



Charlene Tim &lt;charlene.tim@edcgov.us&gt;

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**PC Agenda 8/14 Item 11-0356**

1 message

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**contact@ruralcommunitiesunited.com** <contact@ruralcommunitiesunited.com> Thu, Aug 14, 2014 at 6:26 AM  
To: Dave Pratt <dave.pratt@edcgov.us>, Rich Stewart <rich.stewart@edcgov.us>, Tom Heflin <tom.heflin@edcgov.us>, Walter Mathews <walter.mathews@edcgov.us>, Brian Shinault <brian.shinault@edcgov.us>, Char Tim <charlene.tim@edcgov.us>  
Cc: "Thomas P. Infusino" <tomi@volcano.net>, Rural Communities United <contact@ruralcommunitiesunited.com>

Dear Commissioners:

While my comment made it into the public record for the TGPA/ZOU, the draft EIR comments I was referring to did not appear to. So I am attaching them here (...this is the same document you received previously under the draft EIR agenda)

I am also reiterating that there are changes proposed that were NOT analyzed in the draft EIR, and if you make recommendations now, you are making them based on an incomplete project. Examples of impacts not completely analyzed would be Water Quality, Hazards, and multiple zoning issues; the list is about 300 pages long according to the contributors that participated in our group, with several hundred pages more from other members of the public.

'Waiting for the project to be complete' is not the same as 'delaying'. I understand the Ag community is eager to move forward, but this should not occur at the detriment of the remainder of the county.

Thank you for your service, especially at times like this with such large projects looming.  
Regards,

Ellen Van Dyke

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 **DEIR Comments RCU 7.23.14.pdf**  
14328K

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July 23, 2014

Ms. Shawna Purvines, Long Range Planning  
El Dorado County Community Development Agency  
2850 Fairlane Court, Building C  
Placerville, CA 95667

Dear Ms. Purvines:

The attached document is a public comment on the TGPA/ZOU draft EIR, made on behalf of both Rural Communities United (RCU) and the individual contributors listed below. We appreciate the extended time frame for public comment that has better allowed us to review the draft EIR, ask questions, and provide feedback that we hope will be constructive.

We look forward to the County's response to our comments, and hope it will result in a better understanding of the changes being proposed and their impacts on our County.

We also request that the contributors, as listed below, receive any future notices regarding the project, and that a copy of the final EIR be sent to Ellen Van Dyke of RCU at the address provided below.

Please retain a copy of these comments for the administrative record.

Sincerely,

Thomas P. Infusino

**Mailing Address for Final EIR:**

Ellen Van Dyke on behalf of RCU  
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# **COMMENTS ON**

The El Dorado County  
Targeted General Plan Amendment (TGPA)  
&  
Zoning Ordinance Update (ZOU)

## **DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)**

submitted by

Rural Communities United  
July 23, 2014

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## **Executive Summary - Section ES of dEIR Review Comments**

An EIR shall contain a brief summary that identifies the significant effects of the project, the proposed mitigation measures and alternatives, the areas of controversy, and the issues to be resolved. (CEQA Guidelines, sec. 15123.)

1. Consider a more direct, less harmful, and less controversial approach to job creation.

Page ES-7 indicates that one of the objectives of the TGPA is to “promote and support the creation of jobs.” However, the TGPA does so in a most indirect and unproven way. A major focus of the TGPA is on promoting residential development. The theory put forth is that promoting residential development will indirectly promote job development. This has not been a successful formula in El Dorado County that has long had a jobs – housing imbalance. In addition, it is many of these new residential development policies that create some of the worst impacts of the TGPA. Finally, these new residential development policies trigger the most ardent opposition from citizens already suffering from both high infrastructure costs and lower levels of service from current levels of residential development.

If the County is serious about creating jobs, it should propose policies and programs for the general plan that directly promote job creation. Improving market information, providing one-on-one counseling for new businesses, planning and permit assistance, developing a revolving loan fund for capital, providing classes on how to expand and grow a business, infrastructure planning, are all effective means of economic development currently being employed in neighboring counties to successfully create jobs. In addition, these programs lack the environmental impacts and the public opposition associated with drastic land use changes. Please consider such an alternative in the Final EIR.

2. Provisions of the TGPA/ZOU, proposed mitigation, and proposed alternatives conflict with the TGPA/ZOU objectives, because the objectives conflict.

Page ES-7 indicates that an objective of the TGPA is “to protect agriculture in the county.” However, an objective of the ZOU is to expand allowed uses in the agricultural zones to provide for recreation and rural commerce. Another is to provide a range of intensities for home occupations. As explained in subsequent sections of these comments, these objectives of the TGPA/ZOU conflict with one another. Many provisions of the TGPA/ZOU that expand allowed uses and home businesses in the agriculture zone, for commerce unrelated to agriculture, harm agriculture by bringing the conflicting uses in to proximity with one another.

Because these objectives conflict, the County can try to use them to eliminate worthy mitigation measures and alternatives from consideration. For example, maintaining existing limits on commercial uses in agricultural areas, while meeting the objective of protecting agriculture, can be eliminated from consideration because it does not “expand allowed uses “ in the agricultural zone.

The essential ingredient in determining an alternative's feasibility is the assessment of the alternatives in relation to the objectives of the project. (*Planning and Conservation League v. Department of Water Resources* (App. 3 Dist. 2000) 83 Cal.App.4<sup>th</sup> 892) 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.) By imbuing the TGPA/ZOU with conflicting objectives, El Dorado County has attempted to set up a situation in which it can justify the rejection of any mitigation measure or alternative.

In the Final EIR, amend the TGPA/ZOU objectives so that they do not conflict. We strongly encourage you to keep the objective to protect agriculture in the county.

3. The TGPA/ZOU does not have a "problem solving" focus, and the EIR is not focused on finding feasible mitigation measures and alternatives.

Table ES-1 indicates that the TGPA/ZOU creates 33 significant and unavoidable impacts, and does not offer any mitigation measures for 21 of them.

CEQA and general plan law are integrated. For example, the topics discussed in a general plan include aesthetics, air quality, energy and utilities, land use, population and housing, hazardous and solid waste, mineral resources, public services and facilities, transportation, recreation, water supply, wastewater, noise, public safety, soils, biological resources, and open space. (Government Code, sec. 65302.) Not surprisingly, these same impact topics are evaluated in CEQA documents (See CEQA Checklist, DEIR, Appendix A, p. 2-1, *et seq.*)

A general plan is supposed to be a problem-solving document composed of goals, policies, objectives, standards and implementation measures. (See Gov. Code, secs. 65300-65302; *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 348-352; OPR, *General Plan Guidelines*, 2003.) An EIR is supposed to focus on solving environmental problems by identifying mitigation measures and alternatives. (CEQA Guidelines, secs. 15126.4 and 15126.6.)

If a General Plan does a good job of solving problems for all of the topics it covers, then it will provide countywide standards, policies, and programs that will themselves reduce the impacts of new development. This, in turn, makes it easier for new development to qualify for streamlined environmental review, to mitigate its impacts, and to meet statutory standards for project approval. (E.g. Government Code 65451 for Specific Plans and 66473.1 to 66474 for Subdivisions.) When applied in this fashion as intended, general plan law, CEQA, and land use approval statutes work in concert to promote social harmony, economic prosperity, and environmental protection.

The underlying flaw in the TGPA/ZOU is that it ignores both the problem solving focus of General Plan law, and the mitigation focus of CEQA. Rather than solving problems associated with conflicting uses, the TGPA/ZOU seems focused on pushing these conflicting uses together to exacerbate the conflict. For example, it seems focused on

pressuring agricultural operations dependent on space to avoid nuisances, and clean groundwater for production, with intrusive levels of conflicting commercial and residential development.

Similarly, rather than mitigating impacts, the TGPA/ZOU creates 33 significant and unavoidable impacts, and does not offer any mitigation measures for 21 of them. (Table ES-1, p. ES-8 to ES-13.) There is no mitigation for 12 project-related significant impacts. There is no mitigation offered for all 9 of the cumulatively significant impacts.

While the TGPA/ZOU does this with the expressed intent of promoting economic development, these very same actions will impede such development. By forcing more projects to do EIRs instead of less burdensome environmental reviews, development costs increase for even simple projects. By clogging planning queues with unnecessarily complex projects, delay costs for all new proposals will increase. By failing to address key project approval issues early in the process (appropriate development density, water availability, etc.) more projects will fail to meet project approval standards still imbedded securely in state law.

In the Final EIR, please consider an alternative that includes County standards, policies, and programs that will help new job-creating proposals: to avoid problems associated with conflicting uses, to mitigate potentially significant impacts, and to more securely meet the development approval standards imbedded in state law.

4. The DEIR does not evaluate a broad range of reasonable 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.)

Table ES-2 lists three alternatives. (DEIR, p. ES-16.) One is the “No Project” alternative. Another is the Selective Approval of Components Alternative. However, this alternative’s definition is so flexible that the alternative defies quantitative analysis. Paradoxically, it is also so rigid that it only considers components of the proposed projects for inclusion, and thereby severely limits the potential to reduce impacts. The Transit Connection Alternative is the only defined action alternative. When a project has 33 significant unavoidable impacts, one would expect a broader range of alternatives feasible to reduce one or more of those impacts.

In the Final EIR, please consider an alternative that includes County standards, policies, and programs that will help new job-creating proposals: to avoid problems associated with conflicting uses, to mitigate potentially significant environmental impacts, and to more securely meet the development approval standards imbedded in state law.

5. The Executive Summary fails to make a good faith effort to fully disclose the many controversies and issues to be resolved.



Pages ES-17 and ES-18 list only three controversies and issues to be resolved. Actually, in response to the Notice of Preparation, the public submitted extensive comments in writing and during public meetings. Nevertheless, these concerns remain un-analyzed, un-summarized and buried in Appendix B. Information scattered in an EIR or buried in an appendix is not a substitute for good faith reasoned analysis. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4<sup>th</sup> 1219, 1239.) We expect that these controversies and issues to be resolved will be raised again in public comments on the DEIR. Our own comments on the DEIR identify: controversies about impacts not analyzed in detail in the EIR (e.g. hazards & water quality), controversies about the significance of many impacts the EIR claims to be insignificant, controversies regarding the economic theories that are the basis for the TGPA/ZOU, controversies about the efficacy of TGPA/ZOU provisions in achieving TGPA/ZOU objectives, controversies about the consistency of TGPA/ZOU provisions with the remainder of the general plan, controversies regarding the feasibility of the TGPA/ZOU, and controversies regarding the feasibility of TGPA/ZOU alternatives and mitigation measures. In the Final EIR, please provide an accurate summary of the controversies and issues to be resolved, based upon an analysis of the public comments submitted both during scoping and on the DEIR. .

End of Comment Section

## Project Description - Chapter 2 dEIR Review Comments

The Project Description should reflect the policies and ordinances proposed for change under the TGPA/ZOU. These changes were based on adopted Resolutions of Intention (ROI's) 182-2011, 183-2011, and 184-2011, which are periodically referenced in the comments below.

"An accurate, stable, and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193, [139 Cal.Rptr. 396].) "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decisionmakers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e. the 'no project' alternative) and weigh other alternatives in the balance." (*Id.* at pp. 192-193.) The primary harm caused by "the incessant shifts among different project descriptions" was that the inconsistency confused the public and commenting agencies, thus vitiating the usefulness of the process "as a vehicle for intelligent public participation." A "curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*Id.* at pp. 197-198.) An accurate and complete project description is necessary to fully evaluate the project's potential environmental impacts. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (App. 3 Dist. 2004) 122 Cal.App.4<sup>th</sup> 1591.) A description of the project is an indispensable component of a valid environmental impact report under CEQA. (*Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (App. 3 Dist. 2006) 144 Cal.App.4<sup>th</sup> 890.)

Comments are as follows:

1. *From draft EIR Section 2.1: "Except for the targeted amendments described in this chapter, the current General Plan would remain unchanged. A comprehensive update to the Zoning Ordinance is proposed as a part of the project, but many of the same uses are retained. Major new uses being proposed in the ZOU are examined at a general level in the pertinent impact analyses. All changes proposed in the ZOU are consistent with the existing General Plan land use designations and existing policies or with the proposed amended policies and minor land use diagram (map) corrections."*

The public has no way to evaluate this statement in the Project Description because there has been no complete list of the specific ZOU changes provided. The 'strike-out' version provided to the public shows changes from the previous drafts only, rather than changes from the ordinance in place currently. This draft EIR has not met the intent of the CEQA process for informing the public in order for them to engage in quality dialogue. "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].)

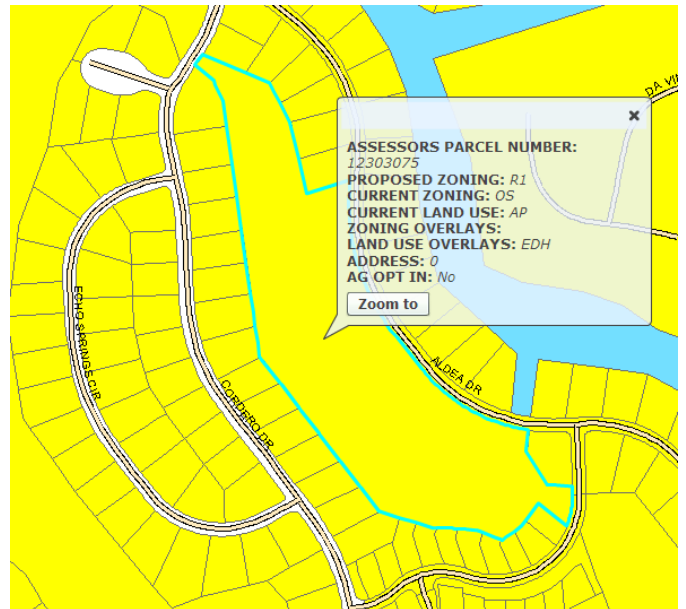
**Please provide a complete strike out version of the Zoning Ordinance Update as well as a comprehensive list of all proposed changes. Then recirculate the DEIR for public comments. (See CEQA Guidelines, sec. 15088.5, *Laurel Heights II* (1993) 6 Cal.4<sup>th</sup> 1112, 1129-1130 [recirculate an EIR when needed to avoid depriving the public of a meaningful opportunity to comment].)**

2. From Section 2.2:

*"None of these plans are proposed for amendments as part of the project;*

- *Meyers Community Plan*
- *Carson Creek Specific Plan*
- *Promontory Specific Plan*
- *Valley View Specific Plan*
- *El Dorado Hills Specific Plan*
- *Bass Lake Hills Specific Plan*
- *North West El Dorado Hills Specific Plan"*

This is not correct. Some examples of zone changes include APN's 123-030-75, 115-400-12 and 119-090-45 in the El Dorado Hills Specific Plan.



**Eliminate these zone changes from the project and review the project to confirm there are no other parcels being rezoned within the Specific Plans through this process without adequate site specific review and public noticing. Alternately, abide by the public noticing requirements for Specific Plan amendments.**

3. The 'Project Description' on page 2-4 downplays the number of changes being proposed and analyzed across the landscape:

*"The majority of the project's proposed General Plan amendments consist of policy changes within the existing General Plan designations (i.e., they are changes to the General Plan text). The project also includes a limited number of proposed changes*

to the land use map and General Plan Land Use Designations. These map changes are proposed in order to correct mapping errors in the adopted General Plan land use map, many of which were identified during the zoning map update process and affect approximately 0.10% of existing parcels within the county." This is only half the truth.

In addition there are over 37,000 zoning changes proposed, out of 108,000 parcels in the county, or well over one third (data from the County's GIS division). Some percentage of these is due to newly created zones, some are correcting inconsistencies, and others appear totally random.

This understatement of the changes across the landscape does not reflect "a good faith effort at full disclosure" of the impacts. (CEQA Guidelines, sec. 15151.)

**In the Final EIR, please expand the breakdown of zone changes to indicate the percentage of changes occurring under each categorical reason for the change.**

4. This is a reference to the General Plan changes proposed, from page 2-4:

*"While the TGPA includes a number of specific amendments to General Plan policies, most of the current General Plan's policies would remain unchanged. Maps and a list showing the proposed changes are available at <http://www.edcgov.us/landuseupdate/>. "*

However, there is no similar accounting of the changes proposed to the Zoning Ordinance, or to the Land Development Manual, or any specific discussion of the draft Mixed Use Design Manual. These documents all contain elements of the proposed changes. In the case of the LDM, policies have been moved there from the General Plan (Noise standards to name one category specifically). The associated impact analysis cannot be reviewed by the public if they are not aware of the changes.

**Please provide equally transparent lists for the changes to the Land Development Manual, the Zoning Ordinance (discussed under item #1) and any changes being incorporated into the new Mixed Use Design Manual, for the purposes of informing the public and allowing them to constructively engage in the review of the impacts. Then recirculate the DEIR for public comments. (See CEQA Guidelines, sec. 15088.5, *Laurel Heights II* (1993) 6 Cal.4<sup>th</sup> 1112, 1129-1130 [recirculate an EIR when needed to avoid depriving the public of a meaningful opportunity to comment].)**

5. The proposed revision creating three Rural Centers from the single Camino/Pollock Pines Community Region, was to be evaluated in the draft EIR. However, the description of this change errs in that the three centers were to include a contraction of the boundaries, providing buffers distinguishing each of the three centers from one another.

From the Project Description 'Land Use Map Changes, page 2-5

*"The TGPA proposes to divide the existing Camino/Pollock Pines Community Region to create three Rural Centers centered on Camino, Cedar Grove, and Pollock Pines (see Figure 2-3). This would allow each of the communities to develop in a manner that reflects its separate and distinct character. The proposed Rural Center designations would not extend beyond the existing boundary of the Community Region."*

**Revise the description of this change to reflect the proposal as presented in the Camino/Pollock Pines community meetings and adjust the impact analysis accordingly.**

6. The proposal to increase the density in Commercial/Mixed Use zones within Community Regions was thought to be required under Government Code section 65583.2(c)(B)(3). However, this is not a state requirement, but rather a consideration that might be deemed appropriate if needed, and should be analyzed as such. Our Housing Element was just approved in October of last year and additional density is not required.

From the draft EIR page 2-7:

*"Policy 2.1.1.3: Commercial/Mixed Use (in Community Regions). This policy would increase the maximum density for the residential portion of mixed-use projects in Community Regions from 16 dwelling units per acre to 20 dwelling units per acre to be consistent with 2009 amendments to State planning law (Government Code Section 65583.2(c)(B)(3))."*

This is the text from the California State Government Code:

**65583.2.**

**(c)** Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobile homes, housing for

agricultural employees, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

**(B)** The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas: sites allowing at least 15 units per acre.

(ii) For unincorporated areas in all nonmetropolitan counties not included in clause (i): sites allowing at least 10 units per acre.

(iii) For suburban jurisdictions: sites allowing at least 20 units per acre.

**Please revise the project description to clarify this difference, and provide analysis in the appropriate sections to reflect that this change is optional and not mandated by state code.**

7. ROI 182-2011 includes the addition of references in various policies regarding the importance of open space. From page 2 of 6 in the ROI:

*"Open Space: Consider amending policy to make reference to Objective 7.6.1"*

Objective 7.6.1 from page 157 of the existing 2004 General Plan reads:

*"OBJECTIVE 7.6.1: IMPORTANCE OF OPEN SPACE Consideration of open space as an important factor in the County's quality of life."*

The Project Description referencing this item in the ROI (on page 2-7 of the draft EIR) does not reflect this intent, and in fact makes no sense. It reads as follows:

*"Policy 2.2.1.2: Open Space. The policy to refer to General Plan Objective 7.6.1 and to allow for additional moderate income housing options would be amended."*

**Please revise the project description to clarify, and to reflect the intention of the change as proposed.**

8. Beginning on page 2-6 of the Project Description is a section titled 'General Plan Policy Amendments'. This itemization includes an incomplete list of changes to the Zoning Ordinance.

Examples of proposed Ordinance changes that are has not listed include 17.37.070**B** allowing self-monitoring of amplified sound, and 17.30.030(**G**)(5a)

allowing the zoning administrator (that's 'over the counter') to grant approval of any use permitted in the subject zone within a riparian setback.

**Please revise this Project Description section to be entitled 'General Plan Policy and Zoning Ordinance Amendments', or alternatively, add a separate section entitled 'Zoning Ordinance Amendments', and revise the finished section(s) so that the list of proposed changes is complete and comprehensive.**

9. The following premise is incorrect, indicating that inconsistencies between the existing Zoning Ordinance and the existing General Plan are in conflict with state law, thereby requiring this comprehensive update. The 2004 General Plan included Policies 2.2.5.6 and 2.2.5.7 specifically to address this issue. The circular and misleading logic from page 2-10 of the draft EIR, indicates a 'targeted' Zoning Ordinance update is not possible. From the draft EIR text (Project Description, pg 2-10):

*"The ZOU is a comprehensive update of the County's Zoning Ordinance. The update is needed so that the Zoning Ordinance will be consistent with the provisions of the General Plan's goals, objectives, policies, and Implementation Measures. Consistency between the general plan and zoning is mandated by state law (Government Code 65860). The current Zoning Ordinance is not consistent with the General Plan."*

If, after review of the impacts, a 'targeted' Zoning Ordinance update is preferred, this misleading premise could lead to the misguided conclusion that targeted changes are not possible. Assuming that electing to adopt just a small number of changes could not be done because of state law requirements could incorrectly preclude either Alternative 1 (No-Project) or Alternative 3 (Selective Approval).

**Please revise the above referenced suggestion indicating that state law mandates the comprehensive changes be made in whole.**

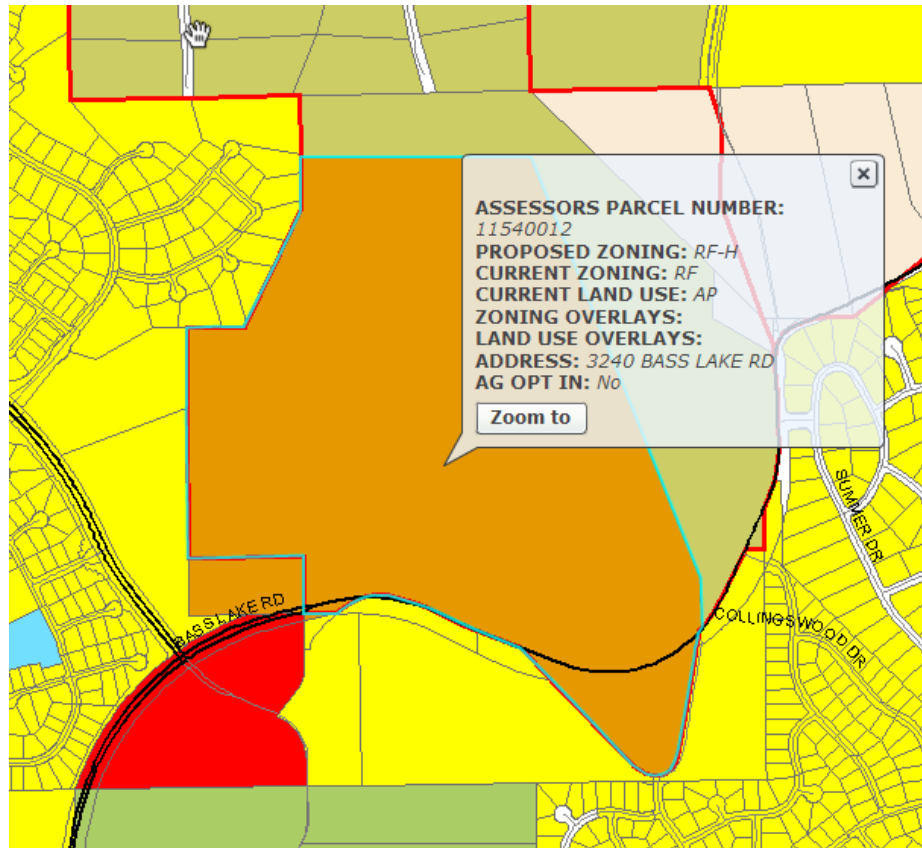
10. This verbiage also, on page 2-10, reinforces the misconception in Item #9 (above):

*"The proposed comprehensive ZOU has two major components:*  
1. *Revising the zoning maps to bring existing zoning designations into conformance with the General Plan, as required by state law.*  
2. *Comprehensively updating the text of the Zoning Ordinance to bring it into conformance with the General Plan to eliminate inconsistencies and to incorporate modern implementation tools."*

The 37,000 zoning changes on existing parcels are much more expansive than what is claimed as "required by state law". Misconceptions about what is being proposed and why, are critical to the analysis of 'significant and unavoidable impacts'.

**Please revise this portion of the Project Description for an accurate portrayal of the reason for proposed zone changes.**

11. Footnote '5' of Table 2-2 on page 2-12 of the dEIR, states that the RFH zone will only be assigned within Community Regions. The sample parcel shown below (APN 115-400-12) is Open Space in the area plan and is NOT within the Community Region, but is being changed from RF to RFH. Additionally it is within the EDH Specific Plan, and should not be changed according to Section 2.2 of the Project Description (page 2-2). It is also designated as open space in perpetuity according to the EIR for the EDHSP and is inappropriate for a 'high' intensity recreational use.



**Please correct the specific error mentioned and review Table 2.2 in its entirety. Correct any other inconsistencies discovered during the process along with the inconsistencies that reach into other sections of the dEIR review, such as Zoning and Land Use.**

12. The Mixed Use Design Guidelines (Appendix C) and the Land Development Manual (LDM), are not discussed anywhere in the Project Description. This is a significant



omission. "A curtailed or distorted project description may stultify the objectives of the reporting process." (*County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 192-193.)

**A complete disclosure of how the LDM and Mixed Use Design Guidelines are related to the project, which General Plan policies and Zoning Ordinances have been moved there, and any impacts of these changes, should be provided in the Project Description.**

13. The Community Outreach section (2.5.1) of the Project Description chapter describes multiple positive outreach efforts. However, the missing critical element is that the proposed changes were not adequately conveyed to the community. Without a comprehensive understanding of the proposal, as discussed in virtually all of the items above, the public has an inadequate understanding of how they might be impacted.

**The public outreach phase of this draft EIR effort must be repeated once fully comprehensive lists of all changes have been made available to the public.**

14. The Notice of Preparation section (2.5.2) of the Project Description chapter describes the second 30-day public review period:

*"A second NOP reflecting the revised ZOU was released on October 1, 2012 for a 30-day public comment period. As before, project-related information was posted on the dedicated project website, and all subscribers to the website were notified."*

This revised ZOU release still did not include a comprehensive list of the proposed changes, and no comprehensive list is available today. The impact analysis cannot possibly be complete if it is based on an incomplete list of changes, and the community cannot comment on what is being proposed, if they have not been informed of it. Additionally, many of the items the public DID know about, and questioned in the NOP comments, have not been addressed. These things together demonstrate a failure to engage and inform the public in this review, as required by CEQA.

**The public review phase of this effort must be repeated once a complete and accurate description of the project has been incorporated into the draft EIR, and item 13 above completed to fully inform concerned County residents. (Re DEIR recirculation see: CEQA Guidelines, sec. 15088.5; *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043 [The draft EIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded].)**

## General Failures of the TGPA/ZOU Draft Environmental Impact Report

### Attestation of Document Review

In review of El Dorado County's (EDC) targeted General Plan amendments/zoning ordinance update (TGPA/ZOU) draft Environment Impact Report (dEIR), many contributors found the document extremely difficult to review and understand.

The TGPA/ZOU was difficult to review for the following reasons:

**1.) It was difficult to tell which of the policies described in the dEIR were new and which were 2004 General Plan policies (not to be revised).**

Especially as a new reviewer, it was difficult to differentiate between the 2004 General Plan policies and the new policies when paging through the dEIR chapters. This was especially true when 2004 policies were under development at the time of their inclusion in the General Plan, and therefore contain language to the effect that, "*The Zoning ordinance shall be amended...*" (as is the case with 2004 General Plan policy 7.3.3.4, for instance). Even though these policies are mostly identified in the text as 2004 General Plan policies, when language that implies revision is used in the policies, it is easily misunderstood by the inexperienced reviewer as a new TGPA/ZOU policy.

**2.) For many new policies, each time the policy was described, the description varied.**

Policy descriptions were *approximately* the same each time they were mentioned, but generally included some different information. While these "changes" can be ascribed in some cases as a tailoring of policy language to suit the topic of various chapters, this kind of repetition (with minor changes) served only to frustrate and confuse the reader. This also meant it was important for the reviewer to locate the majority of the references on any given policy to get a more complete picture of policy impact. For example, new policy 2.4.1.5:

Page 2-8 introduces the policy: "*This policy would set criteria for and identify infill sites and opportunity areas and provide, through an implementation measure, incentives for development of these vacant/underutilized areas. Implementation may support the use of mixed-use and "formbased" codes. These policy changes would not include amending the land use designations or increasing the densities currently provided for in the General Plan.*"

Next it is disclosed that the policy will impact sites of up to five acres in size that do not have wildlife habitat value.

Page 3.4-29 states: "*This amendment would encourage infill development on sites of up to 5 acres in size in existing communities where, among other limitations, the site does not have habitat value for endangered, rare, or threatened species. Although*

*limited to existing communities, the maximum site area eligible for infill is large enough to support habitat for special-status species. Because of the rural nature of the county, infill development of this size may have the potential to adversely affect biological resources when the project site either adjoins existing development or the site itself supports biological resources. Restricting this policy to sites without habitat for endangered, rare, or threatened species does not protect other special-status species. This impact would be significant and unavoidable.* “

The policy is then described as focusing development in Community Regions and Rural Centers.

Page 3.6-10 states: *“Proposed new Policy 2.4.1.5 promoting “infill” development would further encourage development that is consistent with the General Plan to take place within existing communities. This Land Use Element policy is consistent with the Housing Element’s infill implementation measure and reinforces existing policies that focus new development in Community Regions and Rural Centers. As a result, this policy would not result in a significant effect as a result of substantial alteration or degradation of the existing land use character.”*

Not sure what this next description really adds.

Page 3.7-8 states: *“A proposed new policy encouraging infill development on sites of up to 5 acres in size in existing communities. Infill would be required to be consistent with the General Plan and zoning provisions applicable to the given site. Because the infill must be consistent with the General Plan, infill development of this size would have the same effect as identified for the General Plan.”*

Next the policy is described as promoting infill when at least two parcels adjacent to the proposed development site are already developed.

Page 3.8-8 states: *“Proposed new Policy 2.4.1.5 promoting infill development would encourage development within existing communities when at least two parcels adjacent to the proposed development site are already developed. This Land Use Element policy is consistent with the Housing Element’s infill implementation measure and reinforces existing policies that focus new development in Community Regions and Rural Centers. Because this policy would not expand on the allowable development intensities under the General Plan it is not expected to induce substantial population growth.”*

The primary harm caused by "the incessant shifts among different project descriptions" was that the inconsistency confused the public and commenting agencies, thus vitiating the usefulness of the process "as a vehicle for intelligent public participation." (*County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 97-198.)

3.) In several instances, the language used in the TGPA/ZOU was contradictory; this made it impossible to tell what the policy actually meant, and what its impact would be.

(a) The discussion regarding mitigation measures on  $\geq 30\%$  slopes is contradictory:

Page 3.6-10 states: “*The proposed relaxation of the prohibition on development on slopes of 30% or greater would **potentially** result in a **significant and unavoidable impact**...Mitigation Measure BIO-1a would reduce this impact, but not below the level of significance. **This would be a significant and unavoidable impact.**”*

The impact is first described as “**potentially significant and unavoidable**” and then as (definitely) significant and unavoidable. Then the dEIR presents the following statements:

Page 3.1-14 states: Mitigation Measure BIO-1a would reduce impacts related to allowing development on slopes of 30% or greater, but **not to a less-than-significant level**.

Page 3.4-32 & 3.4-39 state: Impacts related to allowing development on 30% hillsides would be reduced **to a less-than significant level** by Mitigation Measure BIO-1a.

(b) The ZOU contains the following contradiction that makes it difficult for the reviewer to identify which open space strategy takes precedence:

**17.28.050 states** “...planned developments within Agricultural Districts may set aside open space for **agricultural uses**...raising and grazing animals, orchards, vineyard, community gardens and crop lands,” **but page 45 of the ZOU states**, “Open Space Zone is intended to identify and protect land set aside for primarily open space purposes...the protection of rare and endangered plant or animal habitat, wildlife habitat...critical winter deer range and migration corridors, oak woodlands...**Intensive agriculture is not compatible.**”

(c) Another conflict comes to light in descriptions of Policy 8.2.4.2. This policy eliminates the requirement for special use permits, but would “*establish requirements for permits.*” So what is really happening here?

**Policy 8.2.4.2. Special Use Permit.** “*This policy would be amended to **eliminate the requirement for a special use permit** for all visitor-serving uses, and instead **would establish standards, permitted uses, and requirements for permits** in the various zone districts in the Zoning Ordinance.*”

(d) The discussion regarding standards for accessory structures for home occupation businesses is contradictory. Have standards for accessory structures been developed or not? (And, as an aside, reviewers are left to wonder how the impact of home

occupancy activities can be evaluated by planning staff/the public if standards are not in place.)

**Page ES 6 states:** "...*standards have been established for the use of accessory structures...*" but **page 2-13 states** "...and *establish standards for the use of accessory structures...*"

Under CEQA, an accurate, stable and finite project description is sine qua non of informative and legally sufficient EIR. (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577.)

#### **4.) Many policy impacts were not discussed, but were sidestepped with dismissive comments.**

Proposed Amendment to Policy 7.1.2.1 and Zoning Ordinance Section 17.30.060 (hillside development) states: "*There is no specific development project being proposed at this time, and the number, size, and habitat value of sites to which the proposed amendments might be applied cannot be known because this will depend upon the future proposals of individual land owners.*"

#### **AND**

"...*the number, size, and habitat value of sites to which the proposed amendments might be applied cannot be known...*" (Page3.4-29)

In many cases, the impact *is* calculable, as is the case with development on slopes  $\geq$  30%. Topography maps of EDC, and/or other sources of information could easily delineate areas of  $\geq$  30% slope, and this information—coupled with known zoning densities (and in some cases, on-site review)—would enable planners to estimate the scope of impact. Unless an attempt is made to perform such evaluations, a fair and reasonable impact assessment has not been made; *nothing* has been done to shed light on the impact of the policy change. This analysis should be done in order to provide the reviewer with a fair and balanced estimate of the impact of policy implementation.

"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.)

#### **5) Many terms critical to an understanding of policies were not defined.**

It is difficult for reviewers to comment on policy when the terms used are not defined or described. For example:

(a) Policies 2.2.3.1 and 2.2.4.1: Open Space. *“It would eliminate the provision that open space may be kept as **wildlife habitat**, instead providing that it may be retained in a **“natural condition.”**”*

What is the difference between maintaining open space as **“wildlife habitat,”** or in a **“natural condition”**?

(b) Page 2-8 states: Policy 2.4.1.5 : *“This policy would set criteria for...infill sites...Implementation may support the use of mixed-use and **‘formbased’ codes.**”*

Not sure what *formbased codes* are—are they defined? Their definition could make a difference in the reviewer’s view of policy impact.

(c) Although Policy 2.1.4.5 states that policy changes would not amend land use designations or **increase densities**, another description of the same policy states *“Because it would not result in an increase in allowable development **intensity**, this amendment would not substantially change impacts...”*

While the description of the policy goes on to state that the policy would not amend land use designations or **increase densities** and would *“...be consistent with the General Plan and zoning provisions applicable to the given site,”* it is unclear if this would be the case because new policies *“amend the zoning code to include a Traditional Neighborhood Design zone within Commercial and Multi-Family Land Uses.”* Plus, it is acknowledged implementation of this policy may entail the **development** and utilization of *“...zero-lot line, duplex with carriage house unit over garage, z-lot, bungalow, etc.),”* and that there will be a thrust to *“**Develop or update, as considered necessary, applicable community plans, specific plans and design guidelines...**”*

The reviewer is left to wonder: will this policy impact development *density* or *intensity*, or neither? It is unclear what all of this means—or could mean. The specifics of policy change need to be spelled out in a manner that facilitates an understanding of the scope of impact. It may or may not be true that the policy will not increase densities, but “wordplay” makes it impossible to tell.

**6) Some of the new policies—or policy revisions—were not listed in the Executive Summary, despite the claim that a complete list was presented there. Unlisted policies included:**

- **Policy Revision 5.2.1.3** “...would be revised such that medium-density residential, high-density residential, multifamily residential, commercial, industrial and research and development projects may be required to connect to public water systems... The current policy requires such development to be connected to public water systems in Community Regions.”
- **Policy Revision 5.3.1.1** “...would be revised such to state that high-density and multifamily residential, commercial, and industrial projects may be required to connect to public wastewater collection facilities...The current policy requires such development to be connected to public collection facilities.”
- **New Policy 2.4.1.5.** “This policy would set criteria for and identify infill sites and opportunity areas...”

**7.) Many of the mitigations were not described in enough detail to determine if they would actually provide a reasonable amount of protection.**

Page 3.4-33 states: **Revise Proposed Policy 7.1.2.1** and Section 17.30.060, subsections C and D, as follows. “...the development proponent shall submit an independent Biological Resources Study, to be prepared by a qualified biologist, which examines the site for important habitat...”

It is not known if Biological Resources Studies have been established and performed (and found to be beneficial) or not; not enough detail is provided for the reviewer to make a determination. **As an aside:** the introduction “**Revise Proposed Policy**” is confusing. Is this proposed policy being **revised**, or is it a revision of a 2004 General Plan policy? (In other words, is this imprecise writing, or does it mean the proposed policy is under revision?) This use of language is partly responsible for making review of this document difficult.

**8.) The status of some 2004 General Plan policies is not clear.**

Despite the declaration that a 25/50 foot riparian/stream buffer would be applied to ministerial projects, and a 50/100 foot buffer for discretionary projects—it was not clear if setbacks have in fact been established. A discussion on page 3.4-28 states “*Zoning Ordinance Section 17.30.030.G ...would establish standards requiring the avoidance and minimization of impacts on wetlands and sensitive riparian habitat.*” The discussion further states, “*The proposed code would also establish...setbacks from specified major lakes, rivers, and creeks within the county.*”

The status of these policies needs to be clarified for the reviewer.

**9.) It is not clear why some policies are being proposed; no discussion regarding need is presented.**

Understanding the need for proposed policies is especially important in cases where the impact is identified as “significant and unavoidable.” For instance, the “why” behind the following proposed policies should be included in the dEIR:

- The deletion of language prohibiting creation of new parcels in dam failure inundation areas (Policy 6.4.1.4)
- The expansion of agricultural lands (and expansion of allowable activities on those lands) (multiple policies)
- The need for exemptions and alternatives to the 30% onsite open space requirement “*to facilitate and encourage development of higher density housing types*” (17.28.050)

Without a clear understanding of the intent behind the policy, there is no way to tell how it will be applied, how it might impact the environment, and how the impact could be mitigated. For example, does the County intend to promote development on slopes over 30%, generally allow development on slopes over 30%, or is this anticipated to be an unusual case? If it is anticipated to be an unusual case, then limiting the total amount of such development could be a feasible mitigation measure. If the County is promoting such development, then limits may not be feasible.

**10.) Many of the impacts (significant and unavoidable) were unsubstantiated.**

More discussion (and reasoning) behind the conclusions regarding significant and unavoidable impacts is necessary. It is not enough to state that the impacts cannot be mitigated, and move on from there. Sound reasoning, studies from peer-reviewed sources, etc., need to be relied upon and cited. EIRs should be “analytic rather than encyclopedic.” (CEQA Guidelines, sec. 15006, subd. (o).)

As is the case with all public documents, this dEIR should be “user friendly”—easily understood by the general public. 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).) It should contain well-reasoned conclusions based on investigation and fact. That is the type of analysis envisioned under the California Environmental Quality Act; it was not accomplished in this dEIR.

END SECTION COMMENTS



## Water Quality - dEIR Review Comments

### Impacts to Surface and Groundwater Quality

#### Statement of Adverse Impact

The draft Environmental Impact Report (dEIR) does not include an analysis of project impact on **surface and groundwater quality**. This is an important area of concern because if/when the project is implemented, the need for potable surface and groundwater will increase. It is the **quality**<sup>1</sup> of available water that will ultimately dictate the **quantity** and **sustainability** of water available to meet project goals. Addressing water quality issues now will enable planners to modify the project to reduce or eliminate adverse impacts to surface and groundwater and thus ensure an adequate water supply for project elements that may move forward.

In addition, a good percentage of residents in El Dorado County (EDC) depend upon groundwater wells for their entire potable water supply. Runoff pollution from project implementation could potentially seriously adversely impact residential water wells. If the project is implemented, without careful consideration of its effect on runoff pollution, a serious water supply problem for existing residents could ensue.

Each of the following topic areas has the potential to adversely impact the quality and quantity of both surface and groundwater. Background information on water quality issues that face EDC, including documentation that supports the comments made in this section are included in **Appendix A: Water Quality**.

The proposed policies in the dEIR that will have an adverse impact on water quality include, but are not limited to, the following:

- **Topic 1:** Increase In Zoning Densities/Mixed Use Development
- **Topic 2:** Water/Sewage Disposal Other Than Public Water/Sewer
- **Topic 3:** Expansion of Commercial/Industrial into Rural Regions/Centers
- **Topic 4:** Revision of Community Region and Rural Center Boundaries
- **Topic 5:** Infill
- **Topic 6:** Development on Slopes  $\geq$  30 Percent
- **Topic 7:** Expanded Home Occupation Activities
- **Topic 8:** Agricultural Expansion/Zoning Changes
- **Topic 9:** Reduction of Stream/Riparian Setbacks
- **Topic 10:** Changes in Open Space Requirements

**NOTE:** For comments made in this water quality section, use of the term “**development**” includes, but is not limited to: the construction of residential, commercial, industrial, institutional, agricultural, and research and development projects.

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<sup>1</sup> Water *quality* is defined as a measure of the suitability of water for its intended use.

## Topic 1: Increase in Zoning Densities/Mixed Use Development

The following proposed policies will adversely impact water quality; negative impacts are described in the comment section that follows the list of policies.

**Policy 2.1.1.3:** “*This policy would increase the maximum density for the residential portion of mixed-use projects in Community Regions from 16 – 20 dwelling units per acre.*”

**Policy 2.1.2.5:** “*This policy would increase the maximum density for the residential portion of mixed-use project in Rural Centers from 4 – 10 dwelling units per acre.*”

**Policy 2.2.1.2:** “*Multifamily Residential (MFR). “The minimum allowable density for the MFR designation in the current General Plan is 5 dwelling units per acre, with a maximum density of up to 24 dwelling units. **The project would increase the designation’s minimum density to eight units per acre with an optional review** but retain the current maximum density of 24 units per acre. The project would amend the MFR designation to **encourage a full range of housing types including small lot, single-family detached design without a requirement for a planned development.** The project would specify that mixed-use development within Community Regions and Rural Centers that combine commercial and residential uses shall be permitted under the MFR designation.”*”

**17.28.050** Residential Development Requirements; Exemptions and Alternatives to the Onsite Open Space Requirement. “**To facilitate and encourage development of higher density housing types...**exemptions and alternatives to the 30 percent onsite open space requirement are: ...projects within Community Regions or Rural Centers; Residential Multi-Family (RM) projects or the residential component of Mixed Use Developments.”

**Policy 6.4.1.4:** “*Creation of new parcels which lie entirely within the 100-year floodplain as identified on the most current version of the flood insurance rate maps provided by FEMA shall be prohibited.*” **(Language prohibiting the creation of new parcels in dam failure inundation areas has been deleted.)**

### Comment 1A:

The increase in densities proposed by these new policies will put additional pressure on water quality/quantity. Based on a review of the dEIR, it can be supposed that at least a portion of this high density residential development will occur in Rural Centers and Rural Regions, areas that will most probably rely strictly on groundwater/septic systems. This is a precarious development strategy; groundwater is simply not a reliable water source. El Dorado Irrigation District (EID) has indicated that because groundwater sources in most of EDC are unreliable, “...ground water will not be relied on to augment firm yield supply or as a sole source of water for domestic, irrigation, or fire-fighting purposes.”<sup>2</sup> And, according to the draft Water Resources Development and Management Plan for EDC, usable groundwater is limited, especially in the western slope of the county where groundwater *quality* was characterized as “satisfactory but marginal.”<sup>3</sup> The Department of Water Resources weighed in on this issue, too, stating that groundwater supplies from the fractured rock sources (present in EDC) are highly variable in

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<sup>2</sup> El Dorado Irrigation District. 2006. *Board Policies and Administrative Regulations*.

<sup>3</sup> Environmental Protection Agency. 2012. *Naturally Occurring Asbestos*, El Dorado Hills, Multimedia Exposure Assessment Preliminary Assessment and Site Inspection Report. <http://www.epa.gov/region9/toxic/noa/eldorado/pdf/asbestosreport0505.pdf>.

terms of water quantity and water quality and are an uncertain source for large-scale residential development.<sup>4</sup>

When new development—especially high density residential development—utilizes groundwater, wells in the immediate area of the development can "go dry." Developments with small lots and individual wells have the effect of lowering the water table in the immediate area, and, if the aquifer is low yielding, the aquifer can fall into "overdraft." Overdraft of groundwater supplies is characterized by groundwater levels that decline over a period of years and never fully recover, even in wet years.<sup>5</sup> Overdraft can lead to water quality degradation, a reduction of water availability, and other adverse environmental impacts.

- What goals are achieved by the increase in zoning densities? Has the State required EDC to adopt increases in zoning densities to facilitate the availability of moderate to low income housing? If so, in what areas of EDC will this type of development occur? How many developments of this kind are expected? How many developments will rely on groundwater?
- What is the likelihood that groundwater will provide a *sustainable* supply in the areas of anticipated development?
- Has El Dorado Irrigation District (EID) developed a detailed water budget by which to estimate groundwater usage/overdraft (to include recharge, extraction and change in aquifers)?
- What historical data do we have to support either the decline or stability of ground water levels in EDC?
- How many wells in EDC been "condemned" because their water was deemed non-potable? What was the source of the contamination? Is future ground water-dependent development planned in these areas?
- Does EDC sustain any liability for approving development projects that later faces water quality/quantity problems? That is, is EDC responsible for ensuring continued delivery of potable water if wells "fail" based on the granting of building permits/project approvals?
- How will property values be affected by issues of water quantity/quality in such developments? If property values drop, who will be responsible/liable for the loss?

### **Comment 1B: Septic Tanks in Areas of Fractured Rock Aquifers**

A thorough assessment of the number of "cluster" or high density housing developments that will utilize groundwater/septic systems must be provided to adequately evaluate the impact of these proposed zoning proposals. It is not enough to say that because there are no development proposals on the table at this time, the impact of the proposed policies cannot be assessed. It is important—and possible—to make impact determinations based upon current zoning/land use/rezoning trends/ project proposals on the horizon/ and other "known quantities," and juxtapose these elements with the physical constraints of current and potential building sites. A reasonable attempt to perform such an evaluation is important, especially in the case of high density housing developments because most rural water problems are related to septic systems, and housing developments that are too dense.<sup>6</sup> Septic-tank effluent can easily travel down the hydraulic gradient and enter fractured rock aquifers, and, if the aquifer is supplying domestic wells, the effluent can introduce bacteria and toxic materials. These bacteria and

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<sup>4</sup> Department of Water Resources. 2003. *California's Groundwater*. Bulletin 118, 2003 update.

<sup>5</sup> *Ibid.*

<sup>6</sup> Waller, R.M. 2014. *Ground Water and the Rural Homeowner*. United States Geological Survey. [http://pubs.usgs.gov/gip/gw\\_ruralhomeowner/](http://pubs.usgs.gov/gip/gw_ruralhomeowner/)

toxins gradually accumulate in the aquifer, and, if the aquifer also supplies surface water sources like creeks and rivers, those receiving waters become contaminated as well.

An additional problem arises when high density developments that utilize septic systems are built on sloping land. In “cluster-housing” developments on sloping land, the house at the highest location generally has the safer water supply. Because effluent migrates down beneath the development, effluent can be pumped, used, and again discharged by each house along its course. Thus, the house furthest downslope will receive the combined effluent from upslope houses. In developments on hillsides with closely spaced houses that include roadways, houses on the uphill side of a road will have a safer water supply; homes on the downslope side will receive effluent from upslope homes plus any contamination generated along the road.

Because treatment of contaminated water is possible, it is often viewed as a stopgap that can “rescue” an otherwise compromised water supply. But treatment can be difficult; while chlorination of water pumped from the aquifer is commonly recommended as a solution for bacteria-contamination, the underlying contaminated zone may take years to stop releasing contaminants.<sup>7</sup> Where contamination is the result of chemical contaminants, treatment can be even more difficult and long lived. It has to be realized that as housing development age, more contaminants will inevitably build in the water supply. In fact, where cluster developments are two or more decades old, almost perpetual recycling of septic waste occurs.<sup>8</sup>

- How much of the anticipated development will be supported by septic systems? What soils are present in the areas of anticipated impact?
- Is it expected that areas now proposed for development with wells/septic tanks will eventually face contamination problems? What actions are EDC prepared to take to resolve groundwater and septic failures?
- Is EDC prepared to condemn a property if there is a water quality/septic issue?
- Is there a contingency plan for these developments if wells become contaminated by septic tank effluent? Will EDC or the developer be responsible/liable to correct water contamination/dry well problems if/when they occur? If so, how will EDC or the developer accomplish remediation?
- If high density developments that rely on groundwater/septic adversely impact the water quality of adjacent landowners’ wells, is EDC or the developer liable to make landowners “whole”? If so, how will this be accomplished?
- Has EDC developed guidelines and mitigation measures for dealing with problems related to the contamination of aquifers by septic systems?
- How will EDC address a lawsuit initiated by property owners in a high-density development seeking compensation from EDC for aquifers contaminated by septic systems?
- Is EDC prepared to manage expedited projects designed to correct water/septic problems?

### **Comment 1C: Storm/Irrigation Water Runoff**

Storm and irrigation runoff from high density residential developments will inevitably contain contaminants from household cleaning products, pharmaceuticals, lawn and garden products, petroleum products, and chemicals from commercial development (allowed under the

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<sup>7</sup> Waller, R.M. 2014. *Ground Water and the Rural Homeowner*. United States Geological Survey. [http://pubs.usgs.gov/gip/gw\\_ruralhomeowner/](http://pubs.usgs.gov/gip/gw_ruralhomeowner/)

<sup>8</sup> Waller, R.M. 2014. *Ground Water and the Rural Homeowner*. United States Geological Survey. [http://pubs.usgs.gov/gip/gw\\_ruralhomeowner/](http://pubs.usgs.gov/gip/gw_ruralhomeowner/)

multifamily residential designation). Fractured rock aquifers will provide an easy conduit for contaminants carried by storm or irrigation water runoff to enter groundwater. Contaminated runoff can also impact adjacent surface water (streams, lakes, etc.) which in turn feed groundwater aquifers. Thus, it is important for EDC planning staff to evaluate site specific contamination potential prior to approving high density residential development projects.

- What contingency plans are in place to mitigate contamination of surface water sources adjacent to development? What contingency plans are in place to mitigate a drop in surface water levels in areas of private domestic well use?
- Will storm water/irrigation runoff from developed areas be able to flow into surface water without prior treatment? Are current EDC “Post Construction Runoff Control Procedures” adequate to protect existing residential wells from potential runoff pollution (pesticides, vehicle fluids and similar contaminants) which could result from the proposed developments? If so, will any rare, threatened, endangered, or species of special interest be adversely impacted as a result of exposure to contaminated runoff?

**Comment 1D: Associated Problems in Mixed Developments (Multifamily Residential, etc.)**

A common source of contamination in residential/mixed development communities lacking a central water or sewage system is small waste-generating businesses (including home-occupation businesses) such as hair salons, veterinary clinics, auto-repair shops, recreation related restrooms in parks, etc. Under these circumstances, septic waste can easily enter aquifers and become subject to pumping by wells. Businesses that discharge contaminants into septic systems and are located upslope of residences can contaminate wells of all downslope residences.

- If commercial development (in multifamily residential “mixed use” developments, for instance) is the source of surface or groundwater contamination, will the business responsible for contamination be held liable/responsible for abating the contamination? How will the source of contamination be investigated/proven, and who will pay for the investigation?

**Comment 1E: Protection of Groundwater Recharge Areas**

The dEIR does not contain policies to protect groundwater recharge areas (nor does the 2004 General Plan). This is an important oversight, especially when an increase in zoning densities is being proposed. Land use decisions affecting groundwater recharge areas can reduce the amount of surface *and* groundwater available and impact the quality of each.<sup>9</sup> Thus, water and land use management agencies must work together to identify and protect groundwater recharge areas.

- How much of the proposed development will occur over aquifer recharge areas?
- Are there plans to protect/preserve recharge areas?
- How many recharge areas will be altered by paving, or other land use changes as development proceeds under the policies presented in this dEIR? Will these alterations impact groundwater quality or groundwater recharge rates at these sites?

**Comment 1F Development in Dam Failure Inundation Areas**

If development is allowed in dam failure inundation areas—and a dam fails or otherwise floods developed areas, many contaminants will be released into the water supply. The contaminants

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<sup>9</sup> 2003. *California's Groundwater*. State of California Resources Agency, Department of Water Resources. Bulletin 118; October, 2003.

will vary with the type of development allowed in the inundation area, but contaminants are likely to include petroleum products, pesticides, sewage, and miscellaneous household products. This contamination can adversely impact human health, stream and terrestrial wildlife, and riparian habitat.

- Why is development being allowed in dam failure inundation areas? How is this issue handled in other counties?

#### **Additional Question Regarding Higher Density Development and Water Quality**

- Does EDC have enough water to support commitments to existing residents—and landowners with parcels yet to be developed (the approximate 16,000 buildable parcels already “on the books”)—and the zoning expansion proposed under this dEIR? What evidence/data supports the assumptions behind the adequacy of water supply? Does the data take into account water quality issues, dry-year scenarios, the effects of prolonged drought, and global climate change?

#### **Information Requests**

- Groundwater sources needs to be identified, evaluated in terms of sustainability, and mapped. It is well established that this is a critical part of the existing setting. “[T]he EIR does not discuss the volume of water contained in the aquifer or the size of the aquifer. We thus conclude the EIR's discussion of the environmental setting is not in compliance with CEQA Guidelines section 15125.” (*Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 92, 99.)
- Recharge areas need to be identified and mapped to enable planners to avoid impacting these important resources. 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.)
- Areas likely/unlikely to support septic systems need to be evaluated and mapped. 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.4th 99.)
- Areas likely to be impacted by “urban” (including medium to high density residential) runoff should be mapped. This would enable planners to take this impact under consideration when projects are proposed for specific areas. Mapping these areas will enable county planners to evaluate the extent of the problem in EDC and plan accordingly. 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 proposed project. (*Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 92, 99.)

#### **Topic 2: Water/Sewage Disposal Other Than Public Water/Sewer**

**Policy 5.2.1.3:** “...would be revised such that medium-density residential, high-density residential, multifamily residential, commercial, industrial and research and development projects **may be required** to connect to **public water systems** if reasonably available when located within Community Regions and to either a public water system or to an approved

**private water systems in Rural Centers. The current policy requires such development to be connected to public water systems in Community Regions.”**

**Policy 5.3.1.1:** “... would be revised such to state that high-density and multifamily residential, commercial, and industrial projects **may be required** to connect to public **wastewater collection** facilities if reasonably available as a condition of approval. **The current policy requires such development to be connected to public collection facilities.”**

**Page 3.6-10 states:** “The proposed changes to **Policies 5.2.1.3 and 5.3.1.1** would effectively relax the current requirement that higher intensity development connect to public water and wastewater disposal systems to instead **allow development to proceed without connecting to public systems** when public systems are not reasonably available. Because of the lack of reliable groundwater supplies within the county and the size requirements for individual septic system leach fields mandated by building code requirements, **this change would not result in higher intensity development. Instead, it would allow property to be developed, but only to the extent allowed by the site’s physical constraints. Where groundwater supplies are limited or the size of the site is limited, this will typically be a lower intensity of development than could be supported by public water and wastewater disposal systems. This would not result in a substantial alteration or degradation of land use character and therefore would have a less than significant impact.”**

**Comment 2A:** These policies will enable/promote development in areas not suited to the intensity/type of development identified in the policies. Because of the “...*the lack of reliable groundwater supplies within the county...*” (as stated in the dEIR), anything other than low density residential is inappropriate; in fact, even low density residential is problematic due to the unreliability of groundwater as a drinking water source.

For any development areas not supported by public water/sewer, not only is the *quantity* and *reliability* of the groundwater supply in question, but so to is the *quality* of the water supply. If contamination occurs—which is likely because of the fractured rock nature of the aquifers in EDC, and because of the scale and type of development proposed—contamination is not an easy problem to solve. Treatment of aquifers can be very difficult and expensive, and it is not always possible, depending upon the contaminant and the aquifer.

Septic systems are not appropriate for the intensity and type of development identified in the policies. Groundwater contamination in areas of septic tank usage is common and can be difficult to resolve. In addition, septic systems can prove ineffective due to percolation rates, and are highly dependent upon the presence of specific soil types to function properly. Septic systems are appropriate only for low-density residential development.

To indicate that development will “...*typically be lower intensity...development than could be supported by public water and wastewater disposal systems*” contradicts other policy statements. The residential development is, after all, described as “high, moderate, and multi-family” development: This is not “*lower intensity*” development. Thus, the conclusion that implementation of these policies “...*would not result in a substantial alteration or degradation of land use character and therefore would have a less than significant impact*” is false. Development of the intensity and type identified in these policies *will* have a profound impact in areas that lack public water and wastewater facilities. And—if development is allowed to proceed as proposed—the sustainability of such development is questionable.

### **Comment 2B: Infrastructure Availability**

Policy 2.1.1.2 of the 2004 General Plan states that **Community Regions** will be established “...to define those areas which are appropriate for the highest intensity of self-sustaining compact urban-type development or suburban type development within the County based on the municipal spheres of influence, **availability of infrastructure**, public services, major transportation corridors and travel patterns.” Thus, proposed policy 5.2.1.3 in essence redefines Community Regions as regions not necessarily served by infrastructure (such as **public water systems**).

As an aside, proposed Policy 5.3.1.1—the companion policy to 5.2.1.3—does not speak to the topic of **public wastewater collection** requirements in Community Regions. Thus, it is not clear whether development in Community Regions is required to rely on public wastewater collection, or not, although the text on page 3.6-10 of the dEIR seems to indicate that development in Community Regions would also be exempt from the requirement to connect to public wastewater collection facilities.

- How much of EDC (land area) will these policies impact?
- Where in EDC is it anticipated most of this development will occur?
- What is the status of the groundwater supply in these areas?
- Are there contingency plans if groundwater/septic systems fail under this intensive development? The County should not be “improperly deferring the study of whether building such a system is feasible until the significant environmental impact occurs.” (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118-1119.)
- Does exclusion from the requirement to utilize public wastewater collection apply to development in Community Regions?
- How will the option to not develop on a public water system affect the ability of water purveyors to finance extensions of their public water and wastewater systems? Will a lack of customer density prevent some extensions in Community Regions, Community Centers, and/or Rural Regions? What effect will this have on water quality?

### **Topic 3: Expansion of Commercial/Industrial into Rural Regions**

**Policy 2.2.1.1: Commercial and Industrial.** “The General Plan states that commercial designations are “considered appropriate only within Community Regions and Rural Centers.” Industrial designations are allowed in Community Regions and Rural Centers, but in Rural Regions only when “constrained to uses which support on-site agriculture, timber resource production, mineral extraction, or other resource utilization.” **The TGPA proposes to change current policy restrictions that prohibit commercial and industrial land use designations in the Rural Regions.**”

**Policy 2.2.1.2. Industrial.** “The requirement that industrial lands be restricted to areas within, or in close proximity to Community Regions and Rural Centers would be deleted. **The requirement that industrial lands in rural regions have more limited industrial uses—for support of agriculture and natural resource uses—would be deleted.**”

Page ES-6, states, “The list of allowable uses in the **rural regions** has been increased to provide additional **agricultural support, recreation, home occupation, and other rural residential, tourist-serving, and commercial uses.**”

**Section 17.25.010 and 17.25.020 (Recreational Facilities, Low-intensity [RFL] and Recreational Facilities, High-intensity [RFH])** “RFL zoning would be allowable in **Rural Regions**



and Rural Centers; RFH zoning would be “**primarily located** in Community Regions and Rural Centers.” This includes: campgrounds, golf courses, off-highway vehicle recreation areas, ski areas, large amusement complexes, outdoor entertainment, hotel/motel.

### **Comment 3A: Development Suitability**

The 2013-2021 Housing Element Update (October 29, 2013) states: “*Since many of these areas are in the Rural Regions...devoid of services (e.g., no water or wastewater services, limited road access), they are generally not suitable for residential development.*” And yet these policies propose to allow development that will include commercial, industrial, agricultural support (undefined), recreation (unspecified), home occupation, (multiple commercial possibilities) and other rural residential, tourist-serving (undefined), and commercial uses. Not only is the majority of this development inappropriate in Rural Regions, it will seriously impact surface and groundwater quality, largely because groundwater and septic systems will be relied upon for water supply and waste disposal, and because some of these types of developments have the potential to generate runoff pollution which could contaminate existing water supplies.

### **Comment 3B: Impact of Commercial/Industrial/Recreational Expansion**

Expansion of commercial, industrial, “agricultural support,” recreation, home occupation, and other “tourist-serving” uses into rural regions means more development will depend on groundwater supplies. Not only are these supplies limited, they are unreliable.<sup>10,11,12</sup> EID has stated that because of the unreliable nature of underground water sources in EDC, “...ground water will not be relied on to augment firm yield supply or as a sole source of water for domestic, irrigation, or fire-fighting purposes.”<sup>13</sup> We can assume this statement also applies to commercial/industrial/recreational development, which is in fact likely to require more water than “domestic.”

### **Comment 3C: Contamination of Surface and Groundwater Supplies**

Contamination of surface and groundwater supplies will become a significant problem in rural regions where commercial, industrial, “agricultural support,” recreation, home occupation, and other “tourist-serving” type development rely on groundwater and septic systems or waste “holding ponds” for wastewater disposal. If contamination occurs—which is likely because of the fractured rock nature of aquifers in EDC—it is not an easy problem to solve. Treatment of aquifers can be very difficult and expensive, and it is not always possible, depending upon the contaminant and the aquifer. In areas where sewer is available—but groundwater is used as a water source—the aquifer is likely to fall into “overdraft” (because it is not recharged by septic effluent). This can adversely impact the quantity of water available for adjacent residential users.

Current EDC “Post Construction Runoff Control Procedures” are vague concerning control and treatment of runoff, and the potential runoff contamination from the various development types allowed under this proposal is considerable.

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<sup>10</sup> State Water Resources Control Board. 2005. *Draft Voluntary Domestic Well Assessment Project: El Dorado County Data Summary Report*. State Water Resources Control Board, Groundwater Ambient Monitoring and Assessment Program, September, 2005.

<sup>11</sup> United States Geological Survey. 2014. *Fractured-Rock Aquifers: Understanding an Increasingly Important Source of Water* <http://toxics.usgs.gov/pubs/FS-112-02/>.

<sup>12</sup> El Dorado County Water Agency. 2007. *Water Resources Development and Management Plan*. Publication No. EDCW06-001. December, 2007. [http://www.edcgov.us/Water/final\\_water\\_resources\\_plan.html](http://www.edcgov.us/Water/final_water_resources_plan.html)

<sup>13</sup> El Dorado Irrigation District. 2006. *Board Policies and Administrative Regulations*.

Allowing off-highway recreational vehicles in rural regions has its water quality consequences, too. In the case of the Rubicon River, the sanctioned use of off-highway recreational vehicles resulted in periodic trail closures due to biological contamination.

### **Questions Regarding Expansion of Commercial/Industrial/Recreational into Rural Regions**

- Has groundwater availability and septic system viability been assessed in areas likely to be developed under these policies?
- Are current EDC “Post Construction Runoff Control Procedures” adequate to prevent groundwater contamination due to potential runoff from the proposed expansion of development types into rural regions?
- If riparian areas (including streams/lakes/rivers/vernal pools) are present on lands to be developed, how will they be protected from commercial/industrial, etc. pollutants that are likely to enter aquifers and resurface as contaminated surface water?
- Could the extension of these additional uses into Rural Regions reduce the availability of good quality water for groundwater-dependent agricultural enterprises? How does this achieve the objective of the TGPA to “protect agriculture in the county.” (DEIR, p. 2-2.)

### **Topic 4: Revision of Community Region and Rural Center Boundaries**

**Policies 2.9.1.2, 2.9.1.3, and 2.9.1.4:** *“Criteria for establishing Community Region and Rural Center boundaries would be amended by deleting the restriction that boundaries can be amended every 5 years; **this revision would allow revisions to the boundaries to be initiated by Board of Supervisors whenever necessary.**”*

**Comment 4A:** Revision of these policies to allow the Board of Supervisors (BOS) to revise Community Region/Rural Center boundaries whenever they deem appropriate would enable the BOS to create higher density development zones at will, any place, any time. Because the expansion or creation of such Regions/Centers would entail an increase in the intensity of development in these areas, water quality could be seriously impacted as development activity increases. For instance, if Region/Center lines are expanded, or if new Regions/Centers are created in areas that lack support services (such as a public water supply/sewer), the impact on groundwater could be significant and adverse. Groundwater could fall into overdraft due to increased demand, and contamination from septic systems and runoff would likely occur.

- What provisions will be made to enable community members to define their own communities?
- Will communities impacted by changes in community region and rural center boundaries be involved in the decision making process?
- Will such changes require an environmental impact analysis?

### **Topic 5: Infill**

**New Policy 2.4.1.5:** *“This policy would set criteria for and identify infill sites and **opportunity areas** and provide, through an implementation measure, **incentives for development** of these vacant/underutilized areas. Implementation may support the use of mixed-use and **“formbased” codes**. These policy changes **would not include amending the land use designations or increasing the densities** currently provided for in the General Plan.”*

**Page 3.4-29 states: Proposed Amendment to Policy 2.4.1.5 (infill development)**

*“This amendment would encourage infill development on sites of up to 5 acres in size in existing communities where...the site does not have habitat value for endangered, rare, or threatened species. Because of the rural nature of the county, infill development of this size may have the potential to adversely affect biological resources... Restricting this policy to sites without habitat for endangered, rare, or threatened species does not protect other special-status species. **This impact would be significant and unavoidable.**”*

**ES.1.2 ZOU** *“Alternative options for open space requirements have been provided that are part of a planned development to provide **more flexibility and incentives for infill development** and use that focuses on **recreation** in Community Regions and Rural Centers.”*

**Table 3.1-2. Proposed Amendment to Policy: (New) Policy 2.4.1.5**

*“The County shall implement a program to promote infill development in existing communities...[when]...**d) Approval of a project would not result in any significant effects relating to traffic, noise, air quality, or water quality.** e) The site can be **adequately served** by all required utilities and public services.”*

**(New) Implementation Measure: Promote Infill Development:** *“The program shall be linked to land-use, housing, air quality, transportation and circulation strategies that support development within existing communities, reduce vehicle miles traveled, increase energy efficiency, and encourage the development of affordable housing. The program shall include, but not be limited to:*

- a. Adopt criteria to be used within existing communities with developed areas currently capable of being served by **public water and public or private sewer**;*
- b. Provide incentives for residential and commercial infill development including **financial incentives** for pedestrian-oriented and transit-friendly design features;*
- c. **Amend the zoning code to include a new Traditional Neighborhood Design zone within Commercial and Multi-Family Land Uses;***
- d. **Support medium and high density residential or mixed use development along commercial and transportation corridors;***
- e. Develop and utilize approved standard plan types (i.e., **zero-lot line, duplex with carriage house unit over garage, z-lot, bungalow, etc.**) to **streamline the approval process** for infill projects. **Standard plans shall include various housing and commercial types and styles.** Standard plan(s) approved as part of a project shall be compatible with neighboring residential or commercial district patterns for which the development is located; and*
- f. Develop or update, as considered necessary, applicable community plans, specific plans and design guidelines to incorporate pedestrian-oriented, transit-friendly, and or energy efficient configurations design as primary goals.”*

*“This proposed policy would promote infill that is consistent with the applicable general plan designation within existing communities. Because **it would not result in an increase in allowable development intensity**, this amendment would not substantially change impacts on existing scenic views of implementation of the General Plan.”*

**Comment 5A: Infill Development Impact on Water Quality/Quantity**

Infill projects will have a significant negative impact on water quality/quantity. Policies related to infill will have the effect of increasing residential/commercial/industrial development on parcels that currently are vacant or “underutilized.” This is likely to mean more development will occur that will be dependent on groundwater and septic systems, a scenario that is likely to result in contaminated aquifers and adjacent wells.

Incentivizing such development will not only promote growth in areas not previously developed, it will promote development types not previously allowed (i.e., it will incentivize “mixed-use” development). This equates to an increased demand on water supply and, in some areas where groundwater/septic tanks/wastewater “holding ponds” are used, contamination of surface and groundwater will likely occur. Especially in the case of commercial, industrial, research and development type projects, the contamination potential is significant.

#### **Comment 5B: Density or Intensity?**

Implementation of this policy may also have the effect of increasing densities in infill properties, which can in turn impact water quality. Although Policy 2.1.4.5 states that policy changes would not amend land use designations or **increase densities**, and would “...*be consistent with the General Plan and zoning provisions applicable to the given site,*” it is unclear if this would be the case because new policies “*amend the zoning code to include a Traditional Neighborhood Design zone within Commercial and Multi-Family Land Uses.*” Plus, it is acknowledged implementation of this policy may entail the development and utilization of “...**zero-lot line, duplex with carriage house unit over garage, z-lot, bungalow, etc.**,” and that there will be a thrust to “**Develop or update, as considered necessary, applicable community plans, specific plans and design guidelines...**” And finally, one description of the policy states, “*Because it would not result in an increase in allowable development **intensity**, this amendment would not substantially change impacts...*”

Which is meant? That implementation of this policy will not impact development *density* or *intensity*, or neither? It is unclear what all of this means—or could mean. The specifics of this policy change need to be spelled out in a manner that facilitates an understanding of the scope of the impact. An accurate and complete project description is necessary to fully evaluate the project’s potential environmental impacts. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (App. 3 Dist. 2004) 122 Cal.App.4<sup>th</sup> 1591.)

#### **Comment 5C: Project “Criteria” and Impact Evaluation**

Because the criteria for infill sites have not been established, it is not possible to evaluate the impact of this policy. (While the impact on biological resources has been identified as “...*significant and unavoidable,*” presumably criteria could be established that are stringent enough to avoid impact at the “significant” level.)

- What analysis of the criteria/impacts have been performed to arrive at the conclusion regarding the scale of impact?
- What analysis has been performed to determine if a balance between infill and impact can be modified to reduce impact?
- What specific data/information is the impact determination based upon? An EIR must contain facts and analysis, not just the bare conclusions of the agency, and must provide sufficient detail so that those who did not participate in its preparation can understand and consider meaningfully the issues raised by the proposed project. The decision to approve a project is a nullity if based upon an EIR that does not provide the decision makers and the public with the required information about the project. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> 1184.)

#### **Comment 5D: More Policy Terminology**

Terminology used within the infill policy make assessment of the impacts of policy implementation unclear. For instance, the description of policy 2.4.1.5 reads, “*This policy would...identify infill sites and **opportunity areas**...*” and states that implementation “...*may*

support the use of **mixed-use** and “**formbased**” codes.” “Opportunity areas,” “mixed use,” and “formbased codes” are not defined. This terminology must be defined to facilitate an understanding of how these elements influence project design. 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).)

Also, while *mixed use* and *formbased* codes are identified as elements of “policy change,” they apparently “...would not include amending the land use designations or increasing the densities currently provided for in the General Plan.” If they do not impact land use designations or densities, how do they facilitate infill projects? How do they function?

#### **Comment 5E: Project Incentives and Streamlining**

What project “incentives” are on the table? For instance, could *density bonuses* or *streamlining* be part of an “incentive” package? Analysis of this proposed policy by the public requires that these incentives be identified in the dEIR (i.e., the type and scale of incentives can define project impact; project impact can be modified by limiting/modifying project incentives.)

Exactly how development will be “encouraged” on vacant or underutilized parcels is not defined. The method of accomplishing this “encouragement” is important, and could equate to a significant impact in these areas.

#### **Comment 5F: Impact Evaluation**

The statement that “*This impact would be significant and unavoidable*” is true only to the extent that projects are allowed to proceed in a manner that is incompatible with the character of the community and the natural environment in which they are placed. Careful planning could mitigate impacts. The County cannot just leap to the conclusion that the impacts will be significant and unavoidable, and approve a statement of overriding considerations. All feasible mitigation must be adopted, and other mitigation properly found infeasible, before an agency can make a statement of overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4<sup>th</sup> 1019.) Adopting a statement of overriding considerations does not justify certification of the EIR absent adoption of the mitigation measures. (*City of Marina v. Board of Trustees* (2006) 39 Cal.4<sup>th</sup> 341.)

#### **Questions Regarding Infill**

- What is the definition of “opportunity areas”?
- It is stated that this policy will “...set criteria for and identify infill sites and opportunity areas.” Who will set the criteria? Why hasn’t the criteria been established prior to the development of this project (dEIR)? How can the public adequately determine potential impacts without knowing what the “criteria” will be? Has EDC staff make impact determinations without knowing the criteria? This statement defers mitigation in the absence of a commitment to meet a clear mitigation standard. CEQA does not allow this. 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. (*Citizens for Quality Growth v. City of Mount Shasta* (3 Dist. 1988) 198 Cal.App.3d 433, 442.) “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.)

- What does "mixed use" include?
- What "incentives" are being offered? The incentives should be identified/defined in the dEIR so the public can evaluate the impact of projects that include incentives.
- Why are infill projects subject to streamlining?
- What are the Open Space "options"?
- What are "formbased" codes? These should be defined in the dEIR/ZOU. If a development based on formbased codes differs from the standards established elsewhere in EDC code, that should be identified and the differences described.
- Does the infill policy allow for the "re-visitation" of properties currently zoned low density residential and—at property owner request—invite a revision to a higher density? Is it *possible* this could happen under this policy (or any other policy)?
- Why aren't special status species' habitat needs part of this policy? After all, it is only "incentivized" infill—why incentivize development in areas of important wildlife habitat?

## Topic 6: Development Slopes $\geq$ 30 percent

**Page 3.1-14 states:** "Allowing development on slopes of 30% or greater would allow new development to be built higher on slopes. Despite the proposed Zoning Ordinance provisions requiring special consideration of grading, geotechnical engineering, landscaping, and other concerns, **there is no practical means of avoiding the introduction of new structures into natural environments when development would occur in rural areas.** Implementation of **Mitigation Measure BIO-1a: Limit...**development on slopes containing special status species habitat, [which] would reduce this impact. However, **because this type of development would adversely affect the vividness and intactness of scenic views, this impact would be significant and unavoidable.**"

**Proposed Amendment to Policy 7.1.2.1 and Zoning Ordinance Section 17.30.060 (hillside development)** "These amendments would authorize development on slopes exceeding 30% under specified circumstances. **There is no specific development project being proposed at this time, and the number, size, and habitat value of sites to which the proposed amendments might be applied cannot be known because this will depend upon the future proposals of individual land owners.** However, this amendment would expand the area of the county that is suitable for development onto land that has previously been undeveloped."

**Page 3.4-24; Section 17.30.060 (Hillside Development Standards)** "Establishes standards regulating development on portions of existing lots where the natural gradient (i.e., slope) exceeds 30%. **Development could proceed with an erosion and sediment control plan in place. Development would be prohibited on sites where the slope has a vertical height of 50 feet or more and exceeds 30%, except 'where reasonable use of an existing lot or parcel would otherwise be denied.'** In those cases, stricter development standards would apply."

**ES.1.2 Zoning Ordinance Update (ZOU)** "Standards for hillside development, including limitations on the development of slopes that are 30% or greater, have been established. These include the **method for calculating average slope.**"

**ZOU, Page 23; F. Reasonable Use Criteria for Placement of Septic Systems on Existing Legal Lots or Parcels.** "General Plan Policy 7.1.2.1 restricts the placement of **septic systems**

on steep slopes. Where public or private sewer service is unavailable, septic systems are integral to the development of most structures. Thus, the **placement of an effluent disposal field on slopes of 30 percent or greater is considered as part of the reasonable use determination** required for the development of parcels with slopes greater than 30 percent.”  
“Septic system components may be located in areas containing slopes greater than 30 percent **where alternative locations are not feasible** or where the placement would reduce the overall disturbance of slopes.”

**Revise proposed Policy 7.1.2.1 and Section 17.30.060, subsections C and D, as follows.**

“Development shall be prohibited where ground disturbance would **adversely affect important habitat** through conversion or fragmentation and shall comply with the provisions of General Plan Policy 7.4.1.6 regarding avoidance of important habitats. In order to demonstrate that adverse effects on important habitat will be avoided, the development proponent shall submit an independent **Biological Resources Study**, to be prepared by a **qualified biologist**, which examines the site for important habitat...Measure CO-U. Where required by the Grading Design Manual, technical studies from **qualified professionals, such as** soils or geotechnical reports to assess the erosion potential or slope stability may be required.”

**Revised Policy 7.1.2.1:** “Development or disturbance of slopes over 30% shall be **restricted**. **Section 17.30.060(D): Exemptions.** **”Agricultural activities that utilize [Best Management Practices] BMPs, as recommended by the County Agricultural Commission and adopted by the Board.”**

**Mitigation Measure BIO-1a:** “The proposed relaxation of the prohibition on development on slopes of 30% or greater would potentially result in a significant and unavoidable impact...Mitigation Measure BIO-1a would reduce this impact, but not below the level of significance. **This would be a significant and unavoidable impact.**”

**Comment 6A: Grading and Hillside Ordinances**

Development on slopes  $\geq 30\%$  will have a significant impact on water quality. Septic effluent will be likely to “daylight” as it travels downslope. Effluent will travel down fractured rock aquifers and—if development occurs in a high-density residential development served by private wells—effluent from residences upslope will contaminate neighborhood wells downslope. Septic effluent is also more likely to contaminate nearby surface water sources as it travels downslope into aquifers that feed surface water, or as it combines with subsurface runoff that enters streams.

**Comment 6B: Unknown Impact**

The TGPA states, “...the number, size, and habitat value of sites to which the proposed amendments might be applied cannot be known...” This does not constitute a reasonable and fair assessment of the impact. Topography maps of the county, and/or other sources of such information, could easily delineate areas of  $\geq 30\%$  slope, and this information—coupled with known zoning densities, and in some cases, on-site review—would enable planners to estimate the scope of impact of development under this policy. (Remember, the project description must include “precise boundaries” of the project on a “detailed map, preferably topographic.” (See CEQA Guidelines, sec. 15125, subd. (a).) For this part of the project, that would be a map of areas of the county with private land over 30% slope.) This analysis should be done in order to provide a fair and balanced estimate of the impact policy implementation.

**Comment 6C: Previously Undeveloped Areas**

Because this amendment will expand the area of EDC that is “*suitable for development onto land that has previously been undeveloped*” there will be more pressure on water resources, including groundwater. Groundwater supplies in EDC are limited, unreliable, and subject to contamination.

#### **Comment 6D: Biological Resources Study/Technical Studies**

In order to demonstrate that adverse effects on important habitat will be avoided, policy 7.1.2.1 specifies that a *Biological Resources Study* will be prepared by a “*qualified biologist.*” And, where required by the Grading Design Manual, technical studies will be performed by “*qualified professionals, such as...*” (undefined).

The “qualified biologist” is not required to have more than a B.A. degree in an unspecified area of emphasis (other than “biology.”) and—regarding the “technical studies” required under the Grading Design Manual—the area of expertise/qualifications of “qualified professionals” are not specified. The specifics regarding these “experts” need to be clearly identified and defined. These individuals must have appropriate credentials and ideally be from a pool of individuals independent of interests that would bias their analyses. Thus, the “pools” from which these individuals are chosen should also be identified/defined.

#### **Comment 6E: Agricultural Activities**

Agricultural activities utilizing Best Management Practices (BMPs) (“*as recommended by the County Agricultural Commission and adopted by the Board*”) are exempt from restrictions on the development of slopes  $\geq 30\%$ . (Section 17.30.060[D]). **This exemption is inappropriate.** Agricultural areas are now subject to a full array of development opportunities (see **Topic 8**) and should be able to accomplish development goals without disturbing slopes  $\geq 30\%$ .

#### **Comment 6F: Significant and Unavoidable**

The impact of development on slopes  $\geq 30\%$  has been identified in the dEIR as “*significant and unavoidable.*” Because there is no State mandate to build on slopes  $\geq 30\%$ , this is a *choice* that county planning is offering for consideration; it should be rejected.

#### **Questions Regarding Development on Slopes $\geq 30\%$ :**

- What mandatory obligations are fulfilled by allowing development on slopes  $\geq 30\%$ ?
- How many *current* parcels in the county are now unbuildable that could be developed if this policy is implemented? How much development could occur on parcels with slopes **up to** 30%? How many parcels with slopes **greater than** 30% could be developed?
- What “stricter development standards” would apply to development on slopes exceeding 30%? Have these standards been developed? If not, who will develop them? Why have the details of this mitigation measure been deferred?
- How does EDC’s method for calculating average slope ensure that the data points used provide an appropriate statistical sample of the project area? Is the procedure current and available to the public?
- Will commercial/industrial development be allowed on slopes  $\geq 30\%$ ?
- What actions will the county take if/when septic systems approved for use by the county begin to “daylight” and/or contaminate wells/surface water adjacent to development on slopes  $\geq 30\%$ ?
- How will groundwater recharge areas be impacted by development on land with slopes  $\geq 30\%$ ?
- Who will be legally/financially responsible for the consequences of approving such development?



- Have any “biological resources studies” been performed in EDC? Does EDC have a defined process under which to perform these studies (established guidelines)? If so, who defined what is to be evaluated? If the guidelines under which the studies are to be performed have not been established, when will they be established? By whom?
- What technical studies required under the Grading Design Manual have been conducted? What “*qualified professionals*” were used for the study, and what were their credentials? What standards have been established for the development of such a study?
- What BMPs would mitigate development on slopes  $\geq 30\%$ ? What is meant by BMPs “*as recommended by the County Agricultural Commission and adopted by the Board*”? Are these BMPs the County Agricultural Commission developed, or BMPs developed by another entity/agency/department?

## Topic 7: Expanded Home Occupancy Activities

**Policy 8.2.4.2. Special Use Permit.** *“This policy would be amended to **eliminate the requirement for a special use permit** for all visitor-serving uses, and instead **would establish standards, permitted uses, and requirements for permits** in the various zone districts in the Zoning Ordinance.”*

**Page ES 6 states:** *“A range of intensities for home occupations, based on size and zoning of parcels, has been provided, and **standards have been established** for the use of accessory structures, ingress and egress of customers, and number of employees. This includes provisions for “cottage food operations.”*

**Page 2-13 states:** *“Provide a range of intensities for home occupations, based on size and zoning of parcels, and **establish standards** for the use of accessory structures, ingress and egress of customers, and number of employees. This includes provisions for “cottage food operations” (small, home-based producers of food for commercial sale) as now allowed under state law.”*

**Page ES 6 states:** *“The list of allowable uses in the **rural regions** has been increased to provide additional agricultural support, recreation, **home occupation**, and other rural residential, tourist-serving, and commercial uses.”*

**Page 3.6-11 states:** *“However, the proposed provisions for **Health Resort and Retreat Centers, Agricultural and Timber Resource Lodging, and Ranch Marketing could substantially alter the character of agricultural and timber resource areas.** A Health Resort and Retreat Center ...would be considered **an expanded home occupation** under the proposed Zoning Ordinance. It would be permitted in the PA (planned agricultural), AG (agricultural grazing), FR (forest resource), and TPZ (timber production) zones upon approval of a CUP, provided that it has been deemed consistent with surrounding agricultural uses by the Agricultural Commission. **No maximum size limit is proposed.** Although the CUP requirement would allow the imposition by the County of restrictions intended to reduce a resort/retreat center’s aesthetic, noise, and traffic impacts, **this type of use could nonetheless substantially alter the existing character of the agricultural or timber production area** by introducing new structures and activities that are different from existing uses. **The proposed right to farm ordinance (section 17.40.290 of the ZOU) will reduce this impact by limiting conflict between agricultural uses, including within the FR and TPZ zones, and resort/retreat center uses.** This impact would be reduced to a less than significant level by **Mitigation Measure AG-1a: Amend the ZOU to limit the size of proposed Health Resort and Retreat Centers.**”*

### **Comment 7A: Home Occupancy Activities and Water Quality**

Allowing home occupancy activities could seriously impact water quality, especially in areas that rely on wells/septic systems. Home occupations such as auto repair businesses, hair salons, veterinary clinics, etc. utilize toxic chemicals/substances that can contaminate surface and groundwater sources. Runoff from auto repair sites, septic effluent from clinics and other home businesses can contaminate aquifers and nearby surface water.

### **Comment 7B: Resorts and Retreat Centers**

Because health resorts and retreat centers will be considered home occupations in areas allowing residential uses (including "...*Agricultural, Rural Lands, Resource, Commercial and Special Purpose zones*"), criteria needs to be established for the size/function of this type of development. These criteria need to be established before the impact of such development can be accurately assessed. Because groundwater/septic would need to be relied upon to support this development in many areas, size restriction is important.

### **Questions Regarding Home Occupancy**

- Since home occupancy activities will be allowed in rural regions, how will the drinking water sources of adjacent residences be protected from possible contamination by chemicals not normally associated with residential living?
- Why abolish the current system under which Special Use Permits are acquired?
- Will neighbors of those engaged in home occupations have a forum to voice concerns and objections prior to the approval of home-based businesses if the Special User Permit process/requirement is dropped?
- What recourse will residents have to "close down" a home occupation business that is "disruptive" or that contaminates adjacent well water supplies?
- Have "standards" for home occupancy activities been established? The discussion under Policy 8.2.4.2. states "...*This policy...**would establish standards, permitted uses, and requirements for permits.***" While page ES 6 states: "...**standards have been established for the use of accessory structures...**" and page 2-13 states "...**establish standards for the use of accessory structures...**" If these standards have not been developed, who will develop them? Will the public be involved? How can the impact of home occupancy activities be reasonably evaluated if the standards have not yet been developed? Why is the formulation of this mitigation being impermissibly deferred?
- How would allowing home occupations impact residential Covenants, Conditions and Restrictions (CCRs)? Would this new policy take precedence over CCRs?
- Why has no size limit been imposed on health resorts and retreat centers? Could a large "home" be built that predominantly serves as a resort or retreat and therefore "skirt" zoning ordinances?
- What are "Special Purpose" zones? Have they been defined? These zones—and the activities allowed in them—need to be described to enable an evaluation of their potential impact.

### **Topic 8: Agricultural Expansion/Zoning Changes**

**ES.1.2 ZOU Allowed uses in the agricultural and rural lands zones have been expanded to provide opportunities for *agricultural support, recreation, and rural commercial activities, including ranch marketing on agricultural grazing land.***

**Policy 2.2.5.10:** Agricultural Support Services. ***“Delete policy requirement for special use permit for agriculture support services; incorporate standards and permitted into Zoning Ordinance.”***

**Revised Policy 7.1.2.1 and 17.30.060(D):** **Agricultural activities that utilize BMPs** *“...as recommended by the County Agricultural Commission and adopted by the Board...”* are **exempt** from restrictions on the *“prohibition on development or disturbance”* of **slopes  $\geq$  30%**

**Policy 7.4.2.2:** *“Horticultural and grazing projects on agriculturally designated lands are exempt from the restrictions placed on disturbance of natural areas when utilizing “BMPs” recommended by the County Agricultural Commission and adopted by the Board of Supervisors when not subject to Policy 7.1.2.7.”*

**Policy 7.4.2.9:** *“The Important Biological Corridor (-IBC) overlay shall apply to lands identified as having high wildlife habitat values...except...Agricultural Lands...”* **“Lower thresholds for grading permits...”**

**Policy 8.2.4.2:** Special Use Permit. *“This policy would be amended to eliminate the requirement for a special use permit for all visitor serving uses, and instead would establish standards, permitted uses, and requirements for permits, in the various zone districts in the Zoning Ordinance.”*

**Policy 8.2.4.4:** *“The proposal considers amending the policy to allow for ranch marketing activities on grazing lands.”*

**Proposed Zoning Ordinance Section 17.21.020 (land uses in Agricultural, Rural Lands, and Resources Zones)** *“Agricultural, Rural Lands, and Resources land uses...include some uses (e.g., Feed and Farm Supply Store; **Industrial, General; Off-Road Vehicle Recreation Area**) that are typically intensive...”*

**Page 3.2-17 states:** *“...key provisions that have the potential to remove agricultural land from production are the change to **Ranch Marketing** and the introduction of **Health Resort and Retreat Center** as a potential use. Ranch Marketing (Section 17.040.260)...can include outdoor entertainment and **concerts**... The matrix in Section 17.21.020 also would allow a number of intensive land uses in these zones: **Industrial...Off-Highway Vehicle Recreation...Ski Area...Public Utility Services Facilities...**”*

**ES.1.2 ZOU** *“The list of allowable uses in the rural regions has been increased to provide additional **agricultural support, recreation, home occupation, and other rural residential, tourist-serving, and commercial uses.**”*

**Comment 8A: Expansion of Allowed Uses in Agricultural Districts**

The dEIR proposes sweeping changes to the agricultural lands of EDC. According to the dEIR, the TGPA/ZOU would add 17,241 acres to the Agricultural Districts, and expand allowable uses/activities in these districts. The expansion of agriculturally designated lands—in combination with the expansion of allowable activities on lands zoned agricultural—will impact water quality (and quantity) in numerous ways. It will not only add agricultural contaminants to new regions of EDC (pesticides, herbicides, nitrates, animal waste, etc.), but also contaminants from industrial, off-highway vehicle recreation, ski areas, public utility services facilities, health resorts, retreat centers, home occupation businesses, recreational facilities/activities, and an unspecified category identified as **“general.”** Contaminants from any/all of these activities will

enter streams, lakes, rivers and groundwater aquifers in these largely rural areas. Because some of these agricultural lands overlay aquifer recharge areas, contamination of groundwater—and ultimately, of surface water—from groundwater sources is inevitable.

- What were the 17,241 acres of land zoned before they were included in the Agricultural Districts?
- Did they previously fall under the list of agricultural zoning designations that provide for the maintenance of “permanent open space”?
- Were they designated Open Space (OS) Zones?
- Because much of this land now supports wildlife, wildlife corridors, riparian habitat, etc., what mitigation is being proposed to offset the impact on these species/communities?
- What uses/development will be allowed under the “general” category?

#### **Comment 8B:**

The dEIR states that the TGPA proposed to “...remove 137 acres that have been determined unsuitable for agricultural use.” What criteria were used to remove acreage from an agricultural designation? On page 231 of the dEIR, correspondence (via email) from a landowner to Planner Lillian McLeod indicates that landowners with land in agricultural districts had to “opt in” to keep their properties zoned agricultural; if they did not respond to the letter, their property defaulted to residential zoning. Not only does this procedure sound inappropriate, it may not be legal; it is the equivalent of the “slamming” practices employed by telecommunications companies. What if the landowner was away on an extended stay or ill, and was therefore unable to respond? What if the letter was lost in the mail or misplaced?

This “selection process” runs counter to the statement on page ES-1 of the dEIR that states the TGPA removed “... 137 acres that have been determined unsuitable for agricultural use;” the correspondence cited above identifies different criteria for the removal of acreage from the agricultural designation. Thus, while Policy 8.1.1.2 identifies the criteria used to *include* land in the Agricultural District boundary, the terms of exclusion seem less measured, and in fact, independent of any such criteria. Apparently the County Agricultural Commission identified parcels to be added or removed from agricultural zones, but this determination was followed by opt-in letters to landowners.

- How does EDC justify using an “opt-in” method for zoning revision when “opt-out” would be more appropriate? Are there concerns that this might look like an attempt to marginalize agriculture?

#### **Comment 8C: Exemptions**

In addition to the numerous expanded activities allowed in agricultural districts, many of the mitigations imposed on development in other zoning categories have been relaxed or exempted for Agricultural Districts. These include:

- exemption from the prohibition on development on slopes  $\geq 30\%$  (for agricultural activities that utilize best BMPs);
- exemption from restrictions placed on the disturbance of natural areas (when utilizing BMPs);
- exemption from restrictions imposed under the The Important Biological Corridor (IBC) overlay that applies to lands having high wildlife habitat value;
- lower thresholds for grading permits; and
- exemption from the requirement for a special use permit for all visitor serving uses and agricultural support services.

The exclusion/relaxation of these elements will not only impact wildlife and wildlife habitat in agricultural districts, but it will have a significant adverse impact on surface and groundwater quality. Grading of areas adjacent to (or in) riparian/stream buffer areas will have a serious, direct impact on water quality (and on the wildlife value of such areas). Development on slopes  $\geq 30\%$  will impact water quality (as described under **Topic 6** of this Water Quality discussion). While the disturbance of natural areas and development on slopes  $\geq 30\%$  is to be mitigated by adherence to BMPs, the specifics of the BMPs are not identified in this dEIR, other than to say they are “...recommended by the County Agricultural Commission and adopted by the Board...” That is not to say the BMPs are supported by field study and performance standards, only that they have been approved by a commission and a board, at least one of which is not in the position to judge the merits of BMPs. In the Final EIR, please list the BMP’s and provide some indication of how effective they have been in El Dorado County or elsewhere. “[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.)

The elimination of special use permits for “*visitor serving uses*,” and “*agricultural support services*” and (in their place) the establishment of “...standards, permitted uses, and requirements for permits,” means that there will be no requirements in place for an undetermined amount of time—at least until “standards” are developed. (As an aside, the fact that “requirements for permits” has been added to the list of “in lieu” requirements for special use permits causes some confusion: indicating that “requirements for permits” will be established implies that a permitting process will be reinstated, which runs counter to the language in this new policy.)

- Are the specific BMPs referenced in the dEIR supported by scientific study and are they “widely accepted” standards?
- The terms of the new permit standards need to be outlined in this dEIR to facilitate an evaluation of the impact of this change.
- Who will be responsible for developing standards for “visitor serving uses”?
- What is the expected timeframe for their development?
- Will applications for visitor serving uses be held up until such standards are developed, or will development be allowed to occur without standards?
- Will the standards resemble those currently established under special use permits? If not, how will they differ?
- “Visitor serving uses,” “tourist serving uses,” and “agricultural support services” need to be defined and the allowable “activities” under each itemized.

**Comment 8D: Loss of Agricultural Land and Agricultural “Character”**

It has been acknowledged that changes proposed by the new policies have the potential to remove agricultural land from production. Ranch Marketing, the introduction of health resorts and retreat centers, industrial, off-highway vehicle recreation, ski areas, public utility services facilities, home occupation, agricultural support services, and “...other rural residential, tourist-serving, and commercial uses” all have the potential to transform agricultural districts into highly commercialized districts that no longer support agricultural activities. This commercialization of agricultural districts will in turn seriously impact water quality through the same mechanisms that come into play in commercial districts in urban settings.

### **Comment 8E:**

Because agricultural operations will expand into areas not previously farmed—assuming these areas will be farmed, and not “commercialized” (i.e., used to support recreation, tourism, etc.)—contamination of surface and groundwater by virtue of nitrates, pesticides, herbicides and other chemicals used for pest control will likely occur. According to the UC Davis Center for Watershed Sciences, agricultural operations are one of the leading contributors to nitrate contamination in drinking water supplies (mainly due to the use of fertilizers). Therefore, this land use conversion—from previously unfarmed areas to farmed areas—will mean that more surface and groundwater contamination will likely occur. The EIR needs to analyze, evaluate, and propose mitigation measures for this potentially significant impact.

### **Additional Questions: Agricultural Expansion**

- If agricultural enterprises expand into areas adjacent to residential properties where both will be using groundwater and the agricultural operation draws down a common use aquifer to the extent that adjacent private domestic wells are no longer viable, who will be responsible for the homeowner’s loss of water supply? Will the agricultural operation be liable for ensuring continued water supply to its neighbors, or does the expense of redrilling a well or establishing a new well site fall on the homeowner? What does case law say about this?
- Who will be responsible if agricultural operations contaminate wells of adjacent residential properties?
- What measures will be implemented to ensure agricultural operations in areas not served by EID water/sewer do not contaminate surface and groundwater sources?
- Because groundwater is generally an unreliable source of drinking water in EDC, how is groundwater going to support not only the individual agricultural operations, but the “recreational venues” allowed on site?
- What will be done to ensure pesticide use does not contaminate surface and groundwater in areas of agricultural operations?
- Will aquifer recharge areas be identified prior to establishing farming entities on the newly established 17,241 acres?
- Will buffer areas for streams and other sources of surface water be protected from runoff from agricultural sites? Will standards be developed? If so, who will monitor/enforce buffer area requirements? Will different provisions be made for different types of agricultural operations (i.e., row crop/orchard/vineyard/dairy/grazing/etc.)?
- It has been acknowledged in the DEIR that changes proposed by the new policies have the potential to remove agricultural land from production. How is this consistent with the TGPA objective to “protect agriculture in the county”? (DEIR, p. 2-2.)

### **Topic 9: Reduction of Stream/Riparian Setbacks**

**Page 3.4-28 states:** “*Project Impacts: The proposed ZOU includes Zoning Ordinance Section 17.30.030.G (protection of wetlands and sensitive riparian habitat) that would **establish standards** requiring the avoidance and minimization of impacts on wetlands and sensitive riparian habitat. These standards would apply to all ministerial and discretionary permits proposed adjacent to **perennial streams, rivers, or lakes, any intermittent streams and wetlands shown on the latest U.S. Geological Survey Quad maps, and any sensitive riparian habitat within the county.** Ministerial development would be required to be set back **25 feet from any intermittent stream, wetland or sensitive riparian habitat, or a distance of 50 feet from any perennial lake, river, or stream.** All discretionary development with the potential to impact wetlands or sensitive riparian habitat would require a **biological resource evaluation** to establish the area of avoidance and **any buffers or setbacks required to reduce the***”

**impacts to a less than- significant level** (this would be in addition to any required CEQA analysis). Where all impacts are not reasonably avoided, the biological resource evaluation would be required to **identify mitigation measures** that may be employed to reduce the significant effects. The **proposed code** would also establish greater setbacks from specified major lakes, rivers, and creeks within the county.”

**2004 General Plan Policy 7.4.2.2:** “Where **critical wildlife areas and migration corridors** are identified during review of projects, the County shall protect the resources from degradation by requiring all portions of the project site that contain or influence said areas to be retained as non-disturbed natural areas through **mandatory clustered development** on suitable portions of the project site or other means such as **density transfers** if clustering cannot be achieved. **The setback distance for designated or protected migration corridors shall be determined as part of the project’s environmental analysis.** The intent and emphasis of the Open Space land use designation and of the **non-disturbance policy** is to ensure continued viability of contiguous or interdependent habitat areas and the preservation of all movement corridors between related habitats. **The intent of mandatory clustering is to provide a mechanism for natural resource protection while allowing appropriate development of private property.”**

**2004 General Plan Policy 7.3.3.3:** “The County **shall develop** a database of important surface water features, including lake, river, stream, pond, and wetland resources.”

**2004 General Plan Policy 7.3.3.4:** The Zoning Ordinance shall be amended to provide buffers and special setbacks for the protection of riparian areas and wetlands. The County shall **encourage** the incorporation of protected areas into conservation easements or natural resource protection areas. **Exceptions** to riparian and wetland buffer and setback requirements...where such buffers deny reasonable use of the property, but only when appropriate mitigation measures and Best Management Practices are incorporated into the project. **Exceptions** shall also be provided for horticultural and grazing activities on agriculturally zoned lands that utilize “**best management practices (BMPs)**” as recommended by the County Agricultural Commission and adopted by the Board of Supervisors. **Until standards for buffers and special setbacks are established in the Zoning Ordinance, the County shall apply a minimum setback of 100 feet from all perennial streams, rivers, lakes, and 50 feet from intermittent streams and wetlands.** These interim standards may be modified in a particular instance if...a different setback is necessary **or would be sufficient** to protect the particular riparian area at issue. For projects where the County allows an **exception to wetland and riparian buffers, development in or immediately adjacent to such features shall be planned so that impacts on the resources are minimized. If avoidance and minimization are not feasible,** the County shall make findings, based on documentation provided by the project proponent, that avoidance and minimization are infeasible.

**Policy 7.4.2.3:** “Consistent with Policy 9.1.3.1 of the Parks and Recreation Element, **low impact uses such as trails and linear parks may be provided within river and stream buffers** if all applicable mitigation measures are incorporated into the design.”

**Policy 7.4.2.4:** “Establish and **manage wildlife habitat corridors...and natural resource protection areas to allow for wildlife use. Recreational uses...shall be limited to those activities that do not require grading or vegetation removal.**”

**Policy 7.4.2.8:** “Develop **within five years** and implement an **Integrated Natural Resources Management Plan (INRMP)**...The INRMP shall include the following components: **Aquatic environments including streams, rivers, and lakes; Wetland and riparian habitat...**”

**Policy 7.3.3.5:** “Rivers, streams, lakes and ponds, and wetlands shall be **integrated** into new development in such a way that they enhance the aesthetic and natural character of the site while disturbance to the resource **is avoided or minimized** and fragmentation is limited.”

**Policy 7.4.2.9:** “The Important Biological Corridor (-IBC) overlay shall apply to lands identified as having high wildlife habitat values because of extent, habitat function, connectivity, and other factors. Lands located within the overlay district shall be subject to the following provisions **except...Agricultural Lands...the IBC policies will not apply:** Higher wetlands/riparian retention standards and/or more stringent mitigation requirements for wetland/riparian habitat loss; Increased riparian corridor and wetland setbacks...”

#### **Comment 9A: Stream/Riparian Setbacks**

The riparian/stream setbacks for ministerial projects (25/50 feet) and discretionary projects (50/100 feet) are not based on scientific study; they are wholly inadequate. (For a discussion on stream/riparian buffers and how they may impact water quality, see **Appendix A.**)

It has been established that development and encroachment setbacks should include the entire *active floodplain*<sup>14</sup> of a creek or river to adequately preserve stream banks and associated riparian vegetation. And, while there is no single, abrupt, well-documented threshold setback width that would provide maximum benefits for all riparian functions (because riparian functions have different mechanistic bases and are affected by different site attributes), it is well known that most riparian functions would be affected if setbacks included a buffer of less than **66 feet beyond the active floodplain**. Consequently, narrower widths are not adequate for long-term conservation of riparian functions. (This conclusion is based on a review of the scientific literature.) A recent study of riparian buffers states that for first and second order stream segments<sup>15</sup> **a minimum riparian setback that includes the entire active floodplain plus a buffer of 98 feet of adjacent land (on each side of the active floodplain)** is required; along higher order stream segments (i.e., third order and greater), and along those in or adjacent to conservation lands, **a setback of at least 328 feet—and preferably 656 feet from the active floodplain** is necessary to conserve stream and riparian ecosystem functions, including most wildlife habitat functions. Although these setbacks may seem large—especially relative to those recommended in this dEIR—even these setback distances would not be sufficient for the conservation of many wildlife species with large area requirements. (For instance, some species that live in riparian areas must move to other areas to reproduce, as is the case with pond turtles.) In the Final EIR, provide a more detailed analysis of the wildlife impacts of the new riparian buffer that reflects current available scientific literature on the subject. That is necessary for a “good faith effort at full disclosure.” (CEQA Guidelines, sec. 15151.)

#### **Comment 9B: Establishing Standards**

To add to the uncertainty regarding the county’s establishment of stream/riparian setbacks, it appears as though—despite the declaration that a 25/50 foot buffer would be applied to ministerial projects, and a 50/100 foot buffer for discretionary projects—standards for stream/riparian setbacks have in fact **not been established**, nor has it been specified when

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<sup>14</sup> *Active floodplain* means the geomorphic surface adjacent to the stream channel that is typically inundated on a regular basis (i.e., a recurrence interval of about 2–10 years or less). It is the most extensive low depositional surface, typically covered with fine overbank deposits, although gravel bar deposits may occur along some streams.

<sup>15</sup> *First order* stream segments are upstream segments that have no tributaries, and *second order* segments are formed by the junction of first order segments.



they will be. The discussion on page 3.4-28 states “**Zoning Ordinance Section 17.30.030.G** ...would **establish standards** requiring the avoidance and minimization of impacts on wetlands and sensitive riparian habitat.” The discussion further states, “The **proposed code** would also establish...setbacks from specified major lakes, rivers, and creeks within the county.”

The text on page 3.4-28 includes a statement to the effect that discretionary development would require a **biological resource evaluation** to establish “*areas of avoidance and any buffers or setbacks required.*”

- When will “standards” and “code” be established? What will they be based on? Will any state/federal agencies with expertise in wildlife habitat issues be included in the development of the standards? Will any state/federal water agencies be involved? Will the standards be subjected to environmental review under CEQA? How can the Board of Supervisors make an informed decision to change the riparian setbacks without knowing the details of these standards? “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].)
- Is the setback under ministerial development (25/50 feet) established, or open to modification? Why does it differ from the setback for discretionary development? Why no “biological resource evaluation”?
- The dEIR states that “Zoning Ordinance Section **17.30.030.G** ...would establish standards requiring the **avoidance and minimization of impacts.**” Which is meant—avoidance or minimization? Or are two sets of standards going to be developed?
- Will residential, etc. development that may impact these resources be “held up” until appropriate setbacks/buffers are established in code?

#### **Comment 9C: 2004 General Plan Mandatory Cluster Development and Density Transfers**

The legality of General Plan Policy 7.4.2.2 that guarantees “...*appropriate development of private property*...” in the form of “mandatory clustered development” or “density transfers” is called into question. **Requiring** a specific density outcome for a given development project runs counter to the California Environmental Quality Act (CEQA) environmental review process, and undermines the decision making power of the County Board of Supervisors. The “...*appropriate development of private property*” is not something that can or should be wholly determined by the project developer.

#### **Comment 9D: Exemptions and Modifications**

Exemptions from riparian/stream setbacks are allowed under the following circumstances:

- where buffers deny reasonable use of the property, but only when “*appropriate mitigation measures and BMPs*” are incorporated into the project;
- on agriculturally zoned lands used for horticultural and grazing activities (that also employ BMPs); and
- when development in or immediately adjacent to such features is planned “...*so that impacts on the resources are minimized;*”
- when EDC makes findings—based on documentation “*provided by the project proponent*”—that “*avoidance and minimization*” are infeasible; and
- if “...*a different setback is necessary or would be sufficient to protect the particular riparian area at issue.*”

All of these exceptions mean that riparian/stream buffers are not universally applied and the result is fragmentation of riparian zones. This fragmentation seriously impacts water quality and the value of riparian areas to wildlife, and should be avoided. The Final EIR must analyze, evaluate, and provide mitigation measures for this potentially significant impact.

#### **Comment 9E: Activities Allowed in Riparian/Stream Buffers**

The activities allowed in riparian/stream buffers that degrade the quality of the riparian zone include:

- "...low impact uses such as **trails and linear parks**...within river and stream buffers if all applicable mitigation measures are incorporated into the design;"
- **Recreational uses**...in "**managed** wildlife habitat corridors" limited to activities that do not require grading or vegetation removal; and
- **Integrated** rivers, streams, lakes and ponds, and wetlands that "...enhance the aesthetic and natural character of the site while disturbance to the resource is avoided or minimized and fragmentation is limited."

These allowed uses may please people, but they are destructive to wildlife habitat and water quality and quantity.

#### **Comment 9F: Natural Resources Management Plan**

According to the 2004 General Plan, a Natural Resources Management Plan (INRMP) was to be developed "within five years" of Plan approval. The INRMP was to include strategies for the protection of "...aquatic environments including streams, rivers, and lakes; Wetland and riparian habitat..." As of this date, the plan has not been developed.

#### **Comment 9G: Riparian/Stream Setbacks**

Two citations (based on field study) say all that needs to be said regarding the impact agricultural and other types of development have on riparian and stream ecosystems:

- Developed land uses (including agricultural uses) within recommended buffer setbacks preclude the effectiveness of setbacks.<sup>16</sup>
- Conversion of large portions of a watershed or region to developed and agricultural land uses is associated with broad negative effects on riparian and stream ecosystems.<sup>17</sup>

The Final EIR must analyze, evaluate, and provide mitigation measures for this potentially significant impact.

#### **Comment 9H: Efficacy of Riparian/Stream Setbacks**

On whole, this dEIR does not present a reasonable plan for the protection of stream/riparian environments. The assumptions and criteria used to develop "protections" aren't based on science, and most of the "plans" to protect these areas are either not yet established, or to be established by individuals of unknown qualifications, whose findings are presented to governing bodies not qualified to assess the scientific basis of the recommendations/plans.

#### **Additional Questions Regarding Riparian/Stream Setback**

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<sup>16</sup> Jones & Stokes. *Setback Recommendations to Conserve Riparian Areas and Streams in Western Placer County*. 2005. February, 2005.

<sup>17</sup> Findlay and Houlihan 1996, Roth et al 1996, Booth and Jackson 1997, Magee et al. 1999, Doyle et al. 2000, Paul and Meyer 2001, Allan 2004, Hatt et al. 2004, Pellet et al. 2004, Wissmar et al 2004, and Jones & Stokes 2005).

- Has EDC developed a database of important surface water features as indicated in the 2004 General Plan?
- How many parcels in EDC are unbuildable if effective riparian/stream buffers are instituted?
- What is the (revised) schedule for development of the INRMP. How can the public—or planning staff—determine the impact of projects on these resources without this plan in place (since its provisions are not yet defined)?
- What surface water impacts are anticipated as a result of reducing buffer zones in residential developments? What surface water impacts are anticipated in areas of commercial/industrial/Research & Development type development and in agricultural districts? When answering these questions, please substantiate your assertions with evidence.

## Topic 10: Changes in Open Space Requirements

**Page 3.6-8 states:** *“The project proposes to amend Policy 2.2.3.1 to **exempt certain residential planned development projects from the 30% open space requirement.** This would allow residential planned developments consisting of five or fewer lots, infill development, Multi-Family Residential, or Commercial/Mixed Use to proceed without devoting 30% of the project site to open space.”.*

**Policies 2.2.3.1 and 2.2.4.1: Open Space.** *“Amend the 30% open space requirement for Planned Development to exempt certain types of residential development from that requirement and to allow high density residential planned developments to provide for **half of the 30% open space requirement to be in private yards.**”*

*“The amendment would revise the 30% open space requirement in High Density Residential (HDR) -PDs to a discretionary **15 and 15 set aside: 15% to be provided in a recreational or landscaped buffer/greenbelt and 15% to be provided in private yards.** It would eliminate the provision that open space may be kept as wildlife habitat, instead providing that it may be retained in a natural condition.”*

**Policies 2.2.3.1, 2.2.3.2, and 2.2.5.4:** Amend the 30% open space requirement for Planned Development **community regions and rural centers** to allow lesser area of “improved open space” on site, and **consider options to provide a portion of the required open space off-site or by an in-lieu fee option.**

**ES.1.2 ZOU** *“Alternative options for open space requirements have been provided that are part of a planned development to provide **more flexibility and incentives for infill development** and use that focus on **recreation** in Community Regions and Rural Centers.”*

**Objective 7.6.1.3(D).** *“Residential agricultural’ would be deleted from the list of zoning regulations that provide for maintenance of permanent open space.”*

**17.28.050 Residential Development Requirements; Exemptions and Alternatives to the Onsite Open Space Requirement.** *“To facilitate and encourage development of **higher density housing types...** exemptions and alternatives to the 30 percent onsite open space requirement are: Residential planned developments consisting of five or fewer lots or units; Projects within Community Regions or Rural Centers; Residential Multi-Family (RM) projects or the residential component of Mixed Use Developments.”*

**Alternatives for Improved Open Space.** The common open space requirement may be reduced to 15 percent of the total site for Planned Developments...where: **a.** The common open space is improved for active recreational uses...or for passive recreational uses; **b.** Area equal to 15 percent of the total site is...private yards and patios.

**Open Space requirements for Planned Developments within Agricultural Districts.** In order to conserve and promote agricultural activities and uses within the County, planned developments within Agricultural Districts **may** set aside open space for agricultural uses...**include raising and grazing of animals, orchards, vineyards, community gardens and crop lands.**”

Page 45 of the ZOU states: “The OS, Open Space Zone, **is intended to identify and protect land set aside for primarily passive open space purposes including, but not limited to, the protection of rare and endangered plant or animal habitat; wildlife habitat, such as critical winter deer range and migration corridors; sensitive riparian areas; oak woodlands; visual resources as a part of a development plan or along a designated scenic corridor; and watersheds and groundwater recharge areas. Intensive agriculture is not compatible, although low intensity agriculture such as seasonal grazing may be compatible.**”

“Where the OS Zone is applied as part of a development plan, the uses allowed under the development plan permit are allowed, including a full range of recreational facilities. Where the County determines it is necessary...limited infrastructure, including but not limited to, roads, water, wastewater, drainage facilities and other utilities are expressly allowed in the OS zone.”

**Proposed amendment to Policy 2.2.3.1 (open space in –PD zones)**

“This amendment would **reduce the open space area available for wildlife habitat** in –PD zones and thereby increase the potential to adversely affect special-status species. General Plan Policy 7.4.1.6 requires discretionary projects to **avoid fragmenting habitat when feasible or to mitigate** for the loss if avoidance is not feasible. Discretionary projects would also be subject to **CEQA review** that would specify the necessary mitigation in order to comply with this policy. **This would be sufficient to protect habitat from fragmentation. This impact would be less than significant.**”

“The TGPA would delete Policy 2.2.5.4 that now requires development applications that have the potential to create 50 parcels or more to be subject to the Planned Development combining zone district, thereby requiring 30% of the site to be left in open space. The open space requirement is not strictly for the purpose of avoiding or mitigating an environmental effect. Open space may include **recreational uses**, for example. **Its primary environmental benefits are aesthetic**, by providing visual relief from buildings... **However, given the limited practical application of these amendments, the TGPA and the related changes in the ZOU would not result in a significant environmental effect. This impact would be less than significant.**”

**Impact LU-3: Conflict with any applicable habitat conservation plan or natural community conservation plan (no impact)** “**There are no habitat conservation plans or natural community conservation plans in El Dorado County** (U.S. Fish and Wildlife Service 2013; California Department of Fish and Wildlife 2013). Therefore, the project would not conflict with any such plan and there would be no impact.”

**Comment 10A: Open Space Policies**

The proposed policies will:

- exempt planned development projects from the 30% open space requirement;
- allow “certain types” (undefined) of residential developments to provide for half of the 30% open space in private yards and patios;
- enable high-density residential planned developments to exercise a discretionary 15/15 set aside—15% in recreational or landscaped buffers and 15% in private yards, while “eliminating the provision that open space may be kept as wildlife habitat;”
- amend the 30% open space requirement in Community Regions and Rural Centers to allow a lesser area of “improved open space” and consider providing open space off-site or by an in-lieu fee option;
- provide infill projects with “alternative options for open space” to “provide more incentives for infill development;”
- delete Residential Agriculture from the list of zoning regulations that provide for maintenance of permanent open space;
- provide “exemptions and alternatives” to open space to facilitate and encourage development of higher density housing types in developments such as residential multi-family, mixed use, and projects within Community Regions and Rural Centers;
- allow planned developments within Agricultural Districts to set aside open space for agricultural uses such as “raising and grazing animals, orchards, vineyard, community gardens and crop lands;”
- include infrastructure, including roads, water, wastewater, drainage facilities and other utilities” with Open Space Zones;
- (quote) “*reduce the open space area available for wildlife habitat;*”
- describe the primary environmental benefits of open space as aesthetic, “by providing visual relief from buildings;” and
- declare that the policies will not “conflict with any applicable habitat conservation plan or natural community conservation plan” because “There are no habitat conservation plans or natural community conservation plans in El Dorado County.”

**Thus, the conclusion, as presented in the dEIR, is out-of-step with the reality of policy impact:** “...*given the limited practical application of these amendments, the TGPA and the related changes in the ZOU would not result in a significant environmental effect. This impact would be less than significant.*”

**Comment 10B:**

The policies impacting open space are wholly inappropriate; they undermine the stated objectives of the 2004 General Plan which state growth will be provided for “...***in an environmentally balanced manner, [that] maintains the rural character and quality of the living environment...while conserving agricultural lands, forest and woodlands, and other natural resources.***” The General Plan “Statement of Vision” goes on to include the statement, “***Maintain and protect the County’s natural beauty and environmental quality, vegetation, air and water quality, natural landscape features, cultural resource values, and maintain the rural character and lifestyle...***”

For the TGPA/ZOU, however, the stated purpose is “...***to provide a framework for future development in the County that takes into account population growth, economic factors, demographics, and community needs and wants.***” This shift is telling, and it is fully reflected in the revision to open space policies.

Open space zoning is relied upon to do much of the “heavy lifting” when it comes to “...*maintaining the rural character and lifestyle...*” that the majority of county residents have

come to expect, and hope to maintain. To change the open space formula—to redefine it as the provision of recreation areas, landscaped plots, and backyards is to subvert its real purpose and value to both wildlife and current and future county residents.

### Questions Regarding Open Space

- How does “natural condition” differ from “wildlife habitat”?
- What is “improved open space”? What elements might it contain?
- What is the definition of—or what are the standards for—a “greenbelt”?
- What are the criteria for a “landscaped buffer”?
- How would open space be provided “off-site”? (What is the formula?)
- What are the particulars of the “in-lieu fee” option? What is the formula? What would the in-lieu fees actually be spent on (i.e., do they go into the EDC General Fund)? How have they been spent in the past?
- Why was Residential Agriculture removed from the list of zoning regulations that provide for permanent open space?
- ES.1.2 ZOU states “*alternative options to open space requirements have been provided.*” What are the options that are specifically being referred to?
- What are “active” and “passive” recreational uses? What is included in each category?
- 17.28.050 states “...planned developments within Agricultural Districts may set aside open space for **agricultural uses**...raising and grazing animals, orchards, vineyard, community gardens and crop lands,” but page 45 of the ZOU states, “*Open Space Zone is intended to identify and protect land set aside for primarily open space purposes...the protection of rare and endangered plant or animal habitat, wildlife habitat...critical winter deer range and migration corridors, oak woodlands...Intensive agriculture is not compatible.*” How can these two “visions” co-exist in the same document? Which is “correct”? Rather than meeting the ZOU objective to “eliminate conflicting provisions,” the new open space provisions are in fact establishing new conflicts. (DEIR, p. 2-3.)
- Page 45 of the ZOU states that roads, water, wastewater, drainage facilities and other utilities are allowed in the Open Space Zone. How do these facilities complement open space? Why are they “counted” as part of open space?
- Why are some of the largest, most dense residential developments “excused” from providing open space for their residents?

### Conclusion

Substantial evidence in the record does not support the County’s conclusion that there is no need to address water quality in the EIR. In fact, a fair argument, based upon substantial evidence now in the record, supports the notion that the proposed project may have significant impacts on water quality, and therefore must be analyzed in the EIR.

Please add this impact topic (Water Quality) to the draft EIR with the appropriate analysis, covering the above issues, along with analysis of any additional changes that may be unknown to the public due to the incomplete list of changes that has been provided to date. (The materials in Appendix A below may prove useful in preparing this new section of the EIR.) “The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes.” (CEQA Guidelines, sec. 15126.2, subd. (a).) Then recirculate the DEIR for public comment. (Re DEIR

recirculation see: CEQA Guidelines, sec. 15088.5; *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043 [The draft EIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded.] "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.)

# Appendix A

## Water Quality

### Statement of Adverse Impact

The draft Environmental Impact Report (dEIR) does not include an analysis of project impact on **surface and groundwater quality**. This is an important area of concern because if/when the project is implemented, the need for potable surface and groundwater will increase. It is the *quality*<sup>18</sup> of available water that will ultimately dictate the *quantity* and *sustainability* of water available to meet project goals. Addressing water quality issues now will enable planners to modify the project to reduce or eliminate adverse impacts to surface and groundwater and thus ensure an adequate water supply for project elements that may move forward.

The significance of water quality on water supply is supported by the California Department of Water Resources (DWR). DWR concludes that local agency management must consider water quality because natural or anthropogenic contamination and pumping patterns that are not managed to protect water *quality* may limit the *quantity* of water that is available for use in a basin.<sup>19</sup>

While El Dorado County (EDC) surface and groundwater has been described as generally of good quality, acknowledged is the fact that there are few studies to support this conclusion.<sup>20,21</sup> In fact, evidence points to numerous surface and ground water quality problems in EDC, many of which will be exacerbated by project proposals. Previously uncontaminated surface waters and aquifers will be adversely impacted if “*development*” (residential, commercial, industrial, institutional, agricultural, research and development, etc.) proposals outlined in this dEIR advance to completion.

### **Why Water Quality is Vulnerable to Project Proposals**

To understand the impact dEIR project proposals will have on water quality, it is important to understand the origin and characteristics of EDC surface and groundwater, and the complexity of surface/groundwater interactions.

## Setting

### Surface/Groundwater Interactions

El Dorado County is located in the Sierra Nevada geomorphic province of California. The Sierra Nevada province is characterized by steep-sided hills and narrow, rocky stream channels. The southwestern foothills of EDC are composed of rocks of the Mariposa Formation including amphibolite, serpentinite, and pyroxenite. The Calaveras Formation occurs in northwestern

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<sup>18</sup> Water *quality* is defined as a measure of the suitability of water for its intended use, with respect to dissolved solids and gases and suspended material.

<sup>19</sup> Department of Water Resources. 2003. *California's Groundwater*. Bulletin 118, 2003 update.

<sup>20</sup> El Dorado County Water Agency. 2007. *Water Resources Development and Management Plan*. Publication No. EDCW06-001, December, 2007.

<sup>21</sup> State Water Resources Control Board. 2005. *Draft Voluntary Domestic Well Assessment Project: El Dorado County Data Summary Report*. State Water Resources Control Board, Groundwater Ambient Monitoring and Assessment Program, September, 2005. Page 4.



areas of the county, and includes metamorphic rocks such as chert, slate, quartzite, and mica schist, and serpentinite. The higher peaks in the eastern part of the county consist primarily of igneous and metamorphic rocks intruded by granite. Groundwater does not penetrate these hard rock masses; aquifers in EDC are fed via fractures in rock.

The characteristics of a fractured hard rock system that affect the ability of water users to develop groundwater resources include the size and location of fractures, the interconnection between fractures, and the amount of material deposited within fractures. Because fracture width generally decreases with depth, groundwater recharge, movement and storage in fractures of hard rock are limited.<sup>22,23,24</sup>

In fact, groundwater in the fractured rocks of the Sierra Nevada foothills is highly variable in terms of water quality and quantity; thus, the following entities have characterized EDC groundwater in the following terms:

- Department of Water Resources: EDC groundwater is an unreliable source for large-scale residential development.<sup>25</sup>
- EDC Water Agency: Usable groundwater is limited, especially in the western slope of EDC.<sup>26</sup>
- U.S. EPA: EDC western slope groundwater quality is “*satisfactory but marginal*.”<sup>27</sup>
- El Dorado Irrigation District (EID): Because of the unreliable nature of underground water sources in most of EDC, “...*ground water will not be relied on to augment firm yield supply or as a sole source of water for domestic, irrigation, or fire-fighting purposes*.”<sup>28</sup>

Originally, foothill development relied on water from springs and river diversions with flumes and ditches for conveyance that date back to gold mining era operations. Current development is primarily based on individual private wells, and as pressure for larger scale development increases, questions about the reliability of groundwater supplies need to be addressed. Many foothill communities have considerable experience with dry or drought year shortages, and some communities have had to rely on water brought up the ridges in tanker trucks.<sup>29</sup>

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<sup>22</sup> State Water Resources Control Board. 2005. *Draft Voluntary Domestic Well Assessment Project: El Dorado County Data Summary Report*. State Water Resources Control Board, Groundwater Ambient Monitoring and Assessment Program, September, 2005.

<sup>23</sup> United States Geological Survey. 2014. *Fractured-Rock Aquifers: Understanding an Increasingly Important Source of Water*. <http://toxics.usgs.gov/pubs/FS-112-02/>.

<sup>24</sup> El Dorado County Water Agency. 2007. *Water Resources Development and Management Plan*. Publication No. EDCW06-001. December, 2007. [http://www.edcgov.us/Water/final\\_water\\_resources\\_plan.html](http://www.edcgov.us/Water/final_water_resources_plan.html)

<sup>25</sup> Department of Water Resources. 2003. *California's Groundwater*. Bulletin 118, 2003 update.

<sup>26</sup> El Dorado County Water Agency. 2007. *Water Resources Development and Management Plan*. Publication No. EDCW06-001. December, 2007. [http://www.edcgov.us/Water/final\\_water\\_resources\\_plan.html](http://www.edcgov.us/Water/final_water_resources_plan.html)

<sup>27</sup> Environmental Protection Agency. 2012. *Naturally Occurring Asbestos*, El Dorado Hills, Multimedia Exposure Assessment Preliminary Assessment and Site Inspection Report. <http://www.epa.gov/region9/toxic/noa/eldorado/pdf/asbestosreport0505.pdf>.

<sup>28</sup> El Dorado Irrigation District. 2006. *Board Policies and Administrative Regulations*.

<sup>29</sup> Department of Water Resources. 2003. *California's Groundwater*. Bulletin 118, 2003 update.

Well Reliability and Water Quality—Drought Year Performance

During the drought of 1976 and 1977, EDC’s Division of Environmental Health initiated a water well survey; the following table lists median depth and estimated production rate for wells in 15 planning areas.<sup>30</sup>

Well Characteristics in El Dorado County

County Planning Area	Number of Wells Surveyed	Median Depth (Feet)	Median Rate (gpm)
Camino-Fruitridge	57	100	5
Cool	29	200	5
El Dorado/Diamond Springs	19	150	4
Finnon	37	150	10
Garden Valley	70	150	10
Gold Hill	2	—	5-10
Kelsey	45	125	4
Latrobe	23	200	5
Lotus-Coloma	66	<100	10
Pilot Hill	21	150	7
Pleasant Valley	199	100	6
Rescue	120	125	10
Shingle Springs	42	125	4
Somerset/Fairplay/Mt. Aukum	—	—	10
Pollock Pines	10	—	8

<sup>30</sup> Source: Calkins, Carla, *Water Well Survey Report*, June 1978

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had flow rates less than 1 gallon per minute and some wells had gone dry.<sup>31</sup> Other reports substantiate the limitation of groundwater as a dependable public water supply, or for augmenting surface water storage during droughts. Surveys also indicate that groundwater *quality*, though satisfactory in most areas of the western slope, is often marginal.<sup>32</sup> Thus, future development occurs in areas beyond pipeline service, both *quality* and *quantity* of groundwater could be jeopardized.

Surface and Groundwater Contamination in Fractured Rock Aquifers

Because water flows relatively rapidly through fractured rock aquifers—as opposed to percolating through sand and gravel as it does in unconsolidated aquifers—fractured rock aquifers are highly susceptible to contamination from human activities.<sup>33</sup> Thus, water quality can be seriously impacted by land use practices that permit septic systems to be built in areas of fractured rock aquifers; and because it is difficult to determine the direction and rate of contaminant migration, remediation is especially problematic.<sup>34</sup> In the Sierra foothills, for example, where insufficient soil depths are available to properly leach effluent before it reaches the aquifer, septic systems have contaminated groundwater.<sup>35</sup>

<sup>30</sup> El Dorado County Water Agency. 2007. *Water Resources Development and Management Plan*. Publication No. EDCW06-001. December, 2007. [http://www.edcgov.us/Water/final\\_water\\_resources\\_plan.html](http://www.edcgov.us/Water/final_water_resources_plan.html)

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> United States Geological Survey. 2014. *Contamination in Fractured Rock Aquifers*. [http://toxics.usgs.gov/investigations/fracrock\\_aquifers.html](http://toxics.usgs.gov/investigations/fracrock_aquifers.html).

<sup>34</sup> United States Geological Survey. 2014. *Fractured-Rock Aquifers: Understanding an Increasingly Important Source of Water* <http://toxics.usgs.gov/pubs/FS-112-02/>.

<sup>35</sup> Department of Water Resources. 2003. *California’s Groundwater*. Bulletin 118, 2003 update.

## Sources of Contamination

Surface and groundwater *contamination*<sup>36</sup> sources are generally identified as either naturally occurring, or those caused by human activity. Some basic sources of contamination are described on the following pages.

### Naturally Occurring Sources of Contamination<sup>37,38,39,40,41,42</sup>

- **Microorganisms:** Bacteria, viruses, parasites and other microorganisms—some of which can cause illness—are sometimes found in water supplies. Some of these organisms can cause illnesses. The effects can be short-term and severe (similar to food poisoning), recur frequently, or develop over time. Giardia and cryptosporidium are pathogens that have caused illness in large numbers of people. Pathogens enter water from animal wastes, including human sources such as septic tanks and wastewater-treatment discharge.
- **Radionuclides:** Radionuclides are radioactive elements that may be present in underlying rock and ground water and include uranium, radium and thorium. Although radioactivity is not considered a significant contaminant statewide, it is an important contaminant in communities in the Sierra Nevada.
- **Radon:** Radon gas is a product of the breakdown of uranium in soil. While radon is not particularly dangerous when consumed in water, use of household water containing radon can elevate indoor air levels. (Radon can cause lung cancer when inhaled.)
- **Nitrates and Nitrites:** High nitrate levels are usually due to human activities (the use of fertilizers in agriculture, for example), but they may be found naturally in groundwater. Drinking large amounts of nitrates and nitrites is particularly harmful to infants and can cause “Blue Baby” syndrome, a condition that disrupts oxygen flow in the blood.
- **Heavy Metals:** Underground rocks and soils may contain arsenic, mercury, cadmium, chromium, lead, and selenium that can leach into water supplies.
- **Asbestos:** Asbestos occurs in natural deposits and can cause benign intestinal polyps in humans. Major sources of asbestos in drinking water are decay of asbestos cement water mains and erosion of natural deposits.

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<sup>36</sup> *Contamination*, as defined in Section 13050 of the California Water Code, is an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. Contamination includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

<sup>37</sup> Environmental Protection Agency. 2012. *Private Wells: Human Health*.

<http://water.epa.gov/drink/info/well/health.cfm>

<sup>38</sup> Environmental Protection Agency. 2013. *Water on Tap: What You Need to Know*.

<http://water.epa.gov/drink/guide/>

<sup>39</sup> United States Geological Survey. 2014. *A Primer on Water Quality*. Publication FS-027-01.

<http://pubs.usgs.gov/fs/fs-027-01/>

<sup>40</sup> Department of Water Resources. 2003. *California's Groundwater*. Bulletin 118, 2003 update.

<sup>41</sup> United States Geological Survey. 2011. *Groundwater Quality in the Tahoe and Martis Basins, California*. Fact Sheet 2011-3143.

<sup>42</sup> Environmental Protection Agency. 2013. *Basic Information about Asbestos in Drinking Water*.

<http://water.epa.gov/drink/contaminants/basicinformation/asbestos.cfm>

### Contamination Caused by Human Activity<sup>43,44,45,46,47</sup>

- **Bacteria:** Sources of bacteria in water include farms (animal wastes), sanitary landfills, garbage dumps and septic systems. Children, the elderly, and people with weak immune systems are especially at risk when exposed to water-borne bacteria.
- **Fertilizers and Pesticides:** Fertilizers and pesticides from agricultural operations, home lawn and garden products, golf courses, etc., can easily work down through fractures in rocks, or, following rain events, runoff to streams and lakes where they promote abundant growth of algae, which leads to low oxygen in the water and the possibility of fish kills. Contamination of surface and groundwater by pesticides is widespread and, while some pesticides have not been used for 20 to 30 years, they are still detected in fish and streambed sediment at levels that pose a risk to human health, aquatic life, and fish-eating wildlife. Chemicals used to treat buildings and homes for termites or other pests may also contaminate water sources.
- **Heavy Metals:** Human activities such as mining, construction, and agriculture can release large amounts of heavy metals into nearby water sources. For instance, some older fruit orchards may contain high levels of arsenic (which was once used as a pesticide) and mining activities can contribute mercury. The simple act of homeowners washing cars releases copper, nickel and other metals in runoff water, which can reach creeks, or leach into groundwater.
- **Industrial Products and Wastes:** Many harmful chemicals are used by industry and commercial businesses (gas stations, dry cleaners, etc.) Spills and improper disposal of chemicals and industrial wastes are also common sources of contamination.
- **Leaking Underground Tanks & Piping:** Petroleum products, chemicals, and wastes stored in underground tanks may contaminate water supplies. Tanks and piping that are improperly constructed or installed can leak; steel tanks and piping can corrode over time and release contaminants.
- **Landfills and Waste Dumps:** While landfills are designed to contain leaking liquids, floods can carry contaminants over barriers designed to contain wastes. Older dumpsites contain a wide array of contaminants that can seep into water sources.
- **Household Wastes:** Improper disposal of many common products can contaminate water sources. These products include cleaning solvents, motor oil, paints, paint thinners, pharmaceutical drugs, detergents, etc. Septic systems can also contaminate groundwater, especially where aquifers are fed via hard rock fractures.

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<sup>43</sup> Environmental Protection Agency. 2012. *Private Wells: Human Health*.

<http://water.epa.gov/drink/info/well/health.cfm>

<sup>44</sup> Environmental Protection Agency. 2013. *Water on Tap: What You Need to Know*.

<http://water.epa.gov/drink/guide/>

<sup>45</sup> United States Geological Survey. 2014. *A Primer on Water Quality*. Publication FS-027-01.

<http://pubs.usgs.gov/fs/fs-027-01/>

<sup>46</sup> Fram, M.S. and K. Belitz. 2012. *Status and Understanding of Groundwater Quality in the Tahoe-Martis, Central Sierra, and Southern Sierra Study Units, 2006-2007: California GAMA Priority Basin Project*. United States Geological Survey Scientific Investigations Report 2011-5216, April 10, 2012.

<sup>47</sup> United States Geological Survey. 2011. *Groundwater Quality in the Tahoe and Martis Basins, California*. Fact Sheet 2011-3143.

- Water Treatment Chemicals: Improper handling or storage of water treatment chemicals (disinfectants, corrosion inhibitors, etc.) can contaminate water supplies.
- Volatile Organic Compounds (VOCs): VOCs are in many household, commercial, industrial, and agricultural products.

There are so many chemicals in use today that evaluating the risk to human health and aquatic life is complicated. Because health based standards have not been established for *mixtures* of chemicals found in water, <sup>48</sup> health risks are sometimes incalculable.

**Tables 1 and 2** are taken from the Environmental Protection Agency publication *Getting up to Speed: Ground Water Contamination*. They identify additional sources of surface and groundwater contamination.

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<sup>48</sup> United States Geological Survey. 2001. *A Primer on Water Quality*. Publication FS-027-01.  
<http://pubs.usgs.gov/fs/fs-027-01/>

**Table 1 TYPICAL SOURCES OF POTENTIAL GROUND WATER CONTAMINATION BY LAND USE CATEGORY**

Category	Contaminant Source	
Agriculture	Animal burial areas	Irrigation sites
	Animal feedlots	Manure spreading areas/pits
	Fertilizer storage/use	Pesticide storage/use
Commercial	Airports	Jewelry/metal plating
	Auto repair shops	Laundromats
	Boat yards	Medical institutions
	Construction areas	Paint shops
	Car washes	Photography establishments
	Cemeteries	Railroad tracks and yards
	Dry cleaners	Research laboratories
	Gas stations	Scrap and junkyards
	Golf courses	Storage tanks
	Industrial	Asphalt plants
Chemical manufacture/storage		Pipelines
Electronics manufacture		Septage lagoons and sludge sites
Electroplaters		Storage tanks
Foundries/metal fabricators		Toxic and hazardous spills
Machine/metalworking shops		Wells (operating/abandoned)
Mining and mine drainage		Wood preserving facilities
Residential	Fuel oil	Septic systems, cesspools
	Furniture stripping/refinishing	Sewer lines
	Household hazardous products	Swimming pools (chemical storage)
	Household lawns	
Other	Hazardous waste landfills	Recycling/reduction facilities
	Municipal incinerators	Road deicing operations
	Municipal landfills	Road maintenance depots
	Municipal sewer lines	Storm water drains/basins
	Open burning sites	Transfer stations

Source: U.S. EPA, 1991a.

**Table 2 POTENTIAL HARMFUL COMPONENTS OF COMMON HOUSEHOLD PRODUCTS**

Product	Toxic or Hazardous Components
Antifreeze (gasoline or coolants systems)	Methanol, ethylene glycol
Automatic transmission fluid	Petroleum distillates, xylene
Battery acid (electrolyte)	Sulfuric acid
Degreasers for driveways and garages	Petroleum solvents, alcohols, glycol ether
Degreasers for engines and metal	Chlorinated hydrocarbons, toluene, phenols, dichloroperchloroethylene
Engine and radiator flushes	Petroleum solvents, ketones, butanol, glycol ether
Hydraulic fluid (brake fluid)	Hydrocarbons, fluorocarbons
Motor oils and waste oils	Hydrocarbons
Gasoline and jet fuel	Hydrocarbons
Diesel fuel, kerosene, #2 heating oil	Hydrocarbons
Grease, lubes	Hydrocarbons
Rustproofers	Phenols, heavy metals
Car wash detergents	Alkyl benzene sulfonates
Car waxes and polishes	Petroleum distillates, hydrocarbons
Asphalt and roofing tar	Hydrocarbons
Paints, varnishes, stains, dyes	Heavy metals, toluene
Paint and lacquer thinner	Acetone, benzene, toluene, butyl acetate, methyl ketones
Paint and varnish removers, deglossers	Methylene chloride, toluene, acetone, xylene, ethanol, benzene, methanol
Paint brush cleaners	Hydrocarbons, toluene, acetone, methanol, glycol ethers, methyl ethyl ketones
Floor and furniture strippers	Xylene
Metal polishes	Petroleum distillates, isopropanol, petroleum naphtha
Laundry soil and stain removers	Hydrocarbons, benzene, trichloroethylene, 1,1,1-trichloroethane
Other solvents	Acetone, benzene
Rock salt	Sodium concentration
Refrigerants	1,1,2-trichloro-1,2,2-trifluoroethane
Bug and tar removers	Xylene, petroleum distillates
Household cleansers, oven cleaners	Xylenols, glycol ethers, isopropanol
Drain cleaners	1,1,1-trichloroethane
Toilet cleaners	Xylene, sulfonates, chlorinated phenols
Cesspool cleaners	Tetrachloroethylene, dichlorobenzene, methylene chloride
Disinfectants	Cresol, xylenols
Pesticides (all types)	Naphthalene, phosphorus, xylene, chloroform, heavy metals, chlorinated hydrocarbons
Photochemicals	Phenols, sodium sulfite, cyanide, silver halide, potassium bromide
Printing ink	Heavy metals, phenol-formaldehyde
Wood preservatives (creosote)	Pentachlorophenols
Swimming pool chlorine	Sodium hypochlorite
Lye or caustic soda	Sodium hydroxide
Jewelry cleaners	Sodium cyanide

Source: "Natural Resources Facts: Household Hazardous Wastes," Fact Sheet No. 88-3, Department of Natural Science, University of Rhode Island, August 1988.

## Drinking Water Standards

Primary and secondary standards for maximum contaminant levels (MCLs) in drinking water have been established under the federal Safe Drinking Water Act of 1974. (The MCL is the highest concentration of a contaminant allowed in public drinking water [i.e., public supply wells] and is an enforceable water quality standard.) Primary standards are developed to protect public health and are legally enforceable. Secondary standards are generally for the protection of aesthetic qualities such as taste, odor, appearance, and factors that may affect human skin or tooth coloration. Under these primary and secondary standards, the United States Environmental Protection Agency (U.S. EPA) regulates more than 90 contaminants; the California Department of Public Health (CDPH) regulates about 100.<sup>49</sup> *(It should be noted that while there are many possible contaminants, many are never actually monitored for; thus it is unlikely many of the chemicals listed in the preceding tables will be detected in water unless they are targeted for monitoring.)* Groundwater quality analyses typically include field measurements (temperature, pH, conductivity), minerals (calcium, magnesium, chloride) nutrients (phosphorus, nitrate), minor elements (arsenic, cadmium, iron), organic compounds (pesticides, petroleum derivatives), and pathogens (bacteria).<sup>50</sup>

## Water Quality in EDC: Groundwater

### Private Domestic Wells

No federal, state, or local entities oversee or regulate water quality in EDC's private, domestic wells. It is up to individual well owners to make certain their well water is up to drinking water quality standards. Well owners are urged to test their wells annually for total coliform bacteria, nitrate, and electrical conductivity (EC), and every five years for aluminum, arsenic, barium, cadmium, chromium, fluoride, iron, lead, manganese, mercury, selenium, and silver. They are also urged to test if changes occur in EC, taste, color, or odor; if surrounding land use has changed;<sup>51</sup> if someone in the household is pregnant or nursing; if a neighbor finds an unsafe contaminant; if it is suspected for any reason that the drinking water may contain any other kind of contamination; or if a well pump is replaced or a well is reconditioned.<sup>52</sup>

During 2003 and 2004 (and as part of a small pilot study in 2001), the State Water Board Groundwater Ambient Monitoring and Assessment (GAMA) Program Unit initiated a voluntary domestic well assessment project in EDC.<sup>53</sup> Under this project, 398 private domestic wells were sampled; GAMA used maximum contaminant levels (MCL)<sup>54</sup> as a benchmark for well water quality data. Of the wells sampled, 30 percent (119 wells) would not pass state primary drinking water standards for public water systems. (Multiple chemicals were detected in some wells.)

The most common primary MCL exceedance was coliform (*total coliform*, present in 111 domestic wells, and *fecal coliform*, present in 14 domestic wells), followed by arsenic (15 domestic wells) and nitrate (7 domestic wells).

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<sup>49</sup> Department of Water Resources. 2003. *California's Groundwater*. Bulletin 118, 2003 update.

<sup>50</sup> Department of Water Resources. 2009. *Groundwater Information Center: Ground Water Quality*.

<sup>51</sup> State Water Resources Control Board. 2011. *A Guide for Private Domestic Well Owners*. Division of Water Quality, Groundwater Ambient Monitoring and Assessment Program, April, 2011.

<sup>52</sup> State Water Resources Control Board. 2005. *Draft Voluntary Domestic Well Assessment Project: El Dorado County Data Summary Report*. Groundwater Ambient Monitoring and Assessment Program, September, 2005.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*



Of particular interest is the nitrate data from EDC. In general, nitrate contaminated groundwater is in part caused by excessive use of fertilizer, and animal and human waste (i.e. septic systems). Nitrate concentrations in natural groundwaters are typically less than 2 milligrams per liter (mg/L) nitrate as nitrogen, equivalent to approximately 9 mg/L nitrate as NO<sub>3</sub>. Based on water quality data collected from the 398 domestic wells in EDC, 256 wells had detections of nitrate. Of those, seven wells exceeded the MCL of 45 mg/L (nitrate as NO<sub>3</sub>) and 100 wells had concentrations above 9 mg/L (nitrate as NO<sub>3</sub>), indicating that the source of nitrate is likely due to human activities.

Although additional research is necessary to determine the degree and source(s) of domestic well contamination, the results of the EDC Voluntary Project underscore the importance of establishing policies that protect groundwater quality.

A summary of the GAMA domestic well sampling results are presented in tables 1 and 2. Figure 1 identifies the locations of wells sampled in EDC.

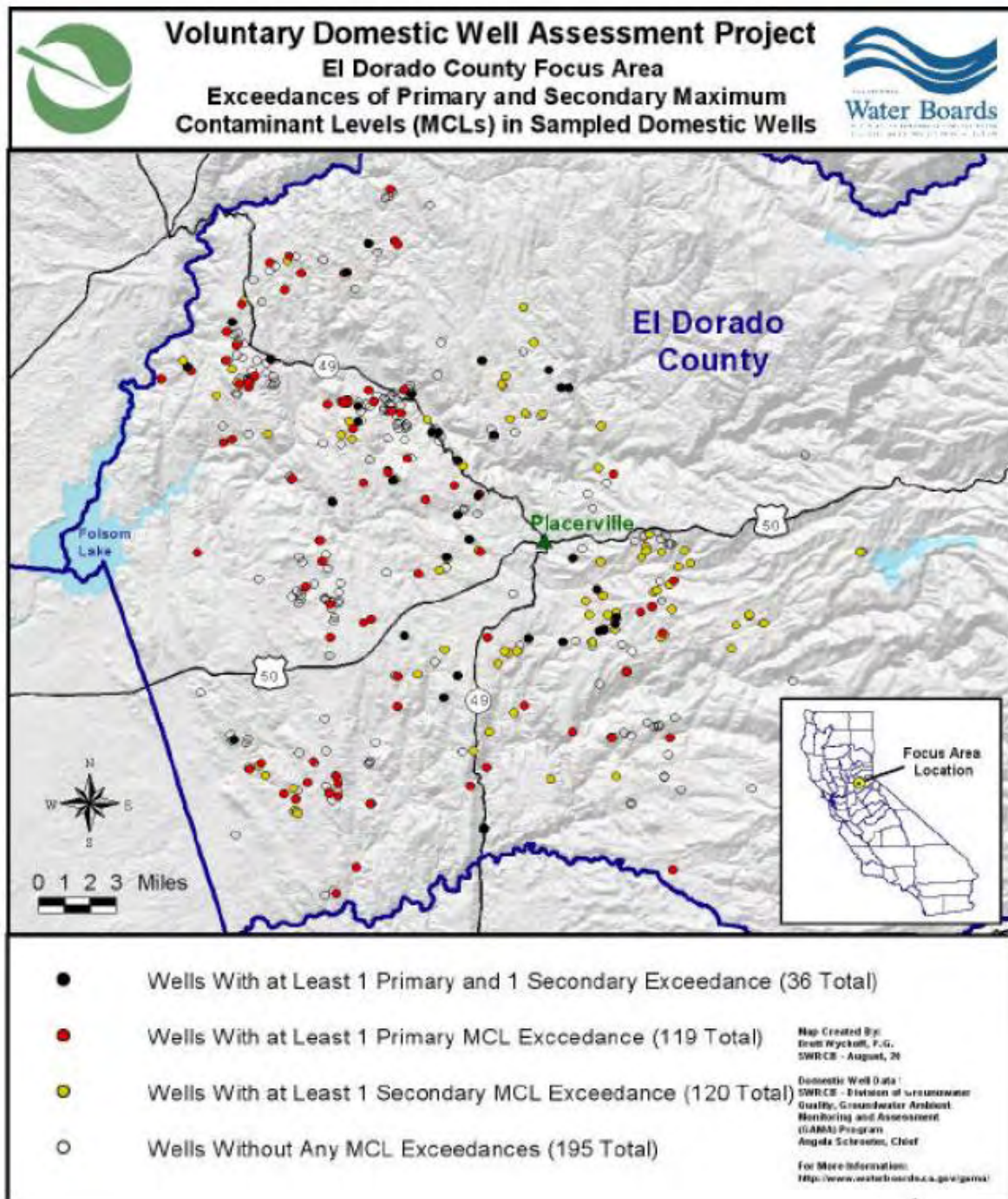
**Table 1.** GAMA Domestic Well Voluntary Assessment Project commonly observed chemicals for wells in EDC, 2001, 2003 - 2004.

GAMA Domestic Well Project Summary Results Commonly Observed Chemicals Number of samples Above CDPH Drinking Water Standards								
Compound	Drinking Water Standard	Yuba (2002) 128 Wells	El Dorado (2003-04) 398 Wells	Tehama (2005) 223 Wells	Tulare (2006) 181 Wells	San Diego (2008-09) 137 Wells	Monterey (2011) 79 Wells	Cumulative Domestic Well Project Totals 1146 Wells
<b>BACTERIA INDICATORS</b>								
Total Coliform	Present <sup>3</sup>	28 (22%)	111 (28%)	56 (25%)	60 (33%)	34 (25%)	11 (14%)	300 (26%)
Fecal Coliform	Present <sup>3</sup>	4 (3%)	14 (4%)	3 (1%)	15 (8%)	NAS <sup>2</sup>	1 (1.3%)	37 (3.2)
<b>GENERAL MINERALS &amp; IONS</b>								
Nitrate	45 mg/L <sup>3</sup>	2 (2%)	7 (2%)	2 (1%)	75 (41%)	25 (18%)	9 (11%)	119(10%)
Nitrite	1 mg/L	NAS <sup>2</sup>	NAS <sup>2</sup>	2 (1%)	4 (2.2 %)	NAS <sup>2</sup>	5 (6%)	11 (<1%)
Perchlorate	6 µg/L <sup>3</sup>	Not Sampled	Not Sampled	Not Sampled	2 of 40 (5%)	5 (4%)	9 (11%)	16 of 256 (6%)
Chloride	500 mg/L <sup>4</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	2 (1%)	NAS <sup>2</sup>	2 (<1%)
Sulfate	500 mg/L <sup>4</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	3 (2%)	1 (1.3%)	4 (<1%)
Total Dissolved Solids	1,000 mg/L <sup>3</sup>	5 (4%)	5 (1%)	5 (2%)	4 (2%)	22 (16%)	5 (6%)	46 (4%)
<b>METALS</b>								
Aluminum	1,000 µg/L <sup>3</sup>	18 (14%)	12 (3%)	6 (3%)	2 (1%)	NAS <sup>2</sup>	NAS <sup>2</sup>	38 (3.3%)
Arsenic	10 µg/L <sup>4</sup>	6 (5%)	15 (4%)	30 (14%)	3 (2%)	3 (2%)	8 (10%)	65 (6%)
Cadmium	5 µg/L	NAS <sup>2</sup>	ND <sup>5</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	2 (1%)	3 (2%)	5 (<1%)
Chromium	50 µg/L <sup>3</sup>	1 (<1%)	NAS <sup>2</sup>	1 (<1%)	2 (1%)	NAS <sup>2</sup>	NAS <sup>2</sup>	4 (<1%)
Iron	300 µg/L <sup>3</sup>	14 (11%)	81 (20%)	31 (14%)	2 (1%)	21 (15%)	6 (8%)	155 (14%)
Manganese	50 µg/L <sup>3</sup>	21 (16%)	98 (25%)	19 (9%)	2 (1%)	45 (33%)	13 (16%)	198 (17%)
Thallium	2 µg/L	NAS <sup>2</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	6 (3%)	NAS <sup>2</sup>	18 (23%)	24 (2%)
Vanadium	50 µg/L <sup>3</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	NAS <sup>2</sup>	14 (8%)	2 (1%)	NAS <sup>2</sup>	16 (<2%)
Zinc	5,000 µg/L <sup>4</sup>	NAS <sup>2</sup>	1 (<1%)	NAS <sup>2</sup>	1 (<1%)	2 (1%)	NAS <sup>2</sup>	4 (<1%)
<b>ORGANICS</b>								
Volatile Organic Compounds	Varies by compound	NAS <sup>2</sup>	1 (<1%)	NAS <sup>2</sup>	10 (6%)	NAS <sup>2</sup>	NAS <sup>2</sup>	11 (<1%)

**Table 2.** GAMA Domestic Well Voluntary Assessment Project summary of detections above a drinking water standard for EDC wells, 2001, 2003 - 2004.

<b>Summary of Detections Above a Drinking Water Standard</b>						
<b>GAMA Domestic Well Project - El Dorado County Focus Area (2003-04)</b>						
Total Number of Wells Sampled: 398						
Chemical Constituent of Concern	Wells Above Public Drinking Water Standards		Range of Detections Above Public Drinking Water Standards	Public Drinking Water Standards		
	Number	Percent		MCL	SMCL	NL
<b>Bacteria Indicators</b>						
Total Coliform	111	28%	NA	Present		
Fecal Coliform	14	4%	NA	Present		
<b>Metals</b>						
Antimony	2	<1%	11 – 12 µg/L	6 µg/L		
Aluminum	11	3%	220 – 1,500 µg/L	1,000 µg/L	200 µg/L	
Arsenic	14	4%	11 – 110 µg/L	10 µg/L		
Iron	80	20%	310 – 87,000 µg/L		300 µg/L	
Lead	3	1%	18 – 110 µg/L			15 µg/L
Manganese	97	24%	51 – 1,800 µg/L		50 µg/L	
Nickel	1	<1%	150 µg/L	100 µg/L		
Zinc	1	<1%	5.8 mg/L		5 mg/L	
<b>Major Ions &amp; General Chemistry</b>						
Nitrate (as NO <sub>3</sub> )	7	2%	50 – 84 mg/L	45 mg/L		
<b>Organic Compounds (Pesticides and VOCs)</b>						
Benzene	1	<1%	15 µg/L	1 µg/L		
MTBE	1	<1%	5.7 µg/L	13 µg/L	5 µg/L	
Notes: California Department of Public Health (CDPH) Public Drinking Water Standards used for comparison purposes only. Domestic well water quality in California is not regulated. MCL = CDPH Primary Maximum Contaminant Level; SMCL = CDPH Secondary Maximum Contaminant Level; NL = CDPH Notification Level NA = Coliform are evaluated on a presence/absence criteria. No range can be determined. µg/L = micrograms per liter; mg/L = milligrams per liter VOCs = volatile organic compounds						

**Figure 1.** Well sampling results for wells sampled during the SWRCB's GAMA Program Domestic Well Assessment Project, 2001, 2003 - 2004.



### Water Quality of Community Water Systems

EDC is under contract with the CDPH to ensure the delivery of safe, adequate, and dependable water; community water systems are permitted, inspected and monitored under EDC's Small Water System Program. There are about 175 community water systems in EDC (surface and groundwater-based systems) that fall under this Small Water System Program.<sup>55</sup> Sampling for total coliform bacteria is performed once per month; sampling of inorganic chemicals (arsenic, asbestos, cyanide, mercury, nitrate, nitrites, etc.) and secondary standards (aluminum, copper, chloride, corrosivity, etc.) is required every three years; sampling for radiological constituents is required every four years; organic chemical analyses (VOCs, including MTBE) are due every six years.<sup>56</sup>

According to a recent study by the SWRCB, *Community Water Systems that Rely on a Contaminated Groundwater Source for Drinking Water*,<sup>57</sup> approximately 63,404 residents of EDC are 100 percent reliant on public well water systems that received CDPH MCL violations on two or more occasions during the 2002-2010 CDPH compliance cycle. *Principal contaminants*<sup>58</sup> for which the violations were issued include 1,2-dichloroethane (1,2-DCA), tetrachloroethylene (PCE), gross alpha particle activity, and arsenic.<sup>59</sup> (Methyl tertiary butyl ether [MTBE] contamination of domestic groundwater supplies in South Lake Tahoe has also been documented, although not under this study.)<sup>60</sup>

### Groundwater Based Water Systems

While small water system operators are required to monitor their water on a regular basis, many fail to comply with monitoring requirements. According to U.S. EPA's Safe Drinking Water Information System, the following groundwater-based water systems violated monitoring/reporting requirements:<sup>61</sup>

- Latrobe School in Shingle Springs failed to conduct the necessary monitoring for coliform in 2002 and 2004; for arsenic in 2008, and nitrates in 2012.
- Gold Beach Park in El Dorado was issued failure to monitor violations in 2003, 2008, 2011, 2012 (and received an MCL violation in 2004 for coliform).
- Tahoe Valley Elementary School was issued a violation in 2012 for "complete failure to report under the consumer confidence rule," among other reporting violations in 2005, 2012.

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<sup>55</sup> El Dorado County Environmental Health. *Small Water System Program*.

[http://www.edcgov.us/Government/EMD/EnvironmentalHealth/Small\\_Waster\\_System\\_Program.aspx](http://www.edcgov.us/Government/EMD/EnvironmentalHealth/Small_Waster_System_Program.aspx)

<sup>56</sup> El Dorado County Environmental Health. *Sampling Requirements for Community Water Systems using a Groundwater Source*

[http://www.edcgov.us/Government/EMD/EnvironmentalHealth/Sampling\\_Requirements\\_for\\_Community\\_Water\\_Systems\\_using\\_a\\_Groundwaster\\_Source.aspx](http://www.edcgov.us/Government/EMD/EnvironmentalHealth/Sampling_Requirements_for_Community_Water_Systems_using_a_Groundwaster_Source.aspx)

<sup>57</sup> *Community water system* is defined as a community public water system (Health and Safety Code Section 116395).

<sup>58</sup> *Principal contaminant* is defined as a chemical detected above a public drinking water standard on two or more occasions between 2002 and 2010.

<sup>59</sup> State Water Resources Control Board. 2013. *Communities That Rely on a Contaminated Groundwater Source for Drinking Water*. Report to the Legislature, January 2013.

<sup>60</sup> El Dorado County Water Agency. 2007. *Water Resources Development and Management Plan*. Publication No. EDCW06-001. December, 2007. [http://www.edcgov.us/Water/final\\_water\\_resources\\_plan.html](http://www.edcgov.us/Water/final_water_resources_plan.html)

<sup>61</sup> U.S. Environmental Protection Agency. *Safe Drinking Water Information System Violation Report*. June, 2014.

- Gray's Mart & Gas failed to comply with routine monitoring for coliform in 2003, 2005, 2006, 2007.
- Tahoe Elementary School was issued a violation in 2012 for "complete failure to report under the consumer confidence rule," among other reporting violations in 2005 and 2012.
- Madrone Montessori School in Rescue was issued "routine major monitoring" violations for coliform in 2002, 2003, 2004, 2008, 2009.

When monitoring was performed, water quality problems become apparent. According to the U.S. EPA's Safe Drinking Water Information System, numerous EDC campgrounds were issued coliform MCL violations:<sup>62</sup>

- Gerle Creek Campground, 2004, 2006, 2007, 2010
- Ice House Campground, 2010
- Stumpy Meadows Campground, 2002, 2003, 2006
- Wench Creek Campground, 2005, 2007
- Wolf Creek Campground, 2006
- Wright's Lake Campground, 2008
- Yellow Jacket Campground, 2003, 2007

#### Surface Water Based Water Systems

Surface water-based community systems are required to sample for total coliform bacteria once per month; sampling of inorganic chemicals (arsenic, cyanide, mercury, selenium, fluoride, nitrate, nitrites, etc.) and secondary standards (aluminum, copper, chloride, thiobencarb, corrosivity, total hardness, turbidity, etc.) is required every year; sampling for radiological constituents is required every four years; organic chemical analyses (VOCs, including MTBE) are due every six years.<sup>63</sup>

According to U.S. EPA's Safe Drinking Water Information System,<sup>64</sup> the following surface water-based water systems received violations:

- The City of Placerville received a water treatment technique violation in 2004.
- EID's Outingdale facility was issued a violation for monitoring of treatment in 2001, and for failing to monitor and report specific constituents in 2007.
- EID received a monitoring violation for coliform in 2012.

#### **Water Quality in EDC: Surface Water**

Multiple activities in the EDC watershed threaten water quality, such as logging, road building, cattle grazing, fires, recreation, wastewater discharge, storm water runoff, runoff from urban areas, agricultural activities, and mining (residual mercury). A cursory (by no means comprehensive) review of the surface water quality in EDC yields the following information:<sup>65</sup>

<sup>62</sup> U.S. Environmental Protection Agency. *Safe Drinking Water Information System Violation Report*. June, 2014.

<sup>63</sup> El Dorado County Environmental Health. *Sampling Requirements for Community Water Systems using a Groundwater Source*  
[http://www.edcgov.us/Government/EMD/EnvironmentalHealth/Sampling\\_Requirements\\_for\\_Community\\_Water\\_Systems\\_using\\_a\\_Groundwater\\_Source.aspx](http://www.edcgov.us/Government/EMD/EnvironmentalHealth/Sampling_Requirements_for_Community_Water_Systems_using_a_Groundwater_Source.aspx)

<sup>64</sup> U.S. Environmental Protection Agency. *Safe Drinking Water Information System Violation Report*. June, 2014.

<sup>65</sup> El Dorado County Water Agency. 2007. *Water Resources Development and Management Plan*. Publication No. EDCW06-001. December, 2007. [http://www.edcgov.us/Water/final\\_water\\_resources\\_plan.html](http://www.edcgov.us/Water/final_water_resources_plan.html)

- American River: Turbidity levels, number of organisms and organic carbon concentrations peak during storm events. Discharges that contribute to these peaks include upper watershed runoff, urban runoff, and sanitary sewer overflows. The lower American River has a high occurrence of sanitary sewer overflows; watershed erosion and associated sediment loads remain problematic.
- Middle Fork of the American River: Because few studies have been conducted on Middle Fork of the American River water quality, not much is known about the presence of contamination. However, it is known that activities such as logging, road building, cattle grazing, fires, and residual mercury from mining activities threaten water quality in the watershed.
- South Fork American River (SOFAR): Timber harvest, recreation (off-road and passive), mining, and other activities impact SOFAR water quality.
- Rubicon River: Off-highway recreational vehicle use has resulted in periodic trail closures due to biological contamination.
- Apple Hill Area: Mixed residential and agricultural land use in the Apple Hill Area has contributed contaminants from both residential and agricultural sources.
- Urban Runoff: Major sources of urban runoff in EDC include El Dorado Hills, Cameron Park, and the City of Placerville. The City of Placerville discharges urban runoff into Hangtown Creek, a tributary to Weber Creek and the SOFAR. The City's plant on Hangtown Creek is undergoing an upgrade to improve discharge water quality.
- Deer Creek Wastewater Treatment Plant: EID's Deer Creek wastewater treatment plant includes a network of transmission and distribution pipelines, pump stations, storage tanks, pressure reducing stations, and various facilities located within Cameron Park. The California Sportfishing Protection Alliance (CSPA) filed suit against EID for illegal sewage spills, overflows and discharges to creeks tributary to the Cosumnes River and the Sacramento/San Joaquin Delta from the Deer Creek plant. Between October 2004 and March 2009, CSPA documented 423 violations of effluent and receiving water limits, five flow violations, 353 monitoring violations, and 443 reporting violations.<sup>66</sup> CSPA alleges that EID has been underreporting spills from this facility, and that EID illegally discharged effluent exceeding allowable limits for total coliform, total suspended solids, biochemical oxygen demand, ammonia, pH and chlorine residual and violated receiving water limits for temperature, pH and dissolved oxygen.
- El Dorado Hills Wastewater Treatment Plant: The CSPA documented illegal spills of reclaimed wastewater at the El Dorado Hills facility, and alleges that EID has been underreporting spills from this facility. Between October 2004 and March 2009, CSPA documented 289 violations of effluent and receiving water limits, 1,286 monitoring violations and 843 reporting violations.<sup>67</sup> CSPA alleges that EID illegally discharged effluent exceeding allowable limits for total coliform, total suspended solids, biochemical oxygen demand, ammonia, pH and chlorine residual and violated receiving water limits for temperature, pH and dissolved oxygen.
- Exceeded Basin Plan Water Quality Objectives:
  - Single sample criterion for bacteria samples (less than 400 organisms/100 milliliter [ml]) was exceeded on several mid-summer sampling dates at several sites in the watershed. On June 23, 2003, Union Valley Reservoir exceeded criterion for fecal coliform at three sites: Camino Cove (3180 organisms/100ml), Jones Fork Campground (550 organisms/100 ml), and Fashoda Beach (600 organisms/100ml). On July 22, 2003, Jones Fork of Silver Creek at Ice House Road had 1500

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<sup>66</sup> California Sportfishing Protection Alliance. 2009. Newsletter. <http://dev.calsport.org>.

<sup>67</sup> *Ibid.*

- organisms /100ml Big Silver Creek at Bike Bridge had 1160 organisms /100ml. The fecal coliform counts were generally lower for sites upstream than downstream.
- **Lead:** Forty-six of the 406 lead samples (11.3 percent) exceeded the Primary MCL for lead (15 micrograms per liter [ $\mu\text{g}/\text{l}$ ]). All 46 occurred in reservoirs during the 2004 sampling events (2004 Spring Runoff, 2004 Summer Low Flow, and 2004 Fall Turnover and First Major Rain).
  - **Copper:** Several Upper American River Project reservoirs and rivers, including Rubicon River outflow, Gerle Creek outflow from Loon Lake, Gerle Creek inflow and outflow from Gerle Creek Reservoir, and portions of Silver Creek near Camino Dam and Powerhouse exceeded the criterion for dissolved copper.
  - **Fish tissues:** Fish tissues were tested for bioaccumulation of metals, including cadmium, mercury, arsenic, nickel, selenium, chromium, silver, copper, lead and zinc, consistent with protocols of the SWRCB Toxic Substances Monitoring Program. At least a moderate level of recreational fishing occurs at six of the 13 reservoirs: Loon Lake, Gerle Creek, Union Valley, Ice House, Slab Creek and Chili Bar. Sacramento Municipal Utility District collected fish from these reservoirs and analyzed filets for metals covered by the U.S. EPA screening values (SV) for recreation (arsenic, cadmium, mercury and selenium) and/or by the SWRCB Maximum Tissue Residue Level values. (arsenic, cadmium, mercury, and nickel). Of the 30 filets examined, two samples exceeded the U.S. EPA SV of 0.026 ppm for arsenic; at Union Valley Reservoir (0.06 ppm) and Ice House Reservoir (0.16 ppm). Two samples exceeded the U.S. EPA SVs for both Target Analytes and Green Areas of 0.4 ppm for mercury, and three samples exceeded the National Recommended Water Quality Criteria (U.S. EPA 2002) of 0.3 ppm for mercury: at Gerle Creek Reservoir (brown trout, 0.32 ppm), Union Valley Reservoir (smallmouth bass, 0.42 ppm) and Slab Creek Reservoir (brown trout, 0.59 ppm).

### **Surface/Groundwater Interactions: Impact on Water Quality/Quantity**

Because surface water/groundwater interactions are difficult to observe and measure, they are often ignored in water management policies. But because many natural processes and human activities affect the interactions of surface and groundwater, it is essential that water managers recognize and account for the relationship between them in their planning and operations.<sup>68</sup>

#### Groundwater and Streamflow Volume

Although the land surface is a convenient division for categorizing surface and groundwater resources, it is an arbitrary one. Surface and groundwater are linked in the hydrologic cycle; groundwater may be recharged by spring runoff in streams; later in the year the base flow of a stream may be provided by groundwater.<sup>69</sup> In fact, one of the primary concerns related to the use of groundwater as a drinking water source is the effect groundwater pumping has on streamflow. (Almost all groundwater used for irrigation and drinking water would become streamflow were it not pumped.)<sup>70</sup>

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<sup>68</sup> Winter, T.C. et al. 2014. *Ground Water and Surface Water: A Single Resource*. United States Geological Survey, circular 1139.

<sup>69</sup> Department of Water Resources. 2003. *California's Groundwater*. Bulletin 118, 2003 update.

<sup>70</sup> California WaterBlog, 2013; UC Davis Center for Watershed Sciences.  
<http://californiawaterblog.com/author/californiawaterblog/>



Wells that pump water out of aquifers can have a detrimental impact on aquatic ecosystems and the availability of surface water.<sup>71,72</sup> Groundwater discharge affects not only the chemistry of surface water, but plays an important role in regulating stream temperature.<sup>73</sup> Groundwater discharge provides cool-water environments that protect fish from excessively warm stream temperatures during the summer, and conversely, relatively warm groundwater discharge can protect against freezing during the winter.<sup>74</sup> This delicate balance can be upset by the small effects of many wells within a basin because they can produce substantial effects on streamflow and aquatic habitats.<sup>75</sup> For instance, the loss of streamflow due to groundwater pumping is the basis for the Cosumnes River Flow Augmentation Project. This Project is designed to recreate river conditions similar to those that existed prior to the reduction of groundwater levels underlying the Cosumnes River.<sup>76</sup> Groundwater overdraft has converted the river to a predominantly “losing stream,” practically eliminating base flows.<sup>77</sup>

#### Water Quality and the Surface Water/Groundwater Connection

When groundwater pumping is large enough to cause stream flows to drop, induced infiltration of streamflow into aquifers can impact water quality of the underlying aquifer and any associated pumped wells. Infiltrated surface water contaminated by chemical pollutants or biological constituents such as *Giardia lamblia* and *Cryptosporidium* can cause illness in people ingesting the water.<sup>78</sup> Conversely, contaminated aquifers that discharge into streams can cause long-term contamination of surface water.

#### **Protection of Aquifer Recharge Areas**

Because human activities can render groundwater recharge areas unusable, it is important to protect these areas from chemical and microbial constituents. To achieve aquifer protection, land use managers must develop and implement policies that limit land use activities in these areas. Such policies will ideally have the effect of protecting both groundwater *quality* and *quantity*.

To ensure recharge areas continue to be replenished with high quality groundwater, water managers and land use planners should work together to:

- identify recharge areas so the public and local planning entities are aware of the areas that need protection from development;

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<sup>71</sup> Leake, S.A. and P. M. Barlow. 2013. *Understanding and Managing the Effects of Groundwater Pumping on Streamflow*. United States Geological Survey Fact Sheet 2013-3001, January 25, 2013.

<sup>72</sup> California WaterBlog, 2013; UC Davis Center for Watershed Sciences.  
<http://californiawaterblog.com/author/californiawaterblog/>

<sup>73</sup> Barlow, P.M. and S. A. Leake. 2012. *Streamflow Depletion by Wells—Understanding and Managing the Effects of Groundwater Pumping on Streamflow*. United States Department of the Interior, United States Geological Survey, Groundwater Resources Program, Circular 1376.

<sup>74</sup> *Ibid.*

<sup>75</sup> United States Geological Survey. 2013: *Understanding and Managing the Effects of Groundwater Pumping on Streamflow*. U.S. Department of the Interior, U.S. Geological Survey Fact Sheet 2013-3001. January 2013.

<sup>76</sup> Robertson-Bryan, Inc. 2006. *Cosumnes River Flow Augmentation Project: 2005 Project Deliverables*. April, 4, 2006.

<sup>77</sup> Fleckenstein, J., et al. 2004. *Managing Surface Water-Groundwater to Restore Fall Flows in the Cosumnes River*. Journal of Water Resources Planning and Management. June, 2004.

<sup>78</sup> Barlow, P.M. and S. A. Leake. 2012. *Streamflow Depletion by Wells—Understanding and Managing the Effects of Groundwater Pumping on Streamflow*. United States Department of the Interior, United States Geological Survey, Groundwater Resources Program, Circular 1376.

- include recharge areas in zoning categories that eliminate the possibility of contaminants entering aquifers;
- standardize guidelines for pre-treatment of recharge water, including recycled water; and
- develop a network of monitoring wells to collect data on changes in groundwater quality.

### **Stream/Riparian Setbacks**

The riparian zone is an ecotone, or transition zone, between aquatic and terrestrial habitats; it is characterized by an unusually high species diversity comprised of both aquatic and terrestrial plant and animal species. Unfortunately, this ecotone is in jeopardy: according to the U.S. Fish and Wildlife Service, California has lost 90 percent or more of its wetlands, which includes riparian communities. These communities provide habitat for up to 80 percent of the wildlife in the Western states; 50 percent of endangered species require wetlands at some point in their life cycle.<sup>79</sup> A contiguous riparian buffer provides migratory and wildlife corridors, which are of particular value in protecting amphibians, waterfowl populations, and fish spawning and nursery areas.

#### Riparian/Stream buffers and Water Quality

Riparian and stream buffers perform many ecological functions important to protecting water quality and quantity, biodiversity, habitat connectivity, and flood capacity. If properly maintained, riparian buffers have a significant capacity to mitigate some of the effects of development; they are an effective way to physically protect and separate a stream or wetland from future disturbance or encroachment.<sup>80</sup>

Riparian zones decrease sedimentation by intercepting sediment and debris before sediment-laden runoff can enter the stream system. This capture of sediments in turn traps particle-bound chemicals and pollutants, preventing them from degrading aquatic environments. Vegetation within a creek buffer decreases erosion and allows for increased soil infiltration by stabilizing stream banks and slowing flow velocities. In some settings, riparian areas remove pollutants traveling in storm water or groundwater.

Setbacks adjacent to streams/riparian areas provide numerous environmental protections and benefits, including:<sup>81</sup>

- restoration and maintenance of the chemical, physical, and biological integrity of water resources;
- reduction of sediment entering the stream;
- removal of pollutants from runoff and urban storm water;
- stabilization of stream banks;
- maintenance of base flow of streams;
- contribution of organic matter (food and energy for aquatic ecosystems);

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<sup>79</sup> San Francisco Bay Regional Water Quality Control Board. 2004. *Local Government Riparian Buffers in the San Francisco Bay Area*. July 2004.

[http://www.waterboards.ca.gov/sanfranciscobay/publications\\_forms/documents/bufferreport1204.pdf](http://www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/bufferreport1204.pdf)

<sup>80</sup> *Ibid.*

<sup>81</sup> U.S. Environmental Protection Agency. 2012. *Model Ordinances Language: Aquatic Buffer Model Ordinance*. November, 2012.

- provision of tree canopy to shade streams and promote healthy environments for fish and other aquatic organisms;
- provision of wildlife habitat; and
- scenic value.

Most contamination problems in riparian areas are the result of the following actions:<sup>82</sup>

- elimination of natural channels, including loss of wetlands, wildlife, fisheries and riparian areas;
- increased sedimentation due to construction activities and land clearing;
- unmitigated changes in hydrology that upset the geomorphic equilibrium of streams, causing destabilization and erosion of channels;
- increased pollutant loads associated with urban activities;
- impairment of fish habitat from water diversions, sedimentation of channels, removal of vegetation; and
- increased pollutant loads associated with agricultural activities.

Developed land uses (including agricultural uses) within recommended buffer setbacks preclude the effectiveness of setbacks.<sup>83</sup> Conversion of large portions of a watershed to developed and agricultural land uses is associated with broad negative effects on riparian and stream ecosystems (Findlay and Houlihan 1996, Roth et al 1996, Booth and Jackson 1997, Magee et al. 1999, Doyle et al. 2000, Paul and Meyer 2001, Allan 2004, Hatt et al. 2004, Pellet et al. 2004, Wissmar et al 2004, and Jones & Stokes 2005).<sup>84</sup>

#### What Some Relevant Science “Says” About Stream/Riparian Setbacks

The following information was taken from Jones & Stokes, 2005.<sup>85</sup>

- Development and encroachment setbacks should include the entire *active floodplain*<sup>86</sup> of a creek or river to adequately preserve stream banks and associated riparian vegetation. Because active floodplain boundaries are more stable and measurable than stream banks or the boundaries of riparian vegetation (that are dynamic and change with time), the boundary of the active floodplain—which can be readily delineated—is a preferable basis for determining setback widths rather than edges of stream banks, stream centerlines (or thalwegs), or any boundaries based exclusively on channel widths or vegetation.

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<sup>82</sup> San Francisco Bay Regional Water Quality Control Board. 2004. *Local Government Riparian Buffers in the San Francisco Bay Area*. July 2004.

<sup>83</sup> Jones & Stokes. *Setback Recommendations to Conserve Riparian Areas and Streams in Western Placer County*. 2005. February, 2005.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> *Active floodplain* means the geomorphic surface adjacent to the stream channel that is typically inundated on a regular basis (i.e., a recurrence interval of about 2–10 years or less). It is the most extensive low depositional surface, typically covered with fine overbank deposits, although gravel bar deposits may occur along some streams.

- There is no single, abrupt, well-documented threshold width setback that would provide maximum benefits for all riparian functions. Rather, because riparian functions have different mechanistic bases, they are affected by different site attributes, and the relationship between setback widths and reduction of human effects differs among riparian functions. Nevertheless, several defensible arguments can be constructed regarding the appropriate width for a buffer to include within riparian setbacks. First, most riparian functions would be affected if setbacks included a buffer of less than 20 m (66 feet) beyond the active floodplain; consequently, narrower widths are not adequate for long-term conservation of riparian functions. This conclusion is based largely on a review of the scientific literature. In addition, stream incision and a discontinuous cover of woody plants reduces the benefits of narrow buffers. This variability in vegetation extent and structure reduces the effectiveness of narrow setbacks.

Recommendations for riparian setbacks are presented below:

- Apply to first and second order stream segments a minimum riparian setback that includes the entire active floodplain plus a buffer of 30 m (98 feet) of adjacent land (on each side of the active floodplain), or the distance to the nearest ridgeline or watershed boundary, whichever is less. (First order stream segments are upstream segments that have no tributaries, and second order segments are formed by the junction of first order segments.) Though the purpose of this setback would be to conserve stream and riparian functions; it would not be sufficient for the conservation of many wildlife species with large area requirements.
- Along higher order stream segments (i.e., third order and greater), and along lower order segments at selected sites (e.g., those in or adjacent to conservation lands), apply a setback of at least 100 m (328 ft), and preferably 150 m (656 ft), from the active floodplain for the purpose of conserving and enhancing stream and riparian ecosystem functions including most wildlife habitat functions. Along these larger stream segments, floodplains and riparian areas are more extensive, continuous, and structurally diverse than for lower order stream segments (e.g., first and second order). These areas constitute corridors connecting a watershed's lower order stream segments, and, at a watershed scale, the riparian areas of these higher order segments contain particularly important habitats for most riparian-associated species.
- The conservation of wildlife habitat functions within these areas may be necessary for the persistence of their populations. For this reason, a wider setback, sufficient for the retention of wildlife habitat functions, is recommended along stream segments. Recommendations would result in a total setback width ranging from slightly more than 30 m (98 feet) on most first- and second order stream segments to over 150-200 m (492-656 feet) on higher-order streams.
- By basing these recommendations, in part, on the width of active floodplains, a variable, site-specific setback width that accounts for stream size is created. The width of the active floodplain provides a clear, functional basis for a variable width criterion that accomplishes the same purpose more directly than criteria based on stream order, slope, and other attributes of streams and their settings.

Riparian woodland restoration and enhancement measures should include:

- Where feasible, contiguous areas larger than 5 ha (12 ac) should be maintained, enhanced and linked to provide habitat refuge areas for sensitive species. These areas should be connected by riparian corridors more than 30 m (98 feet) wide on both sides of the channel wherever possible, in order to provide movement and dispersal corridors for wildlife.

- The preservation, restoration and linkage of large parcels of undeveloped and uncultivated lands adjacent to riparian areas will provide significant benefits to riparian species. Thus, large contiguous areas of riparian vegetation surrounded by “natural” uplands should be conserved to the greatest extent possible.
  - Potential effects of adjacent land uses on riparian areas should be thoroughly evaluated during regional land use planning, and during the environmental review and permitting processes for specific projects, and these effects should be avoided to the maximum extent practicable.
  - Re-creation of regular disturbance events (e.g., high water) on the floodplain will enhance vegetation and breeding bird populations in most systems (Riparian Habitat Joint Venture 2004).
  - Within setbacks, most developed land uses would be incompatible with the conservation of stream and riparian functions. Developed land uses should be restricted to unavoidable crossings by roads and other infrastructure, because any structures or alterations of topography, vegetation or the soil surface are likely to affect both stream and riparian functions, and could result in substantial effects both on-site and downstream.
- For the purpose of long-term conservation of plant habitat functions, riparian setbacks should include the entire active floodplain, regardless of the current extent of riparian vegetation on that surface. The distribution of riparian vegetation is not static within the active floodplain, and the diversity of vegetative structure and species composition is strongly related to the hydrologic and geomorphic processes within the active floodplain. Therefore, conversion of any portion of the active floodplain to developed or agricultural land-cover types would affect hydrologic and geomorphic functions and affect plant habitat functions.
  - Riparian-associated wildlife species differ in the specific habitat attributes they require in riparian systems. Consequently, structurally diverse vegetation, as well as the full range of naturally occurring physical conditions and disturbance regimes, are necessary to provide suitable riparian habitat for the entire community of associated wildlife species. Many riparian-associated wildlife species use, and often require, both riparian and adjacent upland habitats for reproduction, cover, and/or foraging.

Recommendations for riparian setbacks by agricultural operations are presented below:

- Along first- and perhaps second-order streams, mitigation for adjacent agricultural uses would include filter strips and riparian buffers managed according to standards established by the National Resources Conservation Service. Such practices would improve the buffers’ effectiveness for conserving some functions. Along first- and perhaps second-order streams, compatible developed land uses could include open space and low-density residential development, provided no impervious surfaces, infrastructure, or irrigation are placed within the setback.

## **On Site Water Treatment (OSWT) - dEIR Review Comments**

On June 19, 2012, the California Water Resources Control Board established new standards for Onsite Water Treatment Systems also known as the “OWTS Policy”, hereinafter referred to as OWTS. These OWTS standards went into effect on May 13, 2013. OWTS systems are commonly referred to as septic systems. Each of the nine California Regional Water Quality Control Boards were required to adopt this policy, modifying it if necessary and with the approval of the State Water Resources Control Board, to fit the applicable regions unique requirements. The OWTS is divided into four tiers. Tier 0 applies to existing OWTS. Tier 1 applies to low risk new or replacement OWTS. Tier 2 applies to local agency OWTS management Plans, which must still conform and be approved by the Regional Water Quality Control Board. Tier 3 applies to impaired areas. Each of the jurisdictions within the county is required to adhere to this policy.

El Dorado County has not adopted their own conforming policy under Tier 2; therefore, they are bound by Tier 1 of the OWTS. Of particular interest are Tier 1 sections 7.7 and 7.8 of the State and Regional OWTS.

OWTS Tier 1, section 7.7 states, “Natural ground slope in all areas used for effluent disposal shall not be greater than 25 percent.” It is standard practice to locate septic systems downhill from a dwelling thus allowing gravity to move the waste through the system. Otherwise, the waste must be collected in a separate holding tank and pumped uphill to a septic system in compliance and on the same property, a more complicated and costly solution.

TGPA Policy 7.1.2.1. If El Dorado County proposes to allow development on slopes exceeding 30%, then any septic system, located on the same slope will be in violation of the OWTS. Furthermore, the county will be in violation of the OWTS if it allows septic systems to be located on any part of a property where slopes exceed 25 %.

OWTS Tier 1, section 7.8 states “The average density for any subdivision of property made by Tentative Approval pursuant to the Subdivision Map Act occurring after the effective date of this Policy and implemented under Tier 1 shall not exceed the allowable density values in Table 1 for a single-family dwelling unit, or its equivalent, for those units that rely on OWTS.”

**Table 1: Allowable Average Densities per Subdivision under Tier 1.**

<b>Average Annual Rainfall (in/yr)</b>	<b>Allowable Density (acres/single family dwelling unit)</b>
0 - 15	2.5
>15-20	2
>20-25	1.5
>25-35	1
>35-40	0.75
>40	0.5

“Average annual rainfall” in Table 1 means the average of the annual amount of precipitation for a location over a year as measured by the nearest National Weather Service station for the preceding three decades.

TGPA Policies 2.1.1.3 and 2.1.2.5. As can be seen in Table 1 of Section 7.8, the minimum parcel size which can be created, using Table 1 is 0.5 acres. The average rainfall in El Dorado Hills is 25 inches a year. Using Table 1, a parcel created in the Eldorado Hills area and using an OWTS would have to be a minimum of 1.5 acres. Cameron Park and Shingle Springs average 35 inches of rain per year. Using Table 1, a parcel created in the Cameron Park or Shingle Springs areas and using an OWTS would have to be a minimum of 1 acre. The average rainfall in Placerville is 38.75 inches per year. Using Table 1, a parcel created in the Placerville area would have to be 0.75 acres. With these minimum parcel sizes in mind, how can El Dorado consider increasing the density of the residential portion of mixed –use projects in Community Regions and Rural Centers, where these parcels may require septic systems. Again, this would be in violation of the OWTS.

Finally, El Dorado must address the current capacity of its sewer treatment plant to ascertain if it can accommodate the current number of unbuilt parcels which will be required to be on public sewers. It seems only logical that before El Dorado County can approve any additional parcels beyond the current capacity of its sewage treatment facilities, any additional treatment facilities which will be necessary should already be in place.

Appendix A of the DEIR indicates that the DEIR need not address water quality issues. (NOP, p. 11; Initial Study, pp. 2-2, 2-23 to 2-27.) As noted above, substantial evidence in the record does not support the County’s conclusion that there is no need to address water quality in the EIR. In fact, a fair argument based upon substantial evidence in the record supports the notion that water quality must be analyzed in the EIR. There are in fact changes being proposed that may violate water quality or waste discharge requirements. The CEQA Guidelines mandate that an EIR shall discuss any inconsistencies between the proposed project and any applicable regional plans including waste treatment and water quality control plans. (CEQA Guidelines, sec. 15125, subd. (d).) The County’s conclusion that there are no potentially significant wastewater impacts to discuss is erroneous.

## Hazards - dEIR Review Comments

According to the draft EIR, it has been determined that none of the proposed changes to General Plan policy or Zoning Ordinances would result in increased risk or exposure to County residents, concluding that no further analysis is needed (dEIR page 3-2; Appendix A). However, the following policy and ordinance revisions do indeed pose potential risk and must be analyzed for potential impacts.

Comments are as follows:

1. From the dEIR Project Description on page 2-9:

***"Policy 6.4.1.4 and 6.4.1.5. New Parcels in Flood Hazard Areas. Reference to the flood insurance rate maps would be removed from these policies to address recommendations by the Office of Emergency Services and Homeland Security regarding dam failure inundation."***

This is a misleading and incomplete description of the changes being proposed by the project. The actual revisions to policies 6.4.1.4 and 6.4.1.5 *eliminates the prohibition of creating new parcels within dam inundation zones and allows for development on those parcels*. The policies as proposed showing the strike out version:

***"Policy 6.4.1.4 Creation of new parcels which lie entirely within the 100-year floodplain as identified on the most current version of the flood insurance rate maps provided by FEMA ~~or dam failure inundation areas as delineated in dam failure emergency response plans maintained by the County~~ shall be prohibited.***

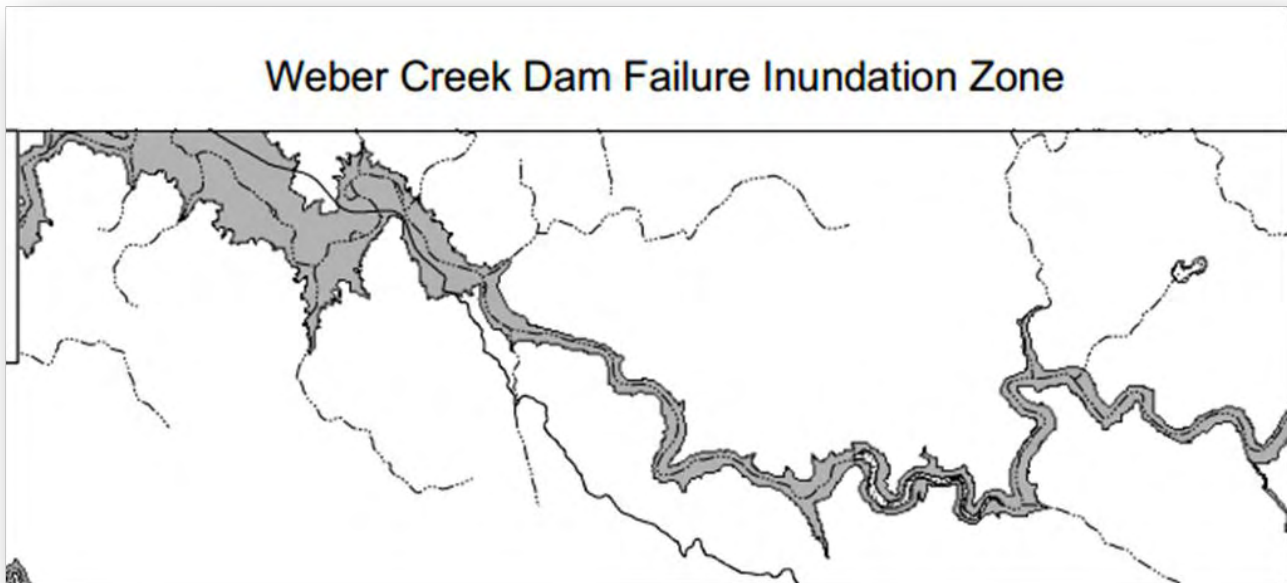
***Policy 6.4.1.5 New parcels which are partially within the 100-year floodplain ~~or dam failure inundation areas as delineated in dam failure emergency response plans maintained by the County~~ must have sufficient land available outside the FEMA or County designated 100-year floodplain or the dam inundation areas for construction of dwelling units, accessory structures, and septic systems. Discretionary applications shall be required to determine the location of the designated 100-year floodplain ~~and identified dam failure inundation areas on the subject property~~"***

This change brings increased risk of exposure to flood hazard and has not been either acknowledged or adequately analyzed:

- a) Provide maps of the inundation areas with parcels delineated, and include data that quantifies the number of existing parcels and homes, as well as the potential parcels and number of potential homes and other facilities that would possibly be impacted by this change.**
- b) Provide data to substantiate any claims that the impact might not be significant.**
- c) Provide specifics as to any recommendations being made by the Office of Emergency Services and Homeland Security.**
- d) Substantiate any claims as to why this would be a 'required' change. Provide citations.**



- e) Contrary to county staff response to NOP comment page 714/1212, the County does have 10 dam inundation zone maps, as listed in Appendix A of the 2004 General Plan. Clarify what was meant by the staff response. (map example here)



- f) Government Code 8589.5 requires inundation maps to be on file with the Office of Emergency Services. Provide substantiating evidence if this is not required for El Dorado County.

2. **[New] Ordinance 17.27.040 A-C - Dam inundation zones.** The policy that this new ordinance was intended to implement (6.4.2.1) simply called for creating an 'overlay' zone to identify dam inundation areas, but the ordinance has been expanded to *circumvent the prohibition of development* in these zones. This new ordinance is in conflict with existing General Plan Policy 6.4.1.4, which does not allow the creation of new parcels within a dam inundation zone. The changes being affected remove the safeguards and would allow further residential development in these hazard areas.

From the draft Zoning Ordinance Update:

**"17.27.040 Dam Failure Inundation (-DFI) Combining Zone**

**A. Combining Zone Established. This Section implements General Plan Policy 6.4.2.1 to advise of the potential hazard in the event of dam failure and to protect public health and safety by establishing regulations that minimize public exposure to such hazards. Nothing in this Section is intended to preclude the development of any lot."**

From the existing (2004) General Plan, 'Health, Safety, &Noise' element, page 113:

***Policy 6.4.2.1 Apply a zoning overlay for areas located within dam failure inundation zones as identified by the State Department of Water Resources Division of Safety of Dams.***

- a) See item 1 above for the substantiating data needed in order to analyze the impact of this change, and provide this info.
  - b) Revise the proposed ordinance verbiage to accomplish what was intended rather than furthering potential development in hazardous areas.
3. The proposed policy changes regarding dam inundation areas have been seriously misrepresented in the Impact Analysis Discussion, resulting in an incorrect dEIR conclusion of 'insignificant impact'. From the 'Impact Discussion' on page 2-26 of the dEIR, does the project:

***"g. Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?"***

*The County of El Dorado participates in the National Flood Insurance Program and limits development within floodplains by ordinance. The Zoning Ordinance Update includes Chapter 17.32 Flood Damage Protection, which will impose restrictions on development necessary to ensure the County's continued participation in the federal program. This project will not result in the designation of lands within the floodplain for development that are now not designated for development. This impact is considered to be less than significant.*

AND

***"i. Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?"***

*The County of El Dorado participates in the National Flood Insurance Program and limits development within floodplains. This project will not result in the designation of lands within the floodplain for development that are now not designated for development. The Zoning ordinance Update includes Chapter 17.32 Flood Damage Protection and Section 17.27.040 Dam Failure Inundation Combining Zone, which will impose the necessary restrictions on development to ensure the County's continued participation in the federal program and establish enforceable restrictions on new development in any dam failure inundation area. Section 17.27.040 implements existing General Plan Policy 6.4.2 Dam Failure Inundation."*

The actual revisions to policies 6.4.1.4 and 6.4.1.5 *eliminate the prohibition of development* on parcels within dam inundation areas. See the strike out version of the policy change below from the TGPA:

***"Policy 6.4.1.4* Creation of new parcels which lie entirely within the 100-year floodplain as identified on the most current version of the flood insurance rate maps provided by FEMA ~~or dam failure inundation areas as delineated in dam failure emergency response plans maintained by the County shall be prohibited.~~**

***Policy 6.4.1.5* New parcels which are partially within the 100-year floodplain ~~or dam failure inundation areas as delineated in dam failure emergency response plans maintained by the County~~ must have sufficient land available outside the FEMA or County designated 100-year floodplain or the dam inundation areas for**

*construction of dwelling units, accessory structures, and septic systems. Discretionary applications shall be required to determine the location of the designated 100-year floodplain and identified dam failure inundation areas on the subject property"*

**This proposed policy change would put more people at risk by allowing additional homes to be built within the dam inundation area, but portrays just the opposite in this section. These inconsistencies must be corrected, and information and analysis provided per item #1. The FEIR needs to make "a good faith effort at full disclosure" of the impacts. (CEQA Guidelines, sec. 15151.)**

4. It is unclear if [new] Ordinance 17.32.050C(1) is intended to exclude dam inundation zones from residential lot 'creation' prohibitions, similar to policy 6.4.1.4. The ordinance reads:

*"Creation of new lots which lie entirely within the SFHAs [Special Flood Hazard Area] as identified on the most current version of the flood insurance rate maps provided by FEMA is prohibited in compliance with General Plan Policy 6.4.1.4."*

It must be clarified if dam inundation zones are considered as separate entities from flood zones, in order to confirm if there is conflict between the new ordinance and the revised policy 6.4.1.4 (referenced above). Policy 6.4.1.4 will eliminate the *prohibition* of lot creation in dam inundation zones; that is, creating new parcels will be allowed in dam inundation zones. Allowing the creation of new residential parcels in these zones creates risk to the potential residents as well as potential cost to the county. Once the intent of the ordinance is clarified, the verbiage must be corrected.

- a) Clarify ordinance 17.32.050(C)1 for consistency with policy 6.4.1.4.**
- b) Explain how this is NOT a risk for potential residents**
- c) Explain how this is consistent with county policy to minimize public exposure to such hazards**
- d) Explain how lifting this prohibition does not allow additional residential development that would not otherwise occur, as confirmed in 17.32.040 ("Nothing in this Section is intended to preclude the development of any lot")**

5. Eliminating construction noise from noise standards requirements is a significant exposure to residents adjacent to both transportation projects and building construction and grading projects.

From page 2-9 of the 'Project Description' in the draft EIR:

***"Policy 6.5.1.11. Noise Standards; Tables 6-3 through 6-5, Establish Noise Standards. This amendment would exempt construction activities occurring from 7 a.m. to 7 p.m. during the week or from 8 a.m. to 5 p.m. on weekends and holidays from those standards. In addition, the amendment would fully exempt public projects to alleviate traffic congestion and safety hazards from those noise standards. (No changes to the tables are proposed)"***

**This is a significant impact that must be analyzed.**

6. Policy 7.1.2.1 and new ordinance 17.30.060 regarding lifting restrictions on development of 30% slopes, lists exemptions under section D. Many of the eleven exemptions pose increased risks to residents in regard to increased airborne contaminants, and increased stream contaminants for well water users. Additionally, grading operations are exempt from many requirements and these policies and exemptions must be analyzed together.

**a) Please examine the list of exemptions to the restrictions on this policy, and review all associated risks.**

**b) Additionally, review this policy relative to the exemptions to general grading restrictions and permit requirements together.**

7. Under 'Geology and Soils' on page 3-2 of the draft EIR, it says "*no reduction in safeguards are proposed*". Also, under 'Hazards and Hazardous Materials' it says "*no changes are proposed to regulations related to naturally occurring asbestos*".

Both of these statements conflict with the fact that there are changes proposed regarding meeting requirements for an El Dorado County Clean Air Act plan, as delineated in the existing (2004) General Plan. It appears the current requirement is being deleted in order to "update" it, with potentially no substitute in place.

From the Executive Summary in the draft EIR, page ES-4, as well as with the Project Description on page 2-10:

*"Objective 6.7.1 and 6.7.5. These objectives would be amended to reflect updated air quality plan opportunities and add new policies and implementation measure that support the adoption of an Air Quality—Energy Conservation Plan."*

From the existing 2004 General Plan:

*"Objective 6.7.1: El Dorado County Clean Air Plan. Adopt and enforce the El Dorado County Clean Air Act Plan in conjunction with the County Air Quality Management District."*

**Please clarify all changes surrounding this item. It appears to be a 'kick the can down the road' type of issue. Please discuss any replacement policies and implementation and the timing of each, and analyze the potential impact of both the policies and the delays.**

8. The Home Occupation Ordinance (HOO) section 17.40.160C(10) does require review by Environmental Management for 'manufacturing' based home businesses. This draft EIR should then assume that every home based manufacturing business may be handling hazardous substances and evaluate the risk. Verbiage below:

*"Any materials used or manufactured as part of the home occupation may be subject to the review and approval of Environmental Management and the applicable fire department prior to business license sign off by the Department."*

**Mitigation would be to add restrictions limiting the type and quantities of specific materials that can be used in home based production.**

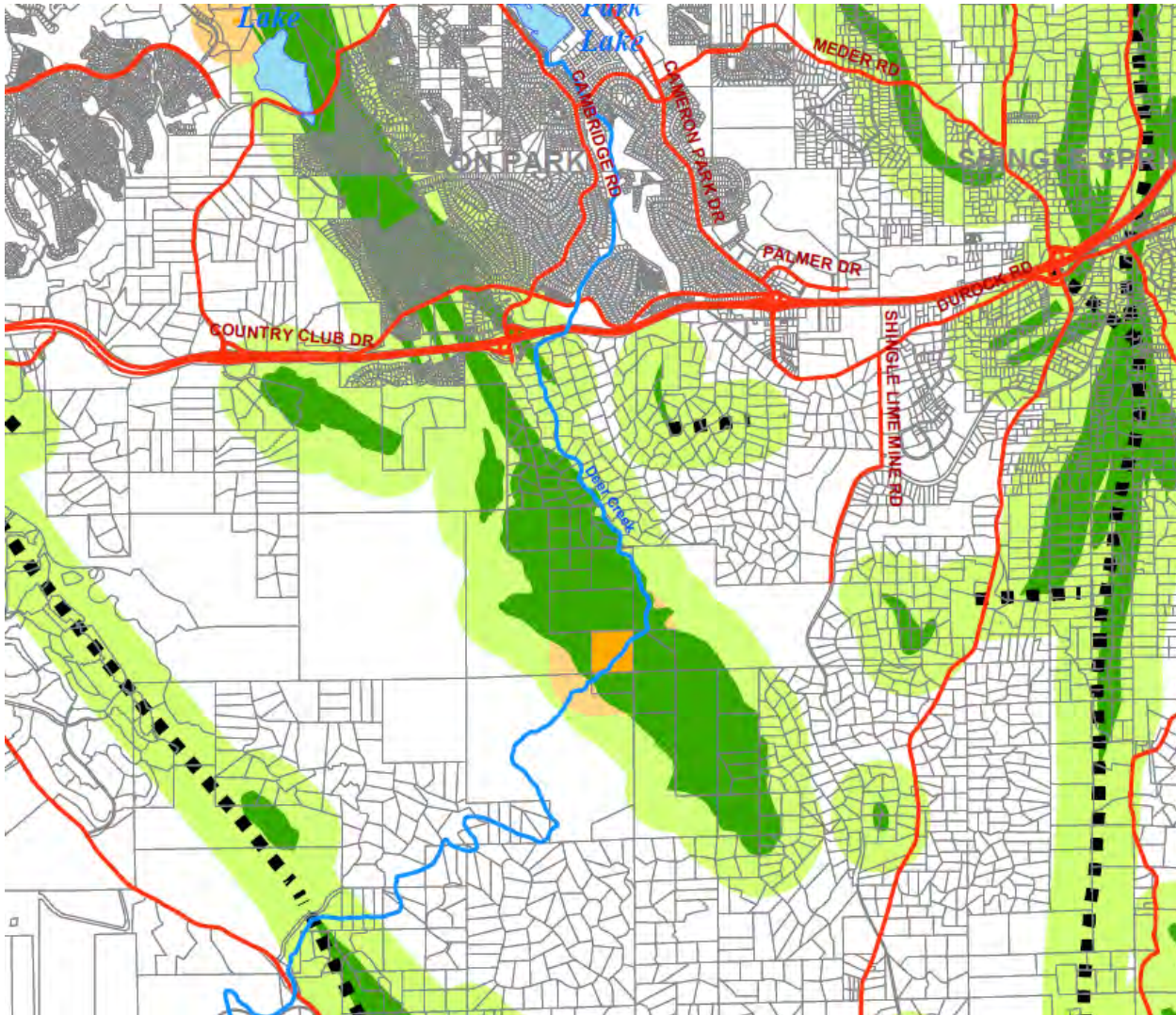
## Hazards - dEIR Review Comments Continued

The General Plan Update is missing several important elements. TGPA does not contain elements to address **Hazards** or **Minerals**. This is remarkable considering that, according to the California Department of Public Health (CDPH), the El Dorado hills are a risky area and home to one of the largest Naturally Occurring Asbestos deposits in the world. There are six types of Naturally Occurring Asbestos in the United States, and the most dangerous of these are considered to be Actinolite and Tremolite. Actinolite and Tremolite are members of the amphibole group of silicate minerals. This material is toxic and inhaling the fibers can lead to asbestosis, lung cancer and both pleural and peritoneal mesothelioma.

The EPA conducted a study in 2005 and found that asbestos fibers, Actinolite and Tremolite, were present in almost all El Dorado Hills area samples. This asbestos is not limited to El Dorado Hills. Actinolite and Tremolite (herein after referred to as asbestos) are found in deposits throughout El Dorado County (see attached map, Exhibit H-1, "Asbestos Review Areas Western Slope County of El Dorado, California"). Previous developments in the El Dorado Hills have resulted in asbestos exposure to children living in these developments. Developers may claim that their activities during construction can be controlled by methods such as wetting the ground which is being disturbed. However, experiences gained in the El Dorado Hills area have shown these methods are not sufficient. This is due to the fact that once these asbestos deposits are disturbed they will become airborne with many of the common activities taking place in these developments following the developer's departure. These include, but are not limited to, children playing and riding bikes in unpaved areas, blowers used to clean property, and landscaping activities.

El Dorado County now has before it several applications for development, specifically Marble Valley and Lime Rock Valley, which contain large deposits of asbestos. Even worse, there is a **verified find** of asbestos situated within these proposed developments. The only acceptable alternative is to not develop in areas containing these asbestos deposits as they present an unacceptable HAZARD. When a portion of a parcel or parcels is removed from development consideration due to the presence of asbestos, it would not seem acceptable to use this area in calculating recreational open space for the project, as this would imply that it could be safely used by inhabitants of the development. These areas should be reserved as scenic open space and prohibited from human activity.

Enlarged view of Lime Rock/Marble Valley area (partial Exhibit H-1 enlargement)



Conclusion:

Substantial evidence in the record does not support the County's conclusion that there is no need to address hazards in the EIR. In fact, a fair argument based upon substantial evidence in the record supports the notion that hazards must be analyzed in the EIR. The CEQA Guidelines indicate that an EIR should "evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions." (CEQA Guidelines, sec. 15126.2, subd.(a).) There are in fact changes being proposed that represent significant risk to county residents, and the conclusion on page 3-2 that there are no impacts to be discussed is erroneous.

Please add this impact topic (Hazards) to the draft EIR with the appropriate analysis, covering the above issues along with analysis of any additional changes that may be unknown to the public due to the incomplete list of changes that has been provided to date.

Additionally, there are thirty three 'significant and unavoidable' impacts listed in Table 5-4 (dEIR, page 5-16). A single one of these impacts is sufficient cause for denial of the project. On the other hand, to approve the project, the County would have to find valid overriding considerations for each one of the 33 impacts listed. Such a statement of overriding considerations must be supported by a logical analysis of substantial evidence in the EIR or elsewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.) All feasible mitigation must be adopted, and other mitigation properly found infeasible, before an agency can make a statement of overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4<sup>th</sup> 1019.)

These are some of the significant and unavoidable impacts that represent potential risks to county residents, as listed on page ES-14:

*" AQ-5: Expose sensitive receptors to substantial pollutant concentrations  
NOI-1: Exposure of noise-sensitive land uses to short-term (construction) noise  
NOI-2: Exposure to ground transportation noise sources as a result of the TGPA  
NOI-3: Exposure to ground transportation noise sources as a result of the ZOU  
NOI-4: Exposure of noise-sensitive land uses to fixed or non-transportation noise sources  
NOI-5: Exposure to aircraft noise"*

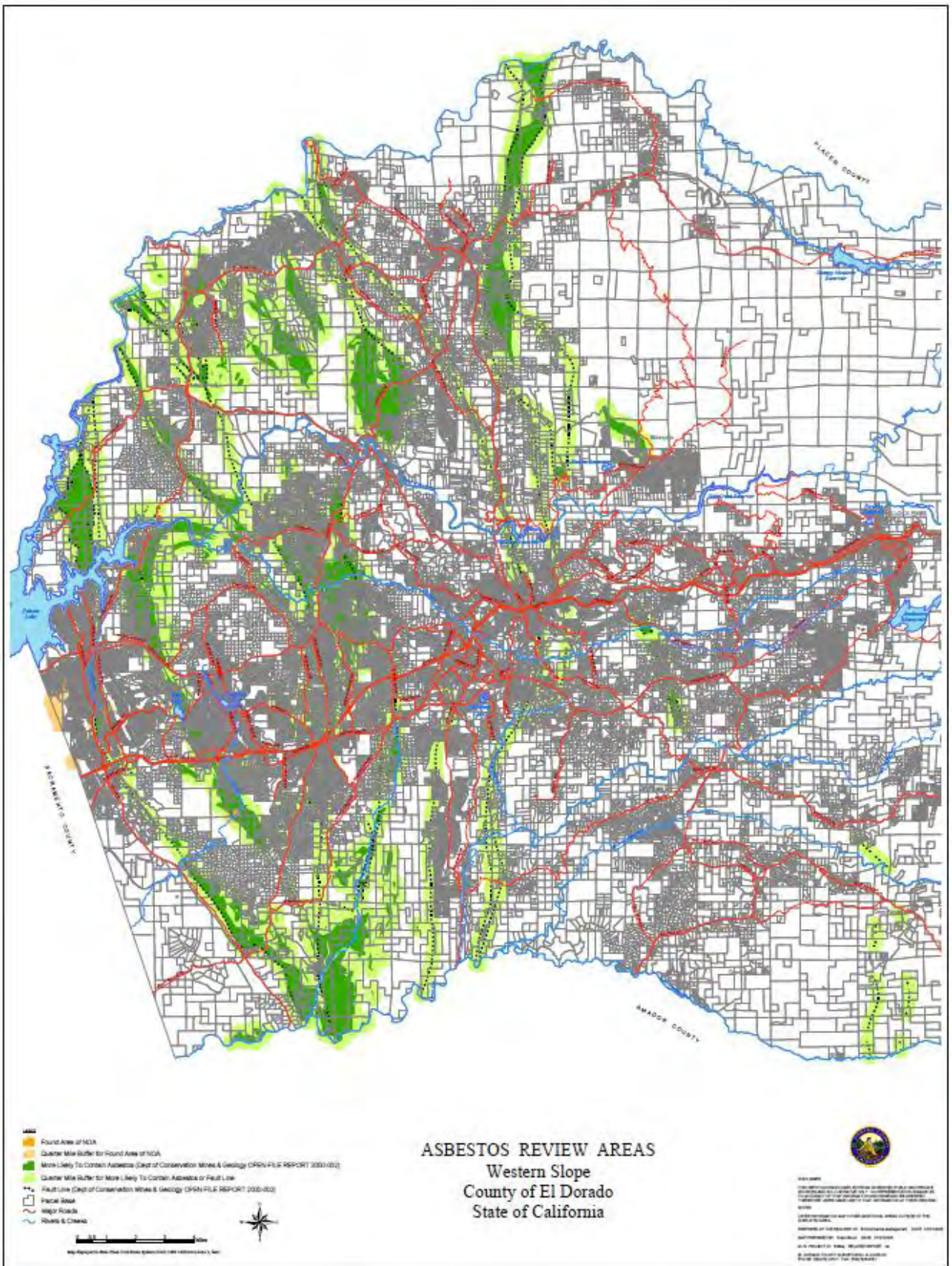
This list cannot be considered complete until further information and analysis is provided per the dEIR comments, in order to fully ascertain the impacts of the extensive changes being proposed.

END SECTION COMMENTS

The following Exhibit H-1, is an El Dorado County map showing the extent of Naturally Occurring Asbestos (NOA) on the West Slope, and is included here for reference in the discussion of expanded development into areas containing NOA.

*Cover Sheet for* **Exhibit H-1**





**Naturally Occurring Asbestos, West Slope**

**Exhibit H-1**

## Aesthetics - Section 3.1 dEIR Review Comments

The premise of the Aesthetics review in the draft EIR as noted on page 3.1-1 is that the proposed changes from the project will not change development patterns, therefore "*the discussion in this section describes the 2004 General Plan EIR's evaluation and significance conclusions. This section relies [on] the county's existing visual character (not that in 2004) as the baseline for its analysis of the project.*" This is a false premise because:

- a. there are multiple density increasing policies, expansive changes of use within zone districts, and the expansion of commercial and industrial uses into Rural Regions
- b. multiple ordinance and policy changes directly affect aesthetics throughout the county (including sound wall policy and new multi use guidelines)
- c. mitigations as laid out in the 2004 General Plan were either not followed or were not effective, and must be reevaluated rather than simply setting a new 'baseline' as is indicated.

Comments are as follows:

1. The description of the environmental setting for this section (draft EIR, page 3.1-6) is incorrect: "*The suburban communities of El Dorado Hills and Cameron Park include extensive retail, office, and residential development. They do not have the rural appearance found in much of the rest of the county.*"

While there is indeed retail, office, and high density residential in EDH and Cameron Park because of their location within the Community Regions, there are also many rural neighborhoods that have been overlooked with this blanket statement. The neighborhoods along Malcolm-Dixon Rd in EDH have many parcels of 1 acre and larger with small country road access and a very rural feel. All along the Green Valley corridor are many 5 acre and larger parcels. Cameron Park Estates and many areas south of Hwy 50 in Cameron Park and EDH, are neighborhoods of 5 acre and larger parcels.

This mischaracterization has caused countless land use conflicts between existing residents and proposed new projects adjacent to them. Residents on a 5 acre parcel in Cameron Park do not appreciate being trampled by new development in order to protect residents on 5 acre parcels in Pollock Pines: all are considered rural and should be protected as such.

"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.)

**In the Final EIR, please correct this description of the environmental setting, and discuss the problems that arise in addressing aesthetics with 'one size fits all' policies in such a diverse county as El Dorado.**

2. Table 3.1-1 Key Public Scenic Viewpoints in El Dorado County, dEIR page 3.1-7 appears to be a reproduction of Table 5.3-1 from the draft EIR for the 1996 General Plan, as reproduced and adopted in the 2004 General Plan. This table should not be re-adopted as 'new'.

**In the Final EIR, re-designate this table to identify the data source as 'forwarded' from the 2004 General Plan.**

3. Policy 2.6.1.6 requires community participation in the identification of scenic corridors, as well as the regulations governing how they are, or are not, developed.

**In the Final EIR, update Table 3.1-1 to confirm that previous mitigation measures have been effective in protecting currently designated 'scenic' vistas and corridors.**

"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.)

4. Per Caltrans (Scenic Highway Program), the local county corridor protection programs are expected to ensure that activities within the scenic corridor are compatible with scenic resource protection and community values (dEIR page 3.1-2). The allowance of billboards (Shingle Springs), neon lighting (Cameron Park), and ridge top development (Serrano in EDH) along the Hwy 50 corridor have not been in keeping with either this expectation or 2004 General Plan policy.

**In the Final EIR, please explain why 2004 policies have not been enforced and mitigations have been lacking, and how future mitigations will differ in their effectiveness.**

"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.)

5. The original Salmon Falls Area Plan (adopted in 1983 and still a current regulation) included protection for ridgelines and natural features under 'Goal D'. This goal is referenced in the EDH Specific Plan EIR (1987) under Appendix I. And yet, below is a picture of ridgeline development in the EDHSP that is in direct conflict with this aesthetic goal.



The 2004 General Plan, policy 2.6.1.1(i) restricts ridge development. The verbiage in policy 2.6.1.5 specifically references the avoidance of "*visual breaks to the skyline*". The draft EIR has omitted this in the evaluation of the 2004 General Plan and its EIR.

**In the Final EIR, please discuss the failure to mitigate this significant impact of the 2004 General Plan, and how it might be addressed now.**

The courts have explained the reason that mitigation measures must be enforceable, and must be monitored to ensure that they are implemented. "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded. (See § 21002.1, subd. (b).) [fn. 5](#)" (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260 - 1261.)

6. The protection of visual resources was maintained through numerous policies in the General Plan that are now proposed for revisions which reduce these protections. These will both independently, and cumulatively, have substantial impact on aesthetics. They include, but may not be limited to:

**Policy 2.3.2.1:** revised to allow Disturbance of slopes thirty (30) percent or greater

**Policy 2.2.4.1:** revised for reduction of open space, and omission of the requirement that it be of public benefit

**Policy 2.5.2.2:** new commercial development was previously to be located nearby existing commercial facilities; expansion of commercial & industrial into the Rural Region voids this protection

**Policy 2.6.1.1(l):** sound walls were previously restricted in the foreground of scenic corridors

**Ordinance changes:** revisions to the zoning ordinance may include impacts that have not been clearly delineated.

**In the Final EIR, please provide a comprehensive list of the changes that have been left out of Table 3.1-2 as noted above, update the table, and evaluate the cumulative impact of all of these changes.**

The discussion of cumulative impacts must either "list past, present, and reasonably anticipated future projects producing related or cumulative impacts" or provide "A summary of projections contained in an adopted general plan or related planning document which described or evaluated regional or areawide conditions." Then it must summarize their "expected environmental effects" and "examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (CEQA Guidelines, sec. 15130.)

7. Programs which have not been defined cannot be evaluated for impact. And the public cannot comment on a vague policy. For example, from Table 3.1-2 on page 3.1-9 of the dEIR:

*"(New) **Policy 2.4.1.5** The County shall implement a program to promote infill development in existing communities."*

How much infill development does the County hope to promote? Is this infill residential, commercial, and industrial? What incentives might be provided? Will significant adverse impacts (aesthetic, traffic congestion, air pollution, etc.) be traded off to allow this infill?

**In the Final EIR, please provide some details regarding the proposal, and then provide a complete evaluation of the impacts.**

An accurate and complete project description is necessary to fully evaluate the project's potential environmental impacts. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (App. 3 Dist. 2004) 122 Cal.App.4<sup>th</sup> 1591.)

8. Page 3.1-13 of the draft EIR includes this caveat:

*"Note that El Dorado County is preparing a new sign ordinance separately from this project. Because that ordinance is not a part of this project and will be subject to its own CEQA analysis, it is not being considered here or otherwise included in this analysis."*

**a)** To this, we would like to note that the sign ordinance is integral to aesthetics issues, and should not have been separated out of this review. 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].) The discussion of cumulative impacts must either "list past, present, and reasonably anticipated future projects producing related or cumulative impacts" or provide "A summary of projections contained in an adopted general plan or related planning document which described or evaluated regional or area wide conditions." Then it must summarize their "expected environmental effects" and "examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (CEQA Guidelines, sec. 15130.)

**b)** Page 3.1-5 lists sign ordinance references, indicating there is some coverage of this issue, which could obfuscate the fact that a review and analysis has not been done. This is very confusing. Either the ordinance issue is covered in the EIR or it is not. EIRs must be "organized and written in a manner that will be meaningful and useful to decision makers and to the public." (Pub. Resources Code, sec. 21003, sub. (b).)

**As of this date, there is no sign ordinance draft included as a part of this update. Apparently, no impact assessments in this dEIR should be construed as including the upcoming sign ordinance approval. If the county insists on leaving the sign ordinance impact analysis out of the Final EIR, please make that clear where any references to sign regulations may occur in the document, or remove the references.**

9. The 2004 General Plan 'aesthetics' EIR evaluation is presumably incorporated into this EIR 'by reference' according to page 3.1-14. We reject that action based on the fact that *the subject mitigations have not been substantiated as effective*, and also that the proposed changes that make up 'the project' have not been confirmed as consistent with those policies.

As listed in items 5 and 6 above, policies and their associated mitigations have not been adhered to, specifically those regarding ridge top development (policy 2.6.1.5), scenic corridor designations (policy 2.6.1.8; note that no additional EDC segments of Hwys 49 or 50 have been designated as scenic by Caltrans), and policy 2.2.5.2 (see item 10 below).

- a. **list the mitigations and all portions of the 2003 EIR intended to be incorporated into this document**
- b. **then substantiate the efficacy of each mitigation intended to be incorporated**
- c. **the incorporated material includes footnote 1 on page 5.3-6 of the 2003 EIR, referring to a Federal Hwy Administration program that was pending in 2003. Confirmation of the program's viability and current applicability must be provided.**

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.)

10. According to page 3.1-14 of the draft EIR, Mitigation Measure 5.3-1(a) from the 2003 EIR was adopted as Policy 2.2.5.2 in the 2004 General Plan. This mitigation measure was intended to establish a 'conformity review' process for permits. The policy that was adopted (2.2.5.2) actually does the opposite, by allowing a project that does NOT conform with the General Plan to be made consistent *by changing the policies with which it conflicts*.

This has been utilized in many projects over the years, the most recent being the proposed EDH Apartments. This project is being said to 'strictly adhere to the General Plan and Town Center requirements' *after* the approval of a General Plan Amendment, Zone change, Specific Plan amendment, and Development Standards revisions. This is not technically 'conforming' to the General Plan, and voids any protections afforded from existing policies.

The courts have explained the reason that mitigation measures must be enforceable, and must be monitored to ensure that they are implemented. "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded. (See § 21002.1, subd. (b).) **fn. 5**" (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260 - 1261.)

**In the Final EIR, please explain how a mitigation measure can protect a scenic corridor when conformity may be achieved by voiding the 'protective' policy rather than upholding it. A policy intended to protect natural resources can just be made to 'go away' if a project is found to be inconsistent with it.**

11. This excerpt from the 2004 General Plan conclusion, restated on page 3.1-13 of the draft EIR for this General Plan update, indicates that the Community Regions and Rural Centers had their boundaries *reduced* prior to the 2004 General Plan:

*"...provide greatly enhanced protection for visual resources. The reduced boundaries and increased land use densities of the Community Regions and Rural Centers would reduce the incentive for residential development to be dispersed through the Rural Regions as ministerial development. Along with the General Plan policies, this development pattern would protect scenic views, resources, and view sheds from encroachment by higher intensity development in the lower intensity rural areas."*

The idea that the boundaries were reduced at that time has not been substantiated in either document, and in fact, many lands were added into those regions via site

specific requests in 1995 with no individual parcel review. It is a false assertion that these reduced boundaries will cause scenic views to be protected, or that there is reduced incentive for rural development. Both are incorrect, and additional information is needed before this conclusion from the 2004 General Plan can be incorporated into the analysis for the current update.

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.)

- a. **Provide documentation that the Community Region and Rural Center boundaries were indeed 'reduced', by providing maps showing both the 'before' and 'after' boundaries (indicate both the parcels removed and the parcels added prior to the 1996 General Plan adoption, which was the basis of the 2004 boundaries).**
  - b. **Provide appropriate market analysis to substantiate how the potential buyer for a 10 acre parcel is convinced to purchase a condominium instead; these are two separate markets and there is no explanation as to why increasing the number of urban parcels will reduce the demand for rural land.**
  - c. **Map the low density lands within the Community Regions as well as those on the perimeter, and analyze the aesthetic impact of converting them to high density development. This would include the rural lands that make up Dixon Ranch, San Stino, and Marble Valley/Lime Rock Valley, to name a few.**
12. From the section analysis on page 3.1-14, it is stated that there are two changes proposed that might have an impact on scenic vistas. Yet the Executive Summary conclusion lists four significant and unavoidable impacts. We believe there will actually be more when the changes have been more fully analyzed.

*"There are no specific projects being proposed by the project. However, as described above, there are two proposed changes that could result in development that would have adverse effects on scenic vistas."*

**In the Final EIR, please reconcile the difference between the Executive Summary conclusion and the Aesthetics review conclusion.**

13. From the Aesthetics analysis on page 3.1-14, the conclusion is reached that allowing development on slopes over 30% would allow building higher up on hillsides, but dismisses the impact on the Community Regions:

*"Allowing development on slopes of 30% or greater would allow new development to be built higher on slopes. Despite the proposed Zoning Ordinance provisions requiring special consideration of grading, geotechnical engineering, landscaping, and other concerns, there is no practical means of*



*avoiding the introduction of new structures into natural environments when development would occur in rural areas."*

El Dorado is a foothills county. Item no.5 above demonstrates how the Community Regions are affected by this policy as well, and have been readily dismissed in favor of concerns for rural areas. Mitigation BIO-1a would not likely protect the urban areas (Community Regions and Rural Centers) against building higher on slopes and creating community eye-sores. Not one of the mitigation measures proposed is aimed at mitigating impact to these areas.

**In the Final EIR, please review and rewrite the analysis for this and all sections to eliminate the bias shown that gives consideration to rural regions over more developed areas.** The fact that past mismanagement of aesthetic resources in Community Regions and Rural Centers have resulted in significant aesthetic impacts is not reason to dismiss future impacts as insignificant. In fact, 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].)

14. From the section analysis on page 3.1-15, an assertion is made regarding the proposed changes:

*"As discussed under Impact AES-1, it is reasonably foreseeable that the proposed ZOU provisions described above could result in new development that adversely affects existing scenic resources. No other part of the project would have that potential."*

The lists of proposed changes that will have an impact cannot be confirmed as 'complete', and therefore this statement is no more than an assertion. Until a comprehensive list of the proposed zoning ordinance changes is provided to the public in an understandable format, this statement must be removed.

**Please revise the analysis to include only the changes that are listed to date. More changes are proposed than have not been made clear to the public, and even a single 'unadvertised' change is unacceptable in the eyes of CEQA. Provide a comprehensive list of changes in the Zoning Ordinance update.**

Under CEQA, an accurate, stable and finite project description is sine qua non of informative and legally sufficient EIR. (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577.) An accurate and complete project description is necessary to fully evaluate the project's potential environmental impacts. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (App. 3 Dist. 2004) 122 Cal.App.4<sup>th</sup> 1591.) A description of the project is an indispensable component of a valid environmental impact report under CEQA. (*Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (App. 3 Dist. 2006) 144 Cal.App.4<sup>th</sup> 890.)

15. Ordinance changes, particularly in the Home Occupation sections, omits the requirement for 'display of goods' to be hidden from view of neighboring parcels. Even parking of company vehicles and equipment could have impact in some zones. This is not listed anywhere in the aesthetics review, and will have major impact in areas of expanded uses.

**Please add this change, note all zones affected, and analyze the impacts regarding aesthetics and quality of life.**

16. The Home Occupancy Ordinance (HOO) expands the allowable parking in all neighborhoods, which would have a significant impact in high density residential areas. Many neighborhoods have CCR's specifically to combat this type of 'offense', not just so that someone can park their car in front of their house after work, but also for appearances sake. This has not been included in any analysis.

**Please review the effect of street parking that proposed changes to the HOO will have in all neighborhoods.**

17. Ordinance 17.37.070A has been revised to make sound walls optional rather than prohibited along Hwy 50, and not restricted at all along local busy roads such as Green Valley Rd. The previous requirements were for setbacks and berms as mitigation. The net result will be to allow a tunnel effect to be created along rural roads where the current views are of rolling foothills and oak woodland. This is a significant impact in transition zones all around the perimeter of the Community Regions and possibly elsewhere. The installation of concrete block walls just off the right of way is not consistent with the rural nature of our county, nor the policies in the existing General Plan that are intended to keep us rural.

**Please provide likely roadways where areas are targeted for development and local roads will be impacted by this. Include the segments of Green Valley Rd where projects are already proposing to do this, and add the other likely targeted areas.**

**Provide an explanation as to how this policy is consistent with the existing General Plan.**

18. Visual screening for RV parks is eliminated through ordinance revision 17.40.100(D)2, and only screening for safety is retained:

*"Fencing. A fence, wall, landscaping screen, earth mound or other screening approved by the Director, or otherwise required by this Title, shall be required as needed for public safety."*

**Please review the possible locations of these areas with the expanded uses, and assess the aesthetic impact.**

Conclusion:

There are thirty three 'significant and unavoidable' impacts listed in Table 5-4 (dEIR, page 5-16). A single one of these impacts is sufficient cause for denial of the project. To approve the project, the County would have to find true overriding considerations for each one of the 33 impacts listed. Such a statement of overriding considerations must be supported by a logical analysis of substantial evidence in the EIR or elsewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.)

The significant and unavoidable impacts from the **Aesthetics** section, as listed on page ES-14:

*" **AES-1:** Result in a substantial adverse effect on a scenic vista*

***AES-2:** Substantially damage scenic resources, including but not limited to trees, rock outcroppings, and historic buildings along a scenic highway*

***AES-3:** Substantially degrade the existing visual character or quality of the site and its surroundings*

***AES-4:** Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area"*

Additionally, this list cannot be considered complete until further information and analysis is provided per the dEIR comments, in order to fully ascertain the impacts of the extensive changes being proposed.

END SECTION COMMENTS

**The following Exhibit is an Article published in the Mountain Democrat July 11, 2014.**

'Grand jury report: County slammed for not enforcing ordinance'

by Chris Daley

The purpose of this exhibit is to show that county ordinances and policies are not being enforced, and to demonstrate the unreliability of the County's mitigation promises.

Cover sheet for **Exhibit 3.1-1**

# Grand jury report: County slammed for not enforcing ordinance

**By Chris Daley**

From page A1 | July 07, 2014 |

According to the annual Grand Jury report, several county departments and individuals failed to protect the public from threats to the environment and to the health of local residents. The report cites the departments of Transportation and Community Development **as well as the District Attorney's Office at best for** inattention and perhaps ineptitude or bowing to political pressure regarding the lack of enforcement of several county ordinances, **particularly the "Grading, Erosion and Sediment Control Ordinance."** **As a result, property owners** graded their land without permits causing some significant environmental impacts.

At issue are several chinks in the permitting process, especially that if an individual or contractor simply does not apply for a grading permit and consequently does not pay the fee for same, the county evidently has no impetus to make a lawful inspection of the work. **Under the ordinance, however, it's clear that the county does have the authority to stop the work, mitigate the damages and charge the offender for the costs,** the report states.

The report notes that the fee and permit application are the triggers for involvement by the appropriate county departments, especially Transportation and Planning/Community Development. The Grand Jury studied one particularly egregious case that involved land in the area of the proposed Diamond Springs Parkway and Diamond-Dorado retail development.

According to the report, the landowner hired a grading contractor who failed to complete the necessary application documents and payment of the permit fee. That individual allegedly then did substantial grading of earth containing toxic limestone waste at the site of a former Diamond Lime processing plant, which is also within the plan boundaries for the parkway and retail project. In addition, the state Department of Fish and Wildlife opened an investigation of the property and issued citations for fines of nearly \$100,000, the report **says. The county issued "stop work" orders that went unheeded. The Fish and Wildlife agency forwarded the case to District Attorney Vern Pierson for legal action. The DA's Office opened a case but later closed it for reasons that are unclear in the report.**

Deputy District Attorney Jim Clinchard, however, discussed the case Wednesday in a phone call responding to a Mountain Democrat request for information.

The case was originally handled by an attorney in 2012-2013 who is no longer with the department, Clinchard said. Relevant documents and office records are incomplete and not easily traced, but more importantly, he said that as a **misdemeanor criminal case, "it would have been incredibly difficult to prove criminal intent."** **Winning a criminal case would not**

necessarily solve the pollution problem because the owner could tell a judge he had no money for the cleanup work and putting him in jail or on probation, likewise, would not address the issue, Clinchard reasoned. Based on considerable experience with **“environmental” cases, he said proving criminal intent is typically a huge barrier to winning** a case. He also pointed out that the case was dismissed long before the recent Grand Jury was impaneled and that the case may be more appropriately handled by the state, that is Fish and Wildlife and Water Quality agencies.

**Clinchard described the county’s existing ordinance as “a very powerful tool” that could** have been used and could be used to resolve the actual environmental problems. The statute of limitations has run out on the matter as a criminal case, he said.

**The report describes the initiation of the case as follows: “Citizens using the El Dorado Trail,** a bike/pedestrian path on the former railroad right-of-way at the North perimeter of the property, reported white, milky water and dead mammals in two tributaries of Webber Creek to the CDFW. CDFW documented lime discharge from the property on March 17, 2011. Testing showed alkalinity up to pH 12, equivalent to ammonia or oven cleaner, on the **property. A CDFW violation case was filed with the county District Attorney.”**

Why the situation was not addressed more aggressively and therefore persists to today is noted in the report:

**“Both County staff and officials reported that they perceived it to be *the will of the Board of Supervisors* that the Ordinance not be enforced. They stated that El Dorado is a *property rights county*; the will of the Board of Supervisors is that property owners not be burdened by strict compliance with requirements perceived to be onerous for some property owners. Several witnesses reported they believed the Ordinance imposed excessive burdens on property owners maintaining rural access roads.**

**“The public appears to understand that the Ordinance is not enforced. Neither of the contractors who performed illegal grading in Report No. 13-15 or 13-16 felt required to obtain a permit for the grading they performed. In Report No. 13-16 the Contractor appears to have understood that if he failed to pay the fee for a grading permit no action would be taken to enforce the terms of the permit.”**

Under the guidelines of the Grand Jury, the county has 90 days from publication of the report to issue an official response. The departments that had and continue to have the authority under the ordinance to do something about the specific situation described in the report, mainly transportation and the community development agency, are under the direction of Assistant Chief Administrative Officer Kim Kerr. She responded by e-mail to a request for comment from the Mountain Democrat Tuesday.

**“We received your e-mail. The County will not be providing a comment on the report until our official response is due,” she wrote.**

## **Agriculture & Forestry Resources - Section 3.2 dEIR Review Comments**

**1. Under the Existing Conditions (Section 3.2.1), discussions of Objective 8.1.3 from the current General Plan (PROTECTION OF AGRICULTURAL LANDS) is completely left out. The County has already reinterpreted Policies 8.1.3.1 and 8.1.3.2 which only leaves Policies 8.1.3.3, 8.1.3.4, and 8.1.3.5.**

***Policy 8.1.3.4 is very important for agricultural protection:***

"A threshold of significance for loss of agricultural land shall be established by the Agriculture Department and the Planning Department, with opportunity for public comment before adoption, to be used in rezone applications requesting conversion of agricultural lands to non-agricultural lands, based on the California LESA system. For projects found to have a significant impact, mitigation shall include 1:1 replacement or conservation for loss of agricultural land in active production and/or 1:1 replacement or conservation for land identified as suitable for agricultural production. A monitoring program should be established to be overseen by the Agricultural Department."

***It is unclear how Policy 8.1.3.4 is being implemented with the new General Plan and Zoning Ordinances.***

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***The Zoning Ordinance Update changes the criteria for allowing residential development in Timber Preserve Zones. By not only allowing, but encouraging residential development on Timberlands, growing and harvesting of timber will be severely impacted. The new zoning ordinance is too vague to protect this most important resource. It is unclear how the General Plan's assumption that the viability of the timber industry is critical to the maintenance of the County's customs, culture, and economic stability will be maintained.***

Existing TPZ criteria:

17.44.050 Criteria for residential use.

A. Residential use of timberland is in general inconsistent with growing and harvesting of timber. However, it is recognized that in certain situations such as intensively managed minimum size acreages, nurseries, etc., in private ownership, living quarters and outbuildings are necessary in connection with the management and protection of the property. Therefore, by recommendation of the agricultural commission acknowledging that three consecutive years of intensive management of his lands have been shown by the landowner, the zoning administrator may grant a special use permit for construction of one owner or caretaker occupied single-family detached dwelling or a mobile home on an approved foundation.

B. The following criteria will aid the agricultural commission in determining what constitutes intensive management and must be in any case considered in granting a special use permit for a residence.

C. Where a landowner has:

1. A timber inventory of his stand;
2. Conducted commercial harvesting operations;
3. Provided legal and physical access to his property so commercial operations can be carried out;
4. Made a reasonable effort to locate the boundaries of the property and has attempted to protect his property against trespass;
5. Conducted disease or insect control work;
6. Performed thinnings, slash disposal, pruning and other appropriate silvicultural work;
7. Developed a fire protection system or has a functioning fire protection plan;
8. Provided for erosion control on existing roads and skid trails and has maintained existing roads;
9. Planted a significant portion of the understocked areas of his parcel. (Ord. 3153 §1, 1981: prior code §9432(E))

17.44.060 Development standards. The following area and building regulations shall apply in TPZ districts unless a variance is first obtained from the planning commission or zoning administrator:

A. Minimum parcel area:

1. Any use permitted in Sections 17.44.040 or 17.44.050 shall be allowed on any existing parcel of record as of October 12, 1976,
2. Any use permitted in Sections 17.44.040 or 17.44.050 shall be allowed on a parcel of not less than one hundred sixty contiguous (as defined in Section 51100(b) of Article 7, Chapter 6.7 of the Government Code) acres or the equivalent of a quarter of a section or sections within which the parcel is located, whichever is less, where the parcel is created after October 12, 1976;

B. Minimum setback, one hundred feet on any side;

C. Maximum building height shall not exceed fifty feet, nor shall buildings exceed any applicable height restrictions imposed by airport approach districts. (Ord. 3452 §1, 1984: prior code §9432(F))

Proposed TPZ criteria:

**F. Disclosure Notice of Rezone.** Within 10 days of final action of a zone change application that either includes or deletes property from a TPZ, the Clerk of the Board shall cause to be recorded an instrument which will serve as constructive notice of the zone change action to prospective buyers of the subject property.

**H. Required Findings to Support Residential, Recreational and Other Non-Timber Uses.** Certain uses within the TPZ may be compatible with growing and harvesting timber in certain circumstances, and may be allowed by Conditional Use Permit. When approving a Conditional Use Permit, as allowed in Table 17.21.020 (Agriculture and Resource Zone Districts Use Matrix), for compatible, non-timber related uses, the review authority shall consider the recommendations of the Ag Commission and shall make the following findings:

1. The proposed use is compatible with and will not detract from the land's ability to produce timber;
2. Fire protection and public safety concerns have been adequately met, including the ability to provide adequate public access, emergency ingress and egress, and sufficient water supply and sewage disposal facilities;
3. The proposed use will not adversely impact the area's watershed, wildlife, and



other natural resources.

**2.** *It also appears that the new zoning ordinance for TPZ, creates more criteria for TPZ parcels to be allowed. This also conflicts with the maintenance of the County's customs, culture, and economic stability. The El Dorado-Alpine Counties 2013 Agricultural Crop and Livestock Report, reported \$11,422,718 value in the timber harvested. According to what constitutes a threshold of Significance, the change in the TPZ ordinance will have a significant impact on that value. Given the importance that the timber resource is to the culture, customs and economic stability of El Dorado County this change is more than just a significant impact that cannot be mitigated it will be a catastrophic change to the entire General Plan. (See CEQA Guidelines, sec. 15131, subd. (b) [economic and social effects can be used to determine the significance of a physical change in the environment].) The changing of the zoning ordinance conflicts with the policies and Objective 8.3.1 of the current 2004 General Plan.*

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**3.** *Since the TGPA/ZOU targets on the creation of Agricultural Districts for implementation, it leads to the question of the Board of Supervisors intent. Looking at Figure 3.2-1, the El Dorado county Important Farmland of 2010, from the Farmland Mapping & Monitoring Program, it shows Prime Farmland (661 acres), Farmland of Statewide Importance (827 acres), Unique Farmland (3,206 acres), Farmland of Local Importance (59,565 acres), and Grazing Land (193,883 acres) distributed throughout the entire mass of El Dorado County.*

*The 2004 General Plan EIR concluded that the adoption of that plan created the potential for 63,307 acres of these particular acres listed to be converted to other uses. The discussion in the TGPA/ZOU EIR explains the amount of acreage being added into Agricultural Districts, but does not explain what the overall affect will be to Agricultural Zoned Lands throughout the County. Will Agricultural Zoned Lands outside of these Districts have the same protections as within? Or once these Districts are established, will Agricultural Lands outside these Districts face more pressure to convert to non-agricultural uses. The Study agrees that the impact to the conversion of Agriculture will still be significant and unavoidable. To date, the measures to mitigate that impact, within the current plan, has been mostly ignored, amended or not implemented. Two new mitigation measures added with this project will not change this impact.*

**4.** *Page 3.2-17 of the TGPA/ZOU, under Impact AG-3, Project Impacts, states, "The TGPA is not proposing any amendments that would result in inconsistent levels of protection for "agricultural operations". Then it is stated that the right-to-farm ordinance provides county-wide protections for "on going agricultural operations", therefore the threat to Agriculture will be less than significant. This is basically a play on words, is misleading to the public and does not address the true impact that implementing the TGPA/ZOU project will have on protections to Agriculture.*

*Currently the right-to-farm provides protections to Agricultural "Zoned" Parcels throughout the county, regardless of their current operational status. Currently, numerous agriculturally zoned parcels exist with conflicting General Plan Land*

Designations throughout El Dorado County. This is allowed according to Policy 2.2.5.6.

Once the TGPA/ZOU project is implemented many of these currently Agricultural "zoned" parcels have the potential to be converted to higher density uses without any analysis. Those parcels will then lose their right-to-farm protections unless they meet all the new criteria for sustaining "on going agricultural operations".

It is the same strategy that has come into play by the El Dorado Irrigation District with new Commissioner members working to change the rules and regulations in place that have historically protected farm rates. This section of the TPGA/ZOU appears to be tainted and lacking the information needed for a true analysis as to the impacts this project will have on current agricultural protections. Will the right-to-farm ordinance eventually only be allowed on parcels contained in Agricultural Districts? If this becomes the case, implementing this plan **WILL** provide an inconsistent level of protection for agricultural operations based on location in identified agricultural areas (meaning whether they are in or out of Agricultural Districts) , contrary to this project's stated "less than significant" statement.

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**5.** The discussion regarding converting the Community Region line in Camino – Pollock Pines to three Rural Centers ends with the impact being less than significant. The main TGPA/ZOU discussion starts with the possible impact to the future of the Camino Mill due to the different allowances for noise levels between Community Regions and Rural Centers. Contrary to this assumption, when looking at the 2004 General Plan noise policies, they address how "new" noise-sensitive land uses being created shall be protected and how "new" proposed non-transportation uses shall be mitigated. The 2004 General Plan does not address existing land uses that retain that use as being affected by the noise ordinance.

The other argument from the TGPA/ZOU was based on the premise that making the change would have little affect because the area does not have the infrastructure or services to reach its potential development intensity. This has been the argument from the developer lobbyists throughout the process. (Don't worry, be happy.. the possibility of this ever happening is way down the road.) This discussion sounded more like propaganda for reasons not to change the overlay to a less growth inducing designation than an analysis as to what the impact would be on Agricultural and Timber resources adjacent to and within these lines. Given that the pressures to allow higher densities for urban development would be reduced, the conclusion in this report should be; making this change would have no impact to Agriculture and Forest resources.

An EIR cannot underestimate the impacts of the project, by assuming that, once the project is adopted, it will not be implemented. If the County wishes to adopt an alternative for which the EIR suggests there will be no additional significant impacts, then the County can choose the "No Project" alternative. On the other hand, if the County wants to adopt the TGPA/ZOU, it must disclose the impacts of its full implementation. "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.)*

**6.** *On page 3.2-14, the TGPA/ZOU states that the project includes "minor" revisions to policies of the General Plan's Agriculture and Forestry Element that would make the following changes:*

- Clarify setback requirements of agriculturally incompatible uses adjacent to agriculturally zoned land.
- Provide consistency with the ZOU provisions allowing Williamson act parcels to be zoned Agricultural Grazing (AG), Planned Agriculture (PA), or Limited Agricultural (LA), rather than only Exclusive Agricultural (AE) or Agricultural Preserve (AP) as under the existing Zoning Ordinance.
- Clarify that visitor serving uses will be allowed in agricultural areas pursuant to the Zoning Ordinance.

*The policy changes being allowed in the TGPA/ZOU are opening up more allowed uses on Agricultural Lands, but the Zoning changes will create a more restrictive environment than the current policies. Without comparing how the new Zoning policies, with new regulations, will impact existing resource industries that depend on existing extended uses on their property, with the uses now allowed based on the existing Ranch Marketing and other existing policies, it is unclear as to what the true impact to the Agricultural and Timber Resources will be given these changes.*

*A better discussion needs to take place regarding the impact of the zone change categories for Agriculture. Art Marinaccio, brought forward these proposed changes and it is known that he has worked as a consultant to the property owners of the San Stino project which entails converting hundreds of acres of agricultural ranch lands to residential and commercial use which have been historically held in Williamson Act contracts. The impact to Agriculture and Forestry due to the above changes has not been clearly defined in the analysis. One should not have to search through volumes of documents to figure this out on their own. Information scattered in an EIR or buried in an appendix is not a substitute for good faith reasoned*

analysis. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4<sup>th</sup> 1219, 1239.)

*This section needs to be more concise and clear as to what impact the policies changes will have on Agriculture and Forestry.*

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**7.** *According to the Methods of Analysis on page 3.2-11, "Existing conditions are the baseline against which the significance of the project's potential impact is evaluated." As documented above many changes have taken place over the years in regards to policies and development that will negatively affect Agricultural lands.*

*Much of the Agricultural Zoned Lands exist as they have prior to the 2004 General Plan being adopted since the change to Agricultural zoning has not yet taken place. The intent of the LUPPU/ZOU is to implement these zone changes without individual analysis to the impact of those changes. These and past policy changes, over the years, have not been analyzed for their cumulative impact on Agriculture and Forestry Resources.*

*Currently numerous speculators have brought forward projects that will convert thousands of Agricultural zoned lands to higher density land uses. These proposed projects are currently being processed, but mostly sitting in the hopper waiting for the new General Plan and Zoning Codes to be finalized.*

***Once the changes, provided for by the TGPA/ZOU, are implemented, they will have a significant and very destructive impact on the County's Agricultural and Forestry Resources. Not only that, they will also impact the County's Custom, Culture and Economic Stability, the Plan Purpose, Statement of Vision, Plan Assumptions, Plan Concepts and Plan Objectives which are the basis of the entire 2004 El Dorado County General Plan.***

*Inconsistencies between the TGPA/ZOU and environmental protection provisions of the general plan are evidence of a significant land use impact on the environment, and may make the TGPA/ZOU legally infeasible. (See CEQA Checklist, DEIR, Appendix A, p. 2-28.; Gov. Code, esc. 65300.5.) Please disclose this in the Final EIR.*

*To merely address "Loss of the county's rural character as a result of new, higher density residential development," while the projects causing this impact are moving forward separate from the TGPA/ZOU process, is irresponsible to the public. The potential impacts created by TGPA/ZOU ends up being left out of the discussion. It should be stated that implementing the TGPA/ZOU will give these projects a new advantage, those issues need to be addressed and not avoided or simply pushed to Chapter 5, which in the end merely concludes that this project is Growth Inducing, without specifying how.*

*As the governmental body of El Dorado County likes to often state when changing protection policies, "since there is no development project involved in the new policy, there is no impact." Much of this document reads the same way. Digging through the document to Chapter 5.2 it is stated that this project could, however,*

*indirectly induce growth by removing barriers to growth. Again one should not have to dig so far to find this information.*

*I will always remember a quote told to me from Bill Stephens, former Agricultural Commission for El Dorado County, "One man's barrier is another man's protection."*

*Following the TGPA/ZOU document to the end, and along with the cumulative affects of all the previous changes to the General Plan mentioned in the attachment to this comment, the overall impact to Agricultural and Forestry Resources will be Significant and Unavoidable due to this project. Simply alluding to the fact that this is not any different than the impacts of the past is not acceptable mitigation.*

*New mitigation measures must be implemented in order to retain the essence of the 2004 General Plan. If not this whole endeavor should be abandoned. County Staff needs to return to the Board of Supervisors with implementation measures that will actually encourage the growth of the Agricultural and Timber Resources, rather than impact them, as was intended and PROMISED in the current 2004 General Plan.*

**Comments regarding the March 2014 El Dorado County TGPA/ZOU Draft Program EIR, 3.2 Agricultural and Forestry Resources:**

**Attachment 3.2-A. Agriculture and Forestry Background Information**

*The Current 2004 El Dorado County General Plan, after years of battling over land use, was the result of being placed on the ballot in the form of Measure B. One of the selling points for Measure B was the protections that would be provided to Agriculture.*

*From the "El Dorado County Taxpayers Coalition for Open Roads and Quality Neighborhoods" the public was told:*

"The 2004 General Plan protects agriculture against urban sprawl and protects the county from over-development by providing agricultural lands as open space, e.g.; working landscapes, and by providing a buffer against urban sprawl."

"The 2004 General Plan provides the most protection for agricultural land use, including grazing. Source: 2004 General Plan, Land Use Element: Policy 2.2.1.2 Agricultural Lands (AL) Land Use Designation & Policy 2.2.2.2 Agricultural District (-A) **Overlay Designation.**"

"Protects our county's agricultural lands, using them as open space buffers against over-development and urban sprawl."

"They all new [now] agree that the 2004 General Plan is the right way to control growth, preserve our rural and agricultural lands, fix transportation problems, protect jobs and encourage healthy economic growth."

*The importance of protecting Agriculture from urban development is expressed throughout the General Plan as one of the most important lands that require sound management.*

**The 2004 General Plan's Custom, Culture, and Economic Stability**

**statement** is as follows: (Parts having to do with timber, grazing and agricultural lands are underlined.)

Public land within El Dorado County provides economic and ecological value to the County, State, and Nation. Since the Eldorado Forest comprises about 57 percent of El Dorado County's land base, and these Federal lands are exempt from local property taxes, the County requires Federal and/or State compensation to offset the loss of potential tax dollars to the County's economy.

Activities on public land include but are not limited to timber harvesting, grazing, mining, tourism, recreation, and the production of clean water within a healthy forest environment.

El Dorado County is blessed with abundant natural resources and has long been recognized for its spectacular beauty. While impacted, these same attributes exist today. The County has a tradition of appreciating and conserving these resources, using them wisely, and upholding a strong ethic of stewardship over these assets. It is the combination of these features that are now referred to as rural character.

The value and historical productivity of the Eldorado National Forest is associated with commodity production, ecological diversity, and geological significance. Its long-term economic and environmental value depends upon overall forest health.

There is an abundance of non-timber oriented natural resource lands in the County. Some of these lands have produced, and will continue to produce, a variety of agricultural products. Others are inherently valuable for their natural environmental characteristics. **All of the County's natural resource lands are important to the local and regional economies due to their availability for crop production,** recreational opportunities, watershed values, and contributions to the tourism industry.

In general, in order for these resources and opportunities to be available in the future, these important lands require sound management. The General Public specifies the manner in which the historic culture, custom, and economic importance of these lands can be sustained in the future. Conflicts do exist as a result of population expansion into resource rich lands. This Plan provides policy guidance and direction on how to avoid and/or minimize these conflicts. Careful management applies especially to the County's abundant water resources and watershed areas. Healthy economies cannot be maintained without a reliable and clean water source.

This Plan also acknowledges that the County will continue to grow but will attempt to retain the qualities of its natural resource base, both consumptive and environmental, in order to maintain its custom and culture and to assure its long-term economic stability. This Plan acknowledges the ecological and historic values of these lands while saving and conserving the lands for future economic benefits for all the purposes stated in this section. **The rural character of the County is its most important asset.** Careful planning and management can maintain this character while accommodating reasonable growth and achieving economic stability.

The County will actively participate with Federal and State agencies in the development and implementation of policies that affect our custom, culture, and economic stability.

To facilitate this participation, the El Dorado County Board of Supervisors shall establish Memorandums of Understanding (MOUs) with the United States Forest Service, the Bureau of Land Management, the California Department of Forestry, the California Department of Fish and Game, and other agencies as the need arises.

**The 2004 General Plan's Statement of Vision** includes #4 which states:

Promote a better balance between local jobs and housing by encouraging high technology activities and **value added activities tied directly to available**

**resource base industries such as the timber industry, tourism, agriculture, mining, and recreation.**

**The 2004 General Plan's Plan Assumptions** includes:

#4. Agriculture and Timber:

The agriculture and timber industries will remain economically viable during the 20-year planning time horizon of the Plan. **The viability of these industries is critical to the maintenance of the County's customs, culture, and economic stability.**

*Agriculture in El Dorado County has been such an important part of retaining the rural way of life that the "El Dorado County Taxpayers Coalition for Open Roads and Quality Neighborhoods" propaganda also stated that:*

*"According to state law, a General Plan must address seven subjects – land use, transportation, housing, conservation, open space noise and safety. Our plan addresses these areas and four others – agriculture & forestry, public services, parks and recreation and economic development – making it one of the most comprehensive plans in the state."*

*Agriculture and Forestry is so important in El Dorado County that even though it is not required in the General plan it was added as an extra element to the General Plan.*

**The 2004 General Plan's Agriculture and Forestry Principle** states:

The Plan must provide for the conservation and protection of El Dorado County's important natural resources, and recognize that the presence of these resources pose a constraint to development.

*Protecting Agriculture is an element that is recognized to constrain development, meaning it is OKAY to impede development in order to protect this resource.*

**The 2004 General Plan's Agriculture and Forestry Introduction:**

The Agriculture and Forestry Element addresses the conservation, management, and utilization of the County's agricultural and forest lands. In El Dorado County, these lands are regarded by residents as fundamental components of the County's rural character and way of life. In recent years large influxes of new residents have resulted in increased development and thus a changed landscape. While this growth has benefited the County in many ways, the low-density residential growth has threatened important agricultural and forest lands. Prudent management of **the County's agriculture and forestry resources is needed to provide future generations with opportunities to experience both the economic benefits and rural lifestyle residents now enjoy.** This prudent management strategy involves maintenance of large parcel sizes and the minimization of incompatible land use encroachment into these resource rich lands.



The Agriculture and Forestry Element is consistent with the requirements set forth in California Government Code Section 65302 and other applicable sections. The conservation and management of agricultural and forest lands is identified by the residents of El Dorado County as an important issue to be addressed by the General Plan. This element encompasses portions of the mandatory Land Use, and Conservation and Open Space Elements set forth by the California Government Code. Provisions within each of these elements apply to agricultural and forest lands. Specifically, State law requires that the general plan shall include:

**"A land use element** which designates the proposed general distribution and **general location and extent of the use of land for ... agriculture...**  
(Government Code Section 65302(a)).

**"A conservation element for the conservation, development, and utilization of natural resources including .... soils.."** (Government Code Section 65302(d)).

**An open space element "used for the managed production of resources, including .... Rangeland, agricultural lands, and areas of economic importance for the production of food or fiber ... "** (Government Code Section 65560(b)(2)).

The focus of the Agriculture and Forestry Element is on conserving these non-renewable lands for agriculture and timber activities, natural resource values, and long-term productivity.

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*Soon after the General Plan was adopted a group of developer lobbyists – mainly the promoters of Measure B (the public voter adopted 2004 General Plan) – started a process of gutting and amending the 2004 El Dorado County General Plan that they had just promoted. (Bernard Carlton, of the El Dorado County Taxpayers Association, has told me several times that "they knew that this plan was horrible, but they just needed to get it adopted so they could fix it.") Their first line of business was to increase the Floor Area Ratio from .25 to .85 on Commercial, Research and Development, and Industrial properties. This increased the County's Commercial, Industrial and Research and Development build out from 24 million square feet to 84 million sq. ft. The Environmental Impact Report (EIR) stated that adopting this amendment would add 26 significant and unavoidable impacts with these two impacts (Impact 5.1-2: Substantial alteration or degradation of land use character in the county or Subareas and Impact 5.2-2: Degradation of existing visual character or quality of the area or region) having no feasible mitigation measures that the Board of Supervisors (BOS) could adopt. Therefore the BOS stated that the economic, legal, social, technological benefits outweighed the unavoidable environmental impacts and adopted the amendment. Even though it appears at build out, El Dorado County does not have the water to sustain this*

growth. This was adopted on 7/10/07 without any consideration as to the impact this increased density would have on the County's agricultural resources. Also the overriding considerations stated that in balancing between competing goals of growth and economic development versus the need to protect the environment, that growth and economic development were more important, thus the overriding considerations. This was counter to the 2004 General plan statements from above showing the stewardship needed over our natural resources for economic stability. Especially given that "the County's rural character is it's most important asset."

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On April 22, 2008 the BOS directed staff to prepare an amendment to Policy TC-Xa, which would reflect their reinterpretation of the 1998 provisions of Measure Y. The new measure stated, "Shall the voter-enacted Measure Y General Plan policies be extended ten years and amended to provide: (1) Traffic from major single-family residential subdivisions shall not result in, or worsen, Level of Service F (gridlock) traffic congestion; (2) No additional county roadways may operate at Level of Service F without voter approval or 4/5ths vote of County Supervisors; (3) Developer-paid traffic fees, combined with any other funding source, shall pay to build necessary road improvements?"

Most residents did not understand the change in verbiage.

After the passage of this Measure on 11/4/08, with the new 4/5ths vote to amend or allow projects even when they create a LOS F, multiple large projects have been brought forward. The Board of Supervisors have also made adjustments to the Traffic mitigation fees for special interests and a lobbyist promoting high density senior housing. Also within the housing element that was adopted, the Board, in 2008, inserted into the element, "As part of the reauthorization process for General Plan policies related to concurrency, the Board of Supervisors has proposed modifications that will reduce the impact on residential development. This includes **allowing for single family residential subdivisions of five or more parcels or all other residential developments to commence** as long as construction of the necessary road improvements are included in the County's 10-year or 20-year CIP.

This modification will no longer require road improvements to be completed prior to occupancy of the development." (Added in 2009) – "Requirements for concurrency of services and development are contained in the General Plan and County Code and will be modified to provide more flexibility in development of multi-family housing."

Without the 4/5's vote of the Board of Supervisors to override the gridlock policy, many of these future projects would not be allowed due to Highway 50 already being at Level of Service F during peak hours, which would require developers to provide the infrastructure to mitigate for the increased traffic. Developers historically would rather pass this impact onto the public and rarely pay for the true cost of mitigating infrastructure impacts created by their projects. When these mostly high density projects move forward they will be impacting existing and

adjacent agriculturally zoned parcels. This change in Measure Y, once the LUPPU process is completed, will contribute to creating a significant impact to Agricultural and especially grazing lands in El Dorado County.

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On 6/19/07 BOS directed staff to prepare an amendment to Policy 2.2.5.20 for relief to limit review of the single family dwellings building permits. Prior to the amendment, a General Plan Consistency Review was required on any development greater than 120 square feet. The amendment changed this threshold to 4,000 square feet. This amendment was initiated by *Art Marinaccio*, a commercial real estate broker, and recommended by an Ad Hoc committee formed "To improve the permit process" and then adopted by the BOS. The recommendation no longer required an applicant to readdress parcels created on subdivisions once they had been approved through the CEQA process. These CEQA statements for new subdivisions, no matter the impact, are usually Negative Declarations. Often El Dorado County Staff reports, when they move to create a new subdivision, will state that since there is no development project, therefore there is no impact. That way when an applicant or developer goes to build on this property they do not have to acknowledge compatibility issues surrounding them. This new policy was mostly created to avoid mitigation of Oak trees, but it also affects adjacent agricultural lands. (Refer to El Dorado County #A07-0011) No longer checking for compatibility issues has the potential for significant impacts on Agriculture.

On 10/11/07 the public (*Kathye Russell*, development consultant) raised concern regarding agriculture buffers and setbacks. On 12/13/07 the Planning Commission adopted a Resolution of Intention to exempt those lands that are located in rural centers and community regions from Policy 8.1.3.1 (Agricultural buffers). On 5/14/08 the Ag Commission approved a motion to recommend to the Planning Commission to amend 8.1.3.1 and provided criteria to be adopted by a separate resolution, which defines when the exemption is applicable. *Art Marinaccio* wanted to omit "and will not intensify conflict with an adjacent agricultural operation". The Agricultural Commission moved to recommend to the Board of Supervisors to initiate a General Plan amendment to allow creation of parcels less than 10 acres and to adopt criteria through Board resolution and added "approving authority" per planning staff. On 10/9/08 Planning Commission (PC) requested staff to go to the Ag Commission and that the process be streamlined when reviewing buffers and setbacks (to lessen Ag Commission input). *Art Marinaccio* mentioned to the PC that the criteria drafted is not what the BOS requested, but what the Ag Commission wants. At the 11/5/08 Ag Commission meeting, *Art Marinaccio* stated that the BOS could just do a policy interpretation rather than a General Plan amendment. *Valerie Zentner*, Farm Bureau Executive Director, stated that the policy should be changed

by General Plan amendment as language is very clear in the policy which does not allow it to be interpreted any differently then warned the Commission to proceed with caution. On 12/1/08 Jack Sweeney introduced his own policy for 8.1.3.1. & 8.1.3.2., written by Jim Brunello, (lawyer & property owner of land which abuts Agricultural zoned land), and initiated Board agenda item to be heard on 12/9/08. On 2/2/09 Board adopted Jack Sweeney's interpretation of policies 8.1.3.1 & 8.1.3.2 to limit review by Ag commission in regards to buffers and setbacks in and adjacent to Community Regions and Rural Centers. Bill Stephens, the Agricultural Commissioner at the time, stated that the Board should do this by General Plan Amendment rather than a reinterpretation. County Council was asked for advice if what they were doing was legal and Lou Greene of County Council basically stated that the Board could do whatever they wanted. On 5/12/09 Board adopted criteria to limit review by Ag commission in regards to buffers and setbacks in and adjacent to Community Regions and Rural Centers. Being that there are only 5 policies in the 2004 General Plan to provide protection of agricultural lands from adjacent incompatible land uses and this reinterpretation reduced the protections clauses of 2 of those polices, this change will contribute to creating a significant impact on agriculturally zoned parcels.

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On 4/18/06 the Board of Supervisors (BOS) adopted a resolution of intention to amend the General Plan with regards to Floor Area Ratio (FAR) and Mixed Use Development (MUD). Later the Board directed staff to address MUD separately from FAR (On 7/10/07 the amendment to increase FAR was adopted). MUD was to include FAR of 1.00, allow residential density from 10 to 24 dwelling units (DU) per acre, and to provide bonus densities for affordable housing. On 7/18/06 the BOS entered into a contract with Pacific Municipal Consultants (PMC) to provide critical environmental impact services to the county. PMC provided a range of options the County could consider regarding the MUD and recommended not to undergo an EIR since it would be too expensive and the findings may not support the desired outcome. In 2007, Planning staff contacted four market analysis firms whose thoughts on MUD for El Dorado County were not strong. A statement was made, in the 10/9/08 staff report, that parcels within Community Regions are of interest to the development community for consideration of more dense urban development as supported by the County's General Plan policies pertaining to Community Regions. In the 10/9/08 Staff concluded that MUD would not degrade the quality of the environment, reduce habitat, threaten plant or animal communities or eliminate important examples of California history or prehistory. Nor would the project cause substantial importance that identifies new or more intense significant impacts. Therefore, staff prepared a Negative Declaration for this amendment.

*During this time Developer Lobbyists appeared to have taken over the General Plan implementation process along with most committees and commissions having to do with land use and development. These lobbyists rewrote the professional staff's ordinance that had been prepared for the Board of Supervisors. They gave a 2-1/2 hour presentation at the BOS workshop regarding what they could accept for the mixed use development ordinance. They also mentioned that they were not affordable home builders. The proposed rewrite of the mixed use on commercial properties included: authority of the Board to reduce the required 30% open space; increase of Dwelling Units from 10 to 24; commercial no longer required to be the primary use; residential and commercial no longer required to be built at the same time; a single site may include contiguous properties; residential can be on a separate parcel from commercial and can be single or multi-family; and zero line setbacks, "by right" with a planned development overlay. Taken out of professional staff's ordinance was: standard lot area and width; design review; and coordination between projects, infrastructure, and open and public spaces. This Ordinance came before the Board on August 4, 2009 for the MUD general plan amendment's final approval. At the 6/30/09 Board meeting regarding the MUD proposed adoption, I objected to the Negative Declaration and mentioned that the way this amendment has been gutted and transformed by the "working MUD group" (the Developer Lobbyists), is to cause the opposite effect of the original intent of the MUD policy. Below is the argument attached to the item prior to adoption of the MOU ordinance:*

December 9, 2009

Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

RE: General Plan Mixed Use Amendment  
Item # 66, 12-08-09 Agenda  
Project # 09-0156

Dear Board of Supervisors,

I would like to state my opposition of the adoption of the Mixed Use General Plan amendment. I object to the negative declaration stating that this project could not have a significant effect on the environment.

The planning staff report makes assumptions that are not well studied. The study is outdated due to amendments and reinterpretations of General Plan policies.

*Assumptions in italics:*

*"Mixed-use projects located within urbanized areas of the unincorporated County are expected to reduce traffic impacts when sited near alternative forms of transportation such as bus routes, bike and pedestrian walkways."* There is no requirement for these mixed use projects to be located near alternative forms of transportation. These projects would also by right be allowed

into rural areas of the unincorporated County, therefore there is no guarantee these projects will reduce traffic impacts. In fact placing this type of development in a rural county is much more likely to create traffic impacts. The concept of “smart growth” was to alleviate the impact of development on Agricultural lands, encouraging denser projects to be infilled into already existing urban cities. Placing these projects in El Dorado County will actually impact the County’s agricultural lands since developers are looking to place these projects on parcels containing choice soils for farming.

*“Development resulting from the proposed amendment would only occur in areas designated for commercial uses, none of which are considered important scenic resources.”* Commercial zoned parcels are located in Camino along Highway 50 which is designated as a scenic highway, therefore this statement is not true.

*“Impacts to existing communities would be less than significant due to future projects would only take place on sites within the County’s Community Regions and Rural Centers.”* Most of our small historic towns are located within these community regions and rural centers. Such as Diamond Springs, El Dorado, Camino, Pleasant Valley to name a few. These towns still sit without any historic protections. Allowing these developments to go into these areas without protections, and design standards these historic towns will be forever lost. Building mixed use projects outside of these existing communities will destroy the economic viability of these communities. More safeguards need to be in place to protect our historic and existing communities before haphazardly approving massive mixed use projects. Therefore adopting this amendment could have a significant impact on our existing communities.

*“Short-term and long-term impacts would be less than significant to the CBC noise standards.”* The staff report only addressed the noise level from construction and airports. Due to the fact that there are no limitations from the list of acceptable uses of commercial development that would be allowed attached to residential, no one knows the impact of the long term noise levels.

*“There is no potential for a significant impact due to substantial growth with the proposed amendment either directly or indirectly.”* Since 70% of a commercial parcel can be residential and since the residential can be built prior to the commercial, creating the possibility of the commercial not be developed, this amendment will create a more substantial imbalance in the County’s current jobs to housing ratio.

*“No significant impacts are expected to public services either directly or indirectly.”* The Board of Supervisors are working with developers to reduce the amount of funds required by developers to mitigate the long term effect of their development. There is no proof that these proposed projects will not impact public services. On the contrary an increase tax base in small rural communities rarely reduces individual tax burdens or meets the demands of new public services required.

*“No significant traffic impacts are expected either directly or indirectly.”* This study was based on facts relative to August 22, 2006. Since this time the road design standards have changed along with the traffic impact mitigation program. Therefore these issues need to be reevaluated. The other issue is there is an assumption that due to the increased density of dwelling units there will be new transit services provided. The 2004 General Plan EIR

determined that the insufficient transit capacity was significant and unavoidable, therefore the impact to alternative transportation is not less than significant.

*“No significant utility and service system impacts are expected either directly or indirectly.”*

Under the General Plan 2025 conditions and its associated population growth, all development is expected to lead to a substantial increase in OWTS resulting in significant and unavoidable impacts. Under build out conditions Mixed Use would result in increased OWTS flows discharge beyond those documented in the 2004 General Plan EIR. Under build out conditions, the project would cause an impact on surface water, requiring all water purveyors to seek additional water rights. Simply acquiring a water supply facility letter from EID, which does not take in consideration previous obligations, and stating that this amendment is no worse than the Far Area Ratio Amendment is not enough to reduce this obviously significant impact to utility and service system to less than significant.

The staff discussion states that the study only took into consideration those elements which applied to the Mixed Use Amendment. The review did not address Agriculture and Forestry, Geology, Soils and Mineral Resources, Biological Resources and Cultural Resources, Recreation, due to being previously addressed in the General Plan EIR and not being affected by this project. Therefore, this project will not degrade the quality of the environment, reduce habitat, threaten plant or animal communities or eliminate important examples of California history or prehistory. Impacts would be less than significant. I disagree. **The county has yet to do much of the work in identifying our agricultural, historical, cultural and natural resources. There are many agricultural parcels that are of choice soils which are no longer protected. Our farms and ranches need to be protected in order for our future generations to have the ability to sustain themselves. We need to find ways for our farms and ranches to remain viable.** The county has yet to identify historical sites and landmarks. SB18 states that the county is required to consult our native local tribes whenever they adopt a General Plan amendment. To my knowledge this has not been done. SB18 also requires the county to work with the native local tribes in order to identify sacred cultural sites and set them aside for preservation. The county has not appropriately dealt with our biological corridors and oak woodlands. The county has yet to determine a location of a 4 year college, locations for parks and recreational activities, and the location of a permanent solid and liquid waste disposal facility. The county has yet to designate our historic landmarks, roads and districts.

There is much to do before adopting the Mixed Use Amendment. It is important to not wait until 2013 to create zones and design standards for mixed use that will help these projects to blend in with existing communities.

If the Board of Supervisors wishes to continue in this endeavor to adopt the Mixed Use amendment without Mixed Use zones and design standards, I request an Environmental Impact Report be prepared showing the effects of adopting this amendment in order to determine mitigation for the impacts.

Respectfully,

Sue Taylor

*The potential for high density on commercial without any setback requirements and reduced open space has created the potential for higher density adjoining Agricultural parcels. The final hearing on this resolution was set for 12/8/09. A massive storm on that day ended up shutting down areas throughout the entire County, burying areas in snow and causing major power outages. The Board Meeting was cancelled due to the power being knocked out. The meeting was moved to two days later, before the public could be notified due to the massive power outages and major restraints to transportation due to large piles of snow throughout the county. After Supervisor Ray Nutting and Commercial Real Estate Broker Art Marinaccio shoved the sidewalks for the building which holds the Board Chambers, on 12/10/09 the Board of Supervisors adopted #09-0156 General Plan Amendment A08-0001/Ordinance, OR08-0001 Mixed Use Development. The wish list brought forward by the developer lobbyist group was mostly adopted short of density of 10 being increased was revised to 16 rather than 24. Without the mitigation policies that had been recommended by staff, this General Plan Amendment and Ordinance has created the potential for significant impacts for Agriculture and other Natural Resource industries.*

---

*While a member of the Ad Hoc Committee to fix the County's permit process, I attended a meeting with Planning to assess the issues in regards to processing development plans. A member of staff gave us a document they put together that showed that the county has no way to monitor or verify if mitigation actually ever takes place. Therefore any mitigation that has been proposed for any impacts to Agriculture since the adoption of the 2004 General Plan is a moot point since the County has a poor record of ever following through and no program for mitigation monitoring.*

*Comments submitted by,*

*Sue Taylor*

*Former Apple Hill Grower  
Long time Resident of El Dorado County  
P. O. Box 961  
Camino, CA 95709*

*With collaboration from,*

*Save Our County*

---



The following attachment was a 2004 handout that was used to "sell" Measure B - our current General Plan - to the voters. The protection of the county's agricultural land, rural character, and prevention of gridlock traffic due to over-development, were selling features.

*Cover sheet for* **Attachment 3.2-B**

# What You Should Know About

## THE 2004 EL DORADO COUNTY GENERAL PLAN

- State planning law requires every county to adopt and maintain a “blueprint for development – a General Plan. This General Plan is El Dorado County’s basic planning document and is the vehicle through which a county addresses, balances and fits together the competing interests and needs of its residents.  
*Source: 2004 General Plan; El Dorado County General Plan website:*  
[www.co.eldorado.ca.us/generalplan/](http://www.co.eldorado.ca.us/generalplan/)
- According to state law, a General Plan must address seven subjects – land use, transportation, housing, conservation, open space, noise and safety. The 2004 El Dorado County General Plan addresses these areas and four others - agriculture & forestry, public services, parks and recreation and economic development – making it one of the most comprehensive plans in the state.  
*Source: Government Code #65302; El Dorado County General Plan website:*  
[www.co.eldorado.ca.us/generalplan/](http://www.co.eldorado.ca.us/generalplan/)
- The General Plan offers traffic solutions with identified funding sources. *Source: 2004 General Plan, Transportation & Circulation Element, Policy TC-Xa, Xf, Xg, Xh*
- The General Plan mandates that developers pay the full cost of mitigating impacts for new development. *Source: 2004 General Plan, Transportation & Circulation Element.*
- Over 36,000 hours of public hearings have been held to discuss the General Plan.  
*Source: Official Records of El Dorado County*
- About 1,300 homes a year will be built under Measure B – some 26,000 over the next twenty years, a third of what opponents claim. Fewer than 10,000 new lots/homes are currently approved and yet to be built. *Source: El Dorado Hills Fire Department; El Dorado County New Dwelling Permits, 1995-2004.*
- Without a General Plan, the El Dorado Irrigation District cannot access at least 20,000 additional acre-feet of water supplies. *Source: El Dorado Irrigation District Counsel Tom Cumpston Analysis, 10/18/04.*

## OPEN ROADS & QUALITY NEIGHBORHOODS

- The 2004 General Plan protects agriculture against urban sprawl and protects the county from over-development by providing agricultural lands as open space, e.g.; working landscapes, and by providing a buffer against urban sprawl.  
*Source: 2004 General Plan Policy, Land Use Element – Objective 2.1.3 (rural regions) and Policy 2.2.2.2 (Agricultural Districts and primary use)*
- The 2004 General Plan provides the most protection for agricultural land use, including grazing. *Source: 2004 General Plan, Land Use Element: Policy 2.2.1.2 Agricultural Lands (AL) Land Use Designation & Policy 2.2.2.2 Agricultural District (-A) Overlay Designation.*

- The General Plan includes all the traffic improvement recommendations of the 2004 El Dorado County Planning Commission – plus the entire Circulation Element of the Planning Commission’s Environmentally-Constrained alternative. *Source: 2004 General Plan, Traffic & Circulation Element Policy TC-Xh, TC-Xi.*
- The sum total of the difference between the General Plan and the Environmentally-Constrained alternative (which opponents support) is only 511 residents or 201 new homes through the year 2025. *Source: 2004 General Plan*
- The Board of Supervisors has approved funding for \$150 million of traffic improvements to be spent in the next five years between Cameron Park and the County line – and designated new development as the source of this funding. *Source: Approved 5-year Capital Improvement Plan for El Dorado County.*
- El Dorado is the only county in California that charges a fee on each home built for the express purpose of paying for state-maintained highway improvements. *Source: 2004 General Plan, Transportation & Circulation Element, Page 59.*
- Proponents of the Highway 50 initiative and opponents of the General Plan are the same people who included restrictions in Measure Y that prohibit the county from using its own state and federal tax dollars to improve Highway 50. *Source: Measure Y, 1998; Supervisory Decision of 12/7/99 accepting Measure Y Committee’s definition of restriction of the use of “grants and other funding sources.”*

## OPEN ROADS & QUALITY NEIGHBORHOODS

El Dorado County Taxpayers Coalition for Open Roads and Quality Neighborhoods  
 Yes on Measure B, PO Box 1992, Placerville, CA95667, [www.protecteldoradocounty.org](http://www.protecteldoradocounty.org)

Sponsored by taxpayers, conservationists, local business, real estate businesses and farmers.

### THE COMMUNITY’S PLAN

After years of hard work and thousands of hours of open public debate, our county finally has a General Plan, as required by state law. The plan is backed by a wide range of local business, agriculture and public safety leaders, taxpayer and neighborhood advocates, elected officials, conservationists and respected community organizations – all of whom agree that this is the right plan to protect the quality of our neighborhoods and deal effectively with the traffic congestion caused by unplanned growth.

Those endorsing the plan include:

- El Dorado County Fire Chiefs Association
- El Dorado County Citizens for Water
- Taxpayers Association of El Dorado County
- Taxpayers for Responsible Government
- El Dorado County Chamber of Commerce
- El Dorado County Farm Bureau
- El Dorado County Chamber Agricultural Council
- Apple Hill Growers Association

- Friends of El Dorado County
- U.S. Representative John T. Doolittle
- Senator Rico Oller
- Assemblyman Dave Cox
- Assemblyman Tim Leslie
- Assemblyman Alan Nakanishi
- El Dorado County Supervisor Helen Baumann
- El Dorado County Supervisor Dave Solaro
- El Dorado County Supervisor Jack Sweeney
- El Dorado County Auditor-Controller Joe Harn
- El Dorado County Assessor Tim Holcomb
- El Dorado Irrigation District President George Wheeldon
- El Dorado Irrigation District Vice President John P. Fraser
- El Dorado Irrigation District Director Bill George
- El Dorado Irrigation District Director Harry Norris
- El Dorado Irrigation District Director George Osborne
- El Dorado County Republican Central Committee

### **A CAREFULLY CRAFTED DOCUMENT**

The plan represents years of hard work and community input – a carefully crafted plan put together by professional planners, community leaders and elected officials after much study and over 36,000 hours of open public hearings on how best to protect our neighborhoods and deal with traffic and unplanned growth.

According to state law, a General Plan must address seven subjects – land use, transportation, housing, conservation, open space noise and safety. Our plan addresses these areas and four others – agriculture & forestry, public services, parks and recreation and economic development – making it one of the most comprehensive plans in the state.

The plan is specifically designed to solve problems, control growth, protect taxpayers and preserve our way of life.

- Requires developers – not taxpayers – to pay for needed road improvements.
- Imposes strict new controls on growth and limits the number of apartments that can be built.
- Protects our county’s agricultural lands, using them as open space buffers against over-development and urban sprawl.
- Requires long-range transportation planning so new roads are built before gridlock strikes.
- Increases local fire protection and secures the rights to 32,000 acre-feet of clean, affordable water for county residents.
- Protects private property rights by creating a process for individual landowners to appeal planning decisions.

## **WHAT HAPPENS WITHOUT THE GENERAL PLAN**

Without the General Plan, El Dorado County will become the only county in California without an approved plan to control growth and prepare for the future. We'll be forced back to square one of the planning process – costing millions of tax dollars, delaying needed traffic improvements and opening the door to planning chaos.

Rather than fixing problems, they'll just get worse.

This plan is the result of years of hard work and careful public review, in which past concerns were mitigated and compromises negotiated. As a result, the 2004 General Plan has been embraced by a wide range of community groups – many of which opposed previous plans.

They all now agree that the 2004 General Plan is the right way to control growth, preserve our rural and agricultural lands, fix transportation problems, protect jobs and encourage healthy economic growth.

To join our team or learn more, please call 530-677-8613 or visit [www.protecteldoradocounty.org](http://www.protecteldoradocounty.org).

## **OPEN ROADS & QUALITY NEIGHBORHOODS**

A committee sponsored by local businesses and taxpayers, farmers and conservationists

El Dorado County Taxpayers Coalition for Open Roads and Quality Neighborhoods  
ID# 1267824, PO Box 1992, Placerville, CA 95667

## ***For Open Roads & Quality Neighborhoods* We Support the 2004 El Dorado County General Plan**

### **Organizations and Public Officials**

El Dorado County Fire Chiefs Association  
El Dorado County Citizens for Water  
Taxpayers Association of El Dorado County  
Taxpayers for Responsible Government  
El Dorado County Chamber of Commerce  
El Dorado County Farm Bureau  
El Dorado County Chamber Agricultural Council  
El Dorado County Association of Realtors  
El Dorado Joint Chambers Commission  
El Dorado Business Alliance  
Friends of El Dorado County  
El Dorado Hills Chamber of Commerce  
El Dorado Builders Exchange  
Shingle Springs/Cameron Park Chamber of Commerce  
South Lake Tahoe Chamber of Commerce  
South Lake Tahoe Association of Realtors  
Building Industry Association of Superior California (BIASC)

### **Local Residents**

Rhonda Adair  
Tom Addison  
Edward Akin  
Jim & Chris Aldrich  
Harry Allen  
James Allen  
Joyce Amlick  
Maryann Argyres  
Imran Aziz  
Chuck Bacchi  
Dennis Badzik  
Lou Barber  
May Barisone  
Hal Barker  
Henry Batsel  
Frank Baumann  
Kimberly Beal

David Jones  
Dennis Jordon  
Gladis Katskis  
Ed Keller  
Sharon Kerrigan  
James Kidder  
Kerry King  
John Knight  
Mike Kobus  
Harry Kohaut  
Tim Land  
Robert Laurie  
Chuck Legge  
Douglas Leisz  
Gladis Lkatskis  
Sherilyn Lum-A  
Jason & Michell  
Geri Maher

SAGE  
 Team 2000 Plus  
 Apple Hill Growers Association  
 El Dorado Farm Trails  
 Local 2749 Lumber Production & Industrial Workers Union  
 El Dorado Winery Association  
 Fair Play Winery Association  
 Marble Valley Regional Center for the Arts  
 U.S. Representative John T. Doolittle  
 Senator Rico Oller  
 Assemblyman Dave Cox  
 Assemblyman Tim Leslie  
 Assemblyman Alan Nakanishi  
 El Dorado County Supervisor Helen Baumann  
 El Dorado County Supervisor Dave Solaro  
 El Dorado County Supervisor Jack Sweeney  
 El Dorado County Assessor Timothy Holcomb  
 El Dorado County Auditor-Controller Joe Harn  
 El Dorado Irrigation District Director George Osborne  
 El Dorado Irrigation District Director George Wheeldon  
 El Dorado Irrigation District President John P. Fraser  
 El Dorado Irrigation District Director Bill George  
 El Dorado Irrigation District Vice President Harry Norris  
 El Dorado County Planning Commissioner John Knight  
 El Dorado County Planning Commissioner Dave Machado  
 El Dorado County Planning Commissioner Alan Tolhurst  
 South Lake Tahoe Council member John Upton  
 South Lake Tahoe Council member Ted Long  
 El Dorado Union High School District President Mary Muse  
 Camino Elementary School Board Member Brian Veerkamp  
 Former El Dorado County Supervisor John Cefalu  
 Former El Dorado County Supervisor Joe Flynn  
 Former El Dorado County Supervisor Vernon Gerwer  
 Former El Dorado County Supervisor Bill Johnson  
 Former El Dorado County Supervisor Mark Nielsen  
 Former El Dorado County Supervisor Ray Nutting  
 Former El Dorado County Supervisor Walt Shultz  
 Former El Dorado County Planning Commissioner Marcia Gerwer  
 Former El Dorado County Planning Commissioner Tom Mahach  
 Former El Dorado County Planning Commissioner Jim McKeehan  
 Former El Dorado County Planning Commissioner Brian Veit  
 El Dorado County Republican Central Committee  
 El Dorado County Republican Women Federated  
 El Dorado West Republican Women  
 Georgetown Divide Republican Women Federated  
 Camino Union School District Board

*(partial list)*

*(partial list)*

**Local Businesses**

Ackerman Emergency Equipment  
 All Star Rents

David Becker	Al Manard
Joe Benguerel	Debbie Manning
Larry & Gay Berge	Linnea Marengo
Douglas Bisbee	Art Marinacco
Candie Bliss	Sue Mary
Timothy L. Bolen	Center Masonic
Tom Bolinger	Pamela Masters
Bradley Bonar	Dennis & Judy M
Liz Boyd	Edwin Mathews
Mary Brehan	Owen K. McGui
Laurel Brent-Bumb	Claire McNeal
Rich Briner	Trudy Meyer
Marie Brooks	Katie Midkiff
Kevin Brown	Ira Mirsky
Richard Brown	Sylvia Moore
Skip Brown	Marlene Moser
Loring Brunius	Martin & Diane
Paul Buchanan	Dave Nelson
Lori Bume	Dennis Nickson
Gerald Burnette	Vanessa Norgau
Michael Cadei	Carol-Anne Ogd
Gerry Camp	Judy Onorato
Christa Campbell	Eve Oswald
Bernard Carlson	Susan & Fred O
Charles Carr	Gary Peters
Jim Carter	Daniel Pinski
Roy E. Carter	PJ & Ray Presgr
Sammy Cemo	Denise Proctor
Scott Chad	Morgan Pulcine
Lauri Clupper	Joy Pyne
Steve Cockerell	Rill Randall
Denise Cork-Nutting	Don Reid
Tabatha Cotton-Keefauver	Jean Reinder
Sue Cox	David Reppas
Richard & Betty Creason	Russell Reyes
Jeff Culver	Carl Reynolds
Tom Davis	Carmen Richard
Wendi-Mae Davis	Linda Riley
Phil Dawson	Allison Rinauro
Heidi De Hart	Jeanne Rios
Kathie Debord	Cyndi Romano
Robert Dominikus	Paige Romine
Kelly Dondero	Tom Roslee
Van L. Dossey	Kathye Russell
Carolyn Doty	Peggie Ryan-Lau
Doretta Doyle	Bolet Salvador
Melissa Dozier	Donna Sauber
Harry Dunlop	Trent Saxton
Cheryl Dworman	Ian Schofield
Kari Dyer	Boyd Sears
Will Eber	Harriett Seigel
Anne Eckert	Nejatian Shan
Christal Ferguson	Gordon & JoAn
Betty Franklin	Thomas Shinn
Shiva Frentzen	Kyle Smith
Chris Fusano	Wendell Smith

Irish Creek Ranch  
KFRD Investment Inc.  
Lorang Brothers Construction  
Town Center East, LP  
Wallace-Kuhl and Associates  
*(partial list)*

Dolores Garcia	Mary Stubbe
Jerry Garvin	Maureen Studen
Thaleia Georgiades	Blain Stumpf
Patti Ghan	Steve Swars
Amar Ghori	Charles & Sheila
Kathleen Gilchrest	Kathy Teresi
Moni Gilmore	Sam Teresi
Pam Gosso	Jeff Thoma
Karen Gregor	Rennie Thomas
Hin Gyrewishi	Sean Tucker
David & Rebecca Harnagle	John Tyler
Chuck Harrell	Bill Vandergriff
Ron & Dee Hayden	Doug Veerkamp
Thomas Heflin	Barbara Vermil
Clay Heil	Joe Vicini
Joan Heinig	Mike & Nancy
Laura Hernandez	Dolly Wager
Mela Hernandez	Lori & David W
Bob Hill	Cheryl Webb
Angela Honoroff	Cecil Wetsel
Elizabeth Humenick	Doug Wiele
Maxine Hurley	Bryan Wilkinson
Doug Hus	John A. Winner
Carrin Jankowski	Dana Wishon
Betty January	James & Donna
Joyce Johns-Roske	Dave Yorty
Susan Johnson	John Zachry
William Johnson	<i>(partial list)</i>

## **Biological Resources - Section 3.4 dEIR Review Comments**

The Integrated Natural Resources Management Plan (INRMP) that will provide the implementation ordinances for preserving our oak woodlands is said to be "*still under development*" (page 3.4-8 of the dEIR) and is not being done as part of this EIR.

In the meantime, the 2004 General Plan policies and mitigation measures will need to suffice, and are repeated and referenced in this dEIR. The problem is, those policies and mitigation measures have gone unheeded, with some overturned in court, and they cannot be re-referenced here with any expectation that they have value for preserving and mitigating. The Final EIR must disclose that the fee-based portion of the oak woodland mitigation program has been rejected by the court as inadequate. This is a key aspect of the regulatory setting.

In 2007 there was an '*Important Oak Woodland Habitat*' map adopted by the Board of Supervisors. Then in 2009, four residential subdivisions were approved over top of presumably 'identified' important oak woodlands. The "mitigations" are not working. Map below (Exhibit 3.4-1 excerpt on the left, with the location of development approved in 2009 shown on the right):

### **Important Oak Woodland Habitat**

(BOS 6/25/07)



The failure of this current mitigation program needs to be disclosed in the Final EIR. Among the other relevant aspects of the environmental setting, the agency must divulge



harm to the environment caused by current and past mismanagement. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 874.) “[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.)

The proposed changes in the TGPA/ZOU reduce open space, increase density, and reduce stream setbacks. The protections to our biological resources must be secured as *part of* the proposed TGPA/ZOU changes, and not afterward. **The impact analysis in this dEIR is based on illegitimate mitigations and policies, and cannot be substantiated. INRMP must be completed and a new analysis provided that evaluates the INRMP policies relative to the proposed TGPA/ZOU changes.**

Specific policy comments follow below.

1. Under 'Project Impacts' on page 3.4-42:

*"The proposed ZOU includes new Zoning ordinance Section 17.30.030.G (protection of wetlands and sensitive riparian habitat) that would require the avoidance and minimization of impacts on wetlands and sensitive riparian habitat"*

Ordinance 17.30.030(G)5a reads as follows:

*The uses, structures and activities allowed in the applicable zone are allowed within riparian areas with an approved Minor Use Permit.*

This new ordinance allows any grading or building activity to occur within the riparian setback with over-the-counter approval from the zoning administrator. While the dEIR summary says this ordinance is for 'protection', the administrator need only find that it is infeasible to grade or build elsewhere. If the setback is for protection and it need not be heeded, there is no protection.

**I challenge the interpretation presented here, and ask for substantiating data as to how impacts are being minimized by this policy.**

2. The same section on page 3.4-42 states:

*"The proposed code would also establish greater setbacks from the county's major lakes, rivers, and creeks."*

In reality, current policy 7.3.3.4 requires setbacks of 50 and 100 feet from intermittent and perennial streams. Proposed ordinance 17.30.030G reduces these setbacks to 25 and 50 feet.

**This is a pretty basic math error that could only produce erroneous analysis; a new analysis is required. In this regard, the DEIR does not reflect a “good faith effort at full disclosure.” (CEQA Guidelines, sec. 15151.)**

3. Ordinance 17.30.060 will allow development on 30% and greater slopes. The dEIR says stricter development standards will apply so there is no impact. However, all the 'exceptions' have not been evaluated, including the blanket exception to both agriculture and grading.

**Please provide slope maps, oak woodland habitat mapping, wildlife corridor locations, and riparian mapping, to overlay and analyze this change for significant impact. The project description must include “precise boundaries” of the project on a “detailed map, preferably topographic.” (See CEQA Guidelines, sec. 15124, subd. (a).) For this part of the project, that would be a map of areas of the county with private land over 30% slope.**

## BIOLOGICAL RESOURCES - Section 3.4 Continued

I do not understand the purpose of this Targeted General Plan Amendment. After reading it, it seems as though the main purpose is to make more land available for development and to allow more kinds of development on different sorts of land.

The other main purpose seems to be to minimize the amount of mitigation required for the impacts that would result from these proposed changes.

- 1. Why do most of the policy changes proposed increase densities, encourage more mixed use, allow building on steeper slopes, and allow LESS open space?**
- 2. What is the true purpose of this amendment?**
- 3. Who are the main beneficiaries of this amendment?**

The DEIR is poorly organized and difficult to follow. It would be easier to assess if proposed changes to a policy were listed directly before or following the existing policy, along with mitigation measures. 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).)

It would also be easier to assess if the proposals and their impacts were addressed separately and not compared to the 2004 General Plan and the EIR for that plan. However, one cannot discuss this DEIR Biological section without first addressing the 2004 General Plan and the inadequate or non-existent mitigation measures used there. Some of the same measures are being applied to the TGPA and DEIR. Among the other relevant aspects of the environmental setting, the agency must divulge harm to the environment caused by current and past mismanagement. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 874.) “[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.)

The most important document in the 2004 General Plan pertaining to wildlife conservation, environmental impacts, and mitigations is the Integrated Resources Management Plan (INRMP). This plan was to identify “important habitat in the County” and establish “a program for effective habitat preservation and management.” It was to be completed within five years of the adoption of the 2004 plan.

It is 10 years later, and the INRMP still does not exist, yet the INRMP is referred to in the DEIR. The following are mitigation measures that are *supposed* to be part of the INRMP.

A. “Habitat Inventory,” to be updated every three years.

- 1. Have the following important habitats been inventoried and mapped:**
  - A. Habitats that support special-status species.**
  - B. Aquatic environments including streams, rivers, and lakes?**
  - C. Wetland and riparian habitat.**
  - D. Important habitat for migratory deer herds.**
  - E. Large expanses of native vegetation.**
- 2. How can you know what habitats are available for preservation if you have not inventoried them?**
- 3. How can you acquire lands for mitigation if there is no habitat inventory?**
- 4. Who will do the inventory?**
- 5. Where will the inventory be done?**
- 6. How extensive will the inventory be? “Habitat Inventory” is so broad a term, it is open to lots of interpretations. It needs to be better defined.**
- 7. How do you define “large expanses of native vegetation?”**

B. "Habitat Protection Strategy"

1. Is there a "strategy for protecting important habitats based on coordinated land acquisitions?"
2. Has any land been acquired?
3. If so, is there a management strategy for acquired land?

"The goal of the strategy shall be to conserve and restore contiguous blocks of important habitats to offset the effects of increased habitat loss and fragmentation elsewhere in the county"

4. If this strategy exists, has it been updated AT LEAST every five years based on the "habitat monitoring program?" (see F. below)
5. Who decides what is "important?" Based on what criteria?
6. How much habitat has been lost between 2009 and 2014 if this strategy has not been developed and applied? It was to be in place by 2009.

C. "Mitigation Assistance"

1. Has a program been established "to facilitate mitigation of impacts to biological resources resulting from projects approved by the County that are unable to avoid impacts on important habitats?"
2. Define criteria for the definition of "important."
3. Have "mitigation banks" been developed?
4. Have lists of potential mitigation options been maintained?
5. What options are listed?
6. Are there incentives for developer and landowner participation in the habitat acquisition and management components of the INRMP?
7. What sorts of incentives are proposed?
8. If a mitigation bank exists, what does it contain and what has it been used for?

D. "Habitat Acquisition"

To be based on the "Habitat Protection Strategy" (see B. above) and in coordination with the "Mitigation Assistance" program (see C. above).

1. Is there a program to identify habitat acquisition opportunities involving "willing sellers?"
2. Have any lands been acquired?
3. How is this land paid for?
4. Are any lands acquired in fee or protected through acquisition of a conservation easement?
5. Do any conservation easements exist?
6. Where are the conservation easements?
7. What do the conservation easements protect?
8. Is there a program to identify opportunities for partnerships between the County and other organizations for habitat acquisition and management?

## **9. Where is the acquired land, and how much is there?**

### **E. "Habitat Management"**

"Each property or easement acquired through the INRMP should be evaluated to determine whether the biological resources would benefit from restoration or management actions."

- 1. Have any properties or easements been evaluated?**
- 2. Have any properties or easements been acquired?**
- 3. Have any biological resources been identified as benefiting from restoration or management actions?**
- 4. Have any resources been restored or managed?**
- 5. How has restoration been accomplished?**
- 6. How is restoration and management paid for?**
- 7. What restoration has been done and where was it done?**
- 8. Who decides what to restore and manage?**

### **F. "Monitoring"**

- 1. Is there a "habitat monitoring program" in the INRMP?**
- 2. Has habitat monitoring been incorporated into future County planning efforts "so as to more effectively conserve and restore important habitat?"**
- 3. Has there been any "special-status species" monitoring?**
- 4. Has the monitoring been reported to the CNDDDB?**
- 5. Have the monitoring results been compiled into an annual report presented to the Board of Supervisors?**
- 6. Who does the monitoring?**
- 7. Who pays for the monitoring?**
- 8. How are habitats identified for monitoring?**
- 9. How much habitat has gone unmonitored and unprotected since 2009 when the INRMP was to be completed?**

### **G. "Public Participation"**

- 1. Has the INRMP been developed with and include provisions for public participation?**
- 2. Has there been "informal consultation with local, state, and federal agencies having jurisdiction over natural resources within the County?"**
- 3. What agencies were consulted?**
- 4. What is meant by "informal consultation?"**

### **H. "FUNDING"**

- 1. Has a conservation fund been developed to adequately fund the INRMP?**
- 2. Does the fund include money for habitat maintenance and restoration?**

3. Is there funding from any source, including grants, mitigation fees, and the County general fund?
4. Have any mitigation fees been required for any project?
5. How much has been paid in mitigation fees?
6. For what projects were mitigation fees paid?
7. What were the mitigation fees used for?
8. Have any grants been applied for?
9. Is there any money set aside in the general fund to provide funding for the requirements in the INRMP?
10. How much money is provided?
11. How much money will be needed?
12. How much is in the fund right now?
13. How much of the fund has been used for meeting the requirements of the INRMP?
14. How has the fund been used?
15. Where has the fund been used?
16. Have project developers been required to pay for all mitigations needed because of their project?
17. Will funds be set aside for continued maintenance, management, and restoration of habitats that are part of the INRMP?
18. Is there been an INRMP annual report as described in section F above?
19. Does the annual report contain information on current funding levels?
20. Has the annual report projected anticipated funding needs?
21. Has the annual report anticipated potential funding sources for the following five years?
22. How has the conservation fund been used?

#### LAND USE ELEMENT

Since these policies are included as part of this DEIR, questions about how effective they are can be asked.

#### Ecological Preserves Policy 2.2.2.4

1. Do any Ecological Preserves exist?
2. Is there an overlay for Ecological Preserves?
3. Have any ecological preserves been established?
4. Have "implementation measures" been developed and approved?
5. What implementation measures have been developed and approved?
6. Are there measures in place to continue to maintain these preserves?
7. How long will the preserves be maintained?
8. How will maintenance of the preserves be funded?
9. How are preserves maintained?
10. How are the preserves monitored?
11. Who monitors the preserves?
12. Who pays for monitoring?

Conservation Element Policy 7.3.3.1

1. Have any projects included a delineation of river, stream, lake, pond, or wetland features?
2. Who decides whether a project will result in “discharge of material” or may affect the function and value of rivers, streams, lakes, ponds, or wetlands?

Policy 7.3.3.3

1. Has the County developed a database of important surface water features, including lake, river, stream, pond, and wetland resources?
2. How is “importance” determined?
3. Who determines what is “important?”

Policy 7.3.3.4

1. Has the Zoning Ordinance been amended to provide buffers and special setbacks for the protection of riparian areas and wetlands?
2. Has the County “encouraged” the incorporation of protected areas into conservation easements or natural resource protection areas?
3. How has encouragement been accomplished?
4. Has any protected land been incorporated into conservation easements or natural resource protection areas?
5. Where are these lands?
6. How much land is included?
7. Has the County ever allowed an exception to wetland and riparian buffers?
8. Why were exceptions made?
9. If avoidance and minimization of impacts are not feasible, why does the County allow exceptions to the buffers?

Policy 7.3.3.5

1. Have rivers, streams, lakes, ponds, and wetlands ever been “integrated into new development in such a way that they enhance the aesthetic and natural character of the site while disturbance of the resource is avoided or minimized and fragmentation is limited?”
2. What are examples of developments where these features have integrated in such a way?

Policy 7.4.2.3

1. Has any private land ever been purchased for preserve sites?
2. How much land and where is it located?
3. How does the County find “willing sellers.”

Policy 7.4.1.3

1. Have land uses ever been limited within established preserve areas to activities deemed compatible?
2. Who decides what is “compatible?”
3. Who monitors whether the land uses are limited?
4. Has a rare plant educational and interpretive program been developed?
5. Who developed this program?
6. Who manages, maintains, and monitors the program?

Policy 7.4.1.4

1. Have any “proposed rare, threatened, or endangered species preserves been designated Ecological Preserves (EP) overlay on the General Plan land use map?
2. How is a “rare, threatened, or endangered species” preserve identified?
3. How is such a preserve acquired?
4. How is such a preserve maintained?

Policy 7.4.1.5

1. Have species, habitat, and natural community preservation/conservation strategies been prepared to protect special-status plant and animal species and natural communities and habitats when discretionary development is proposed on land with such resources?
2. Has it ever been determined that those resources exist and either are or can be protected on public lands or private Natural Resource lands?
3. Why should existing resource preservation be used as a mitigation for new disruption of these habitats?
4. If the lands exist, but are not already protected, how is it assured that they will be protected?
5. What is the time-line for protection?

Important Biological Corridor (IBC) Policy 7.4.2.9

“Important Biological Corridor overlay shall apply to lands identified as having high wildlife habitat values because of extent, habitat function, connectivity, and other factors.”

1. Is there an “Important Biological Corridor” (IBC) overlay?
2. Has an important biological corridor ever been identified and preserved in any project since 2004?
3. Who decides what is “important?”
4. Define “extent,” “habitat function,” and connectivity.”
5. What “other factors” are considered.



**6. If there is no corridor overlay, how much habitat has been disturbed, how many habitats disconnected since the time the corridor overlay was to be in place?**

**7. How will those losses (in 6 above) be mitigated?**

**8. How many times has there been an increase in minimum parcel size to protect habitat?**

**9. How many times have any of the following been done to protect habitat:**

**Higher canopy-retention standards?**

**Lower thresholds for grading permits?**

**Higher wetland/riparian retention standards and/or more stringent mitigation requirements for wetland/riparian habitat loss?**

**Increased riparian corridor and wetland setbacks?**

**Greater protection for rare plants?**

**Standards set for retention of contiguous areas/large expanses of other (non-oak or non-sensitive) plant communities?**

**10. Have there been any “site reviews” to ensure that canopy is retained?**

**11. Have any hindrances to wildlife movement (e.g. fences that would restrict wildlife movement) been put in place and enforced?**

**12. Have any of the standards listed above been included in the Zoning Ordinance?**

#### Policy 7.4.4.1

**1. Has the Natural Resource land use designation been used to protect important forest resources from uses incompatible with timber harvesting?**

**2. What uses are considered incompatible?**

**3. How are wildlife, plants, streams and other animal and habitat resources protected in Natural Resource land?**

#### Policy 7.4.4.2

**1. Has the County ever encouraged “the protection, planting, restoration, and regeneration of native trees in new developments and within existing communities?”**

**2. How does the county accomplish this “encouragement?”**

**3. Has the “encouragement” ever been successful?**

**4. Where are some examples of the successful use of this encouragement?**

#### Policy 7.4.4.4

**1. Have any of the “mitigation options” listed to mitigate for “soil disturbance” ever been employed?**

**2. Has any applicant ever contributed to the County’s Integrated Natural Resources Management Plan (INRMP) conservation fund described in Policy 7.4.2.8?**

**3. If so, how much?**

4. Have woodland habitats ever been replaced on a 1:1 ratio?
5. Where are these restored habitats?
6. How are the restored habitats monitored?
7. Have impacts to woodland habitat and mitigation requirements ever been addressed in a Biological Resources Study and Important Habitat Mitigation Plans described in Policy 7.4.2.8?
8. Has a formula for woodland replacement been developed by the County that accounts for the number of trees and acreage affected?
9. Where and how has this formula been employed?
10. Has any project applicant ever provided sufficient funding to the County's INRMP conservation fund to fully compensate for the impact to oak woodland habitat?
11. Has a preservation ratio of 2:1 ever been applied to compensate for fragmentation as well as habitat loss based on the total woodland acreage onsite directly impacted by habitat loss and indirectly impacted by habitat fragmentation?
12. Has the cost associated with acquisition, restoration, and management of the habitat protected ever been included in the mitigation fee?
13. If none of the above has been accomplished yet, how will the County mitigate for damages done during the time that this policy should have been in effect?

#### Policy 7.4.4.5

1. Has this policy ever been put into use?
2. Have corridors of oak trees ever been retained that maintain continuity between all portions of the stand that has been disturbed?
3. Who goes through the oak stand and decides how to maintain continuity between portions of the stand?
4. How do you define "continuity between all portions of the stand?"
5. Where are the corridors that have been retained?

#### Policy 7.4.5.1

1. Has a tree survey, preservation, and replacement plan ever been filed with the County prior to issuance of a grading permit?
2. Has a mitigation monitoring plan ever been incorporated into any projects to ensure that proposed replacement trees survive?
3. Has the plan provided funds for necessary replacement trees?
4. Who must pay for the monitoring?
5. Where are replacement trees present?

#### Policy 7.4.5.2

1. Has the County developed and implemented an Oak Tree Preservation Ordinance?

2. How do you define a “reasonable acceptable level” of oak tree loss?
3. How do you define “development of private property in a reasonable manner?”
4. Has an “Oak Tree Removal Permit Process” been developed?
5. Have any oak tree removal permits been issued?
6. Has any oak tree removal required replacement of trees in kind?
7. Have trees been replaced? Where are they? Did they survive?
8. Has any person ever had to provide to the County a written statement by the applicant or an arborist stating the justification for the development activity, identifying how many trees within the area will be protected, and stating that all construction activity will follow approved preservation methods?
9. What are the “approved preservation methods?”
10. Has anyone ever provided a site map that identifies all native oaks on the project site?
11. Does anyone from the County go onsite to confirm the information on the map?
12. Has anyone ever provided the County with a report by a certified arborist that provides specific information for all native oak trees on the project site?
13. Have any fines ever been issued to any person, firm, or corporation that damages or destroys an oak tree without first obtaining an oak tree removal permit?
14. Who has paid a fine, and where do these fines go?
15. How much is the fine?
16. Has the County Planning Department ever denied or deferred approval of any application for development of a property where oak trees have been removed without a permit?
17. Has any money ever been received for replacement of illegally removed or damaged oak trees?
18. If so, how much money was received?
19. How many trees and what kind of trees were used for replacement?
20. How is the replacement of trees monitored?
21. Has any money been deposited in the County’s Integrated Natural Resources Management Plan conservation fund?
22. If so, how much money?
23. Has that money been used for any purpose?
24. If so, for what purpose?

Policy 7.6.1.1

1. Does the General Plan land use map include an Open Space land use designation?
2. Has any land been designated as open space?
3. Where is this land?
4. Who owns this land?

**5. How do the Rural Residential and Natural Resource areas add to open space and meet the purpose of implementing the goals and objectives of the Land Use and the Conservation and Open Space Elements?**

**6. Does using Rural Residential and Natural Resource areas as open space relieve the county and developers from providing open space?**

**7. Does this amount to using private land to provide open space?**

**8. Is there any way to maintain and manage this open space, especially in Rural Residential areas, and especially if the proposed “mixed uses” are allowed in those areas?**

**9. Has any open space ever been designated to conserve natural resource areas required for conservation of plant and animal life including habitat for fish and wildlife species?**

**10. Where is this open space, and who owns it?**

**11. How is the conservation of plant and animal life, including habitat for fish and wildlife species in this open space assured, especially if the open space is privately owned?**

Policy 7.6.1.2

**1. Has the County ever designated land as Open Space?**

**2. Whose land has been designated?**

**3. How much land has been designated?**

**4. How does the designation of land for low-intensity uses such as Rural Residential and Natural Resource land help provide open space or preserve open space and protect natural resources?**

**5. Is designating “low-intensity” lands that are privately owned as open space for the County just a way to add to the county’s open space requirements without actually purchasing land or setting aside specific land for habitat preservation?**

**6. Has there ever been implementation of the State Land Conservation Act Program?**

**7. What does that program accomplish?**

**8. Do zoning regulations implement Policy 7.6.1.1?**

**9. Is any land in the “Open Space Zoning District?”**

**10. How much land, and who owns it?**

**11. How does this implement the Open Space designation of the General Plan?**

**12. How can you assure that the uses of the following zones will really preserve open space for the purposes set forth above: A, AE, PA, SA-10, and TPZ?**

**13. Are you not counting on private citizens to provide open space, no matter how they use their land, thus relieving the County or developers from providing open space?**

**14. How do zoning regulations provide for maintenance of permanent open space in residential, commercial, industrial, agricultural, other zone districts?**

**14. How are the zoning regulations monitored and enforced?**

**15. Who pays for monitoring and enforcing?**

**16. Do the regulations really minimize impacts on wetlands, flood plains, streams, lakes, rivers, canals, and slopes in excess of 30 percent?**

**17. Again, who monitors and enforces the regulations?**

**18. How can zoning for mineral resource districts help conserve natural resource areas required for conservation of plant and animal life?**

Policy 7.6.1.3

**1. Does the Open Space (OS) Zoning District implement the Open Space designation of the General Plan land use map and all other land use designations?**

**2. How does land designated as A, AE, PA, SA-10, and TPZ zoning districts meet the requirements of Policy 7.6.1.1, especially A--“Conserving natural resource areas required for conservation of plant and animal life...?” This is another instance of using private lands to preserve open space, even though there are no regulations regarding where the open space is, how much there is, how it is maintained and managed.**

**3. How do zoning regulations “...provide for maintenance of permanent open space in residential, commercial, industrial, agricultural, and residential Sagricultural (sic) zone districts based on standards established in those provisions of the County Code.”**

**4. What are the standards in those provisions of the County Code?**

**5. How are those standards applied, monitored, and maintained?**

**6. Are there examples where the regulations have minimized impacts to wetlands, flood plains, streams, lakes, rivers, canals, and slopes in excess of 30 percent?**

Policy 7.6.1.4

A. Implementation Measure CO-M:

**1. Has an Integrated Natural Resources Management Plan been developed and implemented?**

B. Implementation Measure CO-N:

**1. Has the Important Biological Corridor overlay land use designation been reviewed and updated?**

C. Implementation Measure CO-U:

**1. Have sufficient funds been provided to the County’s conservation fund to acquire and protect important habitat at a minimum 2:1 ratio?**

**2. Have any lands been acquired or protected?**

**3. Who decides what is “important habitat?”**

**4. Has the cost associated with acquisition, restoration, and management of the habitat protected ever been included in the mitigation fee?**

**5. Have impacts on important habitat and mitigation requirements ever been addressed in a Biological Resource Study and an Important Habitat Mitigation Program?**

**6. Has the County adopted biological resource assessment standards?**

**7. Have “independent Biological Resources Studies” by a qualified biologist been done to assess a project site?**

**8. Who decides whether the biologist is qualified?**

**9. Who pays for the biologist?**

Conservation Element (Policy 7.3.3.3).

**1. Has the county developed a database of important surface water features?**

**2. Who decides what is important?**

**3. How is “important” defined?**

Zoning Ordinance (Policy 7.3.3.4)

**1. Has the Zoning Ordinance really provided buffers and setbacks to protect natural resources?**

**2. Do “Conservation Easements” and “Natural Resource Protection” areas exist?**

**3. Where has this zoning been applied?**

**4. What effect did it have on protecting resources?**

Policy 7.4.1.2.

**1. Have any lands ever been purchased or otherwise acquired as preserve sites?**

**2. If so, where are these lands?**

**3. If not, why not?**

Policy 7.4.1.5.

**1. Has a “Conservation Strategy” ever been developed and prepared to protect special-status plant and animal species and natural communities and habitats when discretionary development is proposed on lands with such resources?**

**2. How can you identify lands with such resources if you have never developed the INRMP and all of its sections?**

Policy 7.4.1.6.

Where avoidance is not possible, development should be required to FULLY MITIGATE effects of important Habitat loss and fragmentation. This mitigation is defined in the INRMP, which, as already stated, does not yet exist.

- 1. Have any developments been required to FULLY MITIGATE the effects of important habitat loss and fragmentation?**
- 2. Where are these developments, and how was mitigation accomplished?**
- 3. How to you define “fully mitigate?”**
- 4. How to you determine what is “important?” The word “important” leaves too much room for interpretation.**
- 5. How many impacts have gone unmitigated since 2004 (or 2009) because the INRMP was not completed when it was suppose to be?**

Policy 7.4.2.1.

- 1. Is there a “Biological Resources Map” in the Planning Department?**
- 2. Does it identify “critical” fish and wildlife habitats?**
- 3. How is “critical” determined and defined?**
- 4. Who has the research and how was it done to create a Biological Resources Map?**

These “critical” habitats are supposed to be protected through use of:

A. Open space

- 1. Whose open space?**
- 2. Where is it?**
- 3. How much should be set aside?**
- 4. How is it monitored, managed, and preserved?**

B. Natural Resources Land Use Designation

- 1. Are any lands designated as Natural Resources Land?**
- 2. Who owns those lands?**
- 3. How are they protected?**
- 4. How are these lands maintained?**
- 5. Who determines and monitors their maintenance?**
- 6. How many acres exist in these lands?**
- 7. Where are these lands located?**

C. Clustering, large lot design, and setbacks.

- 1. Has this ever been done to mitigate impacts?**
- 2. Who decides how and where to cluster?**

3. Who decides the lot design?
4. What standards are used to make sure these measures actually provide proper mitigation?

Policy 7.4.2.2.

1. Have any critical wildlife areas and “mitigation corridors” ever been identified or established?

2. What criteria are used to define “critical” areas?

3. Who identifies these areas?

This policy states that the county shall protect these areas from degradation by requiring all portions of the project site that contain OR INFLUENCE said areas to be RETAINED as NON-DISTURBED natural areas.

4. Has any land ever been retained as NON-DISTURBED natural areas?

5. Who monitors whether the land remains non-disturbed?

6. How long will the land remain non-disturbed?

7. Who defines “non-disturbed”?

8. How much land has been retained as non-disturbed?

9. How many corridors have been protected?

10. What studies are used to determine where the corridors are and how to protect them?

11. Who pays for these studies and who conducts them?

12. What criteria are used to decide what “degradation” means? It needs to be specifically defined.

13. Who decides what lands “influence” the “critical” areas?

14. What are the criteria to decide “influence”?

15. Who monitors whether the lands that influence critical habitats are maintained and continue to provide a positive influence for critical habitat?

Open Space land use designation

“The intent and emphasis of the Open Space land use designation and of the non-disturb policy is to insure continued viability of contiguous or interdependent habitat areas and the preservation of ALL movement corridors between habitats.”

1. Is there any land designated as “open space?”

2. Where is this land, and how is it protected and preserved?

3. Who decides how much open space is needed for this cause?

4. How do you know where these habitats and corridors are?

5. Have any corridors been identified and preserved?

6. How are they preserved?

7. How long are they preserved?

If these important open space designations, migration corridors, setbacks, and other means of mitigation have not been done yet, there is no way to know what has already been lost or too disturbed to be of value, thus open to development when they



otherwise would not have been if these mitigation measures were in place. This is a truly sad and disturbing situation.

Policy 7.4.2.4

1. Have wildlife corridors been established, maintained, and managed in public parks and Natural Resource Protection areas?
2. Where are they?
3. Are they effective corridors, undisturbed by public activity in parks?
4. Who manages, maintains and monitors them?
5. Have any “Natural Resource Protection” areas been established?
6. Where are they?
7. Who decides how large they are?
8. Who maintains them?
9. What keeps them from being developed?
10. Who owns them?

Policy 7.4.2.6

1. Have any “El Dorado County Biological Community Conservation Plans” ever been required on any project to protect rare, threatened, and endangered plant species?

Policy 7.4.2.7

1. Has a “Plant and Wildlife Technical Committee” ever been formed to advise the Planning Commission and Board of Supervisors on plant and wildlife issues?
2. If there is a committee, has it formulated objectives?
3. Have the objectives been reviewed by the Planning Commission and the Board of Supervisors?

The County seems to believe that the failure of many of its mitigation programs makes them infeasible, and therefore justifies eliminating them in the TGPA/ZOU. Instead, what appears to be the case is not that the programs are infeasible, but that the County has simply refused to make any effort to implement them. The failure does not rest with the programs, but with the County. CEQA has very specific mitigation requirements. “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded. (See § 21002.1, subd. (b).) [fn. 5](#)” (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260 - 1261.)

## “Impact Mechanisms”

1. The proposed changes to the General Plan must examine impacts to biological resources that exist RIGHT NOW, not just those that are not foreseeable under the current plan. When the proposed project involves changing land use designations or zoning, the potential impacts should be compared not only to what would occur under the existing plan, but also to the existing physical conditions. (*Environmental Planning and Information Counsel v. County of El Dorado* (3d Dist. 1982) 131 Cal.App.3d 350, 354 [182 Cal.Rptr. 317].)

## 2. Agricultural District Boundaries

Increasing the possible acreage available to agricultural uses by over 17,000 acres could have a devastating effect on the current environment.

Agriculture is exempt from many of the mitigations measures that protect streams, plants, riparian habitats, wildlife, and wildlife corridors.

Agriculture can remove acres of land from a natural state to a controlled state, excluding all wildlife with fences or other deterrents. With the mitigation exemptions that agriculture is provided in this DEIR, the potential for damage to waterways caused by grading is significant. There is also a possibility of pollution caused by runoff of agricultural wastes and pesticides.

Agriculture can cause severe changes to and impacts on the environment, and it SHOULD NOT be exempt from the mitigations measures proposed for other uses.

### **1. Why is agriculture exempt from most mitigations?**

**2. Why is it allowable for agriculture to have impacts on the environment that are not allowed by other sorts of changes to the environment?**

### Policy 2.1.1.3

A. Increasing density from 16 to 20 dwelling units per acre would result in more than a “small increase in the intensity of residential development in Community Regions.”

Four more dwelling units per acre could have a devastating effect on wildlife and wildlife corridors as well as tree canopy and other environmental factors.

**Where is the quantitative analysis showing subject parcel locations and wildlife corridor maps?**

B. This document is comparing the impacts of this amendment to the impacts of the 2004 General Plan. The document should, under the law, measure the impacts of the amendment on the habitat that currently exists. (Please recall *Environmental Planning and Information Counsel v. County of El Dorado* (3d Dist. 1982) 131 Cal.App.3d 350, 354 [182 Cal.Rptr. 317].) As is stated in the DEIR, future residential development

“...would impact biological resources where it disrupts or destroys habitat and interferes with the life patterns of wildlife and plants.”

1. **What is the purpose of this increase in density?**
2. **How does this increase help retain the rural character of the County.**
3. **How does this increase retain wildlife habitat?**
4. **How does this increase affect traffic and air quality?**
5. **What is the mitigation for this proposed change in density?**
6. **What is the mitigation for impacts that are “significant and unavoidable?”**

#### Policy 2.1.2.5

A. **How can an increase in density allowed for mixed use development in a Rural Center from 4 dwelling units per acre to 10 dwelling units per acre cause only a “...small increase in the potential intensity of residential development in Rural Centers?”**

B. Not changing the location of development does not reduce the impact that this huge increase in density would have. **The conclusions are not logical; please substantiate.**

C. This change in policy WOULD increase the potential for residential development.

D. **What is the basis for stating that an increase from 4 to 10 dwelling units per acre “...does not increase the impact for residential development...” on biological resources by disrupting or destroying habitat?** The impact could be huge by not only destroying habitat, but by disrupting or destroying the continuity of habitat, as well as the continuity of wildlife corridors.

E. The impact would NOT be the same as under the 2004 General Plan EIR because this amendment should be evaluated in this EIR for the impacts that it would have on the existing environment. **Where is this analysis?**

F. **If the impacts are considered “significant and unavoidable,” what mitigation measures were considered to reduce those impacts? What evidence of benefits from the proposal is there to substantiate the overriding considerations?**

#### Policy 2.2.3.1

A. This amendment basically takes away any requirement to preserve open space in the Planned Development combining zones. **What is the basis of the need for this amendment? If the purpose is to promote affordable housing, why not limit the waiver of the 30% open space requirement to projects that provide low or moderate income housing as defined in the Housing Element?**

B. **What is the reason for the exemptions for certain kinds of uses or development?**

C. **Why are the open space requirements changed from “required” to “discretionary set aside?”**

D. Allowing 15 percent of discretionary “set aside” to be provided in private yards takes half of the burden of providing open space away from the developers and placing

it in the hands of private property owners. There is no requirement for those owners to retain their property in any form other than what they want. **What is the impact?**

E. Open space should be mandatory and should help preserve the rural atmosphere of the county, as well as provide for wildlife habitat. It should be one of the prices for development and one of the mitigations measures required for development.

F. Taking this requirement away serves no purpose for the quality of life in El Dorado County. It only serves to help project developers avoid any responsibility for retaining and maintaining a rural atmosphere, less pollutions, less noise, less light, and less wildlife habitat.

G. One of the purposes of open space should be for wildlife habitat. Removing that provision serves no purpose.

H. This amendment would cause fragmentation of habitat and wildlife corridors.

**Where is the analysis, and mapping of corridors and preserves?**

I. There is no assurance that ANY wildlife habitat or natural areas will be preserved by this amendment.

**J. What are the mitigation measures for the loss of 30 percent open space requirement?**

**K. What is the mitigation for fragmentation of habitat caused by this change?**

#### Policy 7.1.2.1

A. Removing the prohibition of development on slopes over 30 percent to a restriction opens up too many opportunities for severe impacts to wildlife habitat, plant and woodland habitat, corridor continuity, canopy cover, habitat continuity, and stream and riparian resources.

Z.O. section 17.30.060 is too vague to protect resources.

**1. Define "...where reasonable us of an existing lot or parcel would otherwise be denied."**

**2. Specify what "stricter development standards would apply."**

**3. What mitigations would apply to this proposed change?**

**4. Please explain how each policy change in the TGPA meets one or more of the objectives of the TGPA (see DEIR, p. 2-2.)?**

#### Zoning Ordinance Updates

##### Section 17.21.020

**1. What is the point of adding all these new forms of land use to Agricultural and Rural Lands and Resources?**

**2. How does this change affect the rural atmosphere, noise, light, air quality, wildlife habitat, water quality of these rural areas?**

**3. What mitigation was considered prior to determining that the impact is "significant and unavoidable"?**

##### Section 17.24.020

**1. What is the point and purpose of proposing these intensive land uses to rural area?**

2. **What are the mitigations for “Adverse effects biological resources?”**
3. **How would these changes affect the rural atmosphere, open space, noise and light levels, traffic, wildlife habitat, water resources and water quality, canopy cover, migration corridors and continuity of habitat?**

Section 17.25.010 and 17.25.020:

1. **What is the point of allowing recreational facilities in Community regions and rural centers?**
2. **What are the impacts on rural atmosphere, open space, noise levels, traffic, wildlife habitat, water resources and water quality, canopy cover and plant habitat, migration corridors, and continuity of habitat?**

### THRESHOLDS OF SIGNIFICANCE

Appendix G of CEQA guidelines should be used. The County’s list does not include impacts to:

1. Riparian habitat
2. Wetlands
3. Local tree ordinances
4. Local and State provisions of any adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

### IMPACTS AND MITIGATION MEASURES

In most cases, the mitigation measures proposed would set vague restrictions on the changes that are proposed.

There is nothing in Mitigation Measures AG-1a, BIO-1b, BIO-1a, BIO-1c, BIO-2 that would specifically or significantly provide mitigation for these changes. These mitigation measures are too vague and too open for interpretation.

They also say nothing about conservation of: rural atmosphere, wildlife habitat, water resources and quality, air quality, open space, tree canopy, plant life, migration corridors or habitat continuity.

There is nothing to specifically limit noise or light pollution or increases in traffic.

### **What is the mitigation for “IMPACT BIO-3?”**

How can this document state that a proposal has a “substantial adverse effect on wildlife movement (significant and unavoidable) without first evaluating some sort of mitigation?”

The 2004 General Plan EIR should not be used as a comparison for this proposed project or this DEIR. This DEIR must stand alone. It must evaluate the impacts of the proposed changes on the environment as it exists now, not evaluate impacts based on how different this amendment is from the 2004 General Plan. (Please recall Environmental Planning and Information Counsel v. County of El Dorado (3d Dist. 1982) 131 Cal.App.3d 350, 354 [182 Cal.Rptr. 317].)

## **Biological Resources - Section 3.4 Continued**

1. In section 3.4.2 of the DEIR it states that, “The key changes pertinent to biological resources are listed below.”

**Does this statement imply that there are other changes (not necessarily key changes) to biological resources that are not listed in the DEIR? If so, what are they?**

2. In section 3.4.2, of Agricultural District Boundaries, it states, “the project would ... remove 137 acres of land that have been determined unsuitable for agricultural use.”

**Please identify these 137 acres mentioned and explain why they are unsuitable for agricultural use? Who determines that it is unsuitable for agricultural use?**

3. In section 3.4.2, of Policy 2.1.1.3:

**Why would it be proposed to increase density in a Community Region from 16 dwellings per acre to 20 dwellings per acre (an increase of 25%)?**

4. In section 3.4.2, of Policy 2.1.1.3:

I disagree with the statement that, “this [increase in density] does not substantially change ... the effect on biological resources”. Increasing development density certainly does negatively impact biological resources. Higher density reduces open space, wildlife habitat, and wildlife corridors.

**Please substantiate your claim to the contrary.**

5. In section 3.4.2, of Policy 2.1.2.5:

**Why would it be proposed to increase density in a Rural Center from 4 dwellings per acre to 10 dwellings per acre (an increase of 150%)?**

6. In section 3.4.2, of Policy 2.1.2.5:

I disagree with the statement that, “the proposed amendment to Policy 2.1.2.5 does not increase the potential for residential development to have this [negative] effect [on biological resources]”. Increasing development density certainly does negatively impact biological resources by reducing open space, wildlife habitat, and wildlife corridors.

**Please substantiate your claim to the contrary.**

7. In section 3.4.2, Policy 2.2.3.1 would “exempt [condominiums conversions, residential planned developments, infill projects, multi-family residential developments, and commercial/mixed use developments] from the current requirement that 30% of a site be retained in open space for recreation, buffer, or habitat uses” and “would revise the 30% open space requirement in High Density Residential (HDR) – PDs to a discretionary 15 and 15 set aside”.

**Why would the proposed amendment reduce the open space requirement?**

**How does it advance one or more of the objectives of the TGPA (see DEIR, p. 2-2.)?**

**How are these proposed changes to the General Plan consistent with the Principle statement in the 2004 General Plan, Conservation and Open Space Element? The above, proposed changes weaken environmental protections and allow degradation to El Dorado County’s wildlife (by minimizing open space), wildlife corridors (by potentially narrowing riparian areas and denser development).**

**Is this proposed TGPA likely to result in impermissible inconsistencies with the provisions of the Conservation and Open Space Element?**

8. In section 3.4.2, Policy 2.4.1.5 encourages “infill development on sites of up to 5 acres in size in existing communities” with the limitation that “the site does not have habitat value for endangered, rare, or threatened species”.

**Please clarify “existing community”.**

**Who determines if a site does not have habitat value? What qualifications does this person have to make that determination?**

**Wildlife corridors should be considered at these identified infill development sites.**

9. Some of the proposed changes to the General Plan are designed to ultimately comply with CEQAs streamlining benefits. Please keep in mind that under SB 375 a proposed mixed-use residential project, transit priority project and sustainable communities project must be “consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either an SCS or APS accepted by CARB” (sacog.org)

The Sacramento Area Council of Governments (SACOG) is the Metropolitan Planning Organization for several counties, including El Dorado County, and “SACOG is responsible for developing the federally required MTP and the new state-required Sustainable Communities Strategy (SCS)”. The MTP/SCS for SACOG will be adopted by February 2016. Currently the SCS is being developed and addressed by the Rural-Urban Connections Strategy (RUCS), which would apply to El Dorado County. The RUCS addresses “Small Communities” concerns and considerations:

*“Small Communities*

*Infrastructure needs and demand for municipal and commercial services can increase pressure for higher levels of growth, sometimes resulting in more housing that is not balanced with local jobs.*

Small communities are generally agriculturally based towns that appeal to those seeking a slower pace of life and would ideally like to keep it that way. However, many of these communities are having trouble maintaining that way of life, as road, sewer and water infrastructure breaks down.

Maintenance of public swimming pools, emergency services, wastewater treatment, and clean water requirements are significant infrastructure and service costs that are insensitive to population size. The costs are as high for small towns and big cities alike. Required infrastructure improvements for the potability of water levy the same burden of potability, despite a huge discrepancy in the number of rate payers. Additionally, residents leave town for shopping, professional services, and employment, thereby increasing travel and all the congestion and air quality impacts that go with it. They also leave much of their tax dollars in the coffers of other communities.

These infrastructure and service needs often leave small communities feeling forced to incentivize new development in order to pay for improvements and add enough housing units to attract commercial and professional services. This development, however, also



consumes and impacts much of the agricultural land that creates the base economy for many of these communities, creates more traffic from long distance commuting to regional job centers, and diminishes the small-town character.” (sacog.org/ruc)

If the RUCS is adopted in 2016, any developments in El Dorado County that want to qualify for CEQA streamlining benefits must take the RUCS criteria into account.

**Many aspects of the TGPA seem aimed at intensifying residential development in the foothills. This seems diametrically opposed to the objectives of the RUCS under preparation. By instituting the TGPA, might the County be making its development proposals ineligible for the CEQA streamlining benefits of the RUCS? How will this burden on development meet a TGPA objective?**

**The TGPA/ZOU triggers 33 significant and unavoidable impacts of future development. As a result, more development projects being processed in the County will be unable to qualify for Negative Declarations, and will instead have to prepare expensive EIR’s to address their contribution to cumulatively considerable impacts. How will adding this burden on new development meet one of the TGPA/ZOU objectives?**

**Please consider a TRPA alternative that would maintain existing mitigation programs in place, implement those long overdue, and assist job developers in successfully mitigating the impacts of their developments, so that more of them could qualify for expedited environmental review. This would actually advance the TGPA objectives to create jobs and to protect agriculture.**

10. Concerning Multi-Family Use (as mentioned in Resolution of Intention to Amend the General Plan, Res. No. 182-2011): Any considerations to amend density from 24 units per acre to 30 units per acre to try to comply with California Government Code 65583.2©(iv) and (e) must also consider and comply to California Government Codes 65580(e), 65583, 65584.04(c):

65580(e). The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan ...”

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.

65584.04(c). Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs.

11. As stated in the DEIR, "*Policy 7.1.2.1 amends the current prohibition of development (except where the prohibition would deny reasonable use of the property) on slopes over 30% to a restriction on development of slopes over 30%.*"

As stated in the DEIR (3.3-27), "The 2004 General Plan EIR included Mitigation Measure 5.9-4(b), which established the policy prohibiting development on slopes over 30% ..."

**Why would the county consider changing the General Plan to allow development on slopes over 30% when:**

- a) **there are negative impacts on "Aesthetics" (ES-8, Table ES-1) ;**
- b) **"this type of development would adversely affect the vividness and intactness of scenic views, this impact would be significant and unavoidable" (3.1-14);**
- c) **"additional development on steep slopes would potentially result in a degradation of the habitat adjoining that development" (3.4-45); and**
- d) **"would substantially alter the existing land use character" (3.6-10)? ... Especially when, the DEIR states "development on slopes with a grade over 30% ... would potentially allow additional development on existing parcels that is restricted by current General Plan and zoning provisions. However, this increase in development is expected to be small" (3.9-23).**

**What TGPA objective is advanced by this proposal?**

Other potential negative impacts on development on steep slopes is: increased soil erosion, hillside instability, water drainage issues, potential downslope impacts of slope failures, consequences for error can be great, more difficult accessibility, and significant habitat/land degradation caused by increased grading needs for structural stability.

**Why change the General Plan regarding development on slopes over 30% when there are so many negative impacts as a result and yet a small increase in development?**

As mentioned, there are many secondary effects associated with development

on slopes 30% and greater not mentioned in the DEIR, as required by CEQA Section 15146, Degree of Specificity.

**Are there slope maps of El Dorado County? Please make available.**

Please do not adopt the proposed amendment to Policy 7.1.2.1 and Zoning Ordinance Section 17.30.060 which would authorize development on slopes exceeding 30%.

12. In the 2004 General Plan an Integrated Natural Resources Management Plan (INRMP) was to be developed by 2009. This INRMP was to mitigate the adverse effects of development.

**As of June 2014, the INRMP has yet to be implemented. When will this be made available to the public? All projects should be placed on hold until the INRMP has been developed and implemented.**

13. The riparian setbacks mentioned in the ZOU (17.30.030G) amendments provides little definitive protection against development and reduces the riparian zone to 25 feet from intermittent streams, wetland or sensitive riparian habitat and 50 feet from any perennial lake, river or stream (ZOU 17.30.030.3(d)). Basically all riparian protections within the 2004 General Plan have been stricken in the ZOU. In addition, proposed Zoning Ordinance 17.30.030G5a allows Planning Department staff to grant approval of any use permitted in the subject zone within a riparian setback. **Provide an analysis of the impact of these policy revisions.**

The importance of riparian zones cannot be underestimated and therefore their protection is of utmost importance and value (please see Placer County Planning Department "Setback Recommendations to Conserve Riparian Areas and Streams in Western Placer County" Feb. 2005). Riparian areas provide many benefits including, critical wildlife habitat, wildlife corridors, improve water quality, reduce erosion, and enhance recreational opportunities.

Rather than weaken riparian protections, the county should strengthen and enforce strong rules regarding riparian zone degradation, including expanding riparian zone habitat to include 150 foot setbacks from all perennial streams, rivers, lakes, and 75 feet from intermittent streams and wetlands.

**How have the riparian setbacks been determined? Has a comprehensive**

**study been completed (as the Placer County Planning Department did in “Setback Recommendations to Conserve Riparian Areas and Streams in Western Placer County”) to understand riparian zones size and its affects on things like wildlife and water quality?**

**What TGPA objective is advanced by this proposal?**

**14. Please define and clarify a Biological Resource Evaluation as mentioned in ZOU 17.30.030.3(b,c).**

15. The 2004 El Dorado County General Plan Conservation and Open Space Element “Principle” states *“the Plan must conserve and improve the County’s existing natural resources and open space”*.

**How has this Principle statement been honored in the past with proposed and implemented developments?**

**How does the Principle statement holdup within the proposed DEIR?**

**Why has the “Principle” from the 2004 El Dorado County General Plan Conservation and Open Space Element been omitted from the DEIR or not been referenced?**

**Please add the Principle back in to the General Plan Conservation and Open Space Element.**

**What would the impact be if the Principle were removed from the General Plan?**

Conclusion:

There are thirty three 'significant and unavoidable' impacts listed in Table 5-4 (dEIR, page 5-16). A single one of these impacts is sufficient cause for denial of the project. On the other hand, to approve the project, the County would have to find valid overriding considerations for each one of the 33 impacts listed. Such a statement of overriding considerations must be supported by a logical analysis of substantial evidence in the EIR or elsewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.) All feasible mitigation must be adopted, and other mitigation properly found infeasible, before an agency can make a statement of

overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4<sup>th</sup> 1019.)

The significant and unavoidable impacts from the **Biological Resources** section, as listed on page ES-14:

*"**BIO-1:** Result in the loss and fragmentation of wildlife habitat*

***BIO-2:** Have a substantial adverse effect on special-status species*

***BIO-3:** Have a substantial adverse effect on wildlife movement*

***BIO-4:** Result in the removal, degradation, and fragmentation of sensitive habitats"*

Additionally, this list cannot be considered complete until further information and analysis is provided per the dEIR comments, in order to fully ascertain the impacts of the extensive changes being proposed.

END SECTION COMMENTS

The following Exhibit 3.4-1, is the Important Oak Woodland Habitat map as presented by staff to the Board of Supervisors for the 6/25/07 Policy Workshop for the Oak Woodland Management Plan\*. From the accompanying staff memo for the workshop:

*"The composite map, "Important Oak Woodland Habitat", is intended to identify Oak Woodlands that will be the priority for conservation...."*

Many of these 'priority' areas have since been rezoned to higher density and have approved tentative maps on them. There does not appear to be any monitoring of these areas since 2008, or any corresponding 'conservation easement' map. Nor are there any similar maps posted showing 'special status species' or 'wildlife corridors'.

\*The map was adopted by the Board in this meeting with direction to remove the Low Density Residential (LDR) identification, then on 9/25/07 this version (showing LDR) was brought back.

Cover Sheet for **Exhibit 3.4-1**

**EL DORADO COUNTY  
IMPORTANT OAK WOODLAND HABITAT  
Public Review**

- Legend**
-  OWMIP Boundary \*
  -  Important Oak Woodland Habitat \*
  -  5 WHR Oak Woodland Types \*
  -  Important Biological Corridor \*\*
  -  Community Region \*\*
  -  Rural Center \*\*
  -  Low Density Residential \*\*

**Notes:**

IOWH designation includes Large Expanses of Oak Woodlands, and all Valley Oak Woodlands excluding State and Federal lands and Commercial and Industrial lands.

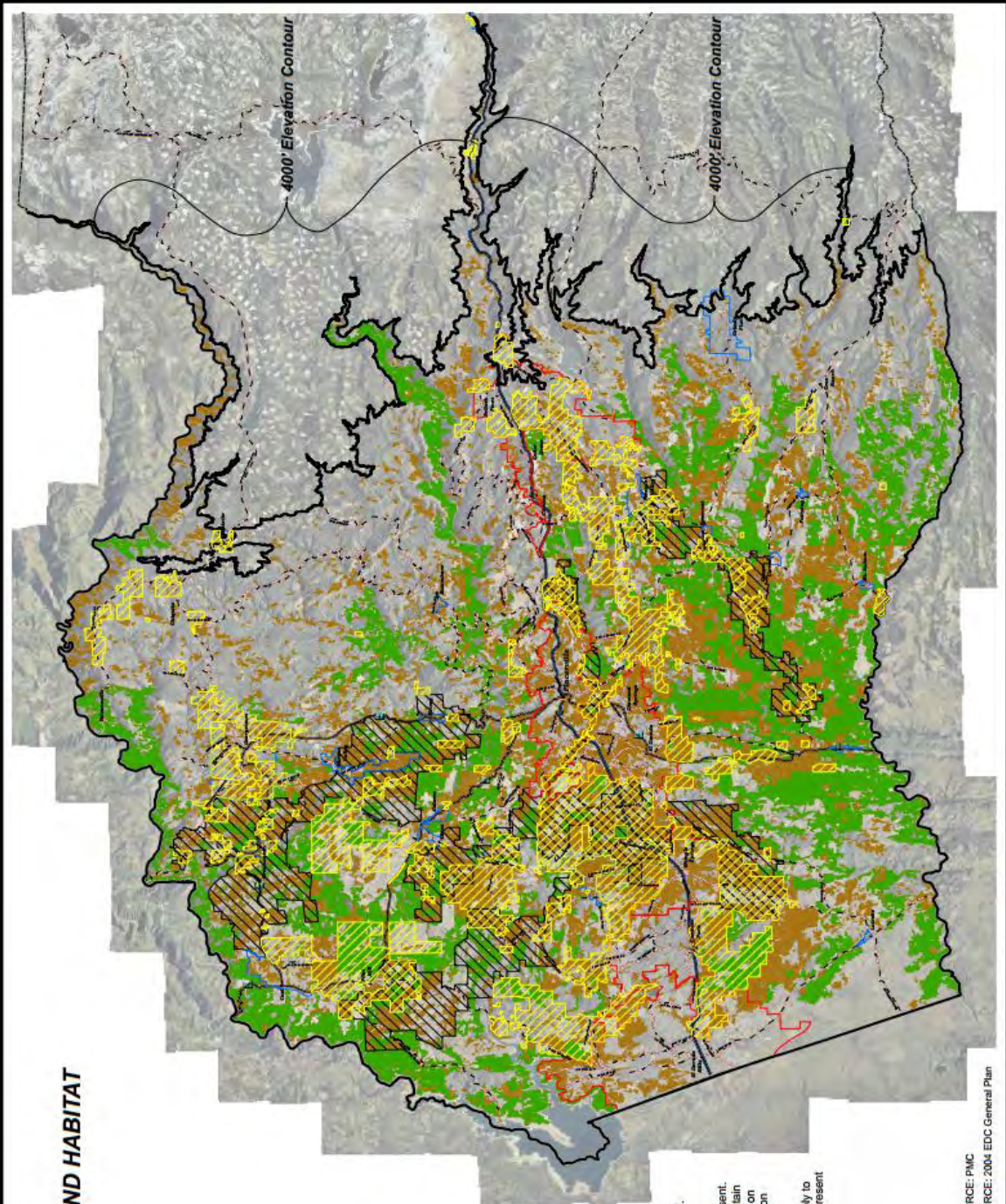
Total Acreage of 5 WHR Oak Woodland Types = 248,857.  
Total Acreage of Important Oak Woodland Habitat = 77,817.

Policy 7.4.1.6 and Implementation Measure CO-U apply only when rare, threatened or endangered species are present. Oak habitat identified on this map does not necessarily contain any rare, endangered or threatened species. Identification on this map does not imply that Policy 7.4.1.6 or Implementation Measure CO-U applies.

Policy 7.4.1.6 and Implementation Measure CO-U may apply to oak habitat if endangered, rare or threatened species are present at the same site.



DATA SOURCE: PMC  
DATA SOURCE: 2004 EDC General Plan  
PADO 1983 California Zone 2, NAD83



**Important Oak Woodland Habitat**

**Exhibit 3.4-1**

**The following Exhibit 3.4-2 is an excerpt of an article published December 2012 in *Perkins/Coie\_Legal Counsel to Great Companies*.**

The purpose of this exhibit is to show that key aspects of the regulatory setting have not been disclosed regarding the oak woodland mitigation program. The DEIR says only that this program is still under development (page 3.4-8).

**CEQA Year In Review 2012**\_Update 12.31.2012

A Summary of Published Appellate Opinions Relating to CEQA, *By Marc Bruner, Julie Jones, Steve Kostka, Geoff Robinson and Barbara Schussman*

Section excerpt: **SUPPLEMENTAL CEQA REVIEW  
EIR Required for Oak Woodland Management Plan  
*Center for Sierra Nevada Conservation v County of El Dorado*  
(3d District 2012) 202 CA4th 1156**

Cover sheet for **Exhibit 3.4-2**



## **SUPPLEMENTAL CEQA REVIEW**

### **EIR Required for Oak Woodland Management Plan**

***Center for Sierra Nevada Conservation v County of El Dorado***  
(3d District 2012) 202 CA4th 1156

Public agencies generally prefer not to prepare EIRs – at least for their own plans and projects – unless they have to. And CEQA attempts to avoid redundancy by encouraging reliance, to the extent possible, on a previously certified EIR to support the approval of a subsequent action. So, in 2008, when El Dorado County adopted its long-awaited countywide oak woodland management plan, the county didn't prepare an EIR, but instead relied on its 2004 general plan EIR.

Not so fast, said the Third District Court of Appeal, in *Center for Sierra Nevada Conservation v County of El Dorado*. The court held that although the General Plan EIR anticipated the development of the oak woodland management plan, it didn't analyze key provisions of the plan the county ultimately adopted, so the plan had to be analyzed in a new tiered EIR.

**Background.** El Dorado County's 2004 general plan allowed development that would cause significant and unavoidable impacts on oak woodland habitat and its dependent wildlife. The general plan created two options for mitigating this impact. Under Option A, a project applicant would adhere to tree canopy retention standards and would replace removed woodland habitat onsite. Under Option B — added late in the general plan process due to objections to Option A — an applicant would not be required to retain oak woodlands onsite but would instead pay a fee to a new conservation fund. The general plan required further action by the county: an integrated plan that would identify important habitat in the county and establish a program for effective habitat preservation and management.

In 2008, the county adopted the oak woodland management plan, which was intended to be the first component of the integrated plan. The plan included an Option B fee program allowing developers to pay 40% of the value of the land under any oak canopies to be removed. The county adopted the oak woodland management plan based on a negative declaration, finding that there would be no significant environmental effects that had not previously been examined in the general plan EIR.

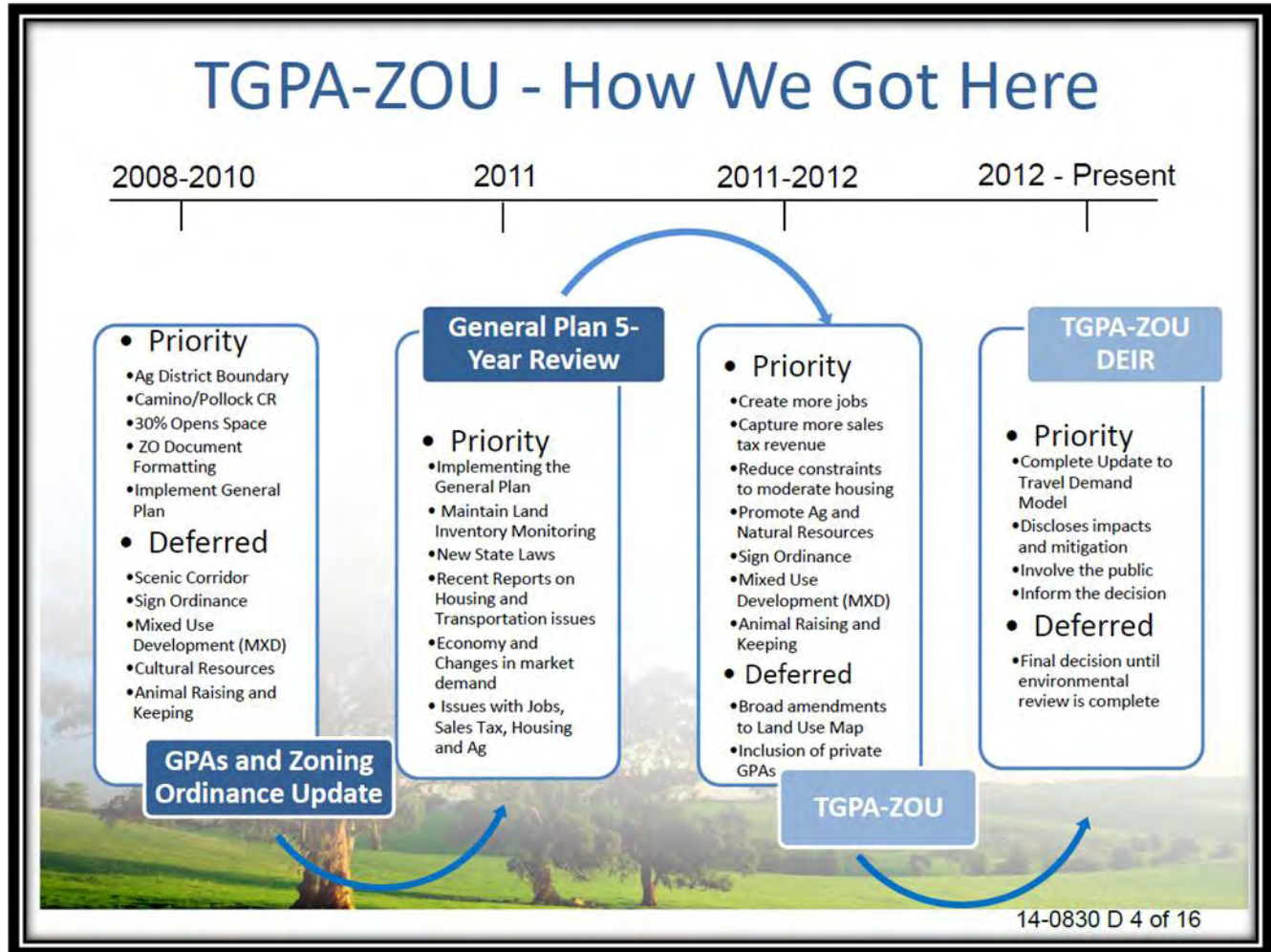
**An EIR was required.** The court of appeal agreed with the Center for Sierra Nevada Conservation that an EIR was required. The county's primary argument was that the oak woodland management plan fit within the 2004 EIR as a mitigation measure under the General Plan. The court, however, identified several matters in the new plan that had not been previously addressed, including the Option B alternative, the prioritization of valley oaks, land acquisition options and proposed use of the mitigation funds collected. The court required the county to analyze all of these new matters in a new EIR.

**EIR couldn't await integrated plan.** The court also rejected arguments that an EIR could await adoption of the county's full integrated plan, reasoning that approval of the oak woodland management plan alone "had the effect of allowing developers to pay a mitigation fee instead of preserving a substantial population of trees on site."

**General Plan EIR's impact conclusion didn't obviate a subsequent EIR.** Finally, the county argued that no EIR was required for the mitigation plan because the General Plan EIR had recognized that development would have a significant unavoidable impact on oak woodlands. The court rejected this argument as well, holding that the County may not shield all subsequent projects affecting the environment on the basis of its prior recognition that development and increased population will have an adverse effect on the region's oak woodlands. Because the General Plan EIR did not adequately cover the Option B mitigation fee program, the EIR's acknowledgement of a significant unavoidable impact was of no assistance to the county; a new EIR was required to consider the effects of the oak woodland management plan and Option B fee program on the environment as it existed with only Option A available to developers in El Dorado County.

## Cultural Resources - Chapter 3.5 DEIR review comments

El Dorado County has a poor track record of caring for its Cultural Resources and implementing policies to do so, as demonstrated in the slide excerpted below from the LUPPU presentation given to the Planning Commission on July 10, 2014. The slide shows that the county moved Cultural Resources to the Deferred list somewhere between 2008-2010 and never brought it back in the Priority list.



Additionally, residents have been asking for years for more protection for culturally significant sites and structures, to no avail. Some of these requests to the Board of Supervisors were captured on video and posted online:

Preserve Our History: <http://youtu.be/kxT2bZTpUCI>

Protect Our Cultural Resources: <http://youtu.be/Be5fJCTaEGo>

Preserve What We Have: <http://youtu.be/w1aGmdQSG2M>

Blending Our Communities: <http://youtu.be/UX6SKWDstH8>

The county has shown a pattern of delaying the implementation of many elements of the General Plan, which are mitigation measures of the 2004 General Plan, including the Cultural Resources Element. Therefore, it is not unreasonable to predict that mitigation measures proposed as part of this DEIR will be delayed and possibly never implemented. "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.)

1. In the Cultural Resources, Regulatory Setting, Local, El Dorado County Historic Design Guide section on page 3.5-7, it states that the county has a design guide for the community of Shingle Springs, however that document is not attached to the DEIR nor referenced in Chapter 7 References Cited. A search of the county's website and a Google search find no such document. Was this document used in the DEIR analysis? Why is it mentioned here? The DEIR must provide references to all documents used in the DEIR analysis. (CEQA Guidelines, sec. 15148.)
2. In the Cultural Resources, Regulatory Setting, Tribal Consultation section on page 3.5-3, it states that "local governments 'provide opportunities for the involvement of California Native American Indian tribes during the preparation or amendment of a general plan (Government Code Section 65351)... for the purpose of discussing protections for cultural resources that are important to the tribes."

This policy is only a valid protection of cultural resources if the tribe that is consulted is a tribe that occupied the affected piece of land. El Dorado County has consulted in the past with tribe members that were not native to the affected piece of land, so the tribe would profess to not be affected by the proposed project. However, if the county had consulted with the native tribe that had actually occupied the land, they would have divulged their interest in the land as a sacred site and the county would have been required to preserve that site. Please describe this aspect of the regulatory setting in the Final EIR.

3. In DEIR section 3.5.2 Environmental Impacts, Zoning Ordinance Updates, it is stated that individual parcels throughout the county will be rezoned to be consistent with their General Plan designation. Changing the zoning on all of the inconsistent parcels within the county to match their General Plan Land Use is not required per General Plan Policy 2.2.5.6. Each parcel needs to be analyzed on its own merit for adequate infrastructure, as stated in General Plan Policy 2.2.5.6:

Policy 2.2.5.6 Where approval of this General Plan has created inconsistencies with existing zoning, lower intensity zoning, in accordance with Table 2-4, may remain in effect until such time as adequate infrastructure is available to accommodate a higher density/intensity land use.

Policy 2.2.5.7 Where a zoning district applied to given land is consistent with the General Plan land use designation, the County reserves the right to deny development plans providing for permitted uses where adequate findings for approval (including adequate public facilities and services) cannot be made.

For example, parcel number 319-260-01 is a 62-acre parcel that is currently zoned for 5-acre residential parcels, but has a Research & Development (R&D) General Plan designation. The change in use from residential to R&D is an increase in land use intensity.

- a) Impact CUL-1 regarding historical resources on page 3.5-15 of the DEIR states that intensive uses will result in significant and unavoidable impacts, and any CEQA issues would be addressed in the Conditional Use Permit (CUP) process. However, parcel number 319-26-01 is being switched from a residential zone to an R&D zone as part of the ZOU without the benefit of the CUP process. This leaves no opportunity for CEQA to be addressed, thus creating a significant and unavoidable impact. There is no analysis or mitigation in the DEIR to address these impacts because there is an assumption that a CUP process will address the CEQA issues. All of the parcels that are being proposed for a zone change in the ZOU must have their CEQA issues addressed with proper analysis, not an erroneous assumption in the DEIR document.

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).) 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]). Generally, an agency cannot not rely on mitigating a significant impact by the development of 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].) "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 assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, 92-93.) Finally, 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.)

b) Furthermore, Impact CUL-2 regarding archeological resources on page 3.5-16 of the DEIR also states that intensive uses will result in significant and unavoidable impacts, and any CEQA issues would be addressed in the CUP process. However, parcel number 319-26-01 is being switched from a residential zone to an R&D zone as part of the ZOU without the benefit of the CUP process. This leaves no opportunity for CEQA to be addressed, thus creating a significant and unavoidable impact. There is no analysis or mitigation in the DEIR to address these impacts because there is an assumption that a CUP process will address the CEQA issues. All of the parcels that are being proposed for a zone change in the ZOU must have their CEQA issues addressed with proper analysis, not an erroneous assumption in the DEIR document.

4. In DEIR section 3.5.2 Environmental Impacts, Zoning Ordinance Updates, Section 17.22.010, the new Commercial Main Street zone is too vague to protect any cultural resources and may actually encourage new development rather than preserve historical areas. The DEIR analysis states that it is "generally appropriate" to apply to "historic downtown areas." This is a hypothetical assessment that has no detailed analysis to support it and assure the public that it is not detrimental to our historical sites. This zone has the potential to negatively impact historic downtown areas. The DEIR needs to include detailed analysis about its impacts and what mitigations are needed to protect the cultural and historical resources of the county.

An EIR must contain facts and analysis, not just the bare conclusions of the agency, and must provide sufficient detail so that those who did not participate in its preparation can understand and consider meaningfully the issues raised by the proposed project. The decision to approve a project is a nullity if based upon an EIR that does not provide the decision makers and the public with the required information about the project. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> 1184.)

5. On page 3.5-12, section 3.5.2 Environmental Impacts, Zoning Ordinance Updates, Various Conditional Land Uses, it states that intensive, permanent land uses not allowed in the Zoning Ordinance could go through the CUP process and CEQA. These uses are listed in Table 3.5-2. However, it is acknowledged that even with the CEQA process there is the potential for such uses to adversely affect existing cultural resources.

This reliance on proper permitting is particularly troubling because there is precedent within the county demonstrating that permits are not always properly obtained for

projects that disturb soil. This precedence of circumventing the county permit process is documented in the 2014 Grand Jury report referenced in the Mountain Democrat newspaper, Exhibit 3.1-1 [link: [www.mtdemocrat.com/news/grand-jury-report-county-slammed-for-not-enforcing-ordinance](http://www.mtdemocrat.com/news/grand-jury-report-county-slammed-for-not-enforcing-ordinance)] See also Youngdahl report for required hazardous waste mitigation that was ignored [link to report: [and in an online video of a 2009 Board of Supervisor meeting, Grado's Quik Stop on Sacred Miwok Site: <http://youtu.be/4G7pAK5xo3k>](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&cad=rja&uact=8&ved=0CCYQFjAB&url=http%3A%2F%2Fwww.edcgov.us%2FGovernment%2FDOT%2FCEQA%2FDiamond_Springs_DEIR_AppendixH-PhaseIEnvironmentalSiteAssessment.aspx&ei=hb7EU_mjFOiHjAK1tIDYCA&usq=A FQjCNEcrYI-k1JRPfIWnDG75UE5rRQPwA&sig2=13SES13GDqWNohxrz5-OKg&bvm=bv.71126742,d.cGE ]</p></div><div data-bbox=)

(See attached files for the report by George Peabody and statements from El Dorado Rancheria. – Exhibits I & J from the report are no longer on the County website)



Recently the Planing Mill was torn down by Sierra Pacific Industries without any intervention from the County. No historical documentation was required by the County of El Dorado for the demolition. Since the County never red flagged this historic building as being a potential significant resource, over 50 years old, there was no way to seek protection or mitigation for destruction. See email message sent to two El Dorado County Supervisors:

**From:** "Taylor, Sue" <[sue-taylor@comcast.net](mailto:sue-taylor@comcast.net)>  
**To:** "Veerkamp, Brian" <[bosthree@edcgov.us](mailto:bosthree@edcgov.us)>, "RayNuttingBOSDistr2" <[bostwo@edcgov.us](mailto:bostwo@edcgov.us)>  
**Sent:** Tuesday, February 25, 2014 7:43:27 AM  
**Subject:** The Camino Mill

Dear Supervisor Veerkamp and Supervisor Nutting,

I am sending this open letter to both Supervisor Veerkamp and Supervisor Nutting on the hopes that together there is something you can do to stop the demolition of the historic structures in the area of the Camino Mill Site.

I sending this to Supervisor Nutting due to the fact that you assisted SPI in the purchase of the mill in the first place and the connection you have with the timber industry and Supervisor Veerkamp because this is in your district.

One of the reasons that community members were pushing to create a rural center in Camino is that it would give us the ability to create a Historic District Overlay on the Mill. I'm guessing SPI figured this out and thus the rush to tear down their buildings. Not only is this site an important historic asset to the County it is also an important site for what our General Plan lists in it's Custom, Culture and Economic Stability statement. Due to the inaction of the Board of Supervisors since the 2004 General Plan was adopted, the County continues to lose many of it's historic resources and assets which sets El Dorado County apart from "anywhere USA".

With an huge financial sacrifice, our family has taken on the historic Hangman Building (featured in the State's Capital), to save it from demolition, but unfortunately we cannot afford to save all of the treasures in this County. Thank goodness someone had the foresight to designate our building as a historic resource, thus saving it from the City of Placerville's intended wrecking ball.

You say what can you do? Well first what about finding out if SPI acquired a demolition permit from the County. If they got that permit then we have a serious problem at the county level in that SPI has been allowed to demolish these significantly historic assets without any oversight.

Next I would talk to County Counsel and see if you there is some kind of emergency measure or action you can take to stop all demolition until some kind of formal archaeology survey can take place. Or declare a county wide emergency and create a measure that will protect all historic buildings over 100 years old until you get the regulations called for in the 2004 General Plan in place which will protect these assets.

If SPI does not plan on using there buildings for future activities, there should have been the opportunity for someone else to make use of them. Or they could have been re-purposed on the site into another use. It is such a loss to this county that there is a lack of understanding to the enormous wealth these structures have to the historical and visual integrity of El Dorado County. This is something that can never be replaced or replicated.

I hope that you will look into this and I would like to hear from you both of you in regards to this matter ASAP. Below it the section from the General Plan that if had been enacted would have served to protect the mill site from being flipped into a future smart growth village. If nothing else you can use Policy 7.5.2.2 (F) and insist that they stop until they have a survey done.



Thank you for any assistance you can give to the issue,

Sincerely,

Sue Taylor

530-391-2190

#### OBJECTIVE 7.5.2: VISUAL INTEGRITY

Maintenance of the visual integrity of historic resources.

Policy 7.5.2.1 Create Historic Design Control Districts for areas, places, sites, structures, or uses which have special historic significance.

Policy 7.5.2.2 The County shall define Historic Design Control Districts (HDCDs). HDCD inclusions and boundaries shall be determined in a manner consistent with National Historic Preservation Act (NHPA) Historic District standards.

A. The County shall develop design guidelines for each HDCD. These guidelines shall be compatible with NHPA standards.

B. New buildings and structures and reconstruction/restoration of historic (historic as per National Register of Historic Places [NRHP] and California Register of Historical Resources [CRHR] criteria) buildings and structures shall generally conform to styles of architecture prevalent during the latter half of the 19th century into the first decade of the 20th century.

C. Any historic building or structure located within a designated HDCD, or any building or structure located elsewhere in the county that is listed on the NRHP or CRHR, is designated a California Building of Historic Interest, or a California State Historic Landmark, or is designated as significant as per NRHP/CRHR criteria, shall not be destroyed, significantly altered, removed, or otherwise changed in exterior appearance without a design review.

D. In cases where the County permits the significant alteration of a historic building or structure exterior, such alteration shall be required to maintain the historic integrity and appearance of the building or structure and shall be subject to a design review.

E. In cases where new building construction is placed next to a historic building or structure in a designated HDCD or listed on the CRHR/NRHP, the architectural design of the new construction shall generally conform to the historic period of significance of the HDCD or listed property.

F. In cases where the County permits the destruction of a historic building or tearing down a structure, the building or structure shall first be recorded in a manner consistent with the standards of the NHPA Historic American Building Survey (HABS) by a qualified professional architectural historian.

Policy 7.5.2.3 New buildings and reconstruction in historic communities shall generally conform to the types of architecture prevalent in the gold mining areas of California during the period 1850 to 1910.

Policy 7.5.2.4 The County shall prohibit the modification of all National Register of Historic Places (NRHP)/California Register of Historical Resources (CRHR) listed properties that would alter their integrity, historic setting, and appearance to a degree that would preclude their continued listing on these registers. If avoidance of such modifications on privately owned listed properties is deemed infeasible, mitigation measures commensurate with NRHP/CRHR standards shall be formulated in cooperation with the property owner.

Policy 7.5.2.5 In cases where the County permits the demolition or alteration of an historic building, such alteration or new construction (subsequent to demolition) shall be required to maintain the character of the historic building or replicate its historic features.

Storage building:



Planing Mill Demolition:

(Speculation was that this building was of unique post and beam with mortise & tenon construction. As far as known nothing was documented for historic record even though Planning, The Board of Supervisors, the El Dorado County Historical Museum was contacted.)

[https://www.facebook.com/permalink.php?story\\_fbid=10152127088423882&id=134273483881](https://www.facebook.com/permalink.php?story_fbid=10152127088423882&id=134273483881)



Given the past circumvention of proper permitting for projects that disturb the soil, the fact that there is no detailed, in-depth analysis for the types of projects listed in Table 3.5-2, and the fact that the DEIR states in the conclusion of CUL-1 that "Destructive impacts to historical resources cannot be fully mitigated... Therefore, this impact is significant and unavoidable," the DEIR is insufficient and must include detailed analysis of the impact by each type of project listed in Table 3.5-2 to cultural resources.

In addition, since the County has failed to properly administer cultural resource mitigation in accordance with CEQA and existing county policies, we strongly encourage El Dorado County to consult with state and federal agencies, private consultants, other counties, and the Native American community to establish new and more effective general plan policies and zoning ordinance provisions to administer historic resources. These policies and ordinances should be included as mitigation measures in the TGPA and ZOU. It is ludicrous to suggest that properly administering historic and cultural resources is somehow infeasible in El Dorado County, when it is properly done in so many other counties in California.

Not only must the analysis include impacts to cultural resources, but also contain detailed, quantifiable analysis with regard to the following:

- a) Golf Course: Impacts to water due to the current water shortage, economic viability to see if the county can sustain another golf course (the El Dorado Hills golf course closed in recent years), water quality from run-off of fertilizers, aesthetics due to remove trees and vegetation, and other impacts of a golf course.
- b) Off-Highway Vehicle Recreational Area: Impacts to air quality from dust and emissions, water quality from run-off from vehicle oils and fluids, noise from the vehicles, land use due to compatibility conflicts with adjacent properties,

aesthetics from removal of trees and vegetation, transportation and traffic, and other impacts from an Off-Highway Vehicle Recreational Area.

- c) Ski Area: Impacts to geology and soils due to erosion from grading and tree and vegetation removal, aesthetics from tree and vegetation removal, transportation and traffic from increased vehicles trips, and other impacts from a Ski Area.
- d) Public Utility Service Facility, Intensive: Impacts to hazardous materials from the use of hazardous materials, noise from the equipment, aesthetics from lights and the extensive removal of vegetation, air quality from odors from power-generating equipment and sewage treatment facilities, and other impacts from a Public Utility Service Facility, Intensive.
- e) Large Amusement Complex: Impacts to aesthetics from lights and extensive vegetation removal, land use due to compatibility conflicts with adjacent properties, noise from equipment and guests, air quality from odors associated with waste, transportation and traffic from increased vehicle trips, geology and soils due to erosion from extensive grading and terrain contouring, and other impacts from a Large Amusement Complex.
- f) General Industrial: Impacts to hazardous materials from use and storage of hazardous materials, water quality from byproduct waste run-off, aesthetics from extensive vegetation removal and lights, noise from equipment, air quality from odors, smoke, or steam, geology and soils due to erosion from extensive grading, land use due to compatibility conflicts with adjacent properties, and other impacts from General Industrial.

**The following Exhibit is a letter from the El Dorado County Indian Council.**

This letter is submitted as a response to the draft EIR to demonstrate how policy designed as mitigation to protect important cultural resources has been disregarded, resulting in irreplaceable losses due to past development, and mistrust moving forward for future development.

*cover sheet for* **Exhibit 3.5-1**



*The El Dorado County Indian Council, Inc.*

Multi-Tribal Service to Native Americans in El Dorado County

To: El Dorado County Board of Supervisors

July 14, 2014

The El Dorado County Indian Council, Inc. is of the opinion that El Dorado County policies allowing increased density, reduced open space requirements, exemption for agricultural grading, and allowing building on 30% or greater slopes may result in the desecration of important cultural resources and projects such as these must not only be analyzed carefully, but must also be mitigated – not simply made irrelevant by a negative declaration.

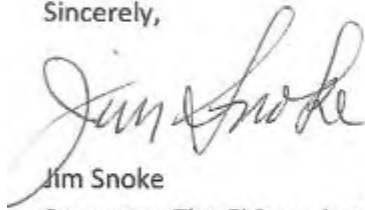
It is our opinion that El Dorado County has exhibited disregard for sensitive cultural sites and burial sites by failing to enforce provisions in the General Plan section 7.5.1.1 designed to protect these sensitive sites. Section 7.5.1.1 calls for El Dorado County to formally adopt a Cultural Resources Ordinance for the mitigation of historic and prehistoric cultural findings prior to and during the development of land-use projects. To our knowledge, that has not been done. Should such a policy have been in place, for example, the Kwik Stop station at Highway 49 and Pleasant Valley road, which was highly sensitive culturally and prehistorically, might not have been allowed to proceed unmitigated. Although input was provided at the time to this resource-destructive project, El Dorado County chose to allow the project to go through. That instance is not an isolated case.

We are also aware that the county no longer has an active Cultural Commission to oversee the preservation of historic and prehistoric cultural materials. As an inter-tribal entity registered with the state of California, The El Dorado County Indian Council, Inc. both encourages and demands that El Dorado County protect these important sites. We also insist that during the development of projects that may have a negative impact on prehistoric and historic cultural materials, a monitoring system must be put in place that includes a formal process for cessation of the project should any prehistoric cultural resources be uncovered as the project progresses. We believe that El Dorado County has the oversight responsibility to ensure that any and all projects do not desecrate sensitive cultural sites, and proper notice must be given to local groups such as ours so that we can provide input into them. These prehistoric sites represent the only truly-perishable natural resources in El Dorado County, and they must be protected at all costs.

The El Dorado County Indian Council, Inc. has among its membership a professional archaeologist, as well as members who have been trained in cultural resource identification and protection. Our membership also includes individuals who are directly descended from prehistoric Nisenan and Miwok inhabitants of what is now El Dorado County and whose relatives are buried here. Therefore, we have a commitment to, a responsibility for, and a deeply-vested interest in cultural resource preservation here.

We are concerned that any action authorized by the county must unilaterally take into account that both prehistoric and historic Native cemetery remains may be unearthed and destroyed unless there is proper oversight during the project. There are both State and Federal laws that must be complied with, and the county must understand that in cases of disturbance of historic and prehistoric Native remains, NAGPRA regulations call for the direct involvement of groups such as ours. We are fully prepared to give input into any proposed modification to the El Dorado County landscape, and will be on hand to evaluate projects as they are submitted. We would be happy to become part of the revitalization of the commission to provide oversight, preservation, and repatriation of prehistoric and historic cultural materials and human remains.

Sincerely,



Jim Snoke

Secretary, The El Dorado County Indian Council, Inc.

## Land Use and Planning - Section 3.6 dEIR Review Comments

An accurate and complete project description is necessary to fully evaluate the project's potential environmental impacts. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (App. 3 Dist. 2004) 122 Cal.App.4<sup>th</sup> 1591.)

On p ES-8, the DEIR states that “*the amended Plan would not substantially increase the residential development potential that presently exists under the General Plan. Similarly, the policy amendments would not substantially change how future developments under the General Plan would proceed. The analysis focuses on the proposed changes to the General Plan, differentiating them to the extent possible from impacts that are attributable to the General Plan as a whole.*” This is a completely inaccurate assessment of the changes being proposed.

In reality, the amended Plan would *substantially increase* the residential development potential that presently exists under the General Plan by allowing construction on steep slopes, increasing the allowed densities by 25-150%, decreasing or exempting the open space requirement and making connection to public water systems optional. Further, the amended Plan would substantially change how future developments would precede as the changes to the General Plan just mentioned would make certain developments a matter of right rather than requiring that these developments propose a General Plan amendment or seek a variance. Finally, the analysis in the EIR should include impacts that are attributable to the General Plan as a whole and not just focus on individual proposed changes. The impacts of the project must be measured against the real conditions on the ground. (*Save our Peninsula Committee v. Monterey County Board of Supervisors* (App. 6 Dist. 2001) 87 Cal.App.4<sup>th</sup> 99.)

### 1. Monitoring Results

Policies 2.9.1.1 through 2.9.1.2 require the County to monitor on an annual basis the rate at which land inventory is being developed, the population and employment growth, and other useful indicators of the County's growth. Increasing or decreasing development potential and changing boundaries of Community Regions and Rural Centers may be proposed by the County every five years based on the results of this monitoring process. The EIR must analyze the impacts of the proposed General Plan Amendments with respect to the results of this monitoring process. The description of the local and regional environmental setting must be sufficient to provide an understanding of the significant effects of the proposed project and its alternatives (CEQA Guidelines, sec. 15125.)

**a) Please provide the required monitoring results and the analysis of how the proposed General Plan Amendments reflect the trends of land inventory depletion, population and employment growth and other useful growth indicators.**



**b) Please show how the proposed changes to the Camino-Pollock Pines Community Region boundaries align with the monitored changes required by Policy 2.9.1.2**

**2. Dividing Camino-Pollock Pines into Three Separate Community Regions.**

On page 3.6-4, the DEIR states “Camino-Pollock Pines Community Region. The project proposes to divide the existing Community Region into three Rural Communities.” Please note that this would change allowable zoning and could significantly impact certain property owners whose properties would become incompatible with their zoning and therefore very difficult to sell or finance.

The proposal for this revision has been before the Board of Supervisors multiple times since 2008, it was included in the original Resolutions of Intent that was the basis for the TGPA, and there has been more than adequate time in this update process for an extensive review of the specifics to have been provided. And yet the analysis provided here is minimal. It will be beyond unacceptable if there is inadequate information available for the Supervisors to make an informed decision on this issue. "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; see also *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.)

**Confirm that there is adequate information on which to base this change, because the County cannot kick this can down the road any longer. In the Final EIR, please identify the staff reports and other materials in the administrative record that were used to analyze this land use change in the EIR. "The EIR shall cite all documents used in its preparation including, where possible, the page and section number." (CEQA Guidelines, sec. 15148.)**

**3. Expanding Agricultural District Boundaries**

On page 3.6-7, the DEIR states “the TGPA proposes to expand the Agricultural District Boundaries for Garden Valley-Georgetown, Coloma, Camino-Fruitridge, Gold Hill, Oak Hill, Pleasant Valley, and Fair Play-Somerset to implement General Plan Implementation Measure AF-J. In addition, a number of parcels now identified as being within Agricultural Districts would be removed from those districts based on the Policy 8.1.1.2 criteria.”

General Plan Implementation Measure AF-J states as follows:

## **MEASURE AF-J**

Complete an inventory of agricultural lands in active production and/or lands determined by the Agricultural Commission to be suitable for agricultural production. Once the inventory is complete, perform a suitability review (consistent with Policies 8.1.1.1, 8.1.1.2, 8.1.1.3, and 8.1.1.4) and amend the Agricultural District boundaries as appropriate. [Policy 8.1.1.7] Responsibility:	Department of Agriculture and Planning Department
Time Frame:	Within two years of General Plan adoption.

The "inventory" is to include a determination by the Ag Commission as to whether the lands are 'suitable' for Ag production or not. Policy 8.1.1.2 specifies six specific criteria for lands included in Agricultural Districts. Lands that do not fit the Policy 8.1.1.2 criteria should not be designated as Agricultural Districts. On page 3.5-10, the DEIR states that "479 parcels, totaling 17,241 acres, are proposed to be added to the Agricultural Districts, and 96 parcels, totaling 137 acres, are proposed to be removed.", for a total of 575 parcels that must be reviewed.

- a) The inventory in Measure AF-J must be completed as part of the DEIR in order to analyze the impact of expanding Agricultural District boundaries. Lands not confirmed as suitable may not be included in the final expansion. Please provide this inventory.**
- b) Please provide an analysis table showing how each of these 575 parcels either meets or fails to meet the Policy 8.1.1.2 criteria.**
- c) The provisions of the existing general plan are intended to protect agricultural lands by systematically identifying with the aid of knowledgeable Agricultural Commissioners, and then including them in the Agricultural Districts. If the proposed project does not follow that proper procedure, it will be in direct conflict with a provision of the general plan intended to avoid impacts to agricultural lands. This conflict suggests that the TGPA may have a significant impact on the environment. (See TGPA/ZOU DEIR, Appendix A, pp. 2-28.) In addition, the Government Code requires that a General Plan be internally consistent. Adoption of the aforementioned TGPA provision would render the general plan internally inconsistent. (Government Code, sec. 65300.5) Please disclose this in the Final EIR. It has a direct bearing on the feasibility of the proposed project.**
- d) In the Final EIR, disclose all the provisions of the TGPA and the ZOU that are in conflict with provisions in the general plan designed to avoid or reduce environmental harm. The DEIR must discuss any inconsistencies**

between the proposed project and existing general plans and regional plans. (CEQA Guidelines, sec. 15125.)

- e) When the 2004 General Plan was approved, the findings of fact identified the policies in the general plan that would reduce or eliminate significant impacts. CEQA has specific procedures that must be followed when such mitigation measures are changed. The lead agency must make a finding of fact, based upon substantial evidence in the record, that the previously adopted measure is no longer feasible. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4<sup>th</sup> 342.) If the TGPA is changing a policy in the general plan that was intended to mitigate impacts, please follow this procedure.

#### 4. Increasing Residential Density of Mixed Use Projects

On pages 3.6-4 the DEIR proposes changing Policy 2.1.1.3 to increase residential density of mixed use projects in CRs from 16 to 20 units per acre to be consistent with 2009 amendments to Gov Code Sec 65583.2(c)(B)(3). Gov Code Sec 65583.2(c) (B) (3) deems certain densities appropriate to accommodate low income housing. It does not justify or mandate increasing the density of an existing parcel if that jurisdiction's low income housing requirements have already been met. The DEIR fails to provide any analysis showing that the increase in density is necessary to meet low income housing requirements. Further, it fails to show how merely increasing the density will encourage the development of low income housing.

a) Please provide an analysis of the County's mandated low income housing requirements for the next ten years including number of units, maximum income levels of buyers and maximum price of units. Then, please provide an analysis of current housing units and development proposals under submission that would meet this requirement. If a comparison between the requirements and our anticipated supply indicates a deficit, please provide an analysis of the least density change possible that would be necessary to meet this need. Please provide some evidence that the density limits are in fact the barrier to affordable housing development, and that raising these limits will actually result in affordable housing benefits in the county. Ultimately, the County will need such evidence to support a statement of overriding considerations. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.)

b) Has the County considered a low income housing density bonus system or a low income housing requirement for developments that exceed a certain number of units, if indeed a deficiency of low income housing is substantiated? Has the County considered more aggressively participating in State and Federal programs that fund affordable housing development? Has the County formed a Housing Authority or appropriate non-profit housing corporation to facilitate accessing State and Federal Funds for affordable

housing development? In the Final EIR, please consider these and other much more direct, much more proven, and far less impacting options to help meet affordable housing needs in the county. Remember, all feasible mitigation must be adopted, and other mitigation properly found infeasible, before an agency can make a statement of overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997)58 Cal.App.4<sup>th</sup> 1019.)

On page 3.6-5, the DEIR proposes changing Policy 2.1.2.5 to increase residential density of mixed use projects in Rural Centers (RCs) from 4 units to 10 units per acre. On page 3.6-10, the DEIR states that the effect of this proposal is limited by the fact that mixed use development is not allowed outside of CRs and RCs. Not only is this not a reliable mitigation due to the ease of boundary changes as proposed under Policy 2.9.1.4, but it is factually incorrect. Zones allowing mixed use are Commercial (CC, CL and CM specifically), and the proposed revision to Policy 2.2.1.2 deems Commercial appropriate - and allowed - in the Rural Regions. See Table 2-1 below:

Land Use Designations	Concept Areas		
	Community Regions	Rural Centers	Rural Regions
Multifamily Residential*	•	•	
High-Density Residential*	•	•	
Medium-Density Residential*	•	•	
Low-Density Residential	•	•	•
Rural Residential			•
Agricultural Lands			•
Natural Resource			•
Commercial*	•	•	• -
Research & Development	•	•	
Industrial	•	•	•
Open Space	•	•	•
Public Facilities	•	•	•
Tourist Recreational	•	•	•

\* May be applied in Rural Regions to reflect existing development when combined with the Platted Lands (-PL) overlay land use designation.

Additionally, the Policy 2.2.1.2 definition for Commercial is being modified to include exceptions that allow 100% residential development on a parcel designated for Commercial use if it has a zoning designation that allows mixed use (this includes the CC, CL, and CM zone districts). Revised Policy 2.2.1.2 from the TGPA (strike out version for clarity) reads as follows:

**Policy 2.2.1.2 Commercial (C):** *The purpose of this land use category is to provide a full range of commercial retail, office, and service uses to serve the residents, businesses, and visitors of El Dorado County. Mixed use*

*development of commercial lands within Community Regions and Rural Centers which combine commercial and residential uses shall be permitted. ~~The residential component of the project shall only be implemented following or concurrent with the commercial component.~~ Commercially designated parcels shall not be developed with a residential use as the sole use of the parcel unless the residential use is either (1) a community care facility as described in goal HO-4 or (2) part of an approved mixed use development as allowed by Policy 2.1.1.3 and 2.1.2.5, within an area zoned to allow for a mix of uses. Numerous zone districts shall be utilized to direct specific categories of commercial uses to the appropriate areas of the County. ~~Except as provided in Policy 2.2.2.3,~~ This designation is considered appropriate only within Community Regions, and Rural Centers and Rural Regions.*

- c) Revise the incorrect statement that "mixed use development is not allowed outside of Community Regions or Rural Centers", or clarify how exactly it is limited and revise Table 2-1 accordingly.**
- d) Provide a list of ALL zones that will potentially allow mixed use, and delineate which of those will be allowed in the Rural Regions. This should include a review of the Residential zones (Multi Family for one) that are to allow expansion of commercial use as well.**
- e) Re-evaluate the impact of this proposed density increase on all regions categorically (Community Regions, Rural Centers, Rural Regions), as well as County-wide**

The DEIR also states on page 3.6-10 that physical constraints such as lot size and lack of services would limit the ability of mixed use projects to reach their maximum allowable densities.

- f) What is the factual analysis supporting this conclusion?**
- g) Has the County prepared an inventory of all the parcels whose development potential would be affected by this proposed change?**
- h) Has each parcel in that inventory been assessed to determine whether we can rely on physical constraints to limit density below the maximum amount allowable?**

The policy verbiage in both Policy 2.1.1.3 (Mixed Use in the Community Regions) and 2.1.2.5 (Mixed Use in Rural Centers) contains a loophole of sorts that would allow up to 20 units per acre anywhere - Rural Regions included - as long as roads, water, and sewer can be brought in:

*"The maximum residential density of 20 dwelling units per acre may only be achieved where adequate infrastructure, such as water, sewer and roadway are available or can be provided concurrent with development. "*

Mitigation Measure LU-4a acknowledges this problem by removing the verbiage from Policy 2.1.2.5, but NOT from 2.1.1.3. In order to effectively convey that the

intent of these policies is not to promote higher density mixed use in the Rural Regions, LU-4a must be applied to both policies.

**i) Apply Mitigation Measure LU-4a to both Policies 2.1.1.3 and 2.1.2.5 to remove the verbiage allowing 20 unit/acre density mixed use in the Rural Regions. Alternately, substantiate how this can act as mitigation on only one of the policies without leaving the possibility of applying the remaining policy to a parcel in the Rural Region.**

5. 'Mixed Use' is not a zone district by itself, but rather is a combination of uses allowed on a single parcel, outside the parameters of a Planned Development. According to Ordinance 17.40.180, Residential development may occur with certain Commercial development, and Commercial development may occur with certain Residential development. Per 17.40.180, this is supposed to be made clear through Table 17.22.020. However, the table makes reference back to 17.40.180.

**a) Clarify all zone districts that may potentially accommodate mixed use. A description of the project is an indispensable component of a valid environmental impact report under CEQA. (*Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer (App. 3 Dist. 2006) 144 Cal.App.4<sup>th</sup> 890.*) If the zoning code provisions remain impermissibly vague, they may be void.**

**b) If a clear delineation is not possible, explain how the impact of the proposed changes for increasing density have been analyzed.**

## 6. Increasing Multi-Family Residential Density

On pages 3.6-4 & 5, the DEIR proposes changing Policy 2.2.1.2 to:

- increase multi-family residential (MFR) density from 5 minimum / acre to 8 minimum;
- amend MFR designation to include small lot, single-family detached w/o requiring a planned development; and
- allow mixed-use in CRs and RCs to be designated as MFR.

It is clear that the increased minimum density is NOT required, per page 2-7 of the draft EIR Project Description, which reads:

*1 The prior proposal to increase the MFR density to 30 units per acre described in the NOP for the DEIR was based on the belief that this was necessary in order for the housing element to accommodate the county's fair share of the regional housing need. After adoption of the Housing Element in late October 2013 and its ratification by the California Department of Housing and Community Development later that year, it is clear that the density is not needed in order to meet state law. Therefore, that part of the project is no longer being pursued.*

It is not clear what the advantage might be to the County of eliminating the Planned Development requirement, other than to aid developers in the application process, and that was presumably not the intent of the TGPA.

Allowing MFR to be designated as mixed use has not been fully analyzed.

- a) **Please include the density increasing change of the 'minimum allowed' units in the footnotes, or substantiate why this change should not be included.**
- b) **Analyze the impact of displacing multi unit housing in this zone by allowing single family units to be built instead**
- c) **Analyze the impact of allowing mixed use within MFR zones, including quantifying data for all regions.**

7. Exempting Certain Developments From the 30% Open Space Requirement

On pages 3.6-4 & 5, the DEIR proposes changing Policies 2.2.3.1 and 2.2.4.1 to exempt certain types of residential development from the 30% open space requirement and for high density residential planned developments allow 50% of that 30% open space requirement to be in private yards.

On page 3.6-9, the DEIR assumes that the impact of this proposal would be less than significant “given the limited practical application of these amendments.”

- a) **Where is the justification for this conclusion? Substantiate by analysis that there is in fact limited practical application. The public has no way of knowing from the data provided in this DEIR whether relaxing the open space requirement will increase potential development by 5% or 50%.**

“An EIR must contain facts and analysis, not just the bare conclusions of the agency, and must provide sufficient detail so that those who did not participate in its preparation can understand and consider meaningfully the issues raised by the proposed project. The decision to approve a project is a nullity if based upon an EIR that does not provide the decision makers and the public with the required information about the project.” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> 1184.)

- b) **Further, what is the justification for relaxing the open space requirement at all? This proposed amendment conflicts with the El Dorado County 2004 general Plan intent to foster a rural quality of life (stated on page 3.6-1 of the DEIR.) This conflict suggests that the TGPA may have a significant impact on the environment. (See TGPA/ZOU DEIR, Appendix A, pp. 2-28.) In addition, the Government Code requires that a General Plan be internally consistent. Adoption of the aforementioned TGPA provision could render the general plan internally inconsistent. (Government Code,**

**sec. 65300.5) Please disclose this in the Final EIR. It has a direct bearing on the feasibility of this component of the proposed project.**

**8. Encouraging Infill Development**

On pages 3.6-10, the DEIR discusses addition of Policy 2.4.1.5 that encourages infill development on sites of up to 5 acres. Without a more specific and descriptive definition of 'infill' this cannot be accurately analyzed. Additionally, the idea that development is 'consistent' with the General Plan is a separate concept from the idea of promoting and encouraging that development.

**Revise this analysis based on a more descriptive definition that is made known to the public, and delineate the development that would presumably not otherwise occur without this policy.**

**9. Making Public Sewer (Policy 5.3.1.1) and Water (Policy 5.2.1.3) Connection Optional**

On page 3.6-5, the DEIR is misleading in the verbiage listing the TGPA proposal to revise Policies 5.3.1.1 and 5.2.1.3, to make connecting to a public sewer system or public water system optional for most projects. As stated, it is not made clear that the change is to *relax* the existing restriction on providing public sewer/water, but rather makes it appear that being *allowed* to connect to public services is the option. This is misleading to members of the public reviewing this document, and contrary to the intent of CEQA review, which is to inform the public.

On page 3.6-10, the DEIR states that proposed changes regarding connection to public water and sewer would not result in higher intensity development because of the lack of reliable groundwater supplies and the size requirements of leach fields. This is flawed and circular reasoning. Yes, there may be some parcels that, despite the relaxed requirement making public water and sewer connection optional, will still not be feasible to develop because of a lack of groundwater or sufficient space to install leach fields. But this is not a mitigation that can be expected to apply in all cases, and should require site specific reviews.

On page 3.6-11, the DEIR asserts that this proposed amendment would have a less than significant impact because where groundwater supplies or the size of the site are limited, the development intensity will be lower than it would be if connected to public water and sewer. Additionally, the flawed assumption is made that utilizing septic systems will result in less degradation or alteration to the land.

**a) What is the reasoning for making connection to public water and sewer optional?**

**b) Please provide the analysis showing how this relaxed standard helps meet the project's objectives.**



- c) Please provide the factual analysis to substantiate the conclusion that development intensity will be lower on septic/groundwater. This would require a comparative analysis that has not been provided. Additionally, the trade-off should be analyzed regarding the depletion of groundwater as a resource.
- d) How many possible building sites will be developed because of this proposed amendment that would not otherwise have been developed at all?
- e) If the intention of this change is to meet affordable housing mandates, one feasible alternative to making public sewer and water optional and increasing the densities as proposed would be to leave the requirement for public sewer and water in place and the densities as they are, but propose an amendment to require that developers of projects over a certain size provide low income housing as part of their development. Did the County consider this alternative?
- f) Septic systems are substantially more impactful on the land in terms of the area of disturbance, water quality, and more. Please explain the assumption of 'less degradation' since the density of the development that can take advantage of this policy is not restricted.
- g) In the Final EIR, the County should evaluate the effect the possible increase in development relying on groundwater and septic systems will have on existing groundwater supplies and quality, especially for groundwater dependent agricultural operations in the Rural Regions. Land use could be dramatically affected if these operations run out of fresh water. Such a result would be contrary to the TGPA objective to “protect agriculture in the county.”
- h) Furthermore, the Final EIR should determine if making the connection to public water and sewer optional, will limit the reach of that infrastructure due to lack of customer density to finance it. This would dramatically alter the geographic pattern of buildout in the county, and its impacts. Contrary to the objectives of the TGPA it may severely impair economic development, job creation, and sales tax revenue.

#### **10. Expanding Development on 30%+ Slopes**

On pages 3.6-4 & 5, the DEIR proposes changing Policy 7.1.2.1 to expand development on slopes over 30% by changing the complete prohibition to a restriction. Certain related requirements such as a plan for erosion control and engineered design will be removed from the General Plan and moved to proposed Zoning Ordinance 17.30.060.

- a) **In order to assess the impact of the increased housing development that may result from the proposed amendment, please provide an estimated number of parcels and total acreage in the County with slopes over 30%. Remember, the project description must include “precise boundaries” of the project on a “detailed map, preferably topographic.” (See CEQA Guidelines, sec. 15124, subd. (a).) For this part of the project, that would be a map of areas of the county with private land over 30% slope.**
- b) **Please provide any scientific or engineering analysis that has been done to support locating septic systems on slopes over 30%.**
- c) **Please explain the alternatives to amending Policy 7.1.2.1 that were considered and why those other alternatives were rejected from further analysis in the DEIR.**

On page 3.6.-6, the DEIR says that proposed Zoning Ordinance 17.30.060 prohibits certain hillside development where “the development or disturbance [would] impair the stability of slopes on the property or on surrounding properties.”

- d) **What is the proposed evaluation method to determine whether a project impairs the stability of the soil?**

The 2013-2014 Grand Jury Report of El Dorado County contains two investigations that demonstrate the County’s difficulty with enforcing its own regulations to prevent erosion and flooding. These investigation reports are attached as:

Exhibit 3.6 - 1: COUNTY ACTIONS CREATE FLOODING, COUNTY NO HELP WITH REPAIR, Case Number GJ-13-17

Exhibit 3.6 - 2: EL DORADO COUNTY FAILS TO ENFORCE ITS GRADING, EROSION AND SEDIMENT CONTROL ORDINANCE , Case Number GJ-13/14-18

Changing the prohibition to a mere restriction on slopes over 30% will require that the County approve numerous plans for erosion control and engineered design and enforce their implementation.

- e) **If the Grand Jury found that the County was unable to effectively do this in 2013-2014, explain how the County proposes to do this with the proposed General Plan Amendments regarding slopes over 30%.**

“[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.).

- f) Provisions of the existing general plan that prohibit development on slopes are also intended to also preserve scenic vistas and separation of communities. If the proposed project does not do this, it will be in direct conflict with these provisions of the general plan. This conflict suggests that the TGPA may have a significant impact on the environment. (See TGPA/ZOU DEIR, Appendix A, pp. 2-28.) In addition, the Government Code requires that a General Plan be internally consistent. Adoption of the aforementioned TGPA provision could render the general plan internally inconsistent. (Government Code, sec. 65300.5) Please disclose this in the Final EIR. It has a direct bearing on the feasibility of the proposed project.
- g) In the Final EIR, disclose all the provisions of the TGPA and the ZOU that are in conflict with provisions in the general plan designed to avoid or reduce environmental harm. The DEIR must discuss any inconsistencies between the proposed project and existing general plans and regional plans. (CEQA Guidelines, sec. 15125.)
- h) When the 2004 General Plan was approved, the findings of fact identified the policies in the general plan that would reduce or eliminate each potentially significant impact. CEQA has specific procedures that must be followed when such mitigation measures are changed. The lead agency must make a finding of fact, based upon substantial evidence in the record, that the previously adopted measure is no longer feasible. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4<sup>th</sup> 342.) If the TGPA is changing a policy in the general plan that was intended to mitigate impacts, please follow this procedure.

11. Mitigation Measure Bio-1a does not explain the extent of the limitation. There is no way to evaluate the effectiveness of this as a mitigation.

a) Please provide more information.

## 12. Ranch Marketing

On page ES-3, the DEIR discusses the proposed deletion of a special use permit requirement from Policy 2.2.5.10. On page 3.6-6, the DEIR discusses the proposed expansion of allowable uses on agricultural lands under Chapter 17.21 of the Zoning Ordinance to include outdoor entertainment and concerts. This would eliminate the need for a finding that the use would have no significant adverse effect on surrounding property. Mitigation Measure LU-4b would require the use to be reviewed by the Agricultural Commission for compatibility with adjoining agricultural uses. This is not a large enough mitigation measure as compatibility with all adjoining uses can be a much higher standard than adjoining agricultural uses.

Please note that there has been at least one SUP issued under the winery ordinance that has resulted in significant conflict with adjoining residential uses. See Olivo

Winery Request for Revision to SUP No S 08-0012-R heard before the Agricultural Commission on June 9, 2014. The Agricultural Commission's staff initially recommended approval of the revision despite a petition signed by more than 150 neighbors complaining of the noise and traffic from numerous special events held at the winery. Staff's reasoning was that despite ample evidence that approval would violate Policy 8.1.4.1 (a) regarding conflicts with neighbors, they could ignore this as it did not negatively impact agriculture. Approximately twenty (20) of the petitioning residents attended the hearing. Part of their testimony indicated a complete lack of enforcement by the County of the SUP violations regarding special events despite numerous complaints that had been lodged with the County over the preceding eighteen (18) months. The Agricultural Commission ultimately decided to not take a stand on approval or disapproval of the SUP Revision Request.

No analysis is provided in the DEIR of the significant impact to adjacent property owners of this proposal to make special events and other ranch marketing a matter of right. It is our view that the number of neighbor conflicts will escalate dramatically if the special event restrictions are liberalized. Please see the attached newspaper article regarding resident opposition to winery special events in Napa County (Exhibit 3.6-3.)

On page 3.6-16, the DEIR states that Mitigation Measure LU-4b would reduce the effect of the proposed zoning ordinance provisions regarding Ranch Marketing to a level less than significant. We disagree. Mitigation Measure LU-4b limits the compatibility review to adjoining agricultural uses only. Ranch Marketing activities should be reviewed for compatibility with all surrounding existing uses as is currently provided under the General Plan.

- a) Have there been reports made to the County of conflicts with adjoining property owners concerning special events at wineries or in connection with ranch marketing? Provide historical data to substantiate if this is NOT to be considered a significant impact.**
- b) Has the County compared its winery ordinance with that of other California counties in this regard? Please provide documentation, including comparative data. Please see the attached survey of California Winery Ordinances prepared by Alameda County (Exhibit 3.6-4.)**
- c) Provide an explanation as to why the compatibility review would apply only to agricultural uses, when residential uses are the most sensitive receptors and likely to result in the greatest conflict.**

Some theoretical underpinnings of the TGPA/ZOU seem questionable.

Many of the existing 2004 General Plan policies are meant to balance competing interests. The notion is that by fairly balancing competing interests, there will be less friction in the community, and less opposition to meritorious economic development proposals. When properly implemented, these policies provide a fertile ground for good economic development, while weeding out the proposals that will result in harm and rancor. This balancing of interest provides what many call, a good climate for

business development. In addition, this reasonable accommodation of competing regional interests is required for land use regulation to maintain its constitutional validity. (See *Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330; *Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582.)

The premise of the TGPA is very different. It is based upon the premise that the policies in the 2004 General Plan, policies that were meant to balance land use interests, are a problem that is hindering good economic development. The TGPA is jettisoning the provisions of the general plan that balance competing interests, in favor of policies that sacrifice many valued public interests in favor of unrestricted economic development. The hope is that such relaxed restrictions will attract additional new development that will help the county's economy and government revenues.

However, we have yet to see the analysis that justifies this view. What evidence is there that the existing general plan provisions are the key barriers to good economic development? What evidence is there that merely relaxing these land use regulations designed to protect the health, safety, and well being of the people of El Dorado County, will in fact trigger economic renewal, new jobs, and increased government revenues? Is it not just as likely that they will lead to more intense fighting, over even less meritorious and less valuable development proposals (e.g. without open space, on steep slopes, without public water and sewer, distant from services, conflicting with neighboring uses, etc.)? Is it not just as possible that the result of these changes will be a degraded business climate for El Dorado County? Could the TGPA/ZOU be deemed so unbalanced with regard to competing interests that it breaches the barrier of constitutional validity?

**d) The County must produce, in the Final EIR, or elsewhere in the record, the substantial evidence to support the alleged benefits of the TGPA/ZOU. Ultimately, the County's statement of overriding considerations must be supported by substantial evidence. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.) "Argument, speculation, unsubstantiated opinion, or narrative evidence which is clearly erroneous or inaccurate ... does not constitute substantial evidence." (CEQA Guidelines, sec. 15384.)**

13. It appears that the main focus of the zoning changes was to maximize the potential residential zoning capability. This is contrary to the claims of 'for consistency' and 'for ease of use'. From page 3.8-2 of the dEIR:

*"The actual number of additional residences that are built over the next several decades will depend on market conditions, the application of Measure Y traffic mitigation policies and related requirements, and the availability of the public water and sewer facilities **necessary to maximize residential density**, among other factors, such as avoidance of special-status species habitat."*

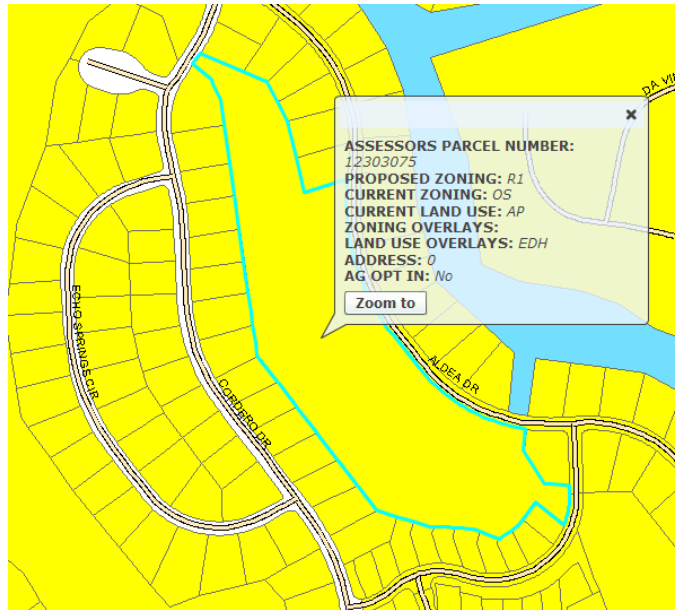
**It is not clear if the changes proposed have been disingenuous, or if the analysis has been 'scrubbed'. Provide clear delineation of all policies that are potentially density-increasing.**

**14.** Zoning changes have been proposed that were clearly specified in the project description as not occurring. Page 2-2:

*"None of these plans are proposed for amendments as part of the project;*

- *Meyers Community Plan*
- *Carson Creek Specific Plan*
- *Promontory Specific Plan*
- *Valley View Specific Plan*
- *El Dorado Hills Specific Plan*
- *Bass Lake Hills Specific Plan*
- *North West El Dorado Hills Specific Plan"*

This is not correct. Some examples of zone changes include APN's 123-030-75, 115-400-12 and 119-090-45 in the El Dorado Hills Specific Plan.



**Update the dEIR Project Description section or eliminate these zone changes from the project. Review the project to confirm there are no other parcels being rezoned within the Specific Plans through this process without adequate site specific review and public noticing. Alternately, abide by the public noticing requirements for Specific Plan amendments, and provide proper analysis of the impacts.**

**15.** The dEIR analyzes the impact of rezoning .01 percent of the existing county parcels, per page 2-4 of the project description. There are actually over 37,000 zoning changes proposed, out of 108,000 parcels in the county, or well over 33 percent (data from the County's GIS division). Some percentage of these is due to newly created zones, some are correcting inconsistencies, and others appear totally random.

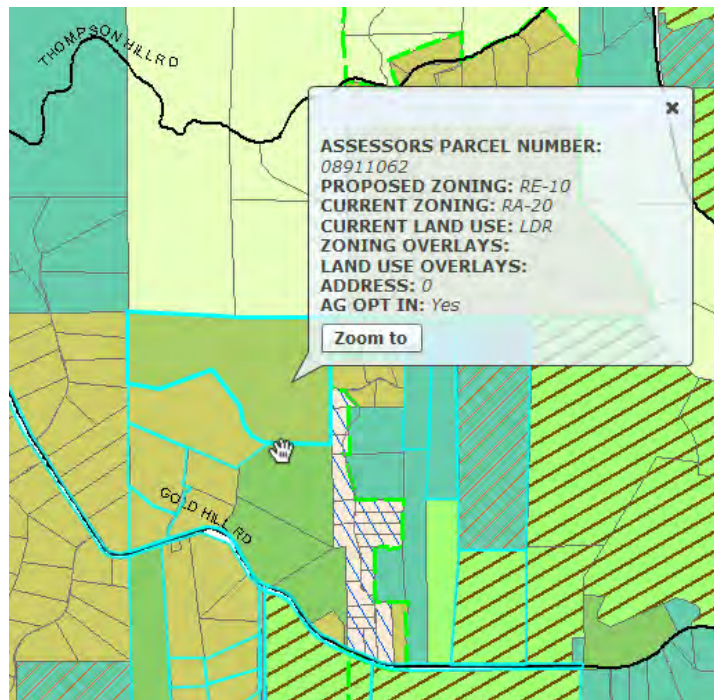
- a) **Please expand the breakdown of zone changes to indicate the percentage of changes occurring under each categorical reason for the change, and quantify in a table or some other form easily understood by the public.**
- b) **Adequately analyze the impact of this change.**

c) **Revise the project description. Then recirculate the DEIR for public comment. (Re DEIR recirculation see: CEQA Guidelines, sec. 15088.5; *Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043* [The draft EIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded].)**

16. Regarding the changes proposed for Table 2-2 consistency between zoning and land use:

As proposed, consistency is being achieved by rezoning parcels that have 20 acre minimum lot requirements within the LDR land use, down to a zone that has 10 acre minimum lot requirements. The net effect is a significant increase in density without individual public review of those parcels, and this increase must be evaluated and quantified in the draft EIR, for - at minimum - the potential increase in housing and population, public services requirements, aesthetics and loss of rural character.

Example: APN 089-110-62



As an alternative method for achieving the same goal of 'consistency', the LDR definition could be modified rather than the table, to allow zoning for 20 acre minimum sized parcels to remain within the Low Density land use designation, as they exist now, with no changes.

See **underscored text** below:

*"Low-Density Residential (LDR): This land use designation establishes areas for single-family residential development in a rural setting. In Rural Regions,*

*this designation shall provide a transition from Community Regions and Rural Centers into the agricultural, timber, and more rural areas of the County and shall be applied to those areas where infrastructure such as arterial roadways, public water, and public sewer are generally not available. This land use designation is also appropriate within Community Regions and Rural Centers where higher density serving infrastructure is not yet available. The maximum allowable density shall be one dwelling unit per 5.0 acres. Parcel size shall range from 5.0 to ~~10.0~~ **60 acres**..."*

**Please analyze the multiple impacts of each alternative (modifying text vs. modifying the table).**

- a. Please evaluate the impact of changing all AE and RE20+ zones countywide to 10 acre minimum zones (RL10, RA10, PA10) with the LDR General Plan designation, as proposed.**
- b. Please evaluate the impact of revising the LDR definition to increase the parcel size range from 5.0 - 60 acres, or greater.**
- c. Provide a comparison and analysis of a) and b).**

### Land Use and Zoning - dEIR Review Comments Continued

Related to land Use and Zoning, the DEIR is extremely deficient and lacks substantive analysis of the true impacts created by the proposed changes. The mitigation measures considered for the very few impacts that were defined are also inadequate and incomplete. The DEIR also failed to consider some of the most fundamental alternatives available. Based on these findings, the DEIR must be rejected by the BOS as being non-compliant with the CEQA.

There need to be more viable alternatives identified between the 'no project alternative' and the baseline DEIR analysis. "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).) "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.)

At a minimum, a ‘current infrastructure constrained’ alternative must be considered that complies with Measure Y criteria for LOS F roadways and Highway 50. A second alternative that considers an ‘available infrastructure gated phased growth’ alternative needs to be considered that is dependent on funded road improvements, water availability and sustainable El Dorado County jobs growth. The stated previous rejections by the then (2004) BOS of the proposed Alternative 2 –Roadway Constrained 6-Lane Plus and Alternative 3-Environmentally Constrained due to political pressures is not an acceptable conclusion. The BOS has changed, and the impacts associated with the BOS actions in 2004 have been well recognized by the resident voters. After 10 years, the previous justifications are totally irrelevant.

A recent survey conducted in El Dorado Hills by County funded AIM consulting, and sponsored by the CEDAC-EDH group, found that the two largest land use needs in EDH are: 1) Public Open Space-61% of respondents and 2) Public Parks-58% of respondents. All other responses received less than 50% majority support (Retail-38%, Senior Housing-31%, Mixed Use Development-27%, Hotels and Motels -23%, Condominiums-18%, Affordable Housing-17%, Office Space-15%, Single Family Residential-12% and Apartment Complexes-7%). A County wide survey should be conducted to determine the individual community needs for each area in order to define a DEIR alternative that best accomplishes the community based resident voters defined needs.

There were many Land Use and Zoning comments/concerns submitted by various groups and individuals following the LUPPU TGPA/ZOU NOP release. Regrettably, the DEIR ignored most of them and chose not to evaluate the real impacts of the proposed changes. The limited responses that could be found within the DEIR were provided as general statements with very limited analysis. This lack of responsiveness to the public’s inputs constitutes sufficient cause to reject the DEIR as a result of this deficiency alone. To think that the final DEIR will comply with CEQA at this late date, by now considering all of these public inputs and appropriately respond with additional mitigation measures in the Final EIR, seems naïve. Yet now that is our only hope.

Section 3.6.2 Environmental Impacts contains the following statement: “Note that the project is unlike most projects subject to CEQA analysis. Where development projects consist of specific actions that would directly affect the environment, the project amends the General Plan and Zoning Ordinance and would have only indirect effects.” This statement is woefully inaccurate, and fails to acknowledge the cumulative affects of all of the smaller development projects wherein a Specific Plan is not required and will not be prepared. The number of proposed zoning changes alone will have a significant traffic and water demand impact by increasing the housing/population densities in many community region areas. The cumulative impacts of all of the TGPA and ZOU changes that will not require project based Specific Plans must be analyzed and appropriate mitigation measures identified.

With respect to the proposed Land Use changes, there are three specific areas that constitute the biggest potential impacts: 1) Changes to Policy 2.2.4.1 Density Bonus- This change would allow increased project densities and would result in significant traffic impacts if broadly applied. It essentially allows a developer to dedicate largely unbuildable or very costly construction areas within a project as 'open space' in order to achieve a 50% density bonus (compaction) in the flatter, lower construction cost areas. It is not appropriate to consider a density bonus in medium density and low density residential land use areas; 2) Changes to Policy 2.2.3.1 and 2.2.4.1 Open Space for planned development- The proposed reduction in the open space requirement from 30% to 15% in High Density Residential (HDR) will result in significant traffic impacts if broadly applied. The proposed criteria is extremely subjective and non-inclusive (i.e. 'where the open space is improved for recreational purposes, or as landscaped buffers or greenbelts, and an additional 15% of the total site is devoted to open space areas reserved for the exclusive use of individual residents such as private yards.' and 3) The misapplication of Infill as a justification to amend the General Plan for projects like the El Dorado Hills Town Center apartments to allow multi-family housing densities that are more than double the current General Plan limits (55 dwelling units/acre compared to 24 dwelling units/acre).

With respect to the proposed Zoning changes, under the guise of 'alignment with the General Plan', the vast majority of the approximate 37,000 proposed parcel zoning changes will allow an increase in housing density. The net result will obviously be an increase in the number of new residents, all of which will impact the current traffic and transportation LOS levels. The cumulative effects of these additional cars on the roads must be realistically analyzed and mitigations proposed. Many roadways in the community regions and rural center areas are at or near LOS F now during peak commute hours. Measure Y requires developers to pay for the full cost of the added roadway capacity and other infrastructure associated with growth. The BOS must honor this mandate, and require cumulative regional roadway impact analysis to be available for public review. Previous Traffic Impact Analyses (TIAs) prepared by developers have significantly understated the traffic impacts for several projects within EDH. County DOT staff has historically failed to challenge the TIAs, and it is only through public review that the ground truth impacts are recognized. Regrettably, this DEIR appears to have the same deficiencies that many of the project TIAs have, it is fraught with superficial impact analysis and makes no attempt to define meaningful mitigation measures and alternatives. Again, this DEIR should be rejected for its inadequacy to identify and quantify the significant impacts detail, and for its failure to propose meaningful mitigation measures.

### Conclusion:

There are thirty three 'significant and unavoidable' impacts listed in Table 5-4 (dEIR, page 5-16). A single one of these impacts is sufficient cause for denial of the project. On the other hand, to approve the project, the County would have to find valid overriding considerations for each one of the 33 impacts listed. Such a statement of overriding considerations must be supported by a logical analysis of substantial evidence in the EIR or elsewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.) All feasible mitigation must be adopted, and other mitigation properly

found infeasible, before an agency can make a statement of overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4<sup>th</sup> 1019.)

The significant and unavoidable impacts from the **Land Use and Zoning** section, as listed on page ES-14:

***LU-4:** Substantially alter or degrade the existing land use character of the County*

***LU-5:** Create substantial incompatibilities between land uses.*

However, this list cannot be considered complete until further information and analysis is provided per the submitted Draft EIR comments above, in order to fully ascertain the impacts of the extensive changes being proposed.

END SECTION COMMENTS

The following two Grand Jury investigation reports are attached as Exhibits 3.6-1 and 3.6-2, and are included to demonstrate El Dorado County's difficulty with enforcing its own regulations to prevent erosion and flooding.

**Exhibit 3.6 - 1:** COUNTY ACTIONS CREATE FLOODING, COUNTY NO HELP WITH REPAIR, Case Number GJ-13-17

**Exhibit 3.6 - 2:** EL DORADO COUNTY FAILS TO ENFORCE ITS GRADING, EROSION AND SEDIMENT CONTROL ORDINANCE , Case Number GJ-13/14-18

*Cover Sheet for* **Exhibits 3.6-1 and 3.6-2**

# EL DORADO COUNTY GRAND JURY 2013-2014

## *COUNTY ACTIONS CREATE FLOODING, COUNTY NO HELP WITH REPAIR*

Case Number GJ-13-17

### REASON FOR REPORT

Two property owners adjacent to the Granada Heights subdivision in Cameron Park complained that each time there is substantial rain, their properties are heavily flooded and eroded. They assert the flooding is a result of: (1) installation of an apparent *speed bump* by the Granada Heights Homeowners Association (HOA) which actually diverts storm water runoff to a drainage swale that was not originally designed to handle it; and (2) enlargement of a side yard and alteration of the same drainage swale by a property owner uphill of the complainants that was approved by the HOA and the County. The alteration changed the swale, a rock lined ditch, into a concrete sidewalk that greatly reduced the storm water capacity while increasing its velocity.

### SUMMARY

The investigation revealed many incidents that ultimately contributed to the complaint. The complainants had every expectation that the County would assist in solving the significant drainage problems the County created when failing to thoroughly review either the original drainage design for Granada Heights or its alteration by the HOA and a property owner. To the complainants' surprise, and significant cost, the County denied any responsibility for the problem, putting the burden of correcting it on the property owners, despite the County's failure to correctly administer the County Code.

In reality, the County failed to protect neighboring property owners from the increased storm water flows by allowing them to happen and continued to deny relief assistance of any kind due to their flawed record keeping.

### BACKGROUND

#### *1990*

The revised Granada Heights subdivision was approved by the County.

#### *July 2002*

The HOA installed what appears to be a *speed bump* that acts as a diverter, redirecting storm water onto Granada Court and to a rock lined drainage easement not designed to handle the additional flow and then to a complainants' property.

#### *March 2004*

El Dorado County Department of Transportation (DOT) Maintenance Division cleared a culvert on Granada Court after a complaint of flooding, demonstrating that DOT accepted maintenance responsibility for that street.

*June 2005*

The Granada Heights HOA approved a property owner's plan to enlarge his side yard adjacent to a rock lined primary drainage swale. He extended his side yard into the drainage swale by constructing a retaining wall reducing the drainage swale to a 3 ft. concrete sidewalk with a 6" curb. This both reduced the drainage capacity and increased the velocity of flowing water.

*November 2005*

The property owner submitted and the County approved a plot plan for the retaining wall although it did not address drainage. The County review of the plan did not address drainage either.

*December 2005*

The complainants' properties were flooded and the newly installed retaining wall, with an incomplete curb, was undermined.

*January 2006*

A complainant notified DOT Maintenance of flooding and silt/erosion on their property. DOT maintenance reported that eroded silt and rocks from the incomplete concrete curb had clogged a storm pipe at the rear of the complainants' properties causing flooding.

*July 2006*

The County decided that the drainage problems were a civil matter that should be resolved between the property owners.

*December 2006*

DOT incorrectly determined that an unrelated property owner was responsible for the obstruction and demanded that the drainage ditch improperly installed on that property be reinstalled. This parcel owner hired an attorney and the County dropped its demand when it was determined that the drainage ditch never existed on this property.

*March 2007*

Subsequently, DOT demanded that the property owner who did alter the drainage ditch properly size a pipe he illegally placed on a neighbor's property. The Assessor's Parcel Number referred to in the DOT letter could not be found to exist.

*February 2008*

The complainants estimated the costs for repairs to and mitigation of the drainage problem at more than \$25,000.

*August 2008*

The County informed the complainant they could not find a drainage plan for Granada Heights.

*2009*

The complainants sued the HOA. The property owner and management company subsequently settled.

*December 13, 2013*

The County Community Development Agency, Transportation Division, stated in a letter to the complainant that "they (the property owner that enlarged his front yard and altered the drainage swale) may have miscalculated the actual velocity of the runoff in the concrete swale and the infrastructure necessary to safely move the run off through the property", and that "additional

calculations and modifications to the concrete swale“ might be necessary to return the flow to pre-concrete velocity.

The County also suggested an existing pipe system in an El Dorado Irrigation District easement at complainants' rear yards may also be inadequate. The letter goes on to say that it is the complainants' responsibility to discuss the need for any change with neighbors.

## ACTIONS

- The complainants were interviewed.
- Representatives of the County Building Department, Department of Transportation and Air Quality Management District were interviewed.
- County records were reviewed.
- The County FINAL Revised Grading Ordinance, 2-5-07 (Ordinance #4716) Revised 8-10-10 (Ordinance #4949) was reviewed.

## DISCUSSION

Although there were neighborhood and civil engineering concerns about the drainage of the revised subdivision of Granada Heights, the County approved the project in 1990. The County's analysis of internal and external drainage was flawed; flooding of the subdivision and adjacent properties has since occurred resulting in damages to the complainants.

From 2004 to 2013, the County has been aware of, has been in communication with, and acted upon complaints from numerous parties regarding the flooding of these properties.

The HOA of Granada Heights subdivision installed a *speed bump* to divert water from their development to a drainage swale. The County subsequently made matters worse by rubber stamping a private property owner's desire to make his yard bigger and not analyzing the impacts of alterations to the drainage. Investigations by the County indicate that a critical drainage ditch that could have alleviated run off to a nearby creek ***did not, in fact, actually exist.***

The mantra the Grand Jury has heard repeatedly from County officials that it is the *will* of the County Board of Supervisors (BOS) to be customer friendly. Unfortunately, in this case, their customer friendly attitude coupled with lack of proper plan checking and application of county ordinances, caused collateral damage.

The complainants had every right to believe and expect that the County would assist in solving the significant drainage problems created when the County failed to thoroughly review either the original drainage design for Granada Heights or its alteration by the HOA and a property owner. To their surprise, and significant cost, the County denied any responsibility for the problem, putting the burden of correcting it on the property owners, despite the County's failure to do its duty and administer the County Code causing their damage originally.

## FINDINGS

1. The complainants' properties are flooded from runoff when there is substantial rain; causing erosion on their properties.
2. The internal and external drainage analysis of the Granada Heights revised subdivision was flawed. The County should not have approved this revised subdivision.
3. Deficiencies in County record keeping prevented County staff from locating the drainage plan for Granada Heights. Staff relied on an *as built* subdivision plan showing a drainage swale that, in fact, did not exist, leading to a claim against the wrong property owner. That property owner was forced to hire an attorney to defend against the mistaken claim.
4. The County illegally permitted the installation of a retaining wall and alteration of a drainage swale without requiring the analysis and plans required by its own regulations.
5. The County has admitted that the velocity of the water in the altered drainage swale and improper sizing of a pipe in an EID easement have contributed to the drainage, flooding, and erosion problems.
6. The County has the authority to remediate the harm done to the complainants and others similarly affected. The El Dorado County FINAL Revised Grading Ordinance, 2-5-07, Section 15.14.410, Corrective work, subsection A., **Abatement of unlawfully created conditions** allows the director to

... order County workers or contractors to immediately enter private property to conduct work necessary to abate hazards to public health and safety such as: a. The alteration of drainage patterns that has caused, or has the potential to cause, flooding of or siltation upon any downstream property...

It further states

2. Cost recovery: Whenever the County expends any funds or takes any action, the County shall bill the landowner, lessee or licensee for the costs indicated herein. Pursuant to the requirements of Government Code Section 54988, the costs shall become a lien on the property, or shall be recoverable from the property owner by other legal means.



## RECOMMENDATIONS

1. The County should analyze, or cause to have analyzed, the existing drainage of Granada Court, Granada Heights and surrounding properties and any drainage methods and devices within public right-of-way and private and public easements to determine their adequacy to properly convey storm runoff sufficiently to avert flooding and erosion of private property. Upon completion of such analysis, the county should install corrective measures in the public right of way and private and public easements to correct any deficiencies.
2. The Director of Development Services should require County employees to apply the requirements of the Grading Ordinance.
3. Prior to issuance of any permit, the County should thoroughly analyze the impacts on drainage by requiring the applicant to adhere to the specific requirements of the Grading Ordinance.
4. If it is determined that application of the Grading Ordinance in some cases is particularly onerous to some property owners, the Director of Development Services should study such cases and, with input from stakeholders, recommend appropriate exemptions.
5. The County should more aggressively implement the provisions of the Grading Ordinance cited above to restore properties to the condition existing before illegal grading and construction occurred and bill the landowner, lessee or licensee for costs.

## RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury, presiding judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This Report has been provided to the El Dorado County Board of Supervisors, Development Services Department and Department of Transportation.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a "Word" file or "PDF" file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at:

[courtadmin@eldoradocourt.org](mailto:courtadmin@eldoradocourt.org)

# EL DORADO COUNTY GRAND JURY, 2013-2014

## *EL DORADO COUNTY FAILS TO ENFORCE ITS GRADING, EROSION AND SEDIMENT CONTROL ORDINANCE*

Case Number GJ-13/14-18

### REASON FOR REPORT

The Grand Jury received a number of complaints involving improper grading of private property. Three specific complaints were investigated and addressed in three separate reports. One involves grading of a rural property, another involves grading of a suburban property and the third is grading by a commercial property owner. In each instance, persons other than the property owner suffered damage as a result of the county's failure to ensure compliance with its Grading Ordinance. The investigations of those cases caused the Grand Jury to question if there was a pattern and practice of failing to comply with the County Grading Ordinance.

The Grand Jury found that it did.

### BACKGROUND

#### *The Ordinance*

The El Dorado County Grading, Erosion, and Sediment Control Ordinance (hereinafter "the Ordinance")

...for the purpose of regulating grading within the unincorporated area of El Dorado County to safeguard life, limb, health, property and public welfare; to avoid pollution of watercourses; and to ensure that the intended use of a graded site is consistent with the El Dorado County General Plan, any Specific Plans adopted thereto, the adopted Storm Water Management Plan, California Fire Safe Standards and applicable El Dorado County ordinances including the Zoning Ordinance and the California Building Code. (Section 15.14.110)

"This ordinance *shall* be implemented and enforced *by the County...*" (emphasis added)

A grading permit is required for all grading activities in the unincorporated area of El Dorado County unless a specific exemption applies. (Sections 15.14.130 and 15.14.140). An exemption did not apply to any of the specific instances investigated by the Grand Jury.

The Ordinance requires permit applications to include specific informational items. (Section 15.14.200)

Fees collected when a permit is issued are used to fund enforcement of the Ordinance. Violation fees of twice the regular permit fees are required whenever grading is done in violation of the Ordinance or without an approved permit. The language of the Ordinance is **not** discretionary; it **mandates** that this violation fee be charged. (Section 15.14.230 E)

It prohibits grading activities that cause or have the potential to result in itemized hazards including a threat to neighboring property or degradation of water quality. (Section 15.14.290)

The county is authorized to enter private property and conduct work necessary to abate and repair hazards from unlawfully created conditions. The County may conduct such work either using its own

employees or through a licensed contractor. The County is required to bill the property owner for costs incurred and is authorized to recover those costs through a lien on the property and other legal means. (Section 15.14.410)

### ***Enforcement of the Ordinance***

Review of the permit application and subsequent inspection of the grading site only happens after permit fees are paid. Otherwise, no action is taken. When work is initiated without a valid permit a stop work order may be issued. If work is completed prior to issuance of a stop work order or if work continues without a valid permit, there is no inspection of the work done. Thus, someone who wants to perform work not authorized by county ordinances could well decide to not seek a permit in order to get away with that unauthorized work.

County employees interviewed were aware of the legal authority to charge violation fees but not that those fees were mandatory rather than discretionary. Further, violation fees were rarely charged and suggested that it would discourage the public from seeking a permit and encourage performing work without proper permits.

County employees were unaware of the County's authority to conduct necessary remedial work at the property owner's expense and knew of no instance when this action was taken.

### ***Why is the Grading Ordinance Not Enforced?***

Grading in violation of the Grading Ordinance resulted in substantial harm to property owners adjacent to or affected by improper grading in each of the cases investigated by the Grand Jury. The Grading Ordinance gives the Department of Transportation significant authority to correct improper grading. This authority could be a very effective tool for protecting other affected property owners if it were used, but it is not .... Why not?

Both County staff and officials reported that they perceived it to be the *will of the Board of Supervisors* that the Ordinance not be enforced. They stated that El Dorado is a *property rights county*; the will of the Board of Supervisors is that property owners not be burdened by strict compliance with requirements perceived to be onerous for some property owners. Several witnesses reported they believed the Ordinance imposed excessive burdens on property owners maintaining rural access roads

The public appears to understand that the Ordinance is not enforced. Neither of the contractors who performed illegal grading in Report No. 13-15 or 13-16 felt required to obtain a permit for the grading they performed. In Report No. 13-16 the Contractor appears to have understood that if he failed to pay the fee for a grading permit no action would be taken to enforce the terms of the permit.

The Ordinance is quite specific "...to safeguard life, limb, health, property and public welfare; to avoid pollution of watercourses..." The Grading Ordinance of the County of El Dorado is Chapter 15.14 of the County Code; it is the law of El Dorado County. Failure to enforce the Ordinance is failure to enforce the law; that failure benefits property owners who act unlawfully while denying the law's specific protections to others. It leads to a perception of corruption on the part of County officials and general disrespect for County government.

## ACTIONS

- The Grand Jury reviewed the El Dorado County Grading, Erosion and Sediment Control Ordinance.
- The Grand Jury interviewed private parties who complained to having been adversely affected by the County's failure to enforce the Ordinance.
- The Grand Jury interviewed County employees responsible for implementing and enforcing the Ordinance.

## FINDINGS

1. When grading work is done in El Dorado County and no permit is obtained and no permit fee paid, and the county is made aware of the work being done before the work is complete, the county will issue a stop work order.
2. When work improperly continues after issuance of a stop work order or if work is completed before a stop work order is issued, no enforcement action is taken.
3. Only payment of a permit fee triggers inspection of grading work performed.
4. Grading work performed where no permit fee is paid is not inspected.
5. El Dorado County does not enforce its Grading, Erosion and Sediment Control Ordinance.
6. The County's failure to enforce its Grading, Erosion and Sediment Control Ordinance encourages illegal grading to the detriment of other property owners and residents.

## RECOMMENDATIONS

1. The Board of Supervisors should review the Grading, Erosion and Sediment Control Ordinance and determine whether the Ordinance imposes overly burdensome requirements for rural access roads.
2. If the Board of Supervisors determines the requirements for grading of rural access roads are overly burdensome, it should amend the Ordinance to define appropriate requirements for the grading of those roads.
3. Whether or not the Ordinance is amended, the Grading, Erosion and Sediment Control Ordinance should be enforced.

## RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury, presiding judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

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[courtadmin@eldoradocourt.org](mailto:courtadmin@eldoradocourt.org)

The following Exhibit is included to demonstrate the neighborhood conflicts created by reduced 'event' restrictions.

*Cover sheet for* **Exhibit 3.6-3**

# Citizens debate small winery ordinance

1

[Print](#) [Email](#)

February 05, 2014 12:20 pm • [Jesse Duarte](#) – St Helena Star

[\(1\) Comments](#)

Supporters and opponents of St. Helena’s new small winery ordinance spoke out at a special City Council meeting on Tuesday.

The brief session was a warm-up for the council’s regular meeting at 6 p.m. Tuesday, Feb. 11, at Vintage Hall, when the council will hear more public comment and could rescind the controversial regulations in response to a successful petition drive.

Opponents who are collecting signatures say the new rules, set to take effect next week, will result in a flood of new ag-zoned wineries that will commercialize residential neighborhoods and create unwanted traffic and noise. They’ve gathered almost 500 signatures in hopes of placing a referendum on the November ballot.

Just 320 verified signatures of registered St. Helena voters would be enough to put the ordinance on the ballot. But the petition drive could be rendered moot if the council agrees to rescind the ordinance.

Last week councilmembers said rescinding the ordinance and passing a modified one that addresses critics’ concerns might be preferable to putting the ordinance on the ballot, which could divide the community.

Tuesday’s special meeting was set aside for the public to weigh in on the ordinance. Opponents, who outnumbered supporters, said they hadn’t realized its broader impacts during the months it was under discussion by the Planning Commission and the City Council.

Geoff Ellsworth said one crucial component of the ordinance, the elimination of a requirement that winery operators live on the premises, was obscured behind confusing language about wineries no longer having to be “subordinate” to residential use.

It also wasn’t clear that the new rules would apply to potential new wineries, not just the handful of existing ones, Ellsworth said.

The ordinance is intended to support small winery operators who produce and sell wine from local grapes, and to protect ag land from development pressure by making small wineries more economically viable.

In the past, supporters have said small wineries need to expand public events, which are currently prohibited, to survive in a business that’s increasingly reliant upon face-to-face marketing and direct sales. But opponents

like Michael Caldarola and Marty Bennett said supporters need to make a stronger case for why the current regulations have to be changed.

Ellsworth added that the provisions in the ordinance that are intended to protect neighbors aren't specific enough. For example, wineries have to be within "reasonable proximity" to a major roadway.

"But who determines what is reasonable?" asked Ellsworth. "And who determines what is a major roadway? ... If I were a smart lawyer, which I'm not, I might try to exploit that sentence."

Pam Smithers, who lives near Anomaly Vineyards on Vallejo Street, said the winery has had a major impact on her and her neighbors, with traffic not only from visitors and employees but also from trucks hauling winemaking equipment and chemicals.

Smithers disagreed with the ordinance's supporters, who say agriculture and wineries go hand in hand. "Wineries are commercial, manufacturing concerns" that should be separated from residential areas, she said.

Smithers said that instead of loosening restrictions on wineries, the city should go back to its original regulations, and maybe even tighten them.

Sandy Ericson said the ordinance is inconsistent with the General Plan and "was put together by a small group of people."

"The way out of this situation is to go back to the (General Plan) ... and craft a solution in open public meetings that protects all interests," Ericson said.

Dave Phinney, who said he's planning a project under the new ordinance, said it protects neighbors by requiring small wineries seeking a use permit to prove to the Planning Commission that their public events "will have no significant impact on neighboring parcels."

"I encourage everybody to read the ordinance," Phinney said.

Despite critics' charges of a lack of transparency, "this wasn't done in private," said Steve Goldfarb, who operates Anomaly Vineyards, one of several wineries that's requested permission to offer tours and tastings over the last few years.

After the city approved use permit amendments for wineries like Anomaly, Spottswoode and David Fulton Winery, members of the Planning Commission agreed the city's regulations needed to be updated.

Goldfarb said that while it would make sense for the council to rescind the ordinance in response to the petition drive, a modified ordinance shouldn't lose sight of the overall goal of protecting the wine industry.

"If we don't allow our vocal wine community to thrive, we're all going to pay the price," Goldfarb said.



The following Exhibit is an example of research done by other jurisdictions during the development of winery and ranch marketing ordinances.

*Cover sheet for* **Exhibit 3.6-4**



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT**

**Survey of Other Counties' Winery Regulations**

County Planning Department staff surveyed eleven other counties in the state to obtain a sampling of how these jurisdictions regulate wineries. The attached matrix contains the results of the survey.

**Summary of Survey Results:**

- All eleven counties surveyed require a use permit for wineries under at least some circumstances.
- In three of the counties, the type of permit required varies depending on such factors as parcel size, intensity of use, zoning, and general plan designation.
- In San Diego County, boutique wineries are allowed by right.
- Ten of the eleven counties surveyed require a use permit for a tasting room.
- Restrictions on tasting rooms vary from county to county, but include allowing them only in conjunction with an on-site commercial winery, limiting their size to a percentage of the total square footage of the winery buildings, limiting days of operation, limiting the number of patrons at any given time, and allowing tasting by appointment only.
- In San Diego County, a tasting room is allowed by right if it does not exceed 30 percent of the total square footage of the wine production structure.
- All eleven counties require use permits for special events. Restrictions on the number, size, timing, and type of events allowed vary from county to county. Napa County does not allow weddings at wineries.
- Most of the counties address traffic and parking issues through the use permit.
- Butte, El Dorado, and San Diego Counties have restrictions specific to wineries on private roads.

**Exhibit 3.6-4**

(Page 1 of 5)

**Comparison of County Winery Regulations**

A	B	C	D	E	F	G	H
Agency	Type of permit required for winery	Wine tasting rooms allowed?	Type of permit required for wine tasting room.	Distinction between different special events in zoning ordinance	Special Events Permit	Traffic measures	Noise standards
1 Butte County	AUP, Minor Use Permit, or UP depending on the size and intensity of the proposal. AUP required for winery when access is only via a private road. The winery shall pay a fair share towards a private road.	Y, limited to three days a week.	On a case-by-case basis based on the type of winery operation and wine tasting room proposal.	No	Y, any Special Event requires a Minor Use Permit for the first event and an AUP for each subsequent event. No Special Events are permitted on Orchard or Field Crop designated in the General Plan. No more than 12 Special Events are permitted per year with a maximum of 12 hours per day. No more than 200 people per event at any one time.	Based on AUP, Minor Use Permit or UP conditions.	Based on Noise Ord.
2 El Dorado County	Depends on zoning, GP designation, parcel size, and commercial vineyard production (5 acre minimum).	Y	UP	No	Y, must apply at least 60 days prior to event. Maximum of 250 persons. Promotional events = 24 events per calendar yr and max. of 250 persons not to exceed three consecutive days. UP or Minor Use Permit when determined by the Ag Commissioner. Temporary Use Permit = Three events per calendar yr, not to exceed 1 per month. Not to last more than three consecutive days and no more than 250 persons. Weddings require Special events permit. No outdoor amplified music permitted.	Winery and wine tasting room access driveway must connect to a public road. If the winery is open to public, approval must be granted from the Develop. Services Director, following the recommendation of the Ag. Commission. No outdoor amplified music permitted.	If the winery is located on a private road with access to the public, approval must be granted from the Develop. Services Director, following the recommendation of the Ag. Commission. No outdoor amplified music permitted.
3 Monterey County	UP, possible Initial Study	Y, in A district and in certain commercial districts/	UP in A district and some commercial districts	Not yet. Presently under consideration.	Y, UP	Improvements as UP conditions of approval, such as driveway encroachment improvements, providing a commercial driveway, etc.	Noise set at property line and time of day. This is on a case by case basis based on size of property, facility location, zoning district, proximity to sensitive receptors., topography, etc... Base on Noise Ord.
4							

**Comparison of County Winery Regulations**

A	B	C	D	E	F	G	H
Napa County	UP, possible Initial Study (must be at least 10 acres).	Y, only with winery.	UP, only permitted with winery. By appt. only, except grandfathered in wineries.	Yes, no weddings allowed.	Y, Special Events Permit. No more than 6 events/yr up to 389 persons. 3 events/yr for ≥400 persons.	Traffic count conducted for wineries. Shuttles service to off-site parking when sufficient parking is not available on-site for special events. Promotional event parking = 1 space per 2.5 persons.	Based on Noise Ord.
5	Placer County	Minor Use Permit in A district (minimum size is 4.6 acres).	CUP, MUP and AUP. Permit type depends on the zoning district.	No, but type of planning application required depends on zoning.	Y, max. 6 events/yr. No special event shall exceed two days.	Case by case basis for traffic modifications depending on proposal and road conditions. Temporary off-site parking is permitted for special events.	Based on Noise Ord.
6	Riverside County	UP, possible Initial Study	UP in CV (Citrus/Vineyard) district.	UP Special events facility require on-site commercial vineyard at least 10 acres.	Y, Temp. Outdoor Event. \$376 fee, CEQA exempt.	As per UP conditions.	Based on Noise Ord.
7	San Diego County	Boutique Wineries for packing and processing are allowed by right if located on public road. Otherwise, UP required, possible Initial Study	The tasting/retail room is allowed by right if it does not exceed 30% of the total square footage of the wine production structure.	Y, a maximum of 4 winery events are permitted per year and required to end by sunset.	Y, Special Event Permit. Amplified music and public gatherings (such as weddings) are not allowed inside or outside the winery. Outdoor seating areas are limited to accommodate a maximum 5 tables for seating of 10 people. Vehicle with a capacity in excess of 12 passengers are not allowed. Signage is limited to 12 sq. ft. on-site.	Parking will comply with the Parking Requirements in Section 6778, Ag., Industrial, and Wholesale Storage. The on-site driveway and parking area shall be surfaced with Chip Seal, gravel or an alternative surfacing material appropriate for lower traffic levels.	Based on Noise Ord.
8							

**Comparison of County Winery Regulations**

A	B	C	D	E	F	G	H
Santa Barbara County	UP, possible Initial Study. Development standards differ between inland and coastal areas.	Y	UP, floor area of the winery shall not exceed 400 sq. ft. or 10% of the winery development structures located on the premises, whichever is greater. Tasting rooms are granted for wineries that produce less than 20,000 cases per year.	Y, wineries and outdoor entertainment (carnival, crafts fair, etc...) events differ in the planning permit required.	Y, Special Events Permit. The number of special winery events vary on the size of winery and production capacity. Smaller wineries are allowed 4 events per year and attendance not to exceed 150 attendees. Up to 8 special winery events are permitted for larger wineries. The number of special events on winery premises can exceed 12 per year and attendance for each event may exceed 200 persons with a CUP under Tier III (development plan under the Planning Commission) on a case by case basis before the Planning Commission. CUP process can grant events over the allowed annual maximum to up to 40 days.	As per condition of approval.	Based on Noise Ord. Amplified music associated with special events shall not exceed 65 dba at the winery exterior boundary. The dba level can be contested by department review for special events depending on the size of the winery and surrounding environment.
9							
Santa Cruz County	Depends on zoning, GP designation, parcel size, and commercial vineyard production. Levels: ASP, CUP (hearing before the Zoning Administration and more intensive process requiring Planning Commission hearing).	Y	AUP, by appt. only with a limit of 12 persons max. at one time. UP, public hearings by Zoning Administrator or Planning Commission based on project proposal on a case by case basis.	No	Y, Special Events Permit required.	As per UP conditions.	Outside operating hours limited to 7 a.m - 7 p.m., except during harvest season. Use Permit noise levels. Max. noise standard of 85 dba for a cumulative period of 15 minutes in an hour. Up to 90 dba for a cumulative period of 5 minutes in an hour. A max noise level of 100 dba. These levels shall be reduced by 10 dba between 10 p.m. - 7 a.m. Levels can potentially be increased with CUP.
10							
Sanoma County	UP	Y	UP, depending on zoning. Allowed w/o winery.	Doesn't differentiate between what type of special events require a permit, but have a criteria whether one is necessary or not.	Y, UP	Measures and conditions of approval are determined through the UP process. Complaints of weekend traffic, but they do not exceed the LOS standards in rural areas.	Based on Noise Ord.
11							

**Comparison of County Winery Regulations**

A	B	C	D	E	F	G	H
San Luis Obispo County	UP	<p>Y, MUP in most zoning districts, CUP, in others. Must be within 200 ft. from the winery facilities. This required can be waived if exemptions can be proven. Legally constructed structures built before 1980 can be modified with an AUP. Only 1 tasting room per winery, even for wineries on the same site that share production facilities.</p>	AUP	<p>No, but specific criteria for winery Special Events exists. 20 acres minimum (can apply for a MUP to required lot size). Limited to 40 days per year. Minor Use Permit or Conditional Use Permit required for events with 50 or more persons. Minor Use Permit allows for up to 80 persons for a maximum of 6 events per calendar year. CUP required for events over 80 persons for a max. of 6 special events per calendar year. Applications must be submitted at least 120 days prior to the event. Fines will be applied for those without County approval.</p>	Y, MUP and CUP required.	<p>As per UP conditions. The main driveway to winery with public tours, wine tasting room or special events must be located within one mile of an arterial or collector.</p>	<p>Based on Noise Ord. Outdoor amplified music is only permitted between the hours of 10 a.m. - 5 p.m. and not to exceed 65 Db.</p>

## Noise - Section 3.7 dEIR Review Comments

Overall comment: At the time when many counties and cities are going in the direction of more restrictive noise ordinances, why is El Dorado County proposing a less restrictive ordinance? We would like our county to be a leader in protecting its residents from noise pollution. If noise attenuation is feasible in these other cities and counties, it must also be feasible here. **Please consider an alternative in the final EIR that is more restrictive in the types, hours, and intensities of noises allowed. Please specify effective mitigation measure such as fines for repeat offenders of the noise ordinance.**

Page 2-9 states: "This amendment would exempt construction activities occurring from 7 a.m. to 7 p.m. during the week or from 8 a.m. to 5 p.m. on weekends and holidays from those standards. In addition, the amendment would fully exempt public projects to alleviate traffic congestion and safety hazards from those noise standards. No changes to the tables are proposed." The General Plan policy 6.5.1.11 has been completely changed by adding the word "not". This is very confusing for several reasons:

The previous draft of the TGPA (and the general plan) did not include the word "not". This change to exempt construction noise from the standards during the daytime was added during the environmental review period, so the change was likely not seen by many people who have been reviewing the document all along. Such shifts in the project description make reviewing the EIR very difficult. The primary harm caused by "the incessant shifts among different project descriptions" was that the inconsistency confused the public and commenting agencies, thus vitiating the usefulness of the process "as a vehicle for intelligent public participation." A "curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (County of Inyo v. City of Los Angeles (3d Dist. 1977) 71 Cal.App.3d 185, 197-198.)

**The previous wording is highly preferred--please change it back so that construction noise is not exempt.**

- a) Tables 6.3, 6.4, and 6.5 still show construction noise must conform to certain  $L_{eq}$  and  $L_{max}$  standards from 7am to 7pm.
- b) Tables 6.3, 6.4, and 6.5 do not make any distinction between weekday and weekend hours.
- c) Page 3.7-9 states: " Adoption of the noise ordinance complies with the directive to do so in General Plan policy 6.5.1.14. The current zoning ordinance relies upon the General Plan's noise standards, rather than including enforceable noise regulations." If this is the rationale for moving the standards to the zoning ordinance, **Please explain why the construction exemption and related tables still exist in the General Plan, rather than the zoning ordinance.**

With the new wording, many people in the county will now be exposed to an unlimited

amount of construction noise from 7am to 7pm Monday-Friday, and 8am to 5pm on weekends and holidays. **Please analyze the impact of unlimited construction noise (i.e. no average or peak noise thresholds) on sensitive receptors throughout the county due to this change.**

**Please ask Planning Staff to consider an alternative in the final EIR that adds some limitations on construction noise. In areas where subdivisions are being constructed, surrounding neighbors need a break from the continuous noise for months and even years at a time. Consider limiting construction hours on subdivisions to weekdays 7am to 7pm, no construction on Saturdays, Sundays, or Federal Holidays.**

Page 3.7-7 states: "Since 2003 the population of the county has increase by about 8%. Assuming that trip generation has increased by about that same amount over that period of time, the overall increase in traffic noise would be less than 0.5 dB. Accordingly, noise levels in the county are not substantially different than in 2003 when the General Plan was adopted."

This analysis is only true as an average, and is in general, meaningless. In order to understand the impact to noise of growth in our county, analysis needs to be done in many different areas throughout the county. For instance, El Dorado Hills has grown at a much higher rate than the overall county, so the calculation there would yield a larger difference than 0.5dB. Roadway noise has a much larger impact to residents near the roadway than those living further away from the roadway. In order to have a better understanding of noise, and how it will change over time, a study needs to be done to determine the current, cumulative, and cumulative plus project noise levels.

In addition, the issue is not how much the noise has increased relative to the existing amount of noise. The question is whether the increase in noise resulting from the TGPA/ZOU project is a considerable contribution to a cumulatively significant impact. "[T]he relevant issue to be addressed in the EIR on the plan is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing." (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 – 1026.) 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].) 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.)

State law (Section 65302f of the Government Code) mandates that a County Noise Element analyze and quantify, to the extent practicable, current and projected noise levels for all of the following sources:

- Highways, freeways.



- Primary arterials and major local streets.
- Passenger and freight on-line railroad operations and ground rapid transit systems.
- Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions
- related to airport operations.
- Local industrial plants, including, but not limited to, railroad classification yards.
- Other ground stationary sources identified by local agencies as contributing to the community noise environment.

That same section of the Government Code also requires the County to recognize the State Noise Element Guidelines, and provide noise contours for all of the noise sources listed above using CNEL or Ldn measurement levels based on monitoring or acceptable modeling. The noise contours are to be used to assist with land use planning so that exposure to excessive noise can be minimized. The noise element must include actions that avoid existing and foreseeable noise problems, and address the State's noise insulation standards.

**In the Final EIR, please provide tables and contour maps showing for each major road segment and all freeway segments: ADT, Center-line to 60 L<sub>dn</sub>, L<sub>dn</sub> (dBA) 100 feet from centerline, and Increase in L<sub>dn</sub> (dBA) over cumulative No Project.**

2. Page 3.7-10 states: "The CEQA Initial Study prepared for this project (Appendix A) concluded that the proposed TGPA and ZOU would not substantively amend any policy or ordinance provision in a manner that would increase exposure to ground borne vibration or noise. Because of these conclusions, impacts related to ground borne vibration and noise were determined to be less than significant. Accordingly, ground borne vibration and noise are not discussed further in this DEIR."

There are, however, many new policies contained in the ZOU that, if implemented, would increase exposure to noise. In accordance with Appendix G of the State CEQA Guidelines, the project would be considered to have a significant effect if it would result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels without the project. Each of the items listed below have the potential to generate a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels without the project.

- a. ZOU section **17.30.020** contains the following categorical exemptions which are a change from the currently approved General Plan:
  - I. Activities conducted in public parks, public playgrounds, and public or private school grounds, including but not limited to school athletic and school entertainment events, providing an amplified sound system is not required or used.

- II. Safety signals, warning devices, and emergency pressure relief valves.
- III. Noise sources associated with property maintenance, such as lawn mowers, trimmers, snow blowers, and power tools in good working order, provided that the activities take place between the hours of eight a.m. and nine p.m. on weekdays and nine a.m. to nine p.m. on weekends and federal holidays.
- IV. Noise sources associated with agricultural uses listed in Section **17.21.020** (Agricultural Zones: Matrix of Allowed Uses) that are performed consistent with the standards and practices of the agricultural industry.
- V. Noise sources associated with religious gatherings, public holidays, or other commonly celebrated occasions.
- VI. Construction (e.g. construction, alteration or repair activities) during daylight hours provided that all construction equipment shall be fitted with factory installed muffling devices and maintained in good working order.
- VII. Cutting of firewood for non-commercial personal use.

These categorical exemptions are not analyzed in the DEIR. Taking the above items (I through VII), **Please analyze the impact of the following specific concerns about these categorical noise exemptions in DEIR:**

- I. This change would subject homeowners (and other sensitive receptors) to unlimited noise from un-amplified sources such as gas-powered toys, acoustic bands, power equipment, leaf blowers, barking dogs, crowd noises, etc. This is a significant impact.
- II. This change would subject sensitive receptors to potential constant noise particularly in the case of back-up warning devices. This is a significant impact.
- III. This change would expose sensitive receptors to extra hours of loud noise, in particular the quiet evening hours from 7PM to 9PM. This is a significant impact.
- IV. This exemption is very broad and vague. The DEIR must examine the impact of this change with respect to each use listed in Section **17.21.020**. The vague term "that are performed consistent with the standards and practices of the agricultural industry." must be defined. **Please supply a reference document that explains these standards and practices for each allowed item in Section 17.21.020.**
- V. This change would expose sensitive receptors to unlimited noise from

"Noise sources associated with religious gatherings, public holidays, or other commonly celebrated occasions." These terms are very vague and broad, and there are no restrictions on the frequency, locations, days, or hours of these gatherings. **Please analyze the impact of this change in the light of these vague parameters.**

VI. This change specifies that construction is exempt "during daylight hours". But this is in conflict with the TGPA proposed amendment specifying construction to be allowed 7am to 7pm weekdays and 8 to 5 on weekends and holidays. The term "during daylight hours" is vague and can easily be interpreted as any time a person can plainly see. In the summertime, this could be from 5:30am to 8:30 pm. **Please specify which set of hours and days is correct. Please analyze the impact of "construction noise (e.g. construction, alteration or repair activities)" 7 days per week, during "daylight hours".**

VII. This change would allow cutting of firewood at any time and place for personal use. No restrictions are placed on time of day/night, noise level, duration, etc. **Please analyze the impact of allowing chainsaws, log splitters, etc. to be operated at any location, any time of day or night.**

**If the County insists on not analyzing these potentially significant noise impacts in the EIR, please identify the substantial evidence in the record that demonstrates that these impacts will be insignificant.** 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].) An EIR is inadequate if it simply ignores or assumes a solution to the problem. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.)

- b. ZOU section **17.37.070 (B)** relies on "self-monitoring to insure that sound system levels are in compliance with the conditions of approval"

It is well known that self-monitoring is ineffective. That is why CEQA requires that, prior to project approval, the lead agency must adopt a reporting and monitoring program that is designed to ensure compliance during project implementation. (Pub. Resources Code, sec. 21081.6.)

**Thus the DEIR must study the effect of outdoor concerts and events where sounds levels are above the approved standards, in all approved venues (e.g. wineries), and provide effective means of mitigation monitoring.**

- c. ZOU section **17.40.080 (A)(4)(d)** Specifies that animals being kept in a non-conforming manner may continue to be kept on the property. This is a potential significant impact since large (noisy) animals may continue to be kept on smaller lots indefinitely, possibly causing noise issues with the neighbors, when the animals may not be there legally in the first place. **Please analyze the noise impact of this section.**
- d. ZOU section **17.40.080** Proposes a large change in the type and number of animals allowed on various sized lots as small as R1. While **17.40.080 (E)(3)** specifies: "No animals will be allowed to create a public nuisance, disturbing the peace by frequent or continuous noise of an irritating or raucous nature. If a nuisance is deemed to have occurred it may be subject to abatement as specified in Title 6, Animals." This is a very vague statement. It does not indicate how this determination is made, who makes it, what are the criteria involved in making the judgment. In addition, the proposed mitigation "may be subject to abatement" per Title 6, is very weak and vague. In all, this section offers no concrete remedies to a sensitive receptor suffering from increased noise from an unspecified number of animals under the new ZOU. **This is a significant impact and must be analyzed in the EIR, and mitigations must be proposed.**
- e. ZOU section **17.40.120 (C)** Allows for " six or fewer agricultural employees shall be considered a single-unit residential use and shall be allowed by right in any zone that permits single-unit residential uses." The proposed ordinance allows this use by right for all residential lots other than Multi-family. The noise impact from additional traffic and persons is a potentially significant impact, especially on the smaller lots (R20k, R1, R1A, R2A, R3A, RE), and generally there is no need for agricultural workers on these smaller sized lots. **Please analyze the noise impact of this proposed ordinance.**
- f. ZOU section **17.40.160** Allows for a large variety of new home occupations. The first change is the allowance for employees to travel to, and work at the home of another person. This was not previously allowed in most of the residentially zoned area, but now, a significant number of people and vehicles can create new noise sources in these areas. This is a significant impact. The proposed ordinance does not specify if more than one home business can be run at each residence, and how this would affect the number of employees (or other provisions). **As written, the DEIR must assume that more than one home business may be operated out of each residence. The following items, then, must be analyzed in this light.**
- i. **17.40.160 (C)(6)** attempts to spell out mitigations for nuisances, by stating: "no equipment or process shall be used that creates noise, vibration, dust, glare, fumes, odors, or electrical interference detectable to the normal senses off-site." But then it goes on to say "Businesses that do not meet these standards may be subject to a Conditional Use Permit." Since a

conditional use permit is not required by the wording, **the DEIR must assume it is not required and analyze the noise impact of these allowed home occupations as if they generate detectable noise off-site.**

- II. **17.40.160 (C)(7)** Allows commercial delivery vehicles to be "utilized for the pick up or delivery of materials related to the home occupation." There appears to be no limitation to the size and frequency of commercial delivery truck activity. This is a significant impact since this type of activity would not be permitted under the previous general plan and Zoning Ordinance. **Please analyze the noise impact of many more commercial trucks in residential areas.**
- III. **17.40.160 (C)(11)(a)** Allows up to six students per group lesson either once or twice per day depending on parcel size. The noise generated from the automobile traffic is a significant impact. **Please analyze the noise impact of 12 to 24 additional vehicle trips in residential areas for home occupations with group lessons.**
- IV. **17.40.160 (F)** States "For parcels greater than one acre, the following uses occurring on the site indicated below are subject to a Use Permit:" **17.40.160 (F)(1-12)** entail many activities that will create substantial noise, and that noise would not be present under the current General Plan. **The DEIR must analyze each of these items to determine the impact and propose mitigations.**

Note that the EIR is required to evaluate the cumulative noise impact of all of these zoning code changes together, in addition to past, present, and other reasonably foreseeable noise impacts. An EIR must contain facts and analysis, not just the bare conclusions of the agency, and must provide sufficient detail so that those who did not participate in its preparation can understand and consider meaningfully the issues raised by the proposed project. The decision to approve a project is a nullity if based upon an EIR that does not provide the decision makers and the public with the required information about the project. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> 1184.)

- g. ZOU section **17.40.210** Proposes many newly allowed uses on all sizes of lots. Many of these activities are new and have not been analyzed for the noise impact they will create.
  - I. (C) Commercial Stables. Traffic from guests pulling horse trailers, talking, animal noise from an unspecified number of horses are all significant impacts. **Please analyze the noise impact resulting from this use.**

- II. (D) Hunting/Fishing Club, or Farm. Vehicle noise, shooting, talking & yelling are all noise sources that may have a significant impact on surrounding residential areas. 20 acres is a small parcel, and the ZOU does not call out what zone the surrounding parcels may be. **The noise impact generated by this proposed change must be analyzed.**
- III. (E) Off-road Vehicle Use. The uses granted here include but are not limited to: "go-cart, motocross, all-terrain vehicle, and miniature auto tracks for recreational purposes." This use presents many possibilities for abuse, is difficult to enforce, and is almost guaranteed to cause noise disturbance with neighbors. If this use falls under the definition of park or playground, it would be exempt from the proposed noise regulation. This is a significant impact. **Please analyze the noise impact resulting from this use.**
- IV. (F) Parks, Day Use. This proposed ordinance does not specify the maximum number of people permitted to use the park. Any residential lot may have park facilities, so these proposed parks may be located very close to other residences. The proposed Noise ordinance **17.30.020** exempts " public parks, public playgrounds, and public or private school grounds" from the noise ordinance. This is a significant impact. **Please analyze the noise impact resulting from this use.**
- V. (G) Swimming Pools and Tennis Courts. This proposed change is vague and unclear. Under the proposed regulation, tennis courts would have no restrictions on their distance from residential areas. This is a significant impact. The term "swimming pool facility" may or may not include the parking lot and associated noise. No noise study is required if the facility is 501 feet or more from a residential zone, even if noise is above the permitted standards. If the noise analysis "shows that the noise levels will exceed the daytime standards of Chapter 17.37 (Noise Standards), a Conditional Use Permit shall be required in compliance with Section **17.52.020**. This would mean that a swimming pool or tennis court could operate above the daytime noise standards. Further, if the pool or tennis court is considered part of a public park, playground, or school, it would be exempt from the noise standard. This is a significant impact. Table **17.24.020** under the rows for Swimming Pool and Tennis Court does not match the text. **Please clarify these related policies. Please analyze the noise impact resulting from this use.**

Conclusion:

There are thirty three 'significant and unavoidable' impacts listed in Table 5-4 (dEIR, page 5-16). A single one of these impacts is sufficient cause for denial of the project. To approve the project, the County would have to find valid overriding considerations for each one of the 33 impacts listed. Such a statement of overriding considerations must be supported by a logical analysis of substantial evidence in the EIR or elsewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.)

The significant and unavoidable impacts from the **Noise** section, as listed on page ES-14:

***NOI-1: Exposure of noise-sensitive land uses to short-term (construction) noise***

***NOI-2: Exposure to ground transportation noise sources as a result of the TGPA***

***NOI-3: Exposure to ground transportation noise sources as a result of the ZOU***

***NOI-4: Exposure of noise-sensitive land uses to fixed or non-transportation noise sources***

***NOI-5: Exposure to aircraft noise***

Additionally, this list cannot be considered complete until further information and analysis is provided per the dEIR comments, in order to fully ascertain the impacts of the extensive changes being proposed.

END SECTION COMMENTS

## **Population & Housing Element - Section 3.8 dEIR Review Comments**

Comments for this section are as follows:

- 1) The Project Description of the draft EIR, page 2-7, contains a footnote reference to the density increase for MFR (Multi Family Residential) under Policy 2.2.1.2. It reads:

*1 The prior proposal to increase the MFR density to 30 units per acre described in the NOP for the DEIR was based on the belief that this was necessary in order for the housing element to accommodate the county's fair share of the regional housing need. After adoption of the Housing Element in late October 2013 and its ratification by the California Department of Housing and Community Development later that year, it is clear that the density is not needed in order to meet state law. Therefore, that part of the project is no longer being pursued.*

The 'Regulatory Setting' section of the Population & Housing chapter of the draft EIR confirms this on page 3.8-2, for the MFR density increase. However, the other density increasing policies proposed are equally unnecessary for meeting state requirements, yet have not received similar notations. The further proposed density increases are as follows:

- increase minimum density for multifamily units from 5 units/ac up to 8 units/acre (Policy 2.2.1.2).
- increase maximum density for the R1 zone from 5 units/acre up to 8 units/acre (Policy 2.2.1.2)
- increase maximum density for mixed use in Community Regions from 16 units up to 20 units/acre (Policy 2.1.1.3)
- increase maximum density for mixed use in Rural Centers from 4 units up to 10 units/acre (Policy 2.1.2.5)

The existing 2004 General Plan (Introduction, page 2) states that "*The rural character of the County is its most important asset.*" Retaining the rural character of the county is a primary directive throughout the various policies of General Plan. The seemingly random yet purposeful proposal to increase the density in multiple zones is simply not in keeping with the existing General Plan.

**In accordance with CEQA Guidelines, section 15125, explain this inconsistency between the density increasing policies of the proposed project, and the primary goal of 'preserving our rural character' of the existing General Plan. Substantiate any perceived need to retain these proposed changes for increasing density.**

**Additionally, if these proposals are not to be omitted, provide the appropriate impact analysis that is missing, including:**

- a. **a complete accounting of the additional units possible under each category**



- b. **the increased population that could potentially result from the increased density proposed**
- c. **a table quantifying the results**
- d. **a qualitative analysis of those impacts. “An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption or amendment.” (CEQA Guidelines, sec. 15146, subd. (b).)**

2) The projected growth assessment from mixed use development is incorrect on page 3.8-3 of the 'Environmental Setting' section in the Population & Housing chapter. It states:

*"The only area projected to see a substantial net increase in dwelling units as a result of the mixed use development is the El Dorado–Diamond Springs Community Region. It is projected to have a net increase of approximately 257 dwellings over the next 20 years from mixed use developments."*

This assessment has neglected to account for Town Center in El Dorado Hills. There are a number of vacant parcels there, and the Specific Plan allows for mixed use. One current project is proposing 250 units under a mixed use application on one of the parcels, and it has not been accounted for in the cumulative projects for the draft EIR, or as potential multi-family here in the subject section.

The El Dorado-Diamond Springs growth is listed as 'substantial' at 1% in 20 years. The Town Center project would add that same projected 1% growth in 2 years rather than 20, in *addition* to the Diamond Springs growth.

"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.)

- a. **revise the Environmental Setting to include the vacant land in Town Center, and any others that may have been overlooked (Serrano has some as well)**
- b. **include the Town Center apartments project under the Cumulative Impacts**
- c. **Conduct a thorough review of each Community Region and Rural Center for potential mixed use sites relative to the zoning ordinance revisions for expanded uses.**
- d. **present the results quantitatively, perhaps in tabulated form.**
- e. **provide a graph showing the rate of projected growth**

"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.)

- 3) There is a very limited analysis provided for the increased density revisions to Policies 2.1.1.3 and 2.1.2.5 regarding mixed use densities. The impact analysis says there will be "limited practical effect" due to the limited number of mixed use parcels and lack of sewer.

From page 3.8-3:

*The project's proposed increase in maximum density for mixed use projects could slightly increase the estimated capacity under the General Plan. However, the relatively limited number of parcels that are available for mixed use development, their small size, and the lack of sewer service in many parts of the County limit the practical effect of this higher density potential on the projected number of residences.*

This section indicates that there is a limited number of mixed use parcels in general, and that lack of public sewer available to them is a further limiting factor. In reality, the number of parcels available for mixed use would be greatly increased with the expanded uses in the zoning update: Commercial zones would have residential included for mixed use; multifamily would have commercial uses allowed, etc.

Additionally, El Dorado County has repeatedly waived the requirement for public sewer in Community Regions. Some Examples are the LDS Church on Green Valley Rd, and the Springs Equestrian project also on Green Valley Rd, and a number of shopping centers in the Placerville area. The point is that non-availability of public sewer is not necessarily a limiting factor in EDC. Note too, that another proposed change in the TGPA is the elimination of the requirement for public sewer. Basically, *this is not a limiting factor.*

**Please provide a delineation of all zones - existing and newly created - in which mixed use will be possible**

- a. **quantify the proposed density increase for mixed use parcels AND**
- b. **quantify the proposed density increase relative to the expanded mixed use potential in existing commercial projects**
- c. **quantify the proposed density increase potential in existing multifamily projects**

Remember that, "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".

- 4) The Zoning Ordinance Update includes expansion of uses within most zones, including residential into Commercial zones for mixed use. Clarification is needed to understand which Commercial zones are intended to allow the inclusion of residential for mixed use. The ZOU section 17.40.180 points to table 17.22.020 to identify the applicable zones, yet the table then points back to the referencing section, 17.40.180. The extent is not actually spelled out anywhere, so the assumption must be made that all commercial zones are subject to mixed use potential. This is not a "limited number".

**Please clarify all zones which will potentially allow mixed uses and provide full analysis of the possible increase in housing units and relative population due to this expansion. Then recirculate the DEIR for public comment. (Re DEIR recirculation see: CEQA Guidelines, sec. 15088.5; *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043 [The draft EIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded].)**

- 5) Policies 2.2.3.1, 2.2.3.2, and 2.2.3.5 are being revised to reduce/eliminate the 30% open space requirements associated with Planned Development applications, and promote infill and mixed use.

From draft EIR page 3.8-7:

*Policies 2.2.3.1, 2.2.3.2, and 2.2.5.4 would be amended to revise the 30% open space requirement for Planned Development to exempt certain types of residential development from that requirement and to allow high-density residential planned developments to provide for half of their 30% open space requirement in private yards. The effect of these amendments would be to marginally increase the potential density on those properties that would no longer be subject to the 30% open space requirement. This would include: residential Planned Developments consisting of five or fewer lots or dwelling units; infill projects within Community Regions and Rural Centers on existing sites 3 acres or less in area; Multi-Family Residential developments; and Commercial/Mixed Use developments. It is not possible to estimate the number of additional residences that might be built as a result of this change—there are too many variables to support more than speculation. However, given that the amendment*

*would allow the entire site to be developed, it is reasonably foreseeable that there would be situations where the amendments would result in an increase in the number of residences built on a qualifying parcel. In light of the potential for residential development under the General Plan provisions absent these policy amendments (i.e., up to an additional 20,000 residential units), the number of additional residences that could result from implementation of the amendments is not expected to be a substantial increase.*

Simple logic dictates that less open space means more area is available for building, and the conclusion regarding a lack of increase is wholly unsubstantiated. The golf course rezone and Town Center hotel parcel are multifamily infill within the Community Region. They are currently proposed for 1000 and 250 units respectively, which is not insignificant.

**Infill sites should be easy to identify and quantify. Please provide more information:**

- a. Provide a quantified analysis for these policies, including locations and sizes of likely infill parcels in all Community Regions and Rural Centers**
- b. The conclusion, that because there are "too many variables" the number of additional residences is insubstantial, is erroneous. The policy must be better defined if necessary and the number of variables reduced in order to analyze the impact.**

**6)** Policies 5.2.1.3 and 5.3.1.1 omit the requirement for connection to public water and sewer within Community Regions or Rural Centers for High Density Residential, Multi Family, Commercial and Industrial zones.

From the draft EIR page 3.8-8:

*"The proposed changes to Policies 5.2.1.3 and 5.3.1.1 would relax the current requirement that higher intensity development connect to public water and wastewater disposal systems, instead allowing development to proceed without connecting to public systems when public systems are not reasonably available. These changes would allow some development of parcels where it might not currently take place because of complications in connecting to public services. However, these parcels would continue to be limited by physical site constraints including availability of reliable groundwater supplies and ability to meet the building code requirements for individual septic system leach fields. Where reliable groundwater supplies are limited or the size of the site would not accommodate a large leach field, the resultant development would typically be of lower intensity than could be supported by public water and wastewater disposal systems. This practical limitation is reflected in existing Policy 5.2.3.5 which limits*

*residential density to one dwelling per five acres (i.e., a 5-acre minimum parcel size if proposed for subdivision) if the project is groundwater dependent. The effects of these policy changes therefore would not be expected to substantially change population growth associated with implementation of the General Plan.*

The statement that "these parcels would continue to be limited by physical site constraints" is a false assertion. And the follow up conclusion that "the resultant development would typically be of lower intensity than could be supported by public water and wastewater disposal systems" is either disingenuous or not well thought out: if it were true there would be no point in changing the policy.

**An actual analysis must be made under the assumption that the subject parcels this policy would apply to would be able to be developed.**

- a. Provide a list of the targeted parcels in the Community Regions and Rural Centers along with a map showing their locations**
  - b. Provide projected density and population increase potential based on the data under (a).**
- 7) The policy 7.1.2.1 revision eliminates the 30% slope development restriction. This was not evaluated for its impact on Housing & Population. However, because this county is in the foothills with significant areas of slope, the buildable area in the county can reasonably be expected to be increased.

**Additional Information is needed:**

- a. The potential increase in developable area should be quantified using slope maps, and**
- b. the corresponding increase in potential housing and population should be determined from the area accounted for in a)**
- c. an analysis using actual numbers rather than a generic descriptive word such as 'substantial' or 'insubstantial' must be provided**

Remember, the project description must include "precise boundaries" of the project on a "detailed map, preferably topographic." (See CEQA Guidelines, sec. 15124, subd. (a).) For this part of the project, that would be a map of areas of the county with private land over 30% slope. After completing tasks a through c, then recirculate the DEIR for public comment. (Re DEIR recirculation see: CEQA Guidelines, sec. 15088.5; *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043 [The draft EIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded].)

- 8) Proposed new policy 2.4.1.5 "encourages" infill development, yet there is no impact analysis included in the draft EIR. The rationale for not analyzing this change is based on the fact that the allowable development intensity is "fixed". This is a flawed assumption, considering the substantial revisions to the zoning ordinance allowing expansion of uses, and the multiple zone districts proposed for density increases.

From page 3.8-8

*"Proposed new Policy 2.4.1.5 promoting infill development would encourage development within existing communities when at least two parcels adjacent to the proposed development site are already developed. This Land Use Element policy is consistent with the Housing Element's infill implementation measure and reinforces existing policies that focus new development in Community Regions and Rural Centers. Because this policy would not expand on the allowable development intensities under the General Plan it is not expected to induce substantial population growth."*

The golf course rezone on EDH Blvd, and the Town Center apartment project are infill projects proposed within the Community Region. They are currently proposed for 1000 and 250 units respectively, which is not insubstantial.

**More information is needed:**

- a. **Provide a listing with corresponding maps of all potential infill parcels.**
  - b. **Review the surrounding parcels for zoning ordinance changes impacting them**
  - c. **Analyze the subject parcels for zoning changes applicable to them.**
  - d. **Provide overall analysis and projections of potential density increases to housing & population based on the review of a) through c), combining the impact of this new policy with the multiple zone changes.**
  - e. **specific policy verbiage must be provided in order to more fully evaluate the impact**
- 9) The actual impact of the proposed county-wide rezoning that is presumably for 'consistency' has been minimized and analysis deemed unnecessary. This is inaccurate and unsubstantiated.

From page 3.8-5:

*"Zoning Ordinance Updates*

*The project includes rezoning of individual parcels throughout the county as needed to make the zoning classifications on each property consistent with the property's General Plan designation. Where there is more than one zone classification that would be consistent with the General Plan, these changes generally adopt the least intensive of those zones. The residential development potential of the parcels is currently determined by the residential densities established in the General Plan. The rezonings would not change the residential*

development potential. As a result, the rezonings would have no incremental effect on the potential for residential development. This component of the ZOU would have no impact on existing population and housing and is not discussed further."

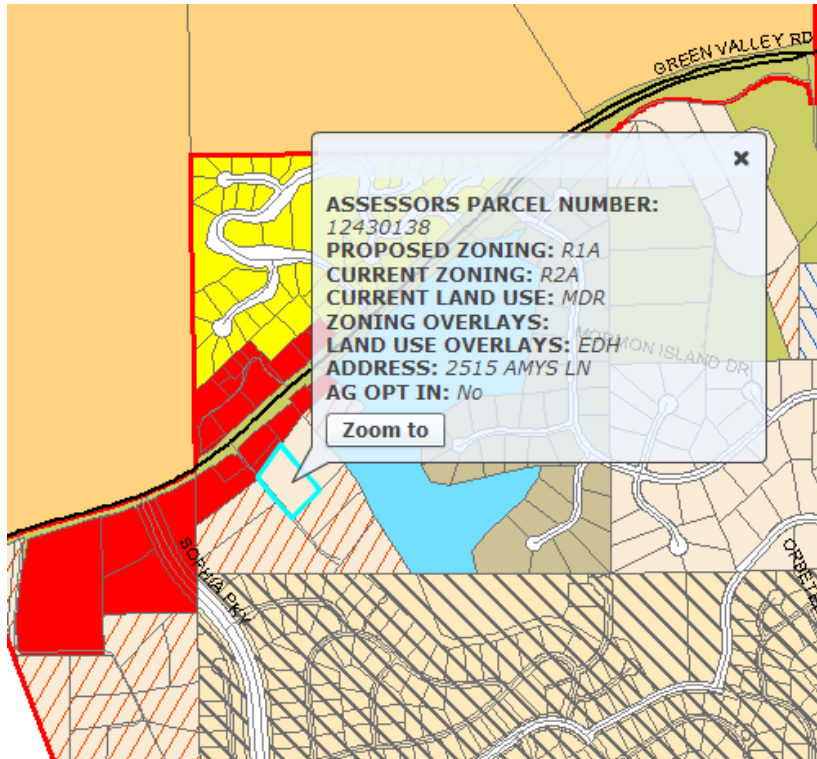
It is incorrect that the least intensive zone achieving consistency is proposed to be adopted for these parcels. It is also erroneous that these rezones have no incremental effect. Typically, a rezone to a higher intensity use (i.e.: R2A to R1A) would have a discretionary review to evaluate impact and compatibility, because 'consistency' does not equal 'entitlement'. But after a rezone is granted, a tentative map review does not consider the impact of increasing density as part of its discretionary review. On the subject parcels to be rezoned under the TGPA, there will be no site specific evaluation or noticing for public review to owners of neighboring parcels.

An example of a 'density equivalent' zone designation might be an RE10 parcel changed to RL10. Another would be AE to RA20, since both have minimum lot sizes of 20 acres. A change from either RE20 or AE, to an RL10 designation, is NOT equivalent, and cannot be considered as 'no impact'. Any changes that are not the 'equivalent' in resultant zoning density or type of use must require site specific review. They must also be analyzed for the effect on potential housing and population increase or decrease.

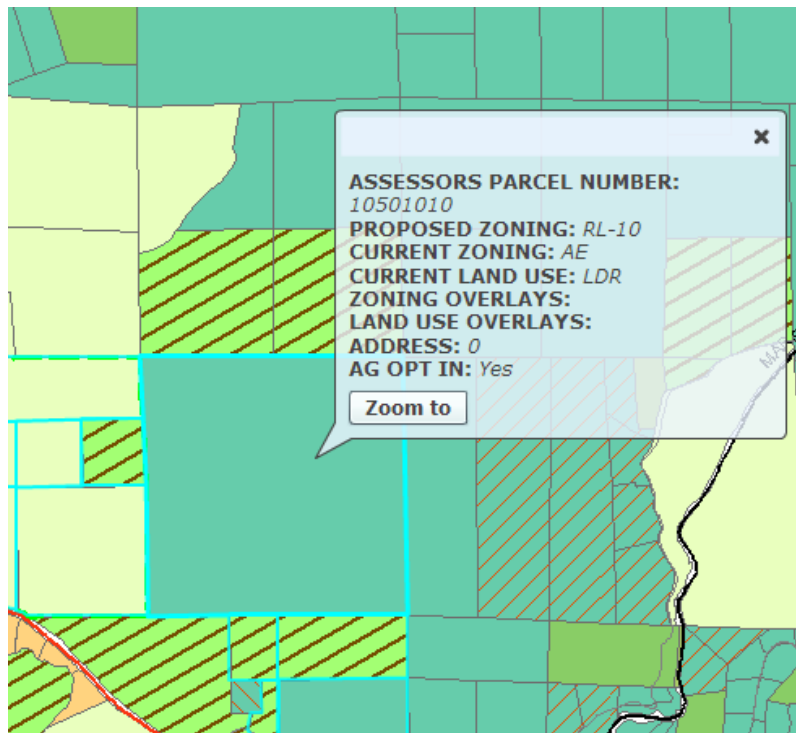
Specific examples of parcels to be changed are documented here (below), but note that these are only a sampling and do not represent a comprehensive list in any way. There are over 37,000 parcels proposed to receive a new zoning designation, out of approximately 108,000 parcels in the County, or 34 percent.

**examples of density increases not necessary for consistency follow:**

APN 124-301-38 & 37 (across from the Purple Place in EDH) changing from R2A to R1A in MDR for a 50% density increase.

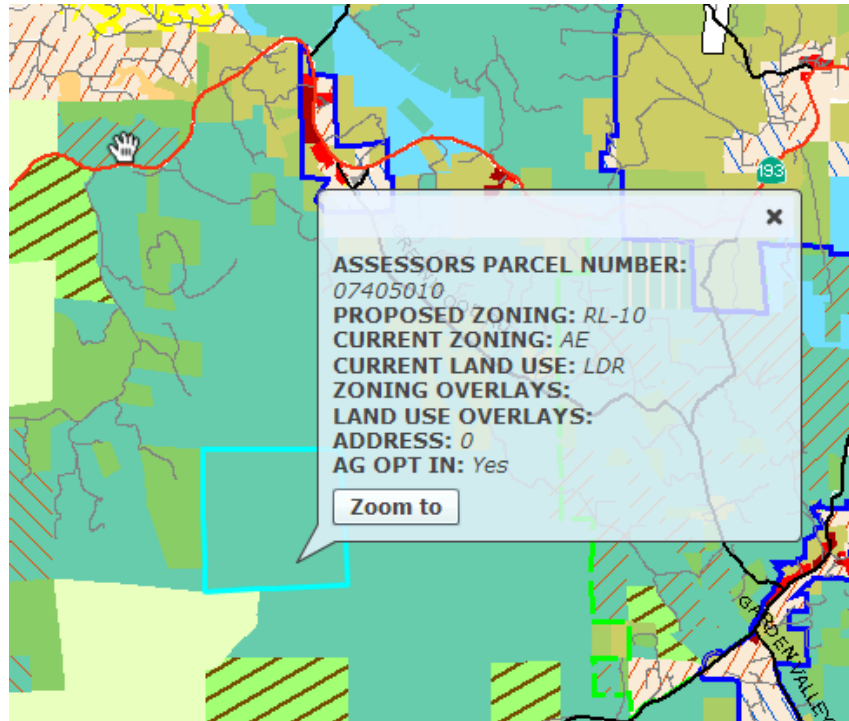


APN 105-010-10 is zoned AE with proposed change to RL10 (640acres), for a 50% increase in development potential. However, RL20 would retain similar density, and would be consistent under the existing matrix. The adjacent parcel is proposed for AG40.

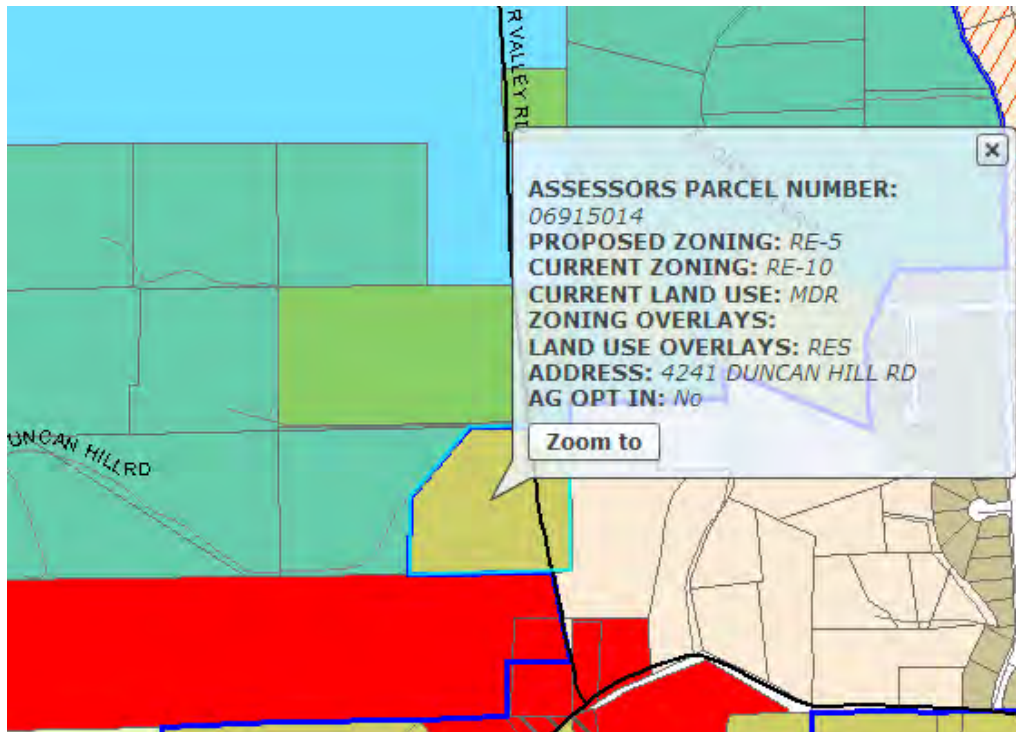




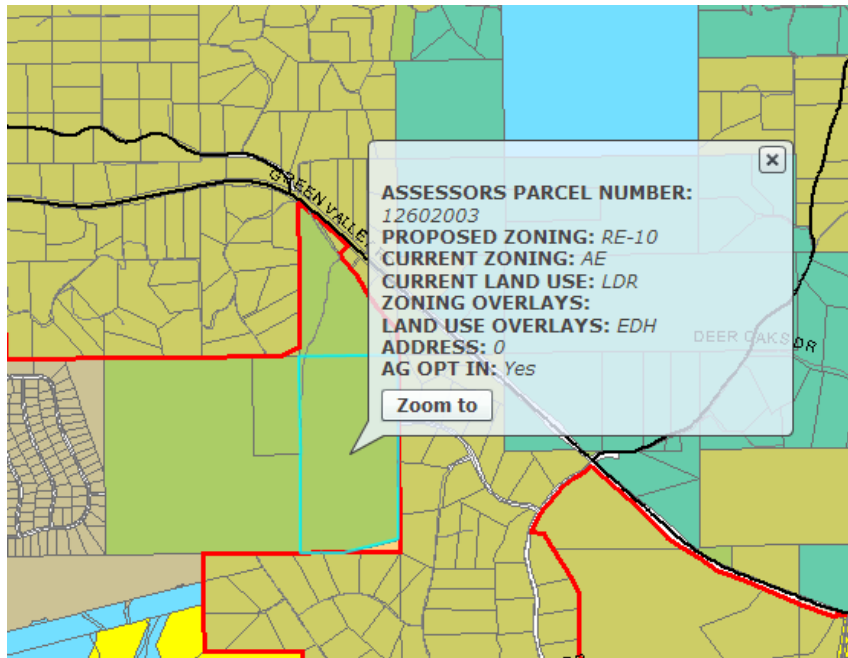
APN 074-050-10 AE changing to RL10 (640ac) (50% density increase). A change to RL20 would be equivalent density and would be consistent under the existing land use matrix.



APN 069-150-14 RE10 to RE5 (MDR) - a change of Land Use designation to LDR would also achieve consistency, would fit with adjacent parcels, and would not have the effect of increasing the potential density without a site specific review.

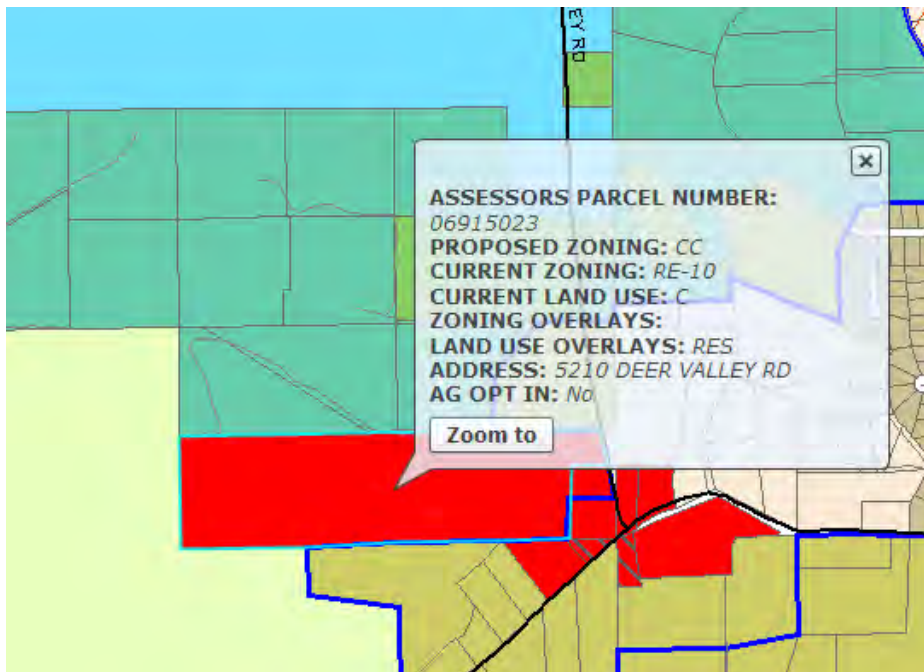


Proposed developments of Dixon Ranch & San Stino are more examples of automatic rezoning from Agriculture, to RE10 (126-020-03 shown is one of the parcels affected). Alternatively, the zoning could be changed to RL20 to stay in keeping with minimum 20 acre parcels and equivalent density.

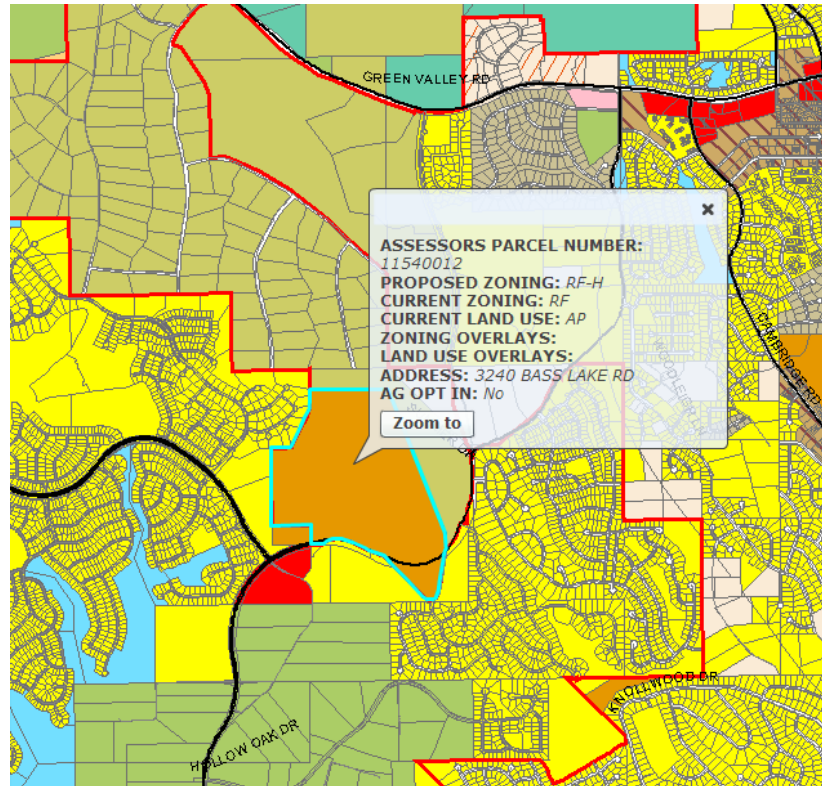


**change of use (residential to commercial):**

APN 069-150-23 RE10 to CC - this parcel is outside the Rural Center, but is being changed to Commercial use for the sake of consistency with its General Plan designation. The uses thereby allowed by right will have an impact on the surrounding area, but will not have received a site specific review. Would a large retail use create a housing surge in the immediate area?



The parcel containing Bass Lake (115-400-12) is currently passive open space. The project proposes a change to Recreational 'High' zoning, which is NOT equivalent, and would not be allowed under the EIR applicable to the parcel.



Bass Lake is covered under the EIR for the EDH Specific Plan, and should not be rezoned at all through the TGPA process, according to page 2-2, Section 2.2, of the draft EIR. Without a site specific review under a Specific Plan amendment, this parcel should not be changed.

**Partial Mitigation:** As mitigation for the 'surprise impact' of these changes upon unknowing residents adjacent to these parcels, a complete list of the parcels proposed for change should be provided to the public, and anyone adjacent to a parcel subject to zone change should be notified by mail of the specifics. *There has not been individual noticing to date.*

**Additional information and analysis is required:**

- a. Enumerate all of the zone changes in a list, sorted by zone designation.
- b. Quantify the acreage being converted from each zone designation.
- c. Analyze the impact on housing and population, within the different regions (Community Region, Rural Center, Rural Region)
- d. Clarify the changes with 'before' and 'after' maps.
- e. Changes from residential zoning to commercial or industrial zoning within the Rural Regions must be reviewed individually for potential uses, to

**determine if there will be incentive for substantial housing increase in the immediate surrounding area.**

- f. Additionally, e) must be evaluated for loss of residential housing, particularly multifamily.**
- g. Any changes from commercial to residential must be evaluated for density and an overbalance of housing to jobs.**

- 10) Policy 2.2.4.1 is being revised to change the density bonus calculation, in part to include the areas of greater slope now proposed to allow development. *APAC expressed this concern in the NOP comments regarding the population balance in Community Regions, but this was not addressed in the dEIR analysis.*

**Greater density is anticipated, and quantitative analysis must be provided that links these two policies (increased development on slopes with increased density bonus).**

Remember, "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." (Whitman v. Board of Supervisors (2d Dist 1979) 88 Cal.App.3d 397, 408, quoting Natural Resources Defense Council v. Callaway (2d. Cir. 1975) 524 F.3d 79, 88.)

- 11) Changes to Table 2-1 propose expansion of Commercial and Industrial zones into Rural Regions. This has not been acknowledged or analyzed in the draft EIR, as demonstrated on page 3.8-7.

From 3.8-7:

*The TGPA would revise certain General Plan policies, but would not substantively change the planned locations of future development and related growth.*

**There is potential for significant 'rearrangement' of areas of growth caused by proposing commercial expansion into the Rural Regions. This could result in unintended but significant encouragement of residential growth in the rural areas surrounding these parcels. Additionally the dynamics of the displacement of residential land should be evaluated. Analysis should be both general as well as address specific targeted areas for the potential impacts. See number 9 above.**

- 12) Policy 2.2.1.2 MFR is proposed for a revision allowing single family units in place of multifamily.

**This displacement of multifamily housing must be analyzed for the whack-a-mole affect, both in general terms and specifics. Where will replacement area**

**for true multifamily residential be located, and what will be the affect on the surrounding area & infrastructure & services in those areas.**

- 13) There is no reference to, or discussion of, policy 2.5.2.1 which omits the restriction of the residential component in mixed use to the 2nd floor, meaning the residential component would be allowed on the 1st floor. This is being proposed in Town Center for the EDH Apartments, with the commercial component being located elsewhere, "off site".

**The impact must be quantified in terms of lost commercial as well as the overbalance of housing to jobs.**

- 14) Policy 2.2.1.2 is being revised to allow 100% residential component in mixed use, and/or to allow the residential component to precede the commercial.

**This revision must be reviewed and analyzed alongside the policy 2.5.2.1 change, relative to the housing to jobs balance.**

- 15) Policy 2.2.1.2 proposes increase in *minimum* density in the multifamily zone district, from 5 units/ac up to 8 units/ac. This is a huge percentage increase that has not been analyzed generally, or for specific targeted sites.

**Please provide quantifying information and analysis.**

- 16) Policy 2.2.1.2 proposes to allow mixed use into multifamily zones, with commercial preceding the residential component. The displacement of multifamily housing could upset the balance in the housing element, causing state required multifamily housing to be accommodated elsewhere, in possibly inappropriate locations.

**Please provide analysis of potential impact.**

- 17) Regulation of building intensities (FAR and impervious surfaces; Table 2-3) is proposed for relocation to the ZOU, section 17.22.030. The Floor Area Ratio limit within the business park (R&D) has been removed, as well as the 'impervious surface' limit for multifamily residential.

**The effect on the business park population, corresponding housing in the immediate area, and impact on overall county population must be evaluated, quantitatively.**

- 18) Increase in density of HDR to 8 units per acre has not been evaluated for effect on population & housing.

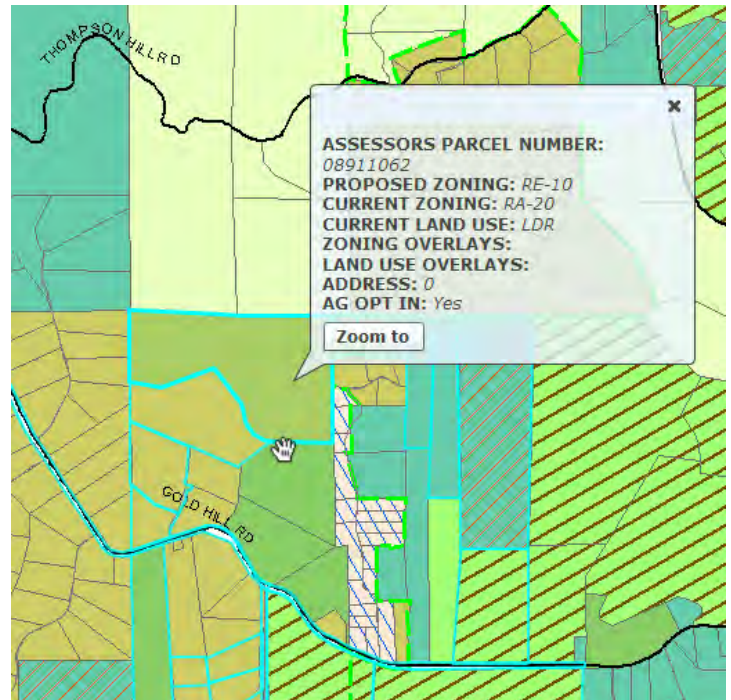
**This could potentially result in a substantial increase in population within the CR's, effecting available services and infrastructure and growth projections. Quantify the potential increase in density relative to both the Community Regions and to the county overall, and provide analysis.**

- 19) Regarding the changes proposed for Table 2-2 consistency:

As proposed, consistency is being achieved by rezoning parcels that have 20 acre minimum lot requirements within the LDR land use, down to a zone that has 10 acre minimum lot requirements. The net effect is a significant increase in density without individual public review of those parcels, and this increase must be evaluated and quantified in the draft EIR, for the potential increase in housing and population (see item 9).

Example: APN 089-110-62

As an alternative method for achieving the same goal of 'consistency', the LDR definition could be modified rather than the table, to allow zoning for 20 acre minimum sized parcels to remain within the Low Density land use designation, as they exist now, with no changes.



See underscored text below:

*"Low-Density Residential (LDR): This land use designation establishes areas for single-family residential development in a rural setting. In Rural Regions, this designation shall provide a transition from Community Regions and Rural Centers into the agricultural, timber, and more rural areas of the County and shall be applied to those areas where infrastructure such as arterial roadways, public water, and public sewer are generally not available. This land use designation is also appropriate within Community Regions and Rural Centers where higher density serving infrastructure is not yet available. The maximum allowable density shall be one dwelling unit per 5.0 acres. Parcel size shall range from 5.0 to 10.0 60 acres..."*

**Both alternatives (modifying text vs. modifying the table) should be analyzed for the affect on population density and the additional housing potential, as well as its impact on available services and infrastructure.**

- a. Please evaluate the impact of changing all AE and RE20+ zones countywide to 10 acre minimum zones (RL10, RA10, PA10) with the LDR General Plan designation, as proposed**
- b. Please evaluate the impact of revising the LDR definition to increase the parcel size range from 5.0 - 60 acres, or greater.**
- c. Provide a comparison and analysis of a) and b).**

**Please also provide the number of people who will not have been notified of the individual changes that are being proposed on parcels adjacent to them, who WOULD have been notified as required under a typical discretionary Zone Change application. This is a specific number of people, easily quantified by the 500' notification requirement for each of the parcels being rezoned via this process. This social effect will be a useful means of estimating the magnitude of the significance of the impact on the environment from the proposed project. (CEQA Guidelines, sec. 15131, subd. (b).)**

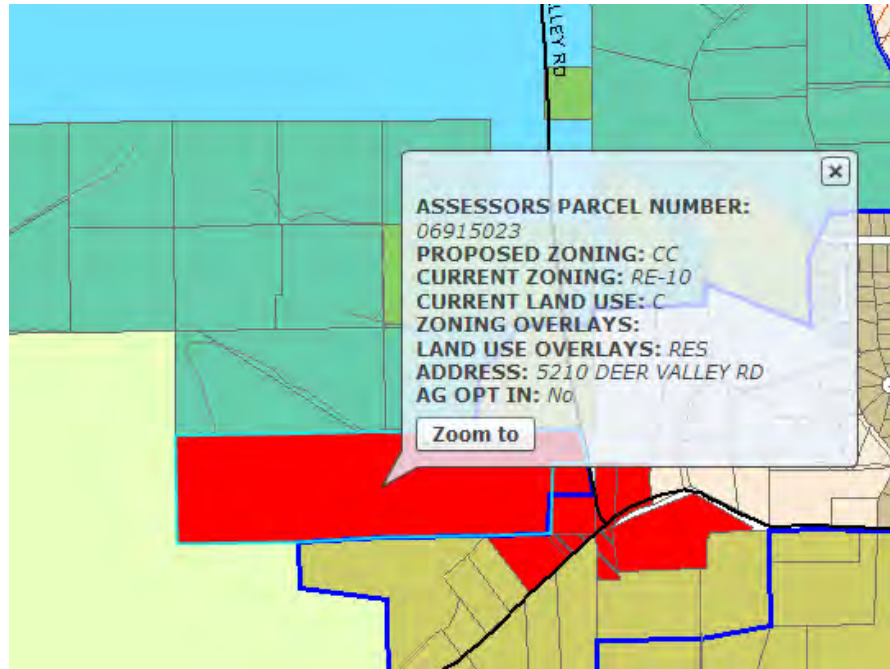
- 20) TGPA adds the General Plan Goal 2.1.4 of "opportunity areas" for infill development, to encourage development of vacant areas. APAC expressed concern in the NOP regarding the additional density per acre exceeding the population balance for Community Regions, but no analysis has been provided. They suggested the possible addition of verbiage requiring that 'infrastructure must already be in place', and this has also not been addressed. Both should be analyzed.**

- a. Provide map locations and/or parcel numbers for specific sites targeted for infill under new General Plan Goal 2.1.4.**
- b. Quantify the potential increase in density on these sites, where development is being encouraged, taking into consideration the increased density changes proposed under the various zones**
- c. Evaluate the effect of adding verbiage as suggested by APAC in the comments section.**

Note that many of the comments above identify the potential for the proposed project to have significant impacts by promoting additional housing development. (E.g., Comments numbered 1 thorough 10, 13 through 15, and 18 through 20.) "[T]he 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." (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4<sup>th</sup> 368.)

- 21) Table 2-1 and Policy 2.2.1.2 will expand Commercial and Industrial zone designations into the Rural Regions. The potential impact has been minimized and not analyzed for its impact on housing and population in the immediate area surrounding these sites.

A site specific example is APN 069-150-23. If for example, a Costco were to go here, the potential impact on housing and population in the immediate area would be substantial:



**Provide an accurate quantitative analysis of the number and size of parcels proposed to be changed automatically for "consistency", provide projections for sites with potential to change, and provide analysis based on the projections for a potential impact due to either increased or decreased housing opportunities.**

- 22) Policies 2.2.5.4, 2.2.3.1 & 2.2.3.2 reduce and eliminate open space and would allow in-lieu fees to replace open space. The impact analysis is speculative, with no quantifying data, and includes an assertion that additional units will be insubstantial because the General Plan is already adding 20,000 more units. This is wholly inadequate.

**Additional information is needed:**



- a. Review previously approved Planned Developments in the county and consider how their density would otherwise have increased under this policy, to develop a historical reference that could be used for comparison.
- b. Consider the possibility that any already existing developments could make changes to their current configuration to reduce open space and add more units under the new policy
- c. Consider both a & b with the addition of the density increases being proposed under policies 2.2.1.2, 2.1.1.3, and 2.1.2.5.
- d. Consider the significance of the impact of the 20,000 units not relative to the whole county, but primarily relative to the Community Regions and Rural Centers where this development would occur.
- e. Provide quantifying data and analysis taking a) through d) into account.

Note that it is impermissible to attempt to trivialize the significance of the impacts of the proposed project by comparing it to the magnitude of the impacts of the existing general plan (i.e. the 20,000 additional units). This ratio method of impact analysis has been repeatedly disapproved by the courts. (See discussion in *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 – 1026.) The relevant analytical question is will the additional units spawned by the proposed project considerably contribute to the cumulative impacts of past, present, and probable future development?

Furthermore, remember that 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.) Thus, the fact that the general plan is going to thrust 20,000 units worth of impacts on the county makes it more likely (not less likely) that the additional impacts of the proposed project will be cumulatively significant.

**23)** Page 5-10 includes the premise that "*The project would not substantially change the population projections under the existing General Plan.*" and concludes "*Consequently, the project's contribution to the cumulative impact on population and housing would be significant and unavoidable*" because that is how it was assessed in the 2004 General Plan.

The project is being compared to the existing General Plan rather than to existing conditions. This is contrary to the conclusion discussed under item 24. Normally, the existing setting serves as the baseline condition against which the impacts of the proposed projects are measured. (CEQA Guidelines, sec. 15125, subd. (a).) The County bears the burden of articulating a justification for varying from this norm. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.)

Furthermore, the basic premise is incorrect. The following list identifies possible causes for an increase in population over that anticipated in the existing General Plan, which must be evaluated. Consider this list as a starting point, and not necessarily a comprehensive list:

- a. Proposals to increase density allowed in specific zones under policies 2.2.1.2, 2.1.1.3, and 2.1.2.5
- b. Expansion of Residential uses into Commercial zones to create mixed use
- c. the expansion of Commercial into the Rural Regions creating new residential 'hubs' must be evaluated for potentially inducing growth
- d. the unequal density swap in the rezoning of individual parcels countywide for purposes of 'consistency' (see item 9)

24) While the TGPA is indeed limited and targeted, the ZOU is not. This paragraph from page 3.8-4 downplays the fact that the Zoning Ordinance Update is such a comprehensive overhaul that the authors were unable to provide the public with a final strike-out version.

An accurate and complete project description is necessary to fully evaluate the project's potential environmental impacts. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (App. 3 Dist. 2004) 122 Cal.App.4<sup>th</sup> 1591.) A description of the project is an indispensable component of a valid environmental impact report under CEQA. (*Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (App. 3 Dist. 2006) 144 Cal.App.4<sup>th</sup> 890.)

**The description of the ZOU must be revised in the EIR to give a true characterization of the scope of the changes. Then recirculate the DEIR for public comment. (Re DEIR recirculation see: CEQA Guidelines, sec. 15088.5; *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043 [The draft EIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded].)**

25) The 'key' changes listed under Impact Mechanisms (below) leave out the new zones created as well as the expansion of uses within existing zones, which are a substantial element of the revisions.

#### *Impact Mechanisms*

*The TGPA is proposing a limited number of amendments to the 2004 General Plan; the ZOU is an update of the County's existing Zoning Ordinance. The key changes—which include changes to policies pertinent to the residential density of mixed use projects, open space, infill development, connections to public water*

*and wastewater systems, and hillside development standards—are listed below. Existing conditions are the baseline against which the significance of the project's potential impacts is evaluated. Therefore, the reasonably foreseeable impacts of the TGPA and ZOU are compared to the existing environment and not to the provisions of the existing General Plan and Zoning Ordinance*

**The impacts in many cases are not compared to the existing environment as stated, but rather to the existing General Plan, as shown in item 23). The same statement is made on 3.8-5 under 'Method of Analysis'. Please select proper baseline conditions for impact analyses, and revise all of these references for consistency (as needed).**

- 26) The impact of proposed ordinance 17.40.120C does not include restrictions for small lots, and has not been evaluated relative to housing and population.

*C. Agricultural Employee Housing*

*1. A residential structure providing accommodation for six or fewer agricultural employees shall be considered a single-unit residential use and shall be allowed by right in any zone that permits single-unit residential uses.*

**Provide quantitative analysis of the potential impact of adding this policy. Look at the Community Regions and Rural Regions separately, as well as together. Note that the Community Regions have parcels with small farm ability and cannot be excluded. Additionally there is no restriction on providing this housing off site, so any parcel will have this capability whether it is designated for agricultural use or not. This could be a substantial impact.**

- 27) Page 3.9-32 presents the assumption that 26,000 jobs are to be created in the next 20 years, when only 44,000 have been created since the 'dawn' of El Dorado County.

**Provide some substantiation of this expectation. "The EIR shall cite all documents used in its preparation including, where possible, the page and section number." (CEQA Guidelines, sec. 15148.) Also, please evaluate where these jobs are to be created, and the type of income they are expected to generate (low-medium-high) to determine the type of housing that will be needed to accommodate that growth.**

- 28) Any of the proposed increases in density result in increased population as discussed in comments 1-26, and must be evaluated for the impact on schools countywide. The EDH area is already suffering impacted attendance at Oakridge High School and is projected to grow 2% in the next 2 years.

**Provide quantitative analysis of impact on schools**

- 29) The adopted Housing Element differs in projected housing and jobs than what is presented in the dEIR. Note that the pursuant to the Government Code, the general plan is required to be internally consistent. If the jobs and housing projections that are the basis of the TGPA are not reconciled with the projections used in the housing element, then adoption of the TGPA will render the General Plan internally inconsistent.

In addition, the jobs housing balance sought in the Housing Element is an important mitigation to avoid traffic congestion and air pollution impacts otherwise resulting from development under the general plan. Thus, the TGPA's inconsistency with the Housing Element is considered a significant impact under CEQA. (See, Initial Study Checklist, TGPA/ZOU DEIR, Appendix A, p. 2-28.) If the TGPA remains inconsistent with the Housing Element, the EIR must disclose this impact.

**Please explain & reconcile.**

**BAE report 2013, Table 5: Projected jobs 16,000 and projected new homes 16,000.**

**dEIR Table 3.9-6: 21,000 new homes and 27,000 new jobs are projected. (Scenario 1 is existing 2010 conditions/ Scenario 6 is 2035)**

- 30) Policy 2.5.2.1 could result in "intensification of development" and "an increase in allowable development intensity" according to table 3.1-2. This has not been acknowledged or mentioned in the Population and Housing section.

**Please provide quantitative data, then analyze for significant impacts.**

- 31) The justification for increasing residential density of mixed use projects (page 3.6-4) is to be consistent with 2009 amendments to Gov Code Sec 65583.2(c)(B)(3). But Gov Code Sec 65583.2(c)(B)(3) deems certain densities *appropriate* to accommodate low income housing; it does not *justify* increasing the density of an existing parcel in order to meet a jurisdiction's mandated low income housing requirements. The DEIR fails to provide any analysis showing that the increase in density is necessary to meet low income housing requirements. Further, it fails to show how merely increasing the density will encourage the development of low income housing.

- a. **Please provide an analysis of the County's mandated low income housing requirements for the next ten years including number of units, maximum income levels of buyers and maximum price of units.**
- b. **please provide an analysis of current housing units and development proposals under submission that would meet this requirement**
- c. **If a comparison between the requirements and our anticipated supply indicates a deficit, please provide an analysis of the least density change possible that would be necessary to meet this need**

**d. Explain how the newly adopted Housing Element was approved in 2013 without these changes.**

Remember, an EIR must contain facts and analysis, not just the bare conclusions of the agency, and must provide sufficient detail so that those who did not participate in its preparation can understand and consider meaningfully the issues raised by the proposed project. The decision to approve a project is a nullity if based upon an EIR that does not provide the decision makers and the public with the required information about the project. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> 1184.)

- 32) Many items listed under the 'Aesthetics' section are not listed under 'Population & Housing' although they most definitely have potential impact. Adding new zone districts for commercial, mixed use and multi-family, with unspecified density, provides no method for evaluation or comment. Here are a few examples from page 3.1-10:

*"Amend the zoning code to include a new Traditional Neighborhood Design zone within Commercial and Multi-Family Land Uses;  
d. Support medium and high density residential or mixed use development along commercial and transportation corridors;  
e. Develop and utilize approved standard plan types (i.e., zero-lot line, duplex with carriage house unit over garage, z-lot, bungalow, etc.) to streamline the approval process for infill projects."*

- a. Substantiate why this is not applicable to the Housing & Population section, or add it in.**  
**b. Provide specific information that can be evaluated and commented upon.**

- 33) Policies 2.9.1.1 through 2.9.1.2 require the County to monitor on an annual basis the rate at which land inventory is being developed, the population and employment growth and other useful indicators of the County's growth. Increasing or decreasing development potential and changing boundaries of Community Regions and Rural Centers may be proposed by the County every five years based on the results of this monitoring process. The EIR must analyze the impacts of the proposed General Plan Amendments with respect to the results of this monitoring process.

**Please provide the required monitoring results and the analysis of how the proposed General Plan Amendments reflect the trends of land inventory depletion, population and employment growth and other useful growth indicators**

Conclusion:

There are thirty three 'significant and unavoidable' impacts listed in Table 5-4 (dEIR, page 5-16). A single one of these impacts is sufficient cause for denial of the project. On the other hand, to approve the project, the County would have to find valid overriding considerations for each one of the 33 impacts listed. Such a statement of overriding considerations must be supported by a logical analysis of substantial evidence in the EIR or elsewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.) All feasible mitigation must be adopted, and other mitigation properly found infeasible, before an agency can make a statement of overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4<sup>th</sup> 1019.)

The significant and unavoidable impacts from the **Population and Housing** section, as listed on page ES-14:

*"PH-1: Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)"*

Additionally, this list cannot be considered complete until further information and analysis is provided per the dEIR comments, in order to fully ascertain the impacts of the extensive changes being proposed.

END SECTION COMMENTS

## Transportation & Traffic - Section 3.9 dEIR Review Comments

### **Transportation and Traffic Summary:**

The conclusions of the traffic section as contained in table 3.9-13 simply don't pass muster. Just looking at the high-level results shows that even after adding nearly 20,000 homes in the county, the number of cars traveling to Sacramento county in 2035 during the morning commute will decrease on highway 50 and Green Valley Road! The table purports to use 2010 numbers for baseline traffic, but these numbers don't even match the county's own DOT counts or CalTrans counts for Highway 50. Why does the study use outdated 2010 information when the county DOT has counts for 2013 and even some for 2014. Using an accurate baseline is an essential component of a traffic study. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.)

The county claims "parallel capacity" to highway 50 will solve our commute problems, but the table doesn't include any data for Saratoga Way, which would be the primary parallel road to Highway 50. Many other high-volume sections of roadway are simply not included in the analysis. 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.)

Also particularly problematic is that the future traffic forecasts include speculative road improvements. Highway 50 improvements that are not even planned at this point are assumed to be completed. CIP projects that get pushed further out in time every year (and change wildly in cost) are assumed to be completed. "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 assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, 92-93.)

Table TC-2 (this table shows road segments allowed to operated at LOS F) is proposed to be moved to "another document". Why is this being done? Would it then not be part of the General Plan?

### **Detailed review:**

Page 2-8 shows a proposed policy change: " Policies TC-1m, TC-1n(B), TC-1w: Road Improvements. These policies would be amended to make minor modifications to clarify language: TC-1m—delete "of effort"; TC-1n(B)—replace "accidents" with "crashes" to be consistent with transportation industry standard language; and TC-1w—delete "maximum." The DEIR does not analyze the impact of these wording changes.

The first change in Policy TC-1m: "The County shall ensure that road funds allocated directly or otherwise available to the County shall be programmed and expended in ways that maximize the use of federal and other matching funds, including maintenance of effort requirements." This proposed amendment changes the meaning of the policy. "maintenance of effort requirements" is a legal term pertaining to Federal Matching funds. **Please explain why this change is being proposed, the impact it will have to the meaning of the policy, and the impact it will have to funding for roads.**

**Policy TC-1w** New streets and improvements to existing rural roads necessitated by new development shall be designed to minimize visual impacts, preserve rural character, and ensure neighborhood quality to the ~~maximum~~ extent possible consistent with the needs of emergency access, on street parking, and vehicular and pedestrian safety. **Please explain why this change is being proposed, and the impact it will have on visual impacts, rural character, and neighborhood quality.**

Page 2-8 shows a proposed policy: " Table TC-2, Policy TC-Xb, and Policy TC-Xd. Level of Service Standards. This revision entails moving Table TC-2 to another document; if it is moved, all references to TC-2, including the references in TC-Xb and TC –Xd, would be amended."

**Is the "other document" part of the general plan? If so, where is the DEIR evaluation of this document? If the other document is not part of the general plan, does this then mean that Table TC-2 would then not need a general plan amendment in order to be revised (or deleted)? Please explain the impact of moving table TC-2 to "another document."**

Page 2-9 shows a proposed policy change: " Policy TC-Xi: Planning for U.S. Highway 50 Widening. this policy would be amended to allow for coordination of regional projects to be delivered on a schedule agreed to by related regional agencies, thereby excluding regional projects from the scheduling requirements of the policies of the General Plan" **Will this exempt highway 50 from the requirements of Policy TC-Xf? Please analyze the impact to traffic on highway 50 in the county if widening of highway 50 no longer needs to meet the scheduling requirements of the policies of the General Plan.**

Page 2-9 shows a proposed policy change: " Policy TC-1y: Employment Cap. The El Dorado Hills Business Park employment cap limits would be analyzed and either amended or deleted."

**Please analyze the potential impact to traffic if the employment cap is amended or deleted. State the mitigations required to ensure that traffic on roads in El Dorado Hills is not worsened by amending this policy.**

Page 2-9 shows a proposed policy change: " Policies TC-Xd, TC-Xe and TC-Xf: Level of Service Standards. These policies would be amended to clarify the definition of "worsen"; to clarify what is required if a project "worsens" traffic; to identify the methodology for traffic studies (e.g., analysis period, analysis scenarios, methods); and to identify the timing of improvements." This process is very vague, and could have significant impact if certain changes are made. For instance, if the timing of improvements is relaxed, this would have a significant impact on traffic for a longer period of time. **Please analyze the potential impact of the**



changes (e.g. timing of improvements, definition of "worsen", etc.) to these policies. State the mitigations required to ensure that traffic is not worsened, and that the period of delay to completion of a mitigation project is not pushed further out in time.

Page 3-9.23, bullet 3 states: "The potential impact of additional residential density was considered in the analyses that follow." **How, specifically, was this impact considered? Was each residential area evaluated at the proposed maximum density for traffic impact?**

Page 3-9.23, bullet 4 states: "New objective and policies encouraging infill development. Any future infill would be subject to the density and intensity limitations of the General Plan. As a result, this change would not incrementally alter land use patterns or intensity." **This statement is demonstrably false since the county currently has in process a proposed project (recommended by staff for approval) to convert mixed-use commercial into high density housing (55 units per acre, more than double what is currently allowed under the general plan). As a result, the DEIR must examine the impact of possible conversion of other commercial and/or high-density residential to an even higher density than allowed by the TGPA/ZOU.**

Page 3-9.24 states: "these changes generally adopt the least intensive of those zones." **Are there cases where the changes do not adopt the least intensive of the zones? How many? If so, what are these parcels, and what impact do they have on the traffic in those areas (and overall)?**

Page 3-9.24 states: "The rezonings would not change the development potential. As a result, the rezonings would not change the expected traffic impacts that will occur as a result of implementation of the General Plan." **However, the ZOU/TGPA process "creates" many new entitlements without individual discretionary review. For example, under ZOU/TGPA changes, the Dixon Ranch property near Green Valley Road would be automatically rezoned from 3 Ag parcels to approximately 28 parcels. While the resulting designation is consistent with the general plan, there is no individual review of each project in this bulk process. There are many such proposed "automatic rezones" and the traffic impact of each of these needs to be included in the cumulative impact study. When evaluating a change, the proper baseline is the current condition, not what is allowed under the general plan.** The EIR "must describe maintenance of the existing environment as a basis for comparison of the suggested alternatives to the status quo." (Dusek v. Anaheim Redevelopment Agency (4th Dist. 1986) 173 Cal.App.3d 1029, 1043 [219 Cal.Rptr. 346].)

Page 3-9.24 states: "Move Table TC-1 from the General Plan to Standards Plans or Land Development Manual." **What effect does the movement of this table have? Are the "Standards Plans or Land Development Manual" part of the general plan? If so, where is the**

**DEIR evaluation of these manuals? If they are not part of the general plan, does this then mean that Table TC-1 would then not need a general plan amendment in order to be revised (or deleted)? Does the County intend to revise or delete the table?**

Page 3-9.24 states: " For the project (i.e., TGPA/ZOU), LOS was determined by comparing existing and forecasted traffic volumes for selected roadway segments with peak-hour LOS capacity thresholds. These thresholds are shown in Table 3.9-3 and were developed based on the methodologies contained in the *Highway Capacity Manual* (HCM) (Transportation Research Board 2010)." The 2010 HCM clearly states that " Because passing capacity decreases as passing demand increases, two-lane highways exhibit a unique characteristic: operating quality often decreases precipitously as demand flow increases, and operations can become "unacceptable" at relatively low volume-to-capacity ratios."

It is clear that simple volume/capacity ratios are an inadequate measure of LOS on 2-lane highways and arterials, and over-state the actual capacity of road segments. **Does the TDM include the following factors as required by the HCM 2010? If not, please explain the rationale for not including each one:**

1. Highway Class per segment
2. lane width
3. shoulder width
4. terrain
5. % no passing zones
6. Directional split
7. Peak hour factor
8. access point density
9. % heavy vehicles
10. signal spacing

**Class I, II, and III must be evaluated for LOS by the method stated in Chapter 15 of the 2010 HCM, and using table 15-3:**

LOS	<u>Class I Highways</u>		<u>Class II Highways</u>	<u>Class III Highways</u>
	ATS (mi/h)	PTSF (%)	PTSF (%)	PFFS (%)
A	>55	≤35	≤40	>91.7
B	>50-55	>35-50	>40-55	>83.3-91.7
C	>45-50	>50-65	>55-70	>75.0-83.3
D	>40-45	>65-80	>70-85	>66.7-75.0
E	≤40	>80	>85	≤66.7

**The information for each road segment in the study area must be updated to include the factors (1-10) above. The DEIR must be updated to utilize the methods specified in Chapter 15 of the 2010 HCM for all Class I, II, and III highways (or equivalent) in the study area.**

HCM 2010, Chapter 15 states: "Isolated signalized intersections on two-lane highways may be evaluated with the methodology of Chapter 18, Signalized Intersections. Two-lane highways in urban and suburban areas with multiple signalized intersections 2 mi or less apart should be analyzed as urban streets or arterials with the methodology of Chapter 17, Urban Street Segments." **The DEIR must be updated to use the methods described in HCM 2010 for "Urban Arterials" (including signalized intersections) for study area roads designated as "major arterial", such as El Dorado Hills Blvd, segments of Green Valley Road, Saratoga Way, Sunrise Blvd., etc.**

Page 3-9.27 states: "El Dorado County's updated Travel Demand Model (TDM) was used to model six roadway network scenarios for the TGPA/ZOU project. This analysis indicates that U.S. Highway 50 will not reach LOS F in 2035 under any of the six roadway network scenarios analyzed." **This statement calls into question the validity of the EDC TDM. Clearly, as is stated on page 3-9.27, a segment of Highway 50 today operates at LOS F. The TDM does not show this segment as LOS F for any dates or scenarios, please explain why not.**

Page 3-9.27 states: "... Caltrans Operations staff has also stated that once the ramp metering for the westbound El Dorado Hills Boulevard on-ramp is operational, LOS on this segment should improve." **Please provide documentation of this statement from CalTrans operational staff. By "improve", did they state that the segment would no longer be LOS F? Did they state that by metering traffic onto highway 50, LOS on El Dorado Hills Blvd. would drop? What will be the result of ramp metering on El Dorado Hill Blvd LOS, as well as the WB on-ramp?**

Page 3-9.27. Much justification of the county TDM is placed upon the "superior zonal resolution (many times more than SACMET) enables a much more detailed analysis of county roadways." The county TDM can have great detail, yet poor representation of the larger area, improper initial conditions, and arrive at an unusable result. **How much of a difference does this "superior zonal resolution" make in the highway 50 traffic forecasts?**

Page 3-9.27 states: "For example, SACMET's land use identified the El Dorado Hills Business Park as "retail," whereas EDC's TDM more accurately depicts its uses as "industrial" and "office." SACMET also showed golf courses, churches, and storage facilities in EDC as retail. Since retail uses result in higher trip generation rates than industrial, office, golf course, and church uses, these discrepancies could lead to differences in roadway impacts if not corrected." Retail is allowed in the business park (and exists there today), so this cannot be entirely discounted. Secondly, retail may generate fewer peak hour trips than industrial and office space. **Did the SACMET model have any areas that were identified as lower-traffic generating land uses than the county TDM assumptions? What are those areas, and what are the land uses in those areas? How much of a difference does this make in the modeling of highway 50**

**peak hour trips? The DEIR needs to provide table showing the difference in peak hour trips on highways between the EDC model and the SACMET model, and describe why the differences exist.**

Page 3-9.28 states: "Caltrans and El Dorado County use different practices regarding how traffic counts are collected and used to model future transportation system performance." CalTrans has wire loops and other mechanisms for real-time counts on Highway 50 in the most populated areas of El Dorado County. This data can be processed to exclude weekends and holidays. The second "justification" for using the TDM instead of CalTrans model does not pass muster. **How and when does the county collect traffic counts on Highway 50 for each segment? Please show a table of differences between the county collected data for Highways 49 and 50, and the CalTrans data for the baseline year (2010).**

Page 3-9.28 tries to further justify the use of the TDM rather than CalTrans data because CalTrans "is planning for LOS F on U.S. Highway in the future, while El Dorado County is tasked with maintaining LOS E on U.S. Highway 50 as required by the General Plan." This statement makes no sense. Since segments of US Highway 50 are already at LOS F (as physically measured by CalTrans), clearly the county planning process has not worked. CalTrans indicates that there is no way to mitigate the traffic to better than LOS F by 2035 given the amount of growth in the county. The fact that the TDM does not concur (by a large amount e.g. LOS C vs. LOS F) with the CalTrans initial conditions in 2010, this makes the county TDM highly suspect as a useful planning tool for Highway 50 traffic. **Please explain how the county TDM will ensure roadway segments will not reach improper LOS (LOS E, or LOS F, as appropriate), when the TDM results are demonstrably incorrect today.**

Page 3-9.28 states that CalTrans and the County use different annual growth projections (e.g. SACOG's vs. County). **The CalTrans/SACOG rate is 0.72% AGR, and the county uses 1.03% AGR. Given that CalTrans uses a more conservative growth rate (about 30% lower than the county), please explain why their traffic forecasts for 2035 are higher volume than that of the TDM.**

Page 3-9.28 states: "For these reasons, El Dorado County has chosen to use its methodology in this analysis." As has been shown above, these "reasons" are all highly suspect. EDC needs to calculate these traffic numbers conservatively (i.e. not err on the low side) since erring on the low side would place the roadway network at risk of more LOS F segments.

"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].)

**The DEIR needs to show in detail how each of these factors makes a difference, how much that difference is, and explain why the TDM provides a more realistic forecast of Highway 50 traffic in 2035.**

Page 3-9.31 indicates that Scenario 1 is a 2010 baseline. This is four years old. In 2010, the county was still recovering from a recession, and traffic in 2010 is not necessarily representative of current traffic on many road segments. Using an accurate baseline is an essential component of a traffic study. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.)

**In the Final EIR, please explain the rationale for using this old information when 2013 and some 2014 traffic counts are available on the EDC website. Please run the scenarios 1-6 using 2013/2014 traffic data?**

Page 3.9-32 states: " Three baselines are represented in the scenarios: 2010, 2025 with future CIP/MTP road improvements (assumes that planned roadway improvements have been constructed), and 2035 cumulative impact."

As explained in by the California Supreme Court,

"Even when a project is intended and expected to improve conditions in the long term— 20 or 30 years after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. Though we might rationally choose to endure short- or medium-term hardship for a long-term, permanent benefit, deciding to make that trade-off requires some knowledge about the severity and duration of the near-term hardship. An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project's impacts in the meantime, does not "giv[e] due consideration to both the short-term and long-term effects" of the project (Cal. Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA's informational purpose well." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (August 5, 2013) 57 Cal.4th 439)

In the Final EIR, please add an additional point of analysis in 2020, before the planned roadways improvements have been completely constructed.

Please list all assumptions in the cumulative impact. This would include (but not limited to):

- A list of CIP and MTP road improvements, their scheduled completion dates, and funding sources/finance plans for each showing a "reasonable expectation" that these projects will in fact be fully funded and completed by the dates specified.
- Document the impact of the federal Highway Trust Fund projected shortfall on these projects.
- A list of approved but not yet constructed projects in El Dorado County and Eastern Sacramento County (including parcel counts) that were included in the cumulative scenarios.
  - For example, Easton, the 10,000+ homes south of highway 50 in Folsom. The adopted plans for Vineyard Springs, North Vineyard Station, Florin-Vineyard Gap, etc.
  - Alto, Diamante, La Canada, Migianella, Summerbrook, Silver Springs, Bass Lake, Rancho Dorado, etc.
  - The remaining approved units in Serrano, Valley View, Promontory, Carson Creek, etc.
- A list of proposed projects in El Dorado County and Eastern Sacramento County (including parcels counts) that were included in the cumulative scenarios.
  - For example, Marble Valley, Lime Rock, Dixon Ranch, Central EDH, San Stino, Town Center Apartments, Wilson Estates, etc.
  - NewBridge, Jackson Township, West Jackson Highway, Cordova Hills, Mather South, etc.

Page 3.9-32 includes Table 3.9-6. In this table, the current (2010) number of households is listed as 55493. Scenario 6 projects 76,270 households, leaving an increase of 20,777 households. In the same table, Employment increases from 44,468 to 71,181. This is an increase of 26,713 jobs. This means that new jobs would need to be created at the rate of 1.29 jobs per new household on an average throughout the county.

Please provide the following information about assumed job creation (26,713 jobs) in scenario 6 as all of these factors impact how much traffic is added and which roads are impacted.

- Location of jobs/job centers
- Types of jobs to be created
- Projected salary ranges of these jobs (determines where the employees can afford to live)
- Price range of homes in each new area (determines what kind of job salary ranges the residents need)
- Assumptions about where the new employees will live (e.g. will they need to commute from Sac county, can they afford to live in El Dorado Hills, Cameron Park,

**Shingle Springs, etc. given the latest average housing price data from the EDC Association of Realtors:**

RESIDENTIAL SALES BY AREA --- YEAR-TO-DATE (5/1 - 5/31)

ZONE	AREA	2013 # OF SALES	2013 AVG. PRICE	2014 # OF SALES	2014 AVG. PRICE
12601	CAMERON PARK	166	\$340,890	128	\$340,533
12602	EL DORADO HILLS	354	\$495,054	304	\$593,723
12603	SHINGLE SPRINGS	44	\$397,484	47	\$475,680
12604	RESCUE/NORTH AREA	20	\$412,630	26	\$468,528
12605	LATROBE/SOUTH AREA	12	\$467,693	8	\$451,125
12701	PLACERVILLE	114	\$248,210	99	\$296,057
12702	DIAMOND SPRINGS/EL DORADO	54	\$222,395	72	\$284,383
12703	PLEASANT VALLEY	44	\$310,108	24	\$345,246
12704	SOMERSET/SOUTH COUNTY	50	\$199,271	42	\$245,522
12705	LOTUS/COLOMA	4	\$348,125	6	\$246,667
12706	GREENSTONE, GOLD HILL WEST	21	\$413,929	11	\$489,864
12707	SWANSBORO	9	\$167,422	14	\$240,692
12801	CAMINO/CEDAR GROVE	28	\$320,853	32	\$311,102
12802	POLLOCK PINES/SLY PARK	100	\$183,473	75	\$223,172
12803	AMERICAN RIVER CANYON	6	\$178,917	7	\$271,004
12901	GEORGETOWN DIVIDE	52	\$202,313	47	\$251,166
12902	PILOT HILL/COOL	48	\$262,800	35	\$304,754
12903	NORTH COUNTY	5	\$268,000	3	\$368,330

- The county's past track record indicates that creating this many jobs will be extremely difficult. **Please show a plan that lays out how this large number of jobs will be created.**

From the 2013 report prepared by BAE for use in the El Dorado County TDM, the numbers are quite different than those presented and used in the TDM. The BAE report list growth in EDC with the following tables:

**Table 1: Baseline Conditions, West Slope, Less City of Placerville**

	<u>2010</u>
Population (a)	139,941
Housing Units (a)	59,668
Employment (b)	32,597

**Notes:**

(a) Based on 2010 Census. El Dorado countywide population, minus population in census tracts located in Tahoe Basin, minus City of Placerville. Tahoe Basin is defined by census tracts 302, 303.01, 303.02, 304.01, 304.02, 305.02, 305.04, 305.05, 316, 320, 9900.

(b) Based on Draft SACOG TAZ-level employment estimates for 2008 and projections for 2014, for El Dorado County West Slope, less employment in City of Placerville area. Assumes constant average annual rate of growth between 2008 and 2014, to estimate 2010 employment.

Sources: U.S. Census, 2010; SACOG, 2012; BAE, 2012.

**Table 3: Projected Residential Growth, West Slope of El Dorado County, 2010-2035**

	<u>2010</u>	<u>2015</u>	<u>2020</u>	<u>2025</u>	<u>2030</u>	<u>2035</u>
Total Housing Units	59,668	62,803	66,102	69,575	73,230	77,077

The job market growth numbers are also quite different in the BAE report:

<u>Market Area (a)</u>	<u>New Jobs Each Period (b)</u>					<u>Total</u>
	<u>2015</u>	<u>2020</u>	<u>2025</u>	<u>2030</u>	<u>2035</u>	
#1 - El Dorado Hills	1,414	1,488	1,567	1,649	1,735	7,853
#2 - Cameron Park/ Shingle Springs	734	773	813	856	901	4,077
#3 - Diamond Springs	214	225	237	250	263	1,188
#4 - Unincorporated Placerville Area	101	107	112	118	124	563
#5 - Coloma/Gold Hill	202	212	224	235	248	1,121
#6 - Pollock Pines	0	0	0	0	0	0
#7 - Pleasant Valley	101	106	112	118	124	561
#8 - Latrobe (c)	22	23	24	25	27	121
#9 - Somerset	0	0	0	0	0	0
#10 - Cool/Pilot Hill	0	0	0	0	0	0
#11 - Georgetown/Garden Valley	31	33	35	36	38	174
#12 - Tahoe Basin	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
#13 - American River	8	9	9	10	10	46
#14 - Mosquito	67	71	74	78	82	373
<b>Total</b>	<b>2,895</b>	<b>3,047</b>	<b>3,207</b>	<b>3,376</b>	<b>3,553</b>	<b>16,078</b>

**Notes:**

Figures in columns may not sum to totals due to rounding.

For the geographic boundaries of the various Market Areas, please refer to Figure 1 on page 9.

(a) Converts new housing units from Table 3 into new households assuming 7.98 percent average vacancy rate, from Table 2.

(b) Projects new jobs based on SACOG's projected ratio of new jobs to new households, from Table 4.

(c) Due to an anomaly in SACOG's projections for Market Area 8, BAE utilized the average jobs/housing ratio from all other market areas to estimate the Market Area 8 job growth.

Sources: U.S. Census, 2010; SACOG, 2012; El Dorado County, 2012; BAE, 2013.



The initial conditions for any simulation/forecast can make a large difference in the results. As shown, the number of households in the BAE report in 2010 is 59,968 vs. the number used in the DEIR Table 3.9-6 is 55,493. There is a stark difference in the number of jobs in the two reports. The BAE report lists 32,597 jobs in the county in 2010, the DEIR lists 44,468.

In the 2035 projections for total households, the BAE report shows 77,077 while Scenario 6 in the DEIR shows 76,270. This difference does not seem to be that significant. What is very significant is the difference in total number of jobs. The BAE report shows 16,078 new jobs, while DEIR Scenario 6 shows 26,713 new jobs.

**Please explain why baseline condition numbers from the BAE report for number of households and Employment are not used in the TDM analyses presented in the DEIR. Please explain why there is such a large discrepancy in the projected number of jobs in 2035.**

Page 3.9-32 states that "The travel demand model (TDM) analysis evaluated 227 roadway segments for each of the six study scenarios to evaluate effects on the County's roadway network." This is insufficient to determine the project impact. Measure Y and the subsequent General Plan policies require that "all intersections and interchanges" be examined. **The DEIR must be amended to include intersections and interchanges in the analysis of scenarios 1-6.**

Table 3.9-7 shows Minimum LOS for segments 44 and 151 to be "4AU". This is a road classification, not a LOS indication. **Please amend the table.**

Page 3.9-33 states: "Two segments of Green Valley Road would operate at an unacceptable LOS F and are expected to continue to operate at LOS F in the near future. Because these levels of service reflect existing conditions without the project, no project impacts would occur." *This is incorrect*, as the project may still "worsen" the LOS F conditions as defined in the General Plan, in which case mitigation measures spelled out must be instituted. 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].)

**The EIR must examine the LOS F segments which are made worse (as defined by General Plan Policy TC-Xe) by the project and list the following information: A) % increase in AM and PM peak hour traffic, B) ADT, C) The number of additional AM and PM peak hour trips. Any road segments that meet any of the criteria of "worsen" in this context represent a significant impact, and must be listed in the DEIR.**

Page 3-9.38 states: "One of the roadway segments, Missouri Flat Road, is allowed to operate at LOS F per General Plan Policy TC-Xa." While this is true, the General Plan also states that there is a maximum v/c ratio for two segments of that road.

1. Highway 50 to Mother Lode Drive may not operate at a v/c worse than 1.12

2. Mother Lode Drive to China Garden Road may not operate at a v/c worse than 1.20

**Please state the future cumulative v/c ratios for these segments of Missouri Flat Road. If these ratios are worse than allowed in the general plan, provide the subsequent necessary mitigation measures in the DEIR.**

Page 3-9.39 states: " Because the County has specific traffic mitigation policies that require future development projects to construct adequate roadway facilities to maintain acceptable levels of service and payment of fees that go toward making regional traffic improvements designed for improving traffic operations, potential impacts are considered less than significant." This is incorrect. The County does not require development projects to construct adequate roadway facilities to maintain acceptable levels of service. Depending on the project and impact, many development projects simply pay a fee to help pay for a project that may be 10 years or more away. In many cases, projects listed in the CIP keep slipping out in time and changing drastically in cost. For instance, CIP project #71324 (**Saratoga Extension Phase I**) has the following revisions to schedule and cost (from county DOT website):

EDC CIP	Project Completion Date	Estimated Cost
2006	06-07	10,000,000
2007	10-11	10,694,269
2008	09-10	16,298,226
2009	13 - 18	15,062,236
2010	14-19	15,279,510
2012	"after 2021"	11,541,347
2013	"after 2022"	11,541,347
2014	"FY 24/25 - 33/34"	11,541,347

Another example is CIP project #72332 (**EDH Blvd realignment**):

EDC CIP	Project Completion Date	Estimated Cost
2004	06-07	\$ 2,689,996.00
2006	Jul-08	\$ 5,033,559.00
2007	After 2011	\$ 5,713,826.00
2008	After 2012	\$ 14,268,688.00
2009	After 2018	\$ 13,899,022.00
2010	after 2019	\$ 11,694,000.00
2012	After 2021	\$ 9,451,507.00

2013	"FY 23/24 - 32/33"	\$	9,452,000.00
2014	"FY 24/25 - 33/34"	\$	9,452,000.00

These two examples are not unique--there are many such projects where the dates get pushed out every year and the estimated costs jump wildly.

"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.) **In the Final EIR, please fully disclose the County's repeated failures to adequately fund and to promptly deliver transportation projects to mitigate traffic congestion impacts.**

**Please describe the process that will be used by the county to ensure that 1) TIM fees are adequate to cover the construction of the mitigation at 10 and 20 years in the future. 2) Mitigations in the CIP do not get pushed out in time, or removed from the CIP. Describe the monitoring program for this, why it has failed in the past, and why it will succeed in the future.** "[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.)

**Please analyze as an alternative to the current CIP program (which has not been working), amending of Policy TC-Xf as follows:**

***At the time of approval of a tentative map for a single family residential subdivision of five or more parcels that worsens (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the County shall ~~do one of the following:~~ (1) condition the project to construct all road improvements necessary to maintain or attain Level of Service standards detailed in this Transportation and Circulation Element based on existing traffic plus traffic generated from the development plus forecasted traffic growth at 10-years from project submittal; or (2) ensure the commencement of construction of the necessary road improvements are included in the County's 10-year CIP.***

***For all other discretionary projects that worsen (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the County shall ~~do one of the following:~~ (1) condition the project to construct all road improvements necessary to maintain or attain Level of Service standards detailed in this Transportation and Circulation Element based on existing traffic plus traffic generated from the***

**development plus forecasted traffic growth at 10-years from project submittal; or (2) ensure the construction of the necessary road improvements are included in the County's 20-year CIP.**

Page 3-9.39 states: "The improvements are shown by roadway segment in Table 3.9-1. These improvements are considered concept facilities, meaning they are the roadway improvements that are needed in the next 20 years (California Department of Transportation 2010). The TDM included these improvements in the analysis of the study scenarios. However, there is no assurance that these improvements to U.S. Highway 50 would be in place in 20 years. Therefore, potential short-term impacts would be significant and unavoidable until these improvements are in place." [emphasis added]

**Since there is currently no plan by CalTrans or other agencies to provide "concept facility" improvements within 20 years, the DEIR must assume these improvements are not constructed within the Project Time Horizon. Scenarios 3,4,6 must then be re-run with that assumption.**

Page 3-9.40 states: "These measures would reduce or avoid decreasing LOS and require payment of TIM fees that would go toward making regional traffic improvements designed for improving traffic operations. Therefore, potential impacts would be less than significant." Improvements may not take place for 10 to 20 years after the completion of a project given the TIM fee arrangement. This could create a significant impact for 10 to 20 years (or more).

As explained in by the California Supreme Court,

"Even when a project is intended and expected to improve conditions in the long term—20 or 30 years after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. Though we might rationally choose to endure short- or medium-term hardship for a long-term, permanent benefit, deciding to make that trade-off requires some knowledge about the severity and duration of the near-term hardship. An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project's impacts in the meantime, does not "give due consideration to both the short-term and long-term effects" of the project (Cal. Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA's informational purpose well." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (August 5, 2013) 57 Cal.4th 439)

**Please explain the rationale for stating this 10 to 20 year delay in implementing traffic operations as "less than significant." Especially given the examples and discussion above showing CIP projects moving out in time and radically up in cost.**

1. Road segments (other than freeway segments), are listed with a total volume at peak AM and peak PM hours. Using this method, the volume and capacity numbers are misleading, and err on the side making the LOS appear better than it really is. As stated in HCM 2010, the information for each segment should include the directional split if available. This information is readily available at the El Dorado County DOT website. Looking at numbers for Green Valley road, the directional split is highly biased in the commute direction (e.g. 70/30). Thus one direction could be LOS F, the other LOS B, but when the two directions are combined, the result may show a misleading LOS D.

"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].)

**The FEIR needs to be updated to provide directional counts and LOS calculations on all roadways in the study area where directional counts have been measured.**

2. Measurement points. Measurement points on highway 50 are presented as "W of Latrobe" or "W of Bass Lake", etc. It is unclear whether or not these measurements would include traffic from the ramps associated with the measurement point. **Please clarify where in each highway 50 segment the measurement is obtained and whether it is west of on/off ramps or not. If the counts are not west of the associated on/off ramps, please state the justification for this, as it would not give correct volume or LOS for that freeway segment.**
3. "Worsen". In order to understand whether or not the project will worsen already LOS F traffic (Policy TC-Xe):  
Policy TC-Xe For the purposes of this Transportation and Circulation Element, "worsen" is defined as any of the following number of project trips using a road

facility at the time of issuance of a use and occupancy permit for the development project:

- A. A 2 percent increase in traffic during the a.m. peak hour, p.m. peak hour, or daily, or
- B. The addition of 100 or more daily trips, or
- C. The addition of 10 or more trips during the a.m. peak hour or the p.m. peak hour.

**The DEIR must measure the % increase in traffic during the AM and PM peak hours, and the additional ADT generated by the project for all road segments, intersections, and interchanges.**

4. Missing road segments. In addition to intersections and interchanges, several critical segments of roadway are missing from the analysis. **Please provide the volume/LOS information for the following roads/segments in the same format as the others in Table 3.9-13. If any of the following road segments are not considered by the county as important to review, please list the reason for each segment.**
- a. Highway 50 W of Empire Ranch interchange.
  - b. Highway 50 West of Silva Valley Parkway. This is important to understand the impact of the new interchange.
  - c. Highway 50 West of Cambridge Road. This is important to understand the impact of Marble Valley/Lime Rock developments, and future commercial in this area.
  - d. Saratoga Way: all segments from EDH Blvd to Empire Ranch. This is important to understand the parallel capacity for highway 50.
  - e. El Dorado Hills Blvd. north of Saratoga Way. This will be important to understand the future split of traffic for parallel capacity on Saratoga Way. This segment is 4AD today. What is the future configuration?
  - f. El Dorado Hills Blvd. south of Park Drive. (Highway 50 WB ramp dumps out here, as well as left turns from El Dorado Hills Blvd. to WB 50, and exit from Raley's center)
  - g. Empire Ranch Road. (all segments) Important to understand highway 50 impact, parallel capacity.
  - h. Latrobe Rd/White Rock Rd Connector (all segments). Important to understand the parallel capacity for highway 50.
  - i. Marble Valley Road south of Highway 50 Important to understand Marble Valley / Lime Rock contribution to highway 50 traffic.
  - j. Flying C/Deer Creek Road South of Highway 50. Important to understand Marble Valley / Lime Rock contribution to highway 50 traffic.
  - k. Green Valley Road East of Silva Valley Parkway. Important to understand the impact from Dixon Ranch.
  - l. Silver Springs Parkway South of Green Valley Road. Important to understand impact from Silver Springs, Dixon Ranch, Summerbrook, etc.

- m. Latrobe Road north of Town Center Blvd. Important to understand impact of south of highway 50 and Town Center development, business.
- n. Valley View Pkwy. south of White Rock Road (this road is used by commuters as a cut-through from the business park today. This is anticipated to get much worse once the Silva Valley interchange is complete, and additional business and residential is added south of Highway 50.)

5. Existing conditions for Highway 50 W of Latrobe (ID 1 and 2) are very different (lower) than the CalTrans measurements. The CalTrans 2010 Traffic Counts book lists peak hour traffic at this segment as 8600 vehicles on the mainline freeway. The TDM table shows a peak volume of 3330 AM and 4100 PM. Clearly since CalTrans lists this segment of Highway 50 as LOS F in peak hour, the table must be incorrect. **Please correct the volume numbers or explain the justification for the numbers used and how they were obtained. This difference is very significant.**

3	50	SAC	23.136	SACRAMENTO/E DORADO CO LN	8,600	101,000	93,000			
3	50	ED	0	SACRAMENTO/E DORADO CO LN				8,600	101,000	93,000
3	50	ED	0.857	LATROBE RD	8,600	101,000	93,000	7,000	78,000	71,000
3	50	ED	R 1.677	BEG INDEP ALIGN RT LNS	7,000	78,000	71,000	3,350	37,500	34,000
3	50	ED	R 1.677	L BEGIN INDEP ALIGN LT LANES	3,350	37,500	23,000	3,350	37,500	34,000
3	50	ED	R 3.154	END INDEPENDENT ALIGN	3,350	37,500	34,000	7,000	78,000	71,000
3	50	ED	R 3.232	BASS LAKE RD	7,000	78,000	71,000	5,700	68,000	62,000
3	50	ED	4.962	CAMBRIDGE RD	5,700	68,000	62,000	5,600	64,000	61,000
3	50	ED	6.57	CAMERON PARK	5,600	64,000	61,000	5,600	64,000	61,000
3	50	ED	R 8.584	SHINGLE SPRINGS	5,600	64,000	61,000	3,850	51,000	47,500
3	50	ED	R 10.295	EAST SHINGLE SPRINGS	3,850	51,000	47,500	3,800	48,000	47,000

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6. Segments #5 and #6 of Highway 50 at Bass lake show a total peak volume of 4350AM and 5740PM. The CalTrans 2010 Traffic Counts book lists peak hour traffic at this segment as 7000. **Please correct the base volume numbers or explain the justification for the numbers used and how they were obtained.**
7. Several other road segments in the table have numbers substantially different than the El Dorado County DOT website count numbers (e.g. Segment #44 show a total peak volume of 1060AM and 1650PM. The EDC DOT Traffic count for 2010 lists peak hour traffic at this segment as 1900AM, 2050PM in Jan, and 1314AM, 2068PM in Jul. DOT numbers also list this segment as 1909AM/2116PM in Jan 2013. **Please correct the base volume numbers on all listed road segments or explain the justification for the numbers used and how they were obtained.**
8. NOP comments: The following comments received by the county on the Draft EIR NOP have not been fully addressed in the DEIR. **Please address the following items in the DEIR:**
- a) Page 710: Caltrans requests "Specifically, the EIR should identify the impacts that the increase in traffic will have on SHS segments, intersections, and interchanges, and any necessary mitigations to reduce the impacts to a less than significant level."
  - b) Page 711: Caltrans requests "Average Daily Traffic, AM and PM peak hour volumes and levels of service (LOS) on all roadways where potentially significant impacts may

occur, including crossroads and controlled intersections for existing, existing plus project, cumulative and cumulative plus project scenarios. Calculation of cumulative traffic volumes should consider all traffic-generating developments, both existing and future, that would affect study area roadways and intersections. The analysis should clearly identify the project's contribution to area traffic and any degradation to existing and cumulative LOS. [emphasis added]

- c) Page 711: Schematic illustration of traffic conditions including the project site and study area roadways, trip distribution percentages and volumes as well as intersection geometrics, i.e., lane configurations, for the scenarios described above.
- d) Page 711: Identification of mitigation for any roadway mainline section or intersection with insufficient capacity to maintain an acceptable LOS with the addition of project-related and/or cumulative traffic. As noted above, the project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should also be fully discussed for all proposed mitigation measures.

#### Conclusion:

There are thirty three 'significant and unavoidable' impacts listed in Table 5-4 (dEIR, page 5-16). A single one of these impacts is sufficient cause for denial of the project. On the other hand, to approve the project, the County would have to find valid overriding considerations for each one of the 33 impacts listed. Such a statement of overriding considerations must be supported by a logical analysis of substantial evidence in the EIR or elsewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.) All feasible mitigation must be adopted, and other mitigation properly found infeasible, before an agency can make a statement of overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4<sup>th</sup> 1019.)

The significant and unavoidable impacts from the **Transportation & Traffic** section, as listed on page ES-14:

" **TRA-1:** Conflict with an applicable congestion management program, including, but not limited to, level-of-service standards and travel demand measures or other standards established by the county congestion management agency for designated roads or highways"

Additionally, this list cannot be considered complete until further information and analysis is provided per the dEIR comments, in order to fully ascertain the impacts of the extensive changes being proposed.

END SECTION COMMENTS



## **Water Supply - Section 3.10 dEIR Review Comments**

The citizens of El Dorado County deserve an Environmental Impact Report which does not hide behind the skirts of the mendacious El Dorado Irrigation District but rather has an analysis of the Targeted General Plan Amendment and Zoning Ordinance Update which is based on best available science, is factual, transparent, and responsive to citizen needs, and not written to meet Big Developer desires.

The DEIR fobs off responsibility for water demands from future development onto the County Environmental Management Department. County Environmental Management Department does not handle water demands.

**Please clarify which county department or agency is deemed primarily responsible for water demands, and the basis for such identification.**

The DEIR falsely asserts that no land use changes are proposed which would increase development beyond that addressed in the 2004 General Plan. The 2004 General Plan found that there would be increased water demand if the build-out envisioned in the 2004 G.P. occurred, resulting in surface water shortages. That increased demand was not quantified, making it impossible to properly evaluate the environmental impact of that increase. "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.)

**Please clarify how many acre-feet of shortage was present in 2004, how many acre-feet of shortage is present currently, and how many acre-feet of shortage would result from buildout as anticipated in the 2004 General Plan, and how many acre-feet of shortage will be present at full build-out under the proposed project.**

The environmental impacts of developing *new water* (if feasible) to meet the excess demand are not provided in the DEIR. The County needs to provide that environmental impact analysis, so that this DEIR may be properly evaluated before its accuracy or inaccuracy/incompleteness can be assessed.

An EIR is inadequate for not disclosing possible alternative water sources and their impacts. In light of the uncertainty regarding future water supplies, the EIR "cannot simply label the possibility that they will not materialize as 'speculative,' and decline to address it. The County should be informed if other sources exist, and be informed, in at least general terms, of the environmental consequences of tapping such resources." (Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) [91 Cal.App.4th 342](#), 373.) 431.) "[T]he future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decisionmaking under CEQA." (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova

(Sunrise Douglas Property Owners Assn.) (2007) 40 Cal.4th 412, 432.) “Where even a full discussion leaves some uncertainty regarding actual availability of the anticipated future water sources, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. [citation] The law's informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated water supply fails to materialize.” (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (Sunrise Douglas Property Owners Assn.)) (2007) 40 Cal.4th 412, 432.)

**Please provide the Environmental Impact analysis of developing the new surface water to meet the surface water needs of the additional development permitted by the Targeted General Plan Amendment and Zoning Ordinance Update.**

The proposed increased residential and commercial development envisioned in the DEIR would put an increased demand on the county's groundwater. This increased demand is not quantified, and so therefore it is not possible to measure how severe an impact on groundwater supply which the increased development would have. County's DEIR needs to quantify the increased groundwater demand before this DEIR can be properly evaluated.

**Please provide the Environmental Impact analysis of developing the new groundwater supplies to meet the groundwater needs of the additional development permitted by the Targeted General Plan Amendment and Zoning Ordinance Update.**

The 2004 General Plan Policy 5.1.2.2 says "Provision of public services to new discretionary development shall not result in a reduction of service below minimum established standards to current users, pursuant to Table 5-1." For public water, the purveyor for most of the County is El Dorado Irrigation *District* (EID). The DEIR refers to El Dorado Water *Agency* as the responsible agency for water supply development and assessment. This discrepancy is not addressed nor resolved in the DEIR. The County needs to clarify who is responsible.

**Please clarify which agency is responsible for water supply development and assessment.**

**DEIR Section 3.10.2 Environmental Impacts** (of TGPA and ZOU on water supply and other aspects of County's environment).

Under Impact Mechanisms, the DEIR says "This DEIR relies upon the water planning documents described in Section 3.10.1 as the primary source of information on existing and projected supply and demand, including sources of additional water that will be needed to meet additional demand." Merely referring to county water agencies for water supply figures is not providing the CEQA-required public services *metrics* of water supply necessitated by new discretionary development. Information scattered in an EIR or buried in an appendix is not a substitute for good faith reasoned analysis. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4<sup>th</sup> 1219, 1239.)

**Please provide those metrics with sufficient specificity so that readers can evaluate those numbers.**

**Please analyze the environmental *impact* of developing the surface water required by those metrics.**

The DEIR states [p. 333] "The project's key differences from the current General Plan that concern water use are as follows", and then lists five differences. In actuality there are *more than five differences* from the 2004 General Plan.

The DEIR fails to list:

- 1) that other communities besides Pollock Pines and Camino are seeking to change their (inappropriate) area designation from Community Region to Rural Region. This will have an impact on surface water demands. Such impact is not analyzed in the DEIR. Such communities include Diamond Springs, El Dorado, and Shingle Springs.

**Please provide an analysis of such impact on surface water demands.**

- 2) that a torrent of General Plan land use-density amendments for specific large subdivision projects has rendered the original assumptions enshrined in the 2004 General Plan woefully understated and erroneous. These numerous land use-density amendments and the increased water demands from these additional unanalyzed housing developments are not analyzed in the 2004 General Plan and are not analyzed in this DEIR. A proper cumulative impact analysis would evaluate, "A list of past, present, and probable future projects producing related or cumulative impacts." (CEQA Guidelines, sec. 15130, subd. (b).)

**Please provide an analysis of the increased water demands from these additional unanalyzed housing developments.**

- 3) The DEIR admits that "expanding the agricultural district boundaries" will have a significant impact on future surface water demands and supply but the DEIR fails to quantify what those metrics are.

"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.)

**Please provide those metrics, and please provide an environmental analysis of those increased demands.**

- 4) The DEIR admits that "Increasing maximum residential density for mixed-use and multi-family projects" will have a significant impact on future surface water

demands and supply, but the DEIR fails to quantify what those metrics are. The DEIR analyzes permitted densities under increased maximum residential density for such mixed-use and multi-family projects, BUT the DEIR fails to provide the metrics for increased demand on surface water based on such high-density projects.

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.)

**Please provide those metrics, and please provide an environmental analysis of those increased demands.**

- 5) The DEIR mentions "Amending the Public Services and Utilities Element", but then in discussion asserts that proposed revisions to Policy 5.2.1.3 and 5.3.1.1 "would not have an impact on water demand." High-density developments connecting to public water systems most certainly do have an impact and increase surface water demand.

**Please provide clarification of how such increased density revisions do not result in increased water demand.**

**Please provide the metrics of how much increase such high-density developments allowed under the proposed revision would actually have on surface water supply.**

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.)

- 6) 3.10-15: The DEIR notes **New land uses under the ZOU**. Under these are industrial, public utility, and large recreational facilities "which can have large water demands." These increased water demands are not measured, and thus no basis is provided to evaluate the environmental impact of these. For the DEIR to assert that future such development is 'speculative' does not absolve the DEIR from making reasonable assumptions, providing an explanation for its assumptions, and quantifying the water metrics of such assumptions. Drafting an EIR "necessarily involves some degree of forecasting. An agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines, sec. 15144.)

**Please provide those reasonable assumptions, an explanation for its assumptions, and quantifying the water metrics of such assumptions.**

7) The historic Drought which the County and California generally are in follows the previously-historic Drought of 1976-77. That previous Drought was supposed to have been a "Hundred Year Drought" and yet an equally-severe drought occurred only 47 years later. Clearly old records are not a reliable basis for future predictions. Five years ago EID commissioned a Water Study from the RAND Corporation, which has never been presented to the public. A preliminary preview of that study over several centuries showed repetitive drought cycles lasting *decades*. EID has suppressed the RAND Study, and does not base its water supply projections on that latest scientific data. Climatologists point out that the long-range result of Global Climate Change trends towards California and the West's having increased episodes of extreme weather including prolonged droughts. There is no sound scientific basis for the rosy water supply forecasts which EID produces.

**Please present the results of the EID commissioned RAND water study.  
Please analyze the impact of decade-long drought cycles on the cumulative and cumulative plus project scenarios.**

Page 3.10-5: Policy 5.2.1.7: In times of declared water shortages, the Board of Supervisors shall give priority within the affected water district to approving affordable housing and non-residential development projects.

We are in the third year of drought for our County. How can the BOS allow any growth for the residential development other than the existing entitlements and commitments? Using our County resources to amend the General Plan for more growth and more development violates this policy and it's a waste of tax payers' money.

**Please explain in the DEIR how the project meets the requirements of General Plan Policy 5.2.1.7.**

Page 3.10-8: In the future, EID plans to purchase 7,500 AFY of water wholesale from EDCWA through a USBR contract under Public Law 101-514 (i.e., "Fazio" water). This water would otherwise be destined for Folsom Lake. The Fazio water is expected to begin delivery in 2015.

If EID is expecting 7,500 AFY ("Fazio" water) in 2015, then they should allocate this water to the existing residents and alleviate the drought restrictions for the existing customers. Priority should be given to current EID customers instead of having more water for future development and TGPA.

**Please show in the DEIR the impact of servicing new customers rather than building reserves for current customers in case of a drought.**

Page 3.10-8: In the future, EID plans to purchase 7,500 AFY of water wholesale from EDCWA through a USBR contract under Public Law 101-514 (i.e., "Fazio" water). This water would otherwise be destined for Folsom Lake. The Fazio water is expected to

begin delivery in 2015. EID is also pursuing through EDCWA another 30,000 AFY under the "El Dorado–SMUD Cooperation Agreement." This supply would be available to EID beginning in 2025. By 2025, EID would thereby increase its current supply by 37,500 AFY in normal years; this would be reduced to an increase of 10,625 AFY in dry years (El Dorado Irrigation District 2013a).

The "Fazio" water negotiations are still in the process and given the current drought year there are concerns that the available water rights may be superseded by other agency and/or state needs. This is also true of the "El Dorado-SMUD Cooperative Agreement".

**Please explain the contingencies of not obtaining these water rights or a reduced amount of these water rights?**

**Also explain the timing of these water rights and how the ZOU will impact the necessary delivery needs with that timing. For example, if the "El Dorado–SMUD Cooperation Agreement" does not take effect until 2025, what will the water supply demand impacts be given the increased density of the ZOU upon approval?**

Page 3.10-10 Conservation Measures

In the current drought conservation measures, we are not reaching the 30% reduction requested by EID from the consumers. Calculating single and consecutive dry years' water supplies, including mandatory or voluntary conservation measures, on historical data that does not track our more recent historical water supply is short-sighted. We must use the current more accurate data to calculate any future supply and demand needs.

**Please explain how our demand and supply, with more empirical conservation data, will meet the projected supply and demand numbers presented. Given the drastic change in both recent high water years and low water years in the past 30 years, our projections need to reflect that data.**

Page 3.10-14 Agriculture District Boundary Expansion - In any case, a number of unknown variables related to an expansion of agricultural use exist; determining whether these variables would result in an increase in water demand makes would be speculative.

Speculative analysis is a necessary tool when performing future projections or planning. In order to make educated decisions regarding our water needs and supply, Agricultural District Boundary Expansion could have a large impact on available water

supplies. A worst case scenario should be presented before assumptions are made that this expansion will be a minimal impact.

**Please supply a detailed explanation on why as a "significant and unavoidable" impact there is no data or description of possible mitigation measures or potential issues. A more thorough assessment of this expansion and its impact on water supply is necessary in order to understand the larger regional planning issues.**

Remember, CEQA requires that findings be made for each significant effect identified in the EIR: (1) mitigation has been adopted, (2) the agency lacks jurisdiction to make the changes but others should, and/or (3) specific economic, social, technological, or other considerations make mitigation or alternatives infeasible. (*Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011; See also *County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141 Cal.App.4<sup>th</sup> 86.) In addition, all feasible mitigation must be adopted, and other mitigation properly found infeasible, before an agency can make a statement of overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4<sup>th</sup> 1019.) The information currently in the EIR will not be sufficient to support such a finding or such a statement of overriding considerations.

Page 3.10-15 : Policy 5.2.1.3: All medium-density residential, high-density residential, multifamily residential, commercial, industrial and research and development projects ~~shall~~ may be required to connect to public water systems if reasonably available when located within Community Regions and to either a public water system or to an approved private water systems in Rural Centers.

By changing the language from "must" to "shall", and adding the caveat "if reasonably available", the project will allow development projects like Marble Valley to have their own wells for residential, commercial, and recreational use.

**Please analyze the impact to groundwater supplies by allowing medium density residential, high-density residential, multifamily residential, commercial, industrial and research and development projects to utilize ground water.**

**Please include in the analysis the impact to existing groundwater users.**

**Please analyze the impact of adding the words "reasonably available", as this vague caveat could be used by many people to avoid the hookup fee to EID water.**

EID's growth rates are double to quadruple the county's projected growth rate of just over 1%.

**Please explain why by showing the data used to create the growth rates of between 1.65% to 4.75% increase. Using two different sets of numbers for planning purposes between the county and EID will create major discrepancies in our planning process.**

**In addition, using different growth assumptions for land use and water planning purposes may jeopardize state funding relied upon for the construction of water supply projects. For example, Prop. 84 funding is contingent on collaborative land use and water planning, that resolves such inconsistencies. (See Department of Water Resources, Integrated Regional Water Management Plan Guidelines, 2010, pp. 22, 60-61.) Without the state funding, the additional needed water supply projects may not be feasible. Please disclose this in the Final EIR.**

Supply numbers in Table 3.10-2 assume Fazio and UARP water.

**What are the projections if one or both agreements are not realized?**

Page 3.10-19 states: " EID estimates that the improvements identified in the IRWMP would be made in a series of three phases: Phase 1—2012–2020; Phase 2—2021–2030; and Phase 3—2031–buildout. The phases would be undertaken as demand dictates. The total capital costs for all three phases are estimated to be \$475 million."

**Please analyze the economic impact to existing and future EID customers of the \$475 million in infrastructure improvements that are required for mitigation of water shortages for the project. Such economic factors "shall be considered by public agencies ... in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR." (CEQA Guidelines, Sec. 15131, subd. (c).)**

Page 5-12 states: " The projections of the proposed sites' water demands under the existing 2004 General Plan designations were subtracted from the total cumulative water demand to avoid double-counting the water demand from the four proposed sites."



**Please supply the numbers for the proposed sites' water demands under the existing 2004 General Plan designations.**

Page 5-13: Table 5.2: El Dorado Irrigation District Total Water Demand and Supply Projections to 2035, with Cumulative Projects except San Stino

- 1) The County hasn't analyzed the water impact for the San Stino project.  
**Please add the water analysis for the San Stino project to the DEIR.**
  
- 2) According to the EID 2013 Water Resources and Service Reliability Report (pages 4, 26 & 28), we only have "4,687" EDUs (Equivalent Dwelling Units) available in the "El Dorado Hills Region". This number is greater than the existing commitments of "2,690" EDUs plus proposed projects (EDH Specific plan, Marble Valley, Lime Rock and Dixon Ranch) of approximately "5,500" EDUs totaling "8,190" EDUs. We are over committing "3,503" EDUs in the EDH region.  
**Please explain how 4,687 EDU's of supply is sufficient for 8,190 EDU's of demand.**
  
- 3) According to the EID 2013 Water Resources and Service Reliability Report, we only have "1,935" EDUs available for the Western & Eastern Regions of which "283" EDUs are committed already. How can we fulfill all the proposed projects for these areas?
  
- 4) EID is approving the water availability for all the proposed projects in the EDH and Western/Eastern Regions. On the other hand, they are enforcing 30% conservation for existing customers and possibly 15% increase in water rates. This conservation is affecting the existing residents in a negative way. For many households, it is destroying lawns and other landscaping. This is a significant adverse aesthetic impact. Who is responsible for ~\$10,000 worth of landscaping damage at each household? Multiply this number by the number of EID customers and you have a measure of the damage for the EDC residents. The TGPA is proposing growth at the expense of the existing customers; this is not right.  
**Please analyze the economic impact to residents of El Dorado County by using water supplies for new developments (increased density under the project), rather than to supplement water supplies for existing customers. Such an economic analysis will provide a measure of the significance of the projects impact on the landscape associated with future drought-related water conservation. (See CEQA Guidelines, sec. 15131, subd. (b).)**

Page 5-14 states: "The contribution of the project is considerable outside of the EID service area, where future water supply availability is more tenuous and dry-year shortages are predicted."

**Please enumerate the areas where dry-year shortages are predicted and the impact to these areas.**

**Please describe the mitigations to bring the impact of these predicted shortages to less than significant. An EIR shall describe feasible mitigation measures. Each measure should be discussed, and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be delayed until some time in the future. Mitigation measures must be fully enforceable. (CEQA Guidelines, sec. 15126.4.) 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.)**

Conclusion:

There are thirty three 'significant and unavoidable' impacts listed in Table 5-4 (dEIR, page 5-16). A single one of these impacts is sufficient cause for denial of the project. On the other hand, to approve the project, the County would have to find valid overriding considerations for each one of the 33 impacts listed. Such a statement of overriding considerations must be supported by a logical analysis of substantial evidence in the EIR or elsewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4<sup>th</sup> 1212.) All feasible mitigation must be adopted, and other mitigation properly found infeasible, before an agency can make a statement of overriding considerations. (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4<sup>th</sup> 1019.)

The significant and unavoidable impacts from the **Water Supply** section, as listed on page ES-14:

***WS-1: Create a need for new or expanded entitlements or resources for sufficient water supply***

Additionally, this list cannot be considered complete until further information and analysis is provided per the dEIR comments, in order to fully ascertain the impacts of the extensive changes being proposed.

END SECTION COMMENTS

## Alternatives – Chapter 4 DEIR review comments

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.) CEQA requires a "quantitative, comparative analysis" of the relative environmental impacts and feasibility of project alternatives. An inadequate discussion of alternatives in an EIR is an abuse of discretion. (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692, 730-737.) 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. (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 404.)

- A. The County impermissibly eliminated numerous significant impacts from consideration when selecting alternatives.

The discussion of alternatives in an EIR "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.) The proposed project has 33 significant and unavoidable impacts.

On Page 4-7, the DEIR indicates that the County identified only five "key impacts" to be reduced by project alternatives. Not considered in alternative selection were project and cumulative impacts including air pollution, cultural resources, noise, population, and water supply. We find no basis in CEQA that grants agencies the discretion to discriminate between significant impacts that can be the basis for alternatives, and significant impacts that are not worthy of reducing or avoiding through alternatives. In the Final EIR, please identify and evaluate alternatives that will reduce or avoid the significant impacts of the project to air pollution, cultural resources, noise, population, and water supply.

- B. The DEIR's Rejection of the Modified Community Region Boundaries alternative is not rationally linked to substantial evidence in the record.

On page 4-12, the Reasons for Rejection of the alternative to Modify Community Region Boundaries are based on proposed policies that have not yet been approved by the Board of Supervisors and hypothetical growth projections that are the wishful thinking of the urban consulting firm that El Dorado County hired for the DEIR analysis.

1. Flawed logic and superficial analysis conclude that the alternative creates an inconsistency with the objective to encourage and support development of housing affordable to the moderate income earner.

- a) The statement that "This alternative would reduce the availability of housing in the future as previously approved development projects are built out" is unsubstantiated. Please either, substantiate this conclusory statement with data, or retract it from the Final EIR.

If a development project is already approved, then the terms of the project cannot be changed by moving a Community Region Line. Instead, a Platted Land Overlay would be added to the General Plan map to show that the previously approved development does not conform to the General Plan designation. This is evidenced by the current General Plan map, which has several instances where a previously approved project is shown with a Platted Land Overlay to indicate that the approved development of the land is consistent with existing land use patterns.

- b) The assumption that higher density mixed use development in Shingle Springs will be affordable to the moderate income earner is unsubstantiated. There is no guarantee that higher densities will lead to affordable housing. If mandatory affordability covenants or other price controls will be a condition for receiving these higher densities, then please indicate this in the Final EIR. Otherwise, retract the statement from the Final EIR. If the County is serious about producing affordable housing, it should partner with a non-profit affordable housing development corporation and aggressively participate in state and federal programs that fund affordable housing construction and rehabilitation. These would be far more effective and less environmentally harmful means of achieving that objective. Please consider such an alternative in the Final EIR.

Substantial evidence contrary to the assumption is the recent proposal to build a 255-unit apartment complex in Town Center of El Dorado Hills. The proposed apartment project has an exceedingly higher density than what is allowed in the General Plan, yet the rent of those relatively small apartments is anticipated to be quite high. Please provide specific, detailed data and analysis to show how the high density development will generate affordable housing.

- c) There are no maps provided to show exactly where the higher density mixed use is proposed and how many units are affected. Remember, the project description "shall contain the precise location of the project on a detailed map." (CEQA Guidelines, Sec. 15124, subd. (a).) In this instance, that would be a map of the land designated for higher density mixed use.

These detailed maps must be included in the DEIR so that the public can see if the proposed higher densities are appropriate for the proposed location. For example, there are parcels in the Barnett Business Park that are zoned commercial, however these would be poor choices for mixed use development because they are adjacent to existing industrial-type businesses and far from shopping opportunities.

- d) There is no detailed data provided for the analysis for the statement, "Reducing the potential for higher density mixed use development in Shingle Springs runs counter to this objective." If there is, indeed, the potential for higher densities, the DEIR must include detailed analysis for those potential higher densities. Please add analysis to show the number of potential units and their impact on Transportation and Traffic, Water, Aesthetics, and Noise. An EIR must contain facts and analysis, not just the bare conclusions of the agency, and must provide sufficient detail so that those who did not participate in its preparation can understand and consider meaningfully the issues raised by the proposed project. The decision to approve a project is a nullity if based upon an EIR that does not provide the decision makers and the public with the required information about the project. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> 1184.)

2. Hypothetical growth projections and misleading information are used to conclude that the alternative creates an inconsistency with the objective to promote and support the creation of jobs.

- a) The statement that, "Reducing the potential for residential development would indirectly limit the future creation of jobs in retail and other commercial sectors that are dependent upon the local population for business," is an unfounded assumption. CEQA requires that findings be made for each significant effect identified in the EIR: that specific economic, social, technological, or other considerations make alternatives infeasible. (*Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011; See also *County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141 Cal.App.4<sup>th</sup> 86.) These findings must be supported by substantial evidence in the record. "Argument, speculation, unsubstantiated opinion, or narrative evidence which is clearly erroneous or inaccurate ... does not constitute substantial evidence." (CEQA Guidelines, sec. 15384.)

To the contrary of the assumption, El Dorado County's jobs-to-housing ratio has been unbalanced for years, which has created plenty of housing with limited local jobs for residents. This has caused residents to seek employment outside of the county, where they often take advantage of retail opportunities along their

commute to work. Decreasing the number of residents that commute outside of the county for work will lessen the number of residents that are likely to shop outside of the county and, thus, support local retail businesses. There is no data in the DEIR to show that there is a need to increase residential development to bring our jobs-to-housing ratio back into balance.

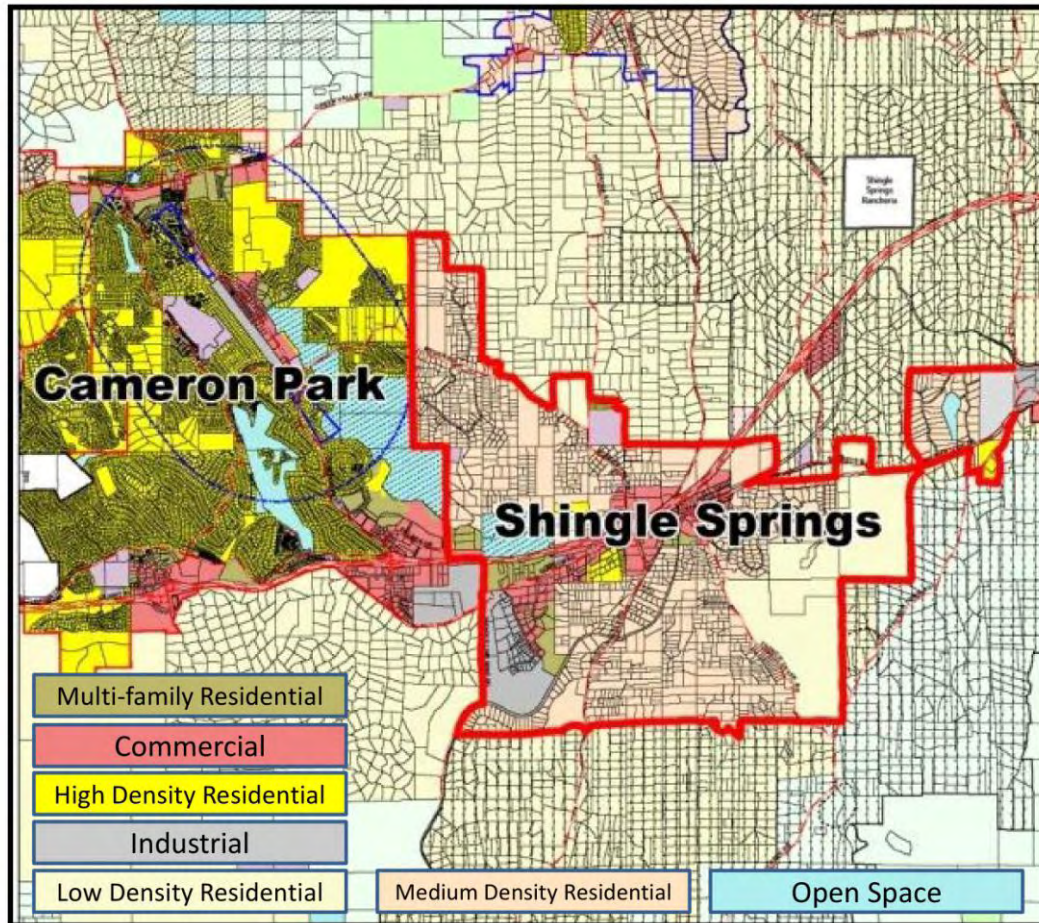
- b) The BAE report combines data for Cameron Park and Shingle Springs, which distorts the data used in the analysis. It also ignores General Plan Goal 2.4: Existing Community Identity:

**Maintain and enhance the character of existing rural and urban communities, emphasizing both the natural setting and built design elements which contribute to the quality of life, economic health, and community pride of County residents.**

and Objective 2.4.1: Community Identity:

**Identification, maintenance, and enhancement of the unique identity of each existing community.**

Map of Shingle Springs and Cameron Park 1 illustrates the different land uses that comprise each community, which are separate and unique. The BAE report erroneously combines the data for each of these communities, making it impossible to know the portion that is attributed to Shingle Springs. It would be logical to project that most of the projections in the data could be attributed to Cameron Park because it is mostly high-density and commercial properties, whereas Shingle Springs is primarily low- and medium-density and commercial properties. Clearly, Cameron Park and Shingle Springs are extremely different communities with different land uses and potential for development.



Map of Shingle Springs and Cameron Park 1

The data analysis and conclusion in the DEIR is based on this erroneous data, and must be corrected in the Final EIR.

- c) The statement "The BAE report estimated that the Cameron Park/Shingle Springs area will support nearly 4,500 jobs new jobs by 2035, based on multifamily residential growth under the TGPA of 635 units and single-family growth 3,560 units," is based purely on speculation and defies logic. It is not based upon an extrapolation of past trends and baseline data. El Dorado County has historically created housing with the promise of creating jobs, and the anticipated jobs have never materialized.

In the Final EIR, please provide baseline job growth numbers historically in El Dorado County as a function of housing construction. This information is essential to assess the feasibility of the project and its alternatives to achieve the objectives of the project. The essential ingredient in determining an alternative's feasibility is the assessment of the alternatives in relation to the objectives of the project. (*Planning and Conservation League v. Department of Water Resources* (App. 3 Dist. 2000) 83 Cal.App.4<sup>th</sup> 892.)

3. The objective to revise existing General Plan policies and land use designations to provide clarity while keeping changes to land use maps to a minimum is superficial and meaningless, making adherence to it pointless and hypocritical.
  - a) The TGPA and ZOU propose to change many policies that will, in effect, change the land use. So while the map may be staying the same, the land use definition is changing. This is the inverse of what the alternative is proposing. The alternative intends to preserve the existing land use by altering the Community Region Lines and adding Platted Land Overlays, so that those parcels are not a target for high-density development. This will provide clarity to developers and residents because there will no longer be a threat of higher-density development inside the Community Region Lines. Since the goal is to provide clarity, please provide analysis to show how keeping the current land use map with different definitions provides more clarity than the proposed CRL alternative.
4. In the Reduction of Impacts section, the statement, "Therefore, reducing the TGPA's residential density here would reduce the rate of traffic generation, but would not reduce other environmental impacts in comparison to the TGPA," is not clear and is presumptive. Please provide the data and analysis that was used in this comparison to reach this conclusion. 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.)

C. The DEIR does not evaluate a broad range of reasonable 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.)

Page 4-13 to 4-17 of the DEIR list three alternatives. One is the "No Project" alternative. Another is the Selective Approval of Components Alternative. However, this alternative's definition is so flexible that the alternative defies quantitative analysis. Paradoxically, it is also so rigid that it only considers components of the proposed projects for inclusion, and thereby severely limits the potential to reduce impacts. The Transit Connection Alternative is the only defined action alternative. When a project has 33 significant unavoidable impacts, one would expect a broader range of alternatives feasible to reduce one or more of those impacts.



In the Final EIR, please consider an alternative that includes County standards, policies, and programs that will help new job-creating proposals: to avoid problems associated with conflicting uses, to mitigate potentially significant environmental impacts, and to more securely meet the development approval standards imbedded in state law.

End of Comment Section

## **Other CEQA Considerations – Chapter 5 DEIR review comments**

1. The cumulative Impacts analysis is vague, and does not provide a quantitative analysis of impacts that can be quantified.

"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.)

An EIR must contain facts and analysis, not just the bare conclusions of the agency, and must provide sufficient detail so that those who did not participate in its preparation can understand and consider meaningfully the issues raised by the proposed project. The decision to approve a project is a nullity if based upon a cumulative impact analysis that does not provide the decision makers and the public with the required information about the project. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> 1184.) A cumulative impact analysis is inadequate when there are no facts, statistics, reports, or studies supporting the lead agencies conclusions that cumulative impacts would be de minimis. (*Joy Road Area Forest and Watershed Assn. v. California Dept. of Forestry & Fire Protection* (2006) 1142 Cal.App.4<sup>th</sup> 656.) 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". (*Whitman v. Board of Supervisors* (2d Dist. 1979) 88 Cal.App.3d 397, 411.) "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.)

The cumulative impact analysis in the DEIR frequently relies on vague, unquantified, and undefined terms to describe impacts that are subject to quantification from site-specific projects. For example, rather than identifying the acres of agricultural land and timber land at risk to conversion, it uses phrases like "a marginal increase" in impacts and "substantial areas" converted. (DEIR, p. 5-4.) Rather than providing quantified air quality impacts, and health risks, the DEIR simply says "significant" impacts would result from "large" projects. (DEIR, p. 5-5.) Instead of identifying the habitat types converted by the cumulative projects, the DEIR merely provides the bare conclusion that the cumulative impacts "would significantly contribute" to wildlife habitat loss in the region. (DEIR, p. 5-6.) Rather than providing any trip generation numbers and noise contours based upon the cumulative projects, the DEIR merely provides the hedged conclusion, "it is possible that there would be a cumulatively considerable increase in noise on U.S. Highway 50." (DEIR, p. 5-9.) Without providing any trip generation figures, the DEIR vaguely states that the cumulative projects represent "a major increase" and a "substantial increase" in the level of traffic on U.S. Highway 50 and on connecting

roads. (DEIR, p. 5-11.) In the Final EIR, please provide the quantitative details regarding these cumulative impacts.

2. The growth inducing impacts analysis is insufficient.

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).)

The single-page-long analysis of growth inducing effects merely concludes that the project is growth inducing. (DEIR, pp. 5-14 to 5-15.) There is no description of the ways in which each relevant provision of the TPGA/ZOU would induce population growth or the construction of additional housing. Perhaps the EIR is relying on the prior discussion of housing and population impacts to address these issues. If that is the case, a prior section of these comments has already detailed the inadequacies of the population and housing impact analysis in the DEIR. In the Final EIR, please indicate how each relevant provision of the TPGA/ZOU induces population growth or the construction of additional housing. Please quantify the expected effects whenever possible. As is the case with so many things in life, with growth inducing effects, the magnitude significantly influences the desirability (i.e. size matters).

End of Comment Section

## **Home Occupation Ordinance - ZOU 17.40.161 dEIR Review Comments**

In public meetings during the past year, county staff and the Board of Supervisors have indicated that the Home Occupation Ordinance (HOO) would primarily give residents an opportunity to work from their home in non-impacting occupations, such as office type jobs where most of the work is done over the phone, by mail, and over the Internet. However, a careful reading of the Draft ZOU indicates that the HOO also includes commercial and industrial type of occupations that are ill-suited for a peaceful neighborhood. The DEIR does not have a section that clearly analyzes the HOO. Instead, the proposed HOO and its components are mentioned haphazardly throughout the DEIR, with no statistical or analytical data on possible impacts.

El Dorado County has a poor track record of resolving conflicts between property owners. Complaints to Code Enforcement fall on deaf ears and county resources are not allocated to increase Code Enforcement staff. Recent examples of the county's lack of will to resolve conflicts include the lack of permits at the Greenstone Cutoff Road project, the lack of code enforcement at All-N-One Storage aka Sundance Lumber at El Dorado Road, and the complete void of assistance to the neighbors suffering from paint fumes and noise from Kniesel's Auto Collision. Many of the proposed policies in the Draft ZOU do not protect the right of people to the peaceful, uninterrupted enjoyment of their property.

1. Number of Employees (Table 17.40.160.2 of Draft ZOU) - At a minimum, a chart should be included in the DEIR to compare the number of employees allowed for each type of zoning and parcel size in the current ZOU and Draft ZOU. This chart would enable the public to see what is changing from the current ZOU to the Draft ZOU. This comparison chart should include detailed analysis when there is a difference between current and draft ZOU. The chart should include, at a minimum:
  - a) The analysis to determine that the increase in employees on residential property would not cause significant impacts to neighbors. Often in El Dorado County, larger parcels (which are proposed for more employees) are located on narrow, windy, roads. Increasing the number of drivers on these small, country roads is a safety hazard. This impact on Transportation and traffic safety must be analyzed.
  - b) The analysis to show that the increased traffic in residential areas does not increase the financial burden of residents served by private roads. Increasing the number of drivers on small, private roads will increase wear and tear and cause neighbors to have to pay for increased road maintenance, or suffer the resulting degradation of the roadways. This impact on Transportation and its costs must be analyzed.

- c) The analysis to show that enough distance exists between the home occupation and the adjacent property to prevent the daily noise and nuisance of the employees from drifting onto adjacent residential property. Potential employee-related nuisances includes the motor noise of additional cars to and from the property, the additional car doors slamming upon arrival and departure, loud conversations among employees, or loud, private cell phone conversations during break (which could include profanity as witnessed at the Kniesel's Auto Collision), and second-hand smoke from employee smoke breaks. These impacts on Noise and Air Quality must be analyzed.

"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.)

Table 17.40.160.2 of the Draft ZOU shows an increasing number of employees on parcels as the parcel size increases. There is no quantitative analysis to show how these numbers were derived or any reference to other jurisdictions that use comparable numbers. Increasing the number of employees on a parcel has the potential to interfere with the right of the neighbors to peaceful, uninterrupted enjoyment of their property.

2. Heavy Commercial Vehicles (Draft ZOU policy 17.40.160.C.8) Heavy Commercial Vehicles are defined in Article 8, Glossary, as:

Vehicles used for commercial purposes that require a Commercial Driver's License in compliance with state Department of Motor Vehicle regulations. These vehicles include, but are not limited to buses or cars that seat ten or more passengers, tow trucks, dump trucks, truck tractors with or without semi-trailers, flat bed trucks, fork lifts, front end loaders, backhoes, logging vehicles, graders, bulldozers, and other similar construction equipment.

Allowing the use of Heavy Commercial Vehicles adjacent to a residential property is in direct conflict with Draft ZOU policy 17.40.160.C.6, which states:

*"... no equipment or process shall be used that creates noise, vibration, dust, glare, fumes, odors, or electrical interference detectable to the normal senses off-site."*

- a) There is no analysis in the DEIR to show that Heavy Commercial Vehicles for use in Home Occupations will not create noise, vibration, dust, glare, fumes, or odors and cause a nuisance to adjacent properties. The DEIR must clearly analyze each of these impacts, including Noise and Air Quality.
  - b) What analysis was done to determine that the use of Heavy Commercial Vehicles on residential property would not cause significant impacts to neighbors? Often in El Dorado County, larger parcels are located on narrow, windy, roads. Using Heavy Commercial Vehicles on these small, country roads is a safety hazard. This impact on Public Safety must be analyzed.
  - c) There is no analysis in the DEIR to show that the use of Heavy Commercial Vehicles in residential areas does not increase the financial burden of residents served by private roads. Increasing the number of heavy commercial vehicles on small, private roads will increase wear and tear and cause neighbors to have to pay for increased road maintenance, or suffer with the degraded roads. The increase in Transportation costs to neighbors would be an effective way to evaluate the significance of this impact in the FEIR. Please do so.
3. Several policies in the Draft ZOU negatively impact Aesthetics within residential areas by allowing business activities, vehicles, Heavy Commercial Vehicles, goods, and materials to be on the property and not required to be screened from view by neighbors on adjacent properties. These policies include:
- a) 17.40.160.C.1 All business is conducted within permitted structures on the lot or outdoors provided the business is screened from a right-of-way or road easement.
  - b) 17.40.160.C.2 For home occupations conducted in any part of a garage or a detached building, the activity shall not be visible from a right-of-way or road easement,...
  - c) 17.40.160.C.8.b On lots 5 acres or larger and in Residential Estate (RE) may be stored onsite providing they are not visible from a right-of-way or road easement, except when in use.
  - d) 17.40.160.C.9 Goods or materials used or manufactured as part of the home occupation shall not be visible from a right of way or road easement.

These policies only require that the business activities, vehicles, Heavy Commercial Vehicles, goods, and materials be screened from a right-of-way or road easement, not from adjacent property owners. This negative impact on Aesthetics for adjacent property owners must be analyzed in the DEIR.

4. Policy 17.40.160.D Student Instruction - This policy gives the Director the discretion to change a residential use into a primarily commercial use, and violates CEQA by not allowing the public to have a complete analysis of the change of use and participate in the process as with a Use Permit. At a minimum, this policy needs to be analyzed for its negative impacts on Land Use, Aesthetics, Noise, and Public Safety.
5. Policy 17.40.160.F Limitations on Home Occupations - A wide variety of Home Occupations are proposed in the Draft ZOU, many of which are not allowed in residential areas in the current ZOU because they are not compatible with residential uses and interfere with the right of the neighbors to peaceful, uninterrupted enjoyment of their property. At minimum, a chart should be included in the DEIR to show which uses are newly allowed by Use Permit and what analysis was done to determine the impact on the adjacent and neighboring properties. As mentioned above, El Dorado County has a poor track record of understanding the true impacts of a project until after a project is approved, and that is too late to resolve compatibility issues. Additionally, there is no analysis as to how it was determined that the noise and fumes from the Home Occupations can be contained on one-acre parcels or greater. Noise and fumes travel far and there is no analysis to show what size property, if any, is suitable to keep the nuisance from leaving the property.

The Limitations on Home Occupations policy is confusing as written, and will need to be more structured for a clear analysis of its impacts. Several of the listed Home Occupations have an exception clause in them (1, 2, 3, 4, 8, 9, 11, 12). It is not clear if the exception applies to the requirement of a minimum one-acre parcel size, to the requirement of a Use Permit, or some other requirement. There is no clear distinction as to whether the proposed Home Occupation is intended for residential areas or agricultural areas, which have different needs and compatibility issues. A complete chart listing each business type, each zoning type, and each parcel size is needed for clarity to the public and for analysis that needs to be in the DEIR. 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).)

- a) Policy 17.40.160.F.1 - Motor vehicle repair and maintenance is a noisy and smelly industry and should not be allowed in any residential neighborhood, regardless of the parcel size. Impacts that should be included in the DEIR includes:
  - i. What limit on volume of cars serviced per day is being analyzed? Does it matter what size the parcel is and what type of zoning it is? Analysis on

the change of Land Use from residential to commercial/industrial must be included in the DEIR.

- ii. Even with proper venting on a paint booth, there are fumes that escape and cannot be contained on the property. For example, these types of fumes have triggered asthma attacks in residents living near the Kniesel's Auto Collision Center. The impacts on Air Quality from noxious paint fumes in residential neighborhoods must be analyzed.
- iii. El Dorado County has a poor track record of properly funding code enforcement staff. "[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.)

Will there be enough staff to enforce all of the regulations and resolve conflicts that will arise if motor vehicle repair is allowed to happen in any neighborhood anywhere in the county instead of in properly zoned commercial and light industrial areas? This impact on Public Services must be analyzed.

- iv. Large clouds of smoke are often created when flushing a car system, sometimes causing nearby citizens to call the fire department out of concern for public safety. What type of burden will be placed on the fire department if it receives increased calls because of large clouds of smoke throughout the county's residential neighborhoods? Impacts to Public Services and Air Quality must be analyzed.
- v. Depending on the volume of cars allowed, neighbors could be subjected to continuous noxious fumes from car exhaust as cars are tested before and after repair. The Draft ZOU should have clear standards for volume of cars allowed in the policy so that the impacts to Air Quality can be analyzed.
- vi. In commercial auto repair shops, signage is required to show that many auto parts contain asbestos and that exposure is a safety hazard. Auto parts that contain asbestos will be delivered, stored, and disposed of on residential properties and the potential health risks need to be analyzed for their impact on Hazardous Materials.



- vii. The delivery and disposal of oils, coolants, and other fluids used in motor vehicle repair is often made by large, industrial-sized trucks. The impact on the neighbors of increased traffic by large, delivery vehicles must be analyzed for Noise, Nuisance, and Public Safety.
  - viii. Is the county and any other responsible agencies prepared to increase staff that performs enforcement of regulations and inspections for compliance regarding proper disposal of materials when this type of business is allowed to be scattered throughout residential neighborhoods rather than commercial and industrial centers? The impact to Public Services, Water Quality, and Hazardous Materials must be analyzed in the DEIR.
  - ix. Motor vehicle repair businesses use loud machinery, such as compressors. Other noises include the beeping, engine noise, and hydraulics of tow trucks that deliver vehicles to the business. Analysis of this type of nuisance of Noise to neighboring properties must be analyzed in the DEIR.
- b) Policy 17.40.160.F.2 - Storage of an excessive number of motor vehicles in residential areas is not a desirable trait for any neighborhood. It gives the appearance of a parking lot or junkyard, depending on the number and type of vehicles allowed. The Draft ZOU should include a chart of the size of parcel, number of vehicles allowed, and type of vehicles allowed so that detailed analysis can be made and included in the DEIR. The DEIR should include analysis of the Aesthetics, Noise, and Air Quality that would negatively impact the neighbors by the increase of vehicles arriving, departing, and being stored in the neighborhood. The impact on Public Services should also be analyzed as the storage area would not be as secure as a commercial storage facility in a centrally located commercial area and would become a target for theft, increasing the burden of law enforcement in the county.
- c) Policy 17.40.160.F.3 - Carpentry and cabinet making is a noisy and sometimes smelly industry and should not be allowed in a residential neighborhood without detailed analysis.
- i. Carpentry and cabinet making use loud saws and machinery and there is not clarity in the Draft ZOU as to how the noise from this machinery will be contained on property of any size. There is no evidence to show that a one-acre parcel is large enough a distance from neighbors to prevent a

negative impact on neighbors. Analysis for the impact of Noise should be included in the DEIR.

- ii. Carpentry and cabinet making use wood finishes that can emanate noxious fumes and must be used and disposed of properly. Analysis must be included on the impact to Public Services, Air Quality, Water Quality, and Hazardous Materials due to the need for increased staff to enforce regulations and perform inspections of the proper disposal and use of wood finishes.
- d) Policy 17.40.160.F.4 - The Food preparation and food sales policy does not clearly indicate the amount of food that can be prepared on-site nor does it indicate how many customers will be allowed on-site to make purchases.
- i. Without clear limits in the Draft ZAOU on the amount of food that can be produced, it is impossible to determine whether or not delivery trucks will service the business and cause increased traffic of commercial trucks to the residential area. The Draft ZOU should have clear limits of how much food can be produced so that a detailed analysis of the increase in traffic can be analyzed for Noise, Public Safety, and Transportation.
  - ii. With food sales allowed on site, clear limits on the number of customers allowed per day should be included in the Draft ZOU so that the impact of customers coming and going into the neighborhood can be analyzed. Analysis of Noise and Traffic should be included in the DEIR.
  - iii. The policy allows for food preparation and sales to be scattered throughout the county instead of in a centrally located commercial area. Is the county prepared to provide the increase in staff that will be needed to monitor and enforce health codes? The impact on Public Services must be included in the DEIR.
- e) Policy 17.40.160.F.5 - Kennels are not allowed on parcels less than 5 acres in size in the current ZOU, however Kennels and Catteries are proposed in the Draft ZOU on parcels one acre or greater.
- i. What analysis was done to determine that one acre or greater parcel size is enough distance to insulate surrounding properties from the noise and smell nuisances related to a kennel or cattery? Analysis on Noise and Air Quality must be analyzed in the DEIR.

- ii. The Draft ZOU does not include any limitations on number of animals or number of clients. This information needs to be included in the Draft ZOU so that it can be analyzed in the DEIR for impact on Noise from the animals and increased traffic into the neighborhood.
  - iii. The Draft ZOU does not include any limitations on number of animals. This information needs to be included in the Draft ZOU so that it can be analyzed in the DEIR for impact on Aesthetics as it is not clear if the kennels/catteries will be indoors or outdoors and out of view of the public.
  - iv. The Draft ZOU does not include any limitations on number of animals. This information needs to be included in the Draft ZOU so that it can be analyzed in the DEIR for impact on Public Services. It is fairly common to read in the newspaper or hear in conversation where someone is complaining about their neighbor's dog barking. Scattering kennels throughout residential neighborhoods will exacerbate an existing common complaint and strain enforcement officials.
  - v. The Draft ZOU does not include any limitations on number of animals. This information needs to be included in the Draft ZOU so that it can be analyzed in the DEIR for impact on Hazardous Materials because animal waste is a carrier of disease and will need to be monitored for proper disposal and containment.
- f) Policy 17.40.160.F.6 - The Personal Services policy in the Draft ZOU is erroneous and incomplete, which makes it impossible to clearly analyze its impact on the environment and its potential as a nuisance to residential neighborhoods.
- i. The Personal Services policy directs readers to find the definition of Personal Services in the Glossary, Article 8. There is no entry in Article 8 for 'Personal Services' or for 'Services, Personal.' Even a document search of the Draft ZOU does not bring up the proper definition in Article 8. Instead, the proper definition is listed under Retail Sales and Service. This needs to be corrected immediately so that the definition can be located and analyzed in the DEIR.
  - ii. The definition of Personal Services is:  
Establishments engaged in providing services relating to personal improvement or

appearance, such as barber shops, beauty salons, therapeutic massage parlors, tailors, shoe repair shops, self-service laundries, and dry cleaners.

This list of potential businesses is vague and confusing. It begins with personal health type of businesses and then progresses into more commercial types of businesses. Since this list is not definitive and the types of services vary, it is impossible to know the impacts on the environment and neighboring residences.

In order to provide clear analysis of potential impacts in the DEIR, the Draft ZOU must be updated to include a definitive list of business types with parcel sizes and types, and limitations on number of clients per day. Proper analysis of the impacts on Noise (machinery), Hazardous Materials (dry cleaners), Air Quality (dry cleaners), and Public Services (self-service laundry has potential to increase crime, as witnessed recently in Shingle Springs) must be included in the DEIR.

- g) Policy 17.40.160.F.7 - The policy for Medical and Dental Offices, Clinics, and Medical Laboratories is vague and confusing, which makes it impossible to clearly analyze its impact on the environment and its potential as a nuisance to residential neighborhoods.
  - i. 'Medical Laboratory' is not clearly defined in the Draft ZOU. There is reference to a Hospital Laboratory, Medical or Dental Laboratories, and Pharmaceutical Research Laboratories in the Draft ZOU, but not a clear definition of what is being referred to in the Home Occupation Ordinance. A clear definition must be part of the Draft ZOU in order for a clear, concise analysis to be performed and included in the DEIR.
    - a. Will drugs be used in the Laboratories? If so, what analysis has been done to ensure that crime will not increase with drugs being allowed into residential neighborhoods? The impact to Public Services must be analyzed in the DEIR.
    - b. What chemicals will be allowed in the Laboratories? Is there a potential for toxic waste to be disposed of improperly? Is there a potential that any of the chemicals are explosive? The impact of Hazardous Materials must be analyzed in the DEIR.
  - ii. 'Clinics' is not clearly defined in the Draft ZOU as it applies to the Home Occupancy Ordinance. In the Glossary, Article 8 of the Draft ZOU, Clinic

is defined as:

Facility that provides any combination of out-patient medical, diagnostic and minor emergency services; that may be open before and after typical medical office hours; and that generally accommodates walk-in patients.

- a. The intent of the policy appears to encourage walk-in patients, which would create a flow of unlimited traffic to and from the home. The policy also appears to encourage before and after regular medical office hours. This has the potential to negatively impact the residential neighbors with patients coming and going at what are normally the quiet hours outside of normal business hours. The Draft ZOU must be updated to set clear standards for hours of business and a limit on number of patients per day. The negative impact of the number of patients and business hours on Noise and Traffic must be analyzed in the DEIR.
  - b. Will drugs be used in the Clinics? If so, what analysis has been done to ensure that crime will not increase with drugs being allowed into residential neighborhoods? The impact on Public Services must be analyzed in the DEIR.
  - c. What chemicals will be allowed in the Clinics? Is there a potential for toxic waste to be disposed of improperly? Is there a potential that any of the chemicals are explosive? The impact of Hazardous Materials must be analyzed in the DEIR.
- h) Policy 17.40.160.F.8 - The Veterinary Services policy is unclear and vague. The Draft ZOU must set clear standards for what, if any, services will be performed on-site at the Home Occupation or off-site at the patient location. A chart of what type of service will be performed, how many and what type of animals are allowed, what size of parcel, and what type of parcel must be added to the Draft ZOU so that detailed analysis may be performed on the environmental impacts. While Veterinary Services may be compatible with Agricultural Support Services, they are not compatible in a residential neighborhood and must be analyzed in the DEIR.
- i. Will drugs be used as part of the Veterinary Services? If so, what analysis has been done to ensure that crime will not increase with drugs being

allowed into residential neighborhoods? The impact on Public Services must be analyzed in the DEIR.

- ii. The impact of increased traffic, including larger vehicles pulling animal trailers, into a residential neighborhood must be analyzed for its impact on Transportation and Public Safety in the DEIR.
- i) Policy 17.40.160.F.9 Repair Shops or Service Establishments - The Repair Shops policy needs to be clarified for number of clients allowed per day and the number and type of items that can be serviced on-site.
- i. A limit on the number of clients allowed per day must be set as part of the policy in the Draft ZOU. Analysis of the impact to Noise and Transportation based on the number of clients coming and going onto the property must be included as part of the DEIR.
  - ii. Will refrigerators and other large appliances be repaired on-site? If so, how many and will they be required to be stored inside and out of public view? The impacts to Aesthetics must be analyzed in the DEIR.
  - iii. How will the disposal of refrigerator coolant and parts be monitored for safety and proper disposal? Will the county have enough resources to staff enforcement officers? The impact to Hazardous Materials and Public Services must be analyzed as part of the DEIR.
- j) Policy 17.40.160.F.10 Commercial Stables - The Commercial Stables policy is erroneous and contradictory and needs clarification so that detailed analysis can be included in the DEIR.

The policy states:

Commercial stables, as defined in Article 8 (Stables: Commercial), which shall be subject to Subsection 17.40.210.C (Outdoor Recreation Facilities).

However, Article 8 states:

**Stables.** (Use Type) Stables are divided into the following categories:

**Commercial.** Facility for keeping horses available to the public for hire. This may also include larger equestrian facilities that specialize in breeding and raising of horses, and equestrian training, exhibitions, and boarding; and their accessory structures, such as arenas, spectator stands, and training facilities. Commercial

stables do not include the keeping or breeding of horses for personal use, training, or horse boarding consistent with a home occupation. (See Section 17.40.210: Outdoor Recreation Facilities.)

**Private.** An equestrian facility that is used for the shelter, breeding and raising of horses and other domestic farm animals for the exclusive use of the property owner or occupant, or for training, horse boarding and student instruction consistent with a home occupation. (See Section 17.40.160: Home Occupations.)

- i. The definition of Stables in Article 8 makes it clear that Private Stables are intended for Home Occupations, **not** Commercial Stables, as stated in the Draft ZOU. This error must be corrected in the Draft ZOU so that proper analysis of the impacts can be analyzed.
  - ii. The definition of a Private Stable includes "consistent with a home occupation." That is circular logic that is unclear and vague. Clear standards for the parcel size, parcel type, number and type of animals must be included so that proper impacts can be included in the Draft DEIR.
  - iii. What analysis was done to determine that a one-acre parcel provides enough distance from its neighbors to not interfere with their right to the peaceful, uninterrupted enjoyment of their property?
  - iv. The number and type of animals must be set in the policy so the potential noise, smell, dust, and animal waste can be analyzed for the impacts to Noise, Hazardous Materials, and Air Quality and included in the DEIR.
  - v. The number of clients allowed per day must be established so that analysis on the impact to Transportation and Public Safety can be included in the DEIR regarding the number of car trips per day onto the property and the use of large vehicles and trailers.
- k) Policy 17.40.160.F.11 Large-Scale Upholstering Service - The Large-Scale Upholstering Service policy needs standards set for the number of clients allowed per day and the number and type of items that can be serviced on-site.
- i. A limit on the number of clients allowed per day must be set as part of the policy in the Draft ZOU. Analysis of the impact to Noise and

Transportation based on the number of clients coming and going onto the property must be included as part of the DEIR.

- ii. What type of furniture and other objects will be repaired on-site? How many and will they be required to be stored inside and out of public view? The impacts to Aesthetics must be analyzed in the DEIR.
- iii. Will any type of varnishes or other product be stored and disposed of on-site? Are any of these products flammable or toxic and need to be monitored for proper storage and disposal? The impact to Public Services must be analyzed as part of the DEIR.

I) Policy 17.40.160.F.12 Welding and Machining policy - The Welding and Machining policy needs standards set for the number of clients allowed per day and the number and type of items that can be serviced on-site.

- i. A limit on the number of clients allowed per day must be set as part of the policy in the Draft ZOU. Analysis of the impact to Noise and Transportation based on the number of clients coming and going onto the property must be included as part of the DEIR.
- ii. What type and size of objects will be repaired on-site? How many and will they be required to be stored inside and out of public view? The impacts to Aesthetics must be analyzed in the DEIR.
- iii. What flammable or toxic substances, such as fuel for the welding machine, will be used and stored on-site and need to be monitored for proper storage and disposal? The impact to Public Services must be analyzed as part of the DEIR.
- iv. The machining tools have the potential to create noise that will leave the property and permeate the neighboring properties. A detailed analysis of the impact to Noise from the machines must be included in the DEIR.

6. Home Occupation Business Hours - The Draft ZOU only makes reference to hours of operation in policy 17.40.160.C.12.c in regard to student instruction. Each and every one of the home occupations listed in the HOO must have clear and concise hours of operation so that the impact to the neighbors including, but not limited to, Noise, Transportation, Air Quality, and Aesthetics can be analyzed.



General comments:

There are too many components in the Project (TGPA, ZOU, TDM, MUD) for the public to be able to understand and address its cumulative impacts.

#### **4.3.1 Project Objectives DEIR review comments**

##### **Objective: Reorganize the ordinance for ease of use**

The Draft Zoning Ordinance Update (ZOU) is difficult to navigate because of its page numbering system. Each section restarts numbering at Page 1, which causes each section to have the same page numbers as the others. This does not make the ZOU easy to use and causes confusion when referencing a page number of the ZOU. Additionally, there are no page numbers in the Table of Contents, which is the whole point of a Table of Contents: to look up a topic and go to the corresponding page number. These need to be corrected in the final ZOU. 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).)

Residents have been asking for almost 2 years for a matrix that tracks the changes of the current ZOU to the draft ZOU. Because the ZOU has been completely reorganized and there is no tracking from the old to the new, how is the public to know what has been changed to determine what impacts will be created by the new ZOU and if the proper analysis has been done?

END SECTION COMMENTS

## References Cited - Chapter 7 dEIR Review Comments

1. As explained in CEQA Guidelines, Section 15148,

“Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.”

These seemingly mundane clerical directions turn out to be critical to CEQA compliance.

Ultimately, the lead agency uses the information in the EIR to draft legal findings of fact based upon substantial evidence. These findings must trace the logical route from the substantial evidence to the agency’s ultimate conclusions. (*Topanga Association for a Scenic Community v. City of Los Angeles* (1974) 11 Cal.3d 506, 514-516; *Resource Defense Fund v. Local Agency Formation Commission* (1987) 191 Cal.App.3d 886, 898; *Citizens for Quality Growth v. City of Mount Shasta* (1988 3d Dist.) 198 Cal.App.3d 433; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1522.) Thus, whenever an EIR makes an assertion of fact based upon a referenced document, it needs to identify the factual assertion, identify the referenced document, and identify the location of the information in that document that supports that factual assertion. This information provides the road map from the agency’s findings to the evidence upon which they are based.

Traditionally, everyone from high school students typing history term papers, to college English majors writing theme papers, to law students writing journal articles, and even to judges issuing legal opinions employ some standard method of providing footnotes, endnotes, or citations to link specific sections from the text of their work to materials referenced in that text. Completing this traditional task of accountability is what CEQA Guidelines, Section 15148, asked of EIR preparers.

Without such a road map, the decision makers, the public and the courts are burdened with the impossible task of guessing which section of which referenced documents are intended to support which assertions in the EIR. Perhaps even more importantly, they cannot identify which factual assertions in the EIR are completely lacking in supporting reference material. In the absence of marking some endnote or footnote in the EIR text, and identifying some page range in the reference document, the most important part of the findings roadmap will be missing: the part that leads to the ultimate factual destination.

Chapter 7 of the DEIR includes only 8 pages of referenced documents. One would expect more references to support the assertions in a DEIR of this length.

None of the referenced documents include a page range to indicate what portion of the document is being referenced to support a factual assertion in the EIR.

There are neither footnote numbers, nor endnote numbers, nor end-of-sentence citations in the DEIR text to indicate which portion of the text is supported by the referenced material.

In the EIR please:

- 1) Provide a footnote, end note, or end of sentence citation in the text of the EIR to support all factual assertions for which the EIR relies on reference materials.
- 2) Provide a page range to indicate which portion of the referenced material is being relied upon to support the factual assertion in the EIR.
- 3) Recirculate the DEIR, so that the public can properly review it to determine the adequacy of the reference material's support for the DEIR's factual assertions. Recirculate the DEIR so that the public can identify and make proper inquiries regarding the support for factual assertions in the DEIR that are not supported with citations to reference material. (See CEQA Guidelines, sec. 15088.5, *Laurel Heights II* (1993) 6 Cal.4<sup>th</sup> 1112, 1129-1130 [recirculate an EIR when needed to avoid depriving the public of a meaningful opportunity to comment].)

2. CEQA Guidelines, Section 15150, allows documents or parts of documents to be incorporated by reference into the EIR. The EIR must indicate a public location in the County where such documents can be reviewed by the public. The incorporated part of the document must be briefly summarized in the DEIR if possible.

It is possible that the County intended to incorporate by reference some or all of the documents listed in Chapter 7 of the DEIR. If that is the case, we have the following requests.

- 1) Please include in the Final EIR a summary of each the document, or portion of the document, that the County intends to incorporate by reference.
- 2) Please identify the County office where documents being incorporated by reference can be reviewed by the public. While some documents listed in Chapter 7 indicate where they can be accessed in the County or on the internet, many do not:
  - The 2006 Williamson Act Status Report (DEIR, p. 7-1.)
  - The 2004 Revision to the SIP for CO (DEIR, p. 7-2.)
  - The 2000 Areas More likely to Contain NOA (DEIR, p. 7-2.)
  - The 1997, Garza, CO Protocol (DEIR, p. 7-2.)
  - The 1996, Science of Climate Change (DEIR, p. 7-3.)
  - Baughman, GHG Initial Study Template (DEIR, p. 7-3.)
  - The 2002, Gabbro Soils Plants Recovery Plan (DEIR, p. 7-4.)
  - The 2013, Eagle Conservation Plan Guidance (DEIR, p. 7-4.)
  - The BAE Urban Economics, Memo re 2035 Growth Projections (DEIR, p. 7-4.)
  - The DOF, 2011 Population Estimates (DEIR, p. 7-4)
  - The DOR, 2013 E-6 Population Estimates (DEIR, p. 7-4.)
  - The Caltrans 2013, Traffic Noise Analysis Protocol (DEIR, p. 7-5.)
  - The 2009, Highway 50 Corridor System Management Plan (DEIR, p. 7-5.)
  - The 2008, Short Range Transit Plan (DEIR, p. 7-6.)
  - The 2010, Highway Capacity Manual (DEIR, p. 7-6.)
  - The 2011 D.O.C., El Dorado County Important Farmland 2010 (DEIR, p. 7-7)
  - The 2013, Eliminating Bias Against Mixed Use Development (DEIR, p. 7-7.)
  - The SACOG 2012, Sustainable Communities Strategy (DEIR, p. 7-7.)
  - The SACOG 2012, Regional Housing Needs Plan (DEIR, p. 7-8.)

## **'Notice of Preparation' Section - Appendix B dEIR Review Comments**

A Notice of Preparation (NOP) for this draft EIR was issued in June 2012, then revised and reissued in November 2012. The responsive comments, included in Appendix B, number in excess of 600 pages. Page 1-1 of the dEIR Introduction says the County will respond to the 'pertinent' ones.

### **How is 'pertinent' defined?**

**If there are many comments on a specific issue, showing strong community interest in the subject, might it still not be considered 'pertinent'?**

The issue of keeping Low Density Residential Land rural and revising the Community Region boundaries is mentioned well over 50 times. It was also in the adopted Resolution of Intentions that the TGPA was based on. It has also been the bone of contention in almost every marathon land use meeting at the Board of Supervisors over the past year. But there is no serious analysis and no serious discussion in the dEIR that answers the multiple questions posed in the NOP.

**Why have Community Region boundaries not been addressed, per ROI 182-2011?**

**If the subject of a particular NOP query has indeed been addressed in the dEIR, but the specific question was not actually answered, was it not 'pertinent', or was it overlooked?**

**If a single lone query is posed, looking for information, is it 'not pertinent' if there are not multiple voices asking the same question?**

The changes to dam and flood inundation zone policies was questioned in the NOP, but only a few times. The change appears to increase risk to residents and pose potential cost to the County.

**Why has this change not been analyzed?**

A number of requests were made for extra time to review the extensive changes during the NOP period, and people expressed problems with understanding exactly what changes were being proposed. Yet there was no time extension, and no comprehensive list of the ordinance changes provided.

**How can this dEIR evaluate all of the changes without knowing what they are? If someone DOES know, why has the public not been better informed? This does not represent "a good faith effort at full disclosure." (CEQA Guidelines, sec. 15151.)**

We have been told multiple times that changes could not be made to the 2012 list of proposed updates, but when the draft EIR was officially posted for review in March,

there were indeed changes that had been made, and they were made without public notification.

**How were the TGPA /ZOU changes made after the NOP period, as posted in the March 2014 version of the Zoning Ordinance without additional public notice? Does the dEIR take responsibility for having analyzed all the last minute changes in their entirety?**

End Comments