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Date: August 15, 2014

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Rich Stewart, First Vice-Chair, District 1
Dave Pratt, Second Vice-Chair, District 2
Tom Heflin, District 3
Brian Shinault, District 5

Subject: TGPA/ZOU Recommendation to the Board of Supervisors

Planning Commission Members:

I reviewed the Biological Resources section of the draft Environmental Impact Report (dEIR) for the Targeted General Plan Amendment/Zoning Ordinance Update (TGPA/ZOU) and was surprised to find—*after* submission of my comments to Long Range Planning—that a contract had been let to the consulting firm Dudek (March 19, 2014) to develop mitigation options for impacts to biological resources.

This approach to resolving important biological resource mitigation issues was presented to the Board of Supervisors (BOS) by Roger Trout, Development Services Director, in a memorandum dated **September 20, 2012** (General Plan Policy 7.4.4.4 Options Report). On **September 24, 2012**, the BOS directed staff to “...prepare a Resolution of Intention to Amend General Plan Policies 7.4.2.8, 7.4.2.9, 7.4.4.4, 7.4.4.5, 7.4.5.1 and 7.4.5.2 and their related implementation measures to clarify and refine the County's policies regarding oak tree protection and habitat preservation, and direct the Chief Administrative Officer to prepare a Request for Proposal to hire a consultant to assist the County with the preparation of policies and the EIR.” (Motion: Supervisor Sweeney, seconded by Supervisor Santiago; Vote: Yes [5] - Knight, Nutting, Sweeney, Briggs and Santiago.)

Thus, while the intent to evaluate and amend mitigation proposals for impacts to biological resources was in the works for some time; this fact was not stated in the TGPA/ZOU dEIR. Instead, the dEIR presented impact mitigation measures from the 2004 General Plan as if they were currently applicable, and would be the mitigating force behind the proposed policies presented in the TGPA/ZOU. The dEIR failed to describe the *actual* status of biological resources mitigation policies.

This approach demonstrates a fundamental flaw in the TGPA/ZOU dEIR: The dEIR uses the 2004 General Plan as the basis from which to evaluate the impacts of the newly proposed policies. This approach is

misleading, and makes the dEIR vulnerable to legal challenge (*Epic v. County of El Dorado*).¹ **The dEIR should have included a discussion of the contract with Dudek and—to the extent known at the time of dEIR development—the mitigation options proposed by Dudek, in lieu of the completely “hollow” presentation of non-existent 2004 General Plan mitigations** (*Kings County Farm Bureau v. City of Hanford*).²

While it is often stated in the dEIR—and by ICF International consultants and Long Range Planning Staff—that the dEIR is not “tiered” from the 2004 General Plan, this is contradicted by analyses presented in the dEIR (and, ironically, by multiple statements found in the dEIR; see Attachment).

Oddly enough, this method of attempting to “convince by statement alone” reminds me of an experience I’ve had while shopping for groceries:

I shop at a grocery store that perpetually hangs a sign that reads “**Large Fuji Apples,**” over what are clearly small—not large—fruits. I want to point out to the store manager that *saying* something doesn’t make it so.

So it is with this dEIR: *Saying* it presents an analysis of the impacts of proposed policies on *current conditions* in the County does not make it so. The *analysis* needs to reflect the evaluation; *saying the words* does not change fact.

Presenting environmental mitigations as relevant that are not established violates the intent of the California Environmental Quality Act (CEQA). CEQA intends EIRs to be “full disclosure” documents that facilitate an understanding of proposed projects and their impacts, based on an analysis of real-time circumstances.³ This requirement was sidestepped in this dEIR.

In addition, Dudek’s presentation to the BOS on July 28, 2014, described a set of four mitigation options that included the possible *elimination* of the Integrated Natural Resources Management Plan (INRMP) and the Oak Woodlands Management Plan (OWMP). Thus, not only have the mitigations presented in the dEIR *not* been developed, they may in fact be *eliminated* from consideration as potential mitigation tools.

To complicate matters, Dudek’s presentation at the BOS meeting/workshop was followed by a request from development interests (George Carpenter, Winn Communities; Kirk Bone, Parker Development) that an “interim policy” be established that would allow development to continue under less restrictive measures than currently exist under Policy 7.4.4.4 Option A (relative to the removal of oak trees). In response to this request, Long Range Planning staff (Ms. Purvines) indicated “*I’d actually like to look into that a little bit further and bring back a discussion on that...*” If there was such an easy willingness to

¹ **EPIC v County of El Dorado (1982) held:** “*The dispositive issue...is whether the requirements of CEQA are satisfied when the EIRs prepared for use in considering amendments to the county general plan compare the environmental impacts of the proposed amendments to the existing plan rather than to the existing environment. We hold that the EIRs must report on the impact of the proposed plans on the existing environment.*” Discussion available at: http://resources.ca.gov/ceqa/cases/1982/el_dorado_043082.html

² **Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 712 held:** “*A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.*”

³ *Ibid.*

evaluate interim policies under which development interests could proceed *sans* 2004 General Plan environmental mitigations, **that possibility should have been explored in the dEIR** as well. (It is likely Long Range Planning staff knew this request would be floated by the development community, due to the lengthy timeline for biological resource mitigation development [implementation timeframe: 15-36 months].)

As it turns out, delay in establishing biological resource mitigation measures was a given. In the September 20, 2012, Options Report, Long Range Planning staff justifies leaving the analysis/inclusion of biological resource mitigation measures out of the TGPA/ZOU dEIR:

“...the EIR for the [TGPA/ZOU] is already growing in size and needs to be completed to implement many other important General Plan policies and Board direction. Adding to this analysis would potentially delay that process and make it more complex. The General Plan’s biological policies appear to be severable from the larger [TGPA/ZOU] process...and do not directly correlate to other policies.”

This rationale for delay should have been discussed (and justified) in the dEIR. And, the following question should have been explored: Are mitigation measures really “severable” from sources of adverse impact? In fact, approaching the process in this manner is counterintuitive; mitigation measures need to be fashioned *in concert* with defined impacts, and mitigation *must* be in place prior to implementation of policies geared to accommodate development proposals. Otherwise, why develop mitigation measures at all?

In conclusion, I ask the Planning Commission to present the following recommendation to the BOS: **Withdraw and re-issue the dEIR.** Ask the BOS to send the dEIR back to the consultant to be revised in the following manner:

- Reorganize the proposed policies on a policy-by-policy (or topic-by-topic) basis to enable the reader to determine exactly what is being proposed (e.g., a *topic* might be “changes to agricultural zoning;” discussion on the topic would include TGPA *and* ZOU changes that impact agricultural lands). Couple this discussion with anticipated impacts and proposed mitigations; include documentation that provides the basis for impact/mitigation determinations/conclusions. Provide data that define the magnitude of proposed changes, and include maps that identify specific areas of the County that will be impacted by policy implementation.
- Describe how the policy proposals differ from policy/land use currently in the 2004 General Plan.
- Discuss *why* the changes are necessary/desirable.
- Provide a cost/benefit analysis of each proposed policy (describe how the County will benefit from the proposed change). Include supporting evidence (studies, surveys, etc.) that substantiate claims of benefit.
- Discuss alternatives to proposed policies (include a discussion of anticipated trade-offs), and include the rationale behind the selected proposal.
- Provide documentation supporting determinations of adverse impact (e.g., “significant and unavoidable,” etc.) Ideally, documenting these determinations would involve describing what mitigations were examined, the rationale behind the choices, and the efficacy of proposed mitigations. All supporting information, studies, and other documentation should be included in appendices to the dEIR.

- Present, in a single, comprehensive topic-oriented discussion, a description of proposed agricultural land zoning changes—including changes to Williamson Act rollout zoning—that describe the impact of zoning changes on agricultural operations. Include a discussion of specific zoning changes, acreage data and maps for each designation change, the need/benefit of change, and any negative impacts related to rezoning (e.g., loss of Open Space, etc.) Describe why development activity in Agricultural Districts is “excused” from many environmental mitigation measures (grading, development on ≥30% slopes, Important Biological Corridor restrictions, etc.), and include a cost/benefit analysis of agricultural development that *is*—and development that *is not*—excluded from mitigation requirements. (Include all supporting documentation in an appendix to the dEIR).
- Include a comprehensive discussion of changes to Open Space, including acreage data and maps (“before” and “after” implementation of proposed policies). Include justifications/anticipated benefits of changing Open Space designations; include documentation supporting claims of benefit. Include assessments of the wildlife habitat value of currently zoned Open Space land (prepared by wildlife experts).
- Re-write the biological resources section to include: 1) a complete and accurate description of the County’s environmental setting (plant and animal communities); 2) a complete list of all plants/animals/habitats requiring protection through State and Federal mandate and other pertinent lists; 3) a compilation of anticipated impacts to wildlife/wildlife habitats; 4) a compilation of important habitats in the County for each plant/animal community present (include maps); 5) a discussion of the rationale behind severing the biological resources policies from the TGPA/ZOU process; 6) a complete description of all proposed mitigation measures; 7) a synopsis of possible “interim policies” that may be established to meet the demands of development interests prior to the establishment of “final” mitigation measures (include anticipated adverse impacts/mitigation proposals for each interim policy and documentation that supports the efficacy of interim mitigation proposals); and 8) an appendix to the dEIR that includes peer-reviewed scientific studies, and studies from universities and State departments that support claims of efficacy for proposed mitigation measures.
- Include the previously omitted topics of water quality,⁴ hazards, geology/soils/minerals, and public services.
- Reevaluate the CEQA guidelines relative to existing (2014) environmental conditions.
- Define all terminology used in the dEIR; make consistent the use of established terminology.
- Eliminate contradictory statements in the dEIR though *careful evaluation* of the proposed policies and their impacts.

While the stated purpose of the proposed policies in the TGPA/ZOU is to promote economic development (jobs, moderate income housing, etc.), I wonder why—that being the case—such a shoddy document was prepared to advance that goal. As it stands, the dEIR project description is virtually impossible to comprehend; the text is composed of unintelligible, fragmented policy descriptions, imprecisely used language, undefined terms, and contradictory statements. It excludes relevant information (e.g., the status of biological resource mitigations), and—in many cases—fails to explore pertinent topics (water quality,⁵ hazards, geology/soils/minerals, and public services). Impact

⁴ At the July 10, 2014, Planning Commission meeting an ICF International consultant stated—when discussing future construction of ski resorts in the County—“[ski resorts have] a lot of potential impact on **water quality**...” Thus, while ICF consultants realized development activities proposed under the TGPA/ZOU would adversely impact water quality, this issue was not covered in the dEIR.

⁵ *Ibid.*

determinations are based on outdated and/or unsubstantiated “data” —or no data at all—thus, the dEIR presents fallacy as fact. **This document is certain to face legal challenge** if not withdrawn and re-written in a manner that enables the public to understand what County management intends to accomplish through policy implementation, and what “price” residents are expected to pay for those choices. The dEIR must be rewritten (perhaps re-purposed) to accommodate a *balanced* approach to economic development/environmental protections.

Unless a prudent, balanced approach is developed under this TGPA/ZOU process, the County will be stuck in the limbo of working under a succession of “interim policies” promoted by development interests. Needless to say, while policies developed under such circumstances may or may not serve the interests of the community at large, they most certainly will work to the detriment of all that is thought to represent “good planning.”

Thank you for your attention to this matter. I look forward to reviewing a re-issue of the dEIR. For your convenience, I have attached the TGPA/ZOU review comments I submitted to Long Range Planning.

Attachment

Cheryl Langley
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Date: July 21, 2014

Subject: Review of the TGPA/ZOU Draft Environmental Impact Report

I reviewed El Dorado County's (EDC) Targeted General Plan Amendments/Zoning Ordinance Update (TGPA/ZOU) draft Environment Impact Report (dEIR) and have the following comments.

(1) The basic approach of the dEIR is flawed.

Page 3.4-21 states: *"This DEIR analyzes whether these proposed changes...would not be reasonably foreseeable under the existing General Plan and Zoning Ordinance."*

AND

Page 3.4-25 states: *"Each of the impact discussions...first discloses the extent to which the current General Plan...has or is expected to have an impact on biological resources. The potential effects of the project on existing biological resources are then analyzed."*

AND

Page 3.4-25 states: *"The 2004 Final EIR for the General Plan modified these considerations [CEQA thresholds of significance] to reflect the character of El Dorado County. The present DEIR will use the following considerations taken from the 2004 General Plan EIR to evaluate impacts..."*

Because the dEIR takes the 2004 General Plan as a "starting point" from which to evaluate the impacts of the newly proposed TGPA/ZOU policies, the result is an inappropriate assessment of new policy impacts. To be a legally appropriate document, the dEIR must compare the outcome of the proposed policies (the project) with **existing** physical conditions; that is, courts have required that the baseline of an EIR reflect physical conditions at the **start of environmental review** (*EPIC v. County of El Dorado [1982]*).¹ Using conditions that were present when the General Plan (a ten-year old document) was prepared and approved is inappropriate.

(2) Many of the mitigation programs described in the 2004 General Plan have not been implemented.

Page 3.4-5 states: *"The County 2004 General Plan contains numerous goals and policies intended to conserve biological resources."*

Despite the fact that many of the mitigation measures (including *programs* intended to mitigate adverse effects of development) described in the 2004 General Plan have not been established, **the TGPA/ZOU dEIR is working under the assumption that these mitigations have been implemented and are efficacious**; this is erroneous. The dEIR should "start from scratch." It should clearly identify mitigation programs that are currently in use (and shown to be effective mitigation elements), and reestablish

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timelines for yet to be developed programs. Mitigation measures under development need to be well researched and—to the degree possible—their efficacy established through investigation into programs implemented elsewhere in the State, and/or evaluated and recommended by research institutions, including universities and State departments with expertise in the areas of concern. **The efficacy of established and proposed programs needs to be documented and presented in the dEIR.**

These programs/mitigation measures **must be in place** prior to allowing TGPA/ZOU development policies to move forward (e.g., increases in zoning densities, changes to allowable activities in Agricultural Districts, etc.)

Please provide information on the following programs/studies/ mitigation measures/strategies, databases, etc., in an appendix to the final EIR. Identify: 1) specifically how the programs, etc. function to mitigate the impacts they are designed to reduce; 2) the programs, etc. that have been established and implemented (include efficacy evaluations); 3) the programs, etc. that have not been developed, the progress made toward development, the anticipated completion date, and documentation upon which development will be based; 4) the programs, etc., that include monitoring and reporting components; 5) the timing/duration of monitoring and reporting components, if applicable; and 6) any penalties imposed (and/or project adjustments required) for noncompliance with mitigation responsibilities (short and long-term).

- a. Integrated Natural Resources Management Plan (INRMP) (CO-M; page 3.4-13)
- b. Important Biological Corridor (-IBC) Overlay (review and update; page 3.4-13)
- c. Oak Tree Preservation Ordinance (page 3.4-11)
- d. Biological Resources Study (CO-U, A; page 3.4-14)
- e. Biological resource evaluation (if different than Biological Resources Study [d]) (page 3.4-28)
- f. Important Habitat Mitigation Program (CO-U, B; page 3.4-14)
- g. *County guidelines for off-site mitigation* of impacts to biological resources (page 3.4-14)
- h. Erosion and Sediment Control Plan (page 3.4-23)
- i. *Development standards* for hillside development (page 3.4-24)
- j. *Conservation fund* to acquire and protect important habitat (CO-U; 3.4-13)
- k. Ecological Preserve Fee Program (Policy 7.4.1.1; page 3.4-14)
- l. Zoning Ordinance's in-lieu fee option (page 3.4-14)
- m. Rare Plant Mitigation Program (page 3.4-15)
- n. Riparian/wetland setbacks and "proposed code," (page 3.4-6 & 3.4-28)
- o. Conservation easements (page 3.4-6)
- p. Natural Resource Protection Areas (page 3.4-6)
- q. No-Net-Loss Policy (CO-U8; page 3.4-27)
- r. Species, habitat, and natural community preservation/conservation strategies (page 3.4-6)
- s. Natural Resources Management Plan Conservation Fund (If different than [j]) (page 3.4-12)
- t. State Land Conservation Act Program; describe how EDC will "provide for Open Space through local implementation" of this program (page 3.4-13)
- u. Habitat Protection Strategy (if different than [f]) (page 3.4-8)
- v. Ecological Preserve overlay (page 3.4-5)
- w. Database of important surface water features (page 3.4-6)
- x. Important Biological Resources Map (page 3.4-7)
- y. Biological Community Conservation Plans (page 3.4-7)

For each of the programs that have been implemented, please provide the following documentation in an appendix to the final EIR:

- Identify specific EDC development projects that have been required to implement mitigation programs, and identify which mitigation measures were implemented.
- Provide monitoring results from follow-up mitigation efficacy investigations, and name the specific development project(s) that were investigated.
- Identify the individual/agency/department/etc. responsible for evaluating the effectiveness of mitigation, and provide their credentials (relative to evaluating mitigation of environmental impacts).
- Provide documentation on specific (named) projects from which mitigation fees have been collected, identify the program under which they were collected, quantify the amounts collected, and what the fees were used for.

Please explain the following statements (A) and (B):

(A) *“Mitigation to ensure no net loss of important habitat would be developed, but there are no current assurances that implementation of such mitigation would be required by the County.”*
(page 3.4-26)

(B) *“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, [there would be no] conflict with any such plan and there would be no impact.”*
(page 3.6-9)

- Is it likely the “lack of mitigation enforcement” referenced in **(A)** would also apply to any or all of the proposed biological resources mitigation measures listed in **(2)** above? If so, under what circumstances?
- Does the statement “[t]here are no habitat conservation plans...in El Dorado County” **(B)** mean the conservation strategies and plans, conservation easements, etc., identified on page 3.4-6 are null and void?

(3) The mitigation proposals presented in the dEIR are “hollow.”

While many of the mitigation proposals presented in the dEIR sound well established, closer inspection yields a different picture. For example, tracing the thread of discussion on development of hillsides $\geq 30\%$ yields the following information.

Page 3.4-33: Mitigation Measure BIO-1a: Limit the relaxation of hillside development standards

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

*Development or disturbance of slopes over 30% **shall be restricted**. Standards for implementation of this policy, including but not limited to a **prohibition on development or disturbance where special-status species habitat is present and exceptions for access, reasonable use of the parcel, and agricultural uses shall be incorporated into the Zoning Ordinance.***

Section 17.30.060, subsection C. Development Standards applicable to slopes 30 percent or greater.

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 consistent with General Plan Implementation Measure CO-U.**

Reviewer Comments on this portion of the mitigation proposal:

- Mitigation is described in broad terms, such as “shall be restricted.” This does nothing to identify how activities will actually be “restricted.”
- “Avoidance” is not quantified or defined.
- “Important habitats” is not defined. (According to the 2004 General Plan, “important habitats” will not be defined until the INRMP is developed.)
- The term “prohibited”—in this context—is narrowly defined; special-status species is a high bar, and exceptions (“reasonable use of parcel,” “agricultural uses,” etc.) are included even in the presence of special-status species. (Who decides what “reasonable use” is?)
- The fact that the development proponent is responsible for hiring the biologist that performs the Biological Resources Study is problematic. The question of the potential “bias” of a report prepared by an individual hired by the developer to evaluate the developer’s project will always loom large.
- Biological Resources Studies have not been performed, and the criteria for these studies have not been developed. Furthermore, it is not known *when* study criteria will be developed, or how effective the studies will be in evaluating project impacts. Because the studies will be performed by different biologists who are not required to consult with independent experts or with agencies with expertise in environmental issues (such as riparian/stream protection, wildlife requirements, etc.), the studies are likely to be inconsistent, and highly dependent upon the relative expertise of each biologist.

Again, following the thread to General Plan Policy 7.4.1.6. Page 144 of the 2004 General Plan states:

Policy 7.4.1.6 All development projects involving discretionary review shall be designed to **avoid disturbance or fragmentation of important habitats to the extent reasonably feasible**. Where avoidance is not possible, the development shall be required to **fully mitigate** the effects of important habitat loss and fragmentation. Mitigation shall be defined in the **Integrated Natural Resources Management Plan (INRMP)** (see Policy 7.4.2.8 and Implementation Measure CO-M).

The County Agricultural Commission, Plant and Wildlife Technical Advisory Committee, representatives of the agricultural community, academia, and other stakeholders shall be involved and consulted in defining the **important habitats** of the County and in the **creation and implementation of the INRMP**.

Reviewer Comments on this portion of the mitigation proposal:

- “Avoidance” is once again not defined.
- “Important habitats” is not defined.

- The term “reasonably feasible” is a red flag for “wiggle room.” (Who determines what is “reasonably feasible”?) Without pre-determined mitigation standards, “reasonably feasible” is purely subjective.
- How do you “fully mitigate” something where “avoidance is not possible”? (How is this accomplished, and who determines how to accomplish mitigation?) “Full mitigation” would require that the site be left undisturbed.
- The Integrated Natural Resources Management Plan (INRMP) has not been established. According to the 2004 General Plan, it was to be developed within five years of General Plan approval (page 146, 2004 General Plan). Because the plan has not come to fruition, EDC’s mitigation program for “...effective habitat preservation and management” remains undefined.
- The Plant and Wildlife Technical Advisory Committee—to be established under the INRMP—is described as a Committee that “...**should be formed of local experts, including agricultural, fire protection, and forestry representatives, who will consult with other experts with special expertise on various plant and wildlife issues, including representatives of regulatory agencies.**” What assurance is there that the Committee will be formed by local “experts,” or that members will consult with experts? Is it realistic to assume someone from fire protection (or agriculture or forestry, for that matter) has expertise in the area of wildlife issues?
- Policy 7.4.2.8 and CO-M refer to the non-existent INRMP.

Again, following the thread to General Plan mitigation measure CO-U; page 144 of the 2004 General Plan states:

MEASURE CO-U

*Mitigation under Policy 7.4.1.6 shall include providing **sufficient funding** to the County’s **conservation fund** to acquire and protect important habitat at a minimum 2:1 ratio. Impacts on important habitat and mitigation requirements shall be addressed in a **Biological Resources Study and an Important Habitat Mitigation Program (described below).***

A. Biological Resources Study. *The County shall adopt biological resource assessment standards that apply to all discretionary projects that would result in disturbance of soil and native vegetation in areas that include **important habitat as defined in the INRMP.** The assessment of the project site must be in the form of an independent **Biological Resources Study**, and must be completed by a qualified biologist.*

B. Important Habitat Mitigation Program. *The **Biological Resource Study** shall include an **Important Habitat Mitigation Program** that **identifies options that would avoid, minimize, or compensate for impacts on important habitats in compliance with the standards of the INRMP and the General Plan.***

Reviewer Comments on this portion of the mitigation proposal:

- Because the INRMP, Biological Resources Study, and Important Habitat Mitigation Program have not been established, mitigation measure CO-U is a non-starter.

(4) Protections for Open Space are inadequate.

The exemptions and modifications to Open Space protections are numerous. Open space—the element that defines EDC’s rural character—is not protected under the proposed policies. “Rural character” is a finite resource; it is the unique feature that EDC has to offer both current and future residents, and

visitors to the County. The 2004 General Plan identified this attribute as worthy of protection when it states that the goal of its policies is to, *“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...”* The policies proposed under this dEIR will erode Open Space protections, and change the character of EDC through the following proposals:

- exempt some development projects from the 30% open space requirement while allowing others to provide 15% in recreational/landscaped buffers and 15% in private yards;
- eliminate the provision that open space may be kept as *wildlife habitat*, instead providing that it may be maintained in a *natural condition*;
- allow development in specific areas (Community Regions and Rural Centers) and allow a lesser area of *“improved open space”*;
- provide open space off-site or by an in-lieu fee option (with actual off-site land acquisition, and acquisitions under fee program unidentified);
- provide *“exemptions and alternatives”* to open space to facilitate and encourage higher density housing developments;
- 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;”* and
- include infrastructure, including roads, water, wastewater, drainage facilities and other utilities within Open Space Zones.

Please include in an appendix to the final EIR the following information:

- Why—given the obvious magnitude of the Open Space policy changes—the dEIR concludes that, *“...the TGPA and the related changes in the ZOU would not result in a significant environmental effect. This impact would be less than significant.”*
- Explain how the in-lieu fee option works—if it has been used—and if it has been used, what funds have been collected and what they have been used for.
- Explain what is meant by *“eliminate the provision that open space **may** be kept as wildlife habitat, instead providing that it may be maintained in a natural condition.”*
- Explain how *“natural condition”* differs from *“wildlife habitat”* in the context of this new policy.
- Describe what is meant by *“improved open space.”*
- Identify where open space might be provided *“off site.”* Identify where this has been done in the past (if it has), where the open space is, and identify and describe what policies protect it from future development.
- Explain why infrastructure and agricultural uses (orchards, etc.) will be classified as open space.

(5) Riparian/wetland setbacks for ministerial projects are too small; discretionary project setbacks remain undefined, with no minimums.

Page 3.4-28 states: *“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**... 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.”*

It is not clear from this description exactly what will be accomplished under the biological resource evaluation. The evaluation is described as a tool to identify setbacks that will reduce impacts to a “less-than-significant level,” but where *all impacts (less than “less-than-significant”?)* are not reasonably avoided, the evaluation would identify mitigation measures that “may” be employed to “reduce” significant effects. Then a “proposed code” is mentioned. So—what is the mitigation mechanism—the biological resource evaluation, or a yet-to-be-developed “code”?

The language in the dEIR does nothing to identify what **real** protection is being established for riparian/wetland habitat under discretionary projects. Where impacts “are not reasonably avoided,” measures **may** be employed to reduce impacts, but clearly, these measures—as implied by the term “*may*”—need *not* be employed. Theoretically, EDC should have more flexibility to enforce setbacks under discretionary projects than under ministerial projects, and yet a standard has been set for ministerial projects (albeit inadequate to protect riparian/stream resources), but no setback has been established for discretionary projects.

Because the biological resource evaluation would be conducted by a biologist hired by the developer (with potentially as little expertise as is acquired with a BA degree in biology), it is doubtful the biologist would have the expertise necessary to effectively evaluate riparian/stream setback requirements. The biologist would need to consult with experts (research institutions, State agency personnel with field experience, etc.) to produce an effective evaluation. Consultation is crucial; effective buffers need to be based on science, not on the wishes of the developer.

Please provide in an appendix to the final EIR:

- **The scientific basis upon which riparian/stream setbacks were/will be developed (such as peer-reviewed research documents, studies from universities, reports from State agencies with expertise in riparian/stream protection).**
- **How/why the criteria for ministerial projects will differ from the setback for discretionary projects, given a hypothetically equivalent environment in each case.**
- **The criteria used to determine both the impacts/mitigations for discretionary development projects and the setback size(s) for discretionary projects.**
- **Information on the “biologist” that will perform the evaluations, including who will hire the biologist (the project developer, etc.) Include a discussion about whether an additional environmental review should be conducted post-project approval under contract with a research institution or State agency.**
- **A synopsis of what will be required in the biological resource evaluation, including whether the biologist will be required to consult with agencies with expertise in the field of riparian/stream protection, wildlife protection, etc., and be required to include information from such consultations in the report.**
- **Information on short- and long-term monitoring and reporting requirements for both ministerial and discretionary projects. (If they will be conducted, who will conduct them, and the qualifications of individuals conducting the monitoring.)**
- **Any penalties or corrective actions that will be required for violations to prescriptive mitigations, and the criteria upon which these actions will be based.**
- **Identify actions that will be taken to revise ordinances and policies if mitigation measures established in “code” are found not to be effective.**

(6) The “Environmental Setting”—beginning on page 3.4-15—is cursory at best and therefore understates the rich plant/animal communities present in EDC; some “special-status species” are not listed.

The description of EDC’s plant/animal communities woefully understates the rich diversity present in the County. This “omission” could lull some reviewers into believing there is “really not much to lose,” if we edge wildlife/wildlife habitat out as EDC “grows,” and that the multiple environmental mitigation measures cited in the dEIR are more than adequate to protect the few biological resources mentioned. This, of course, would be a serious misperception; but it is one easily deduced from the limited representation of biota in this dEIR.

To complicate matters, the list of “special-status species” is incomplete. (It needs to be clarified—if it is indeed the case—that species to be protected via environmental mitigations include more than endangered, rare, or threatened species; included are *fully protected animals*,² *special animals*,³ and nesting habitat for specific species, etc.) But because this list of “special-status species is incomplete, these animals (and nesting habitats) are probably not protected, and it is doubtful protections will be applied to ensure either their survival or the protection of their habitat if they are not recognized. For instance, Table 3.4-2 does not include some “special-status species” that the reviewer knows occur in EDC:

- The list does not include two *fully protected animals* that are EDC residents, the white-tailed kite (*Elanus leucurus*) and ring-tailed cat (genus *Bassariscus*).
- Nesting colony protection⁴ for great blue heron (*Ardea Herodias*), and snowy egret (*Egretta thula*), white-tailed kite (*Elanus leucurus*), great gray owl (*Strix nebulosa*), Nuttall’s woodpecker (*Picoides nuttalli*), and oak titmouse (*Baeolophus inornatus*) is not included.

(NOTE: This is by no means a complete list of animals/habitats that were overlooked; these are simply notes on what was easily recognized as omissions by a non-expert resident that has lived in EDC for a few years.) The fact that “fully protected” and “special animals” and their habitat requirements are not identified in the dEIR is an oversight that speaks volumes about the lack of analysis performed to establish these lists. Because this analysis has bearing on what is protected under mitigation activities, it needs to be amended/corrected by experts with appropriate credentials.

Section 15380 of the California Environmental Quality Act (CEQA) Guidelines clearly indicates that species of special concern (including “*fully protected*” and “*special animals*”) should be included in the analysis of project impacts. Sections 15063 and 15065 are particularly relevant to species of special concern. (In assigning “impact significance” to populations of non-listed species, analysts consider factors such as population-level effects, proportion of the taxon’s range affected by a project, regional effects, and impacts to habitat features.)⁵

² California Department of Fish and Wildlife. 2014. *Fully Protected Animals*. Available at: https://dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html.

³ Department of Fish and Game. 2011. *Special Animals*. Biogeographic Data Branch, California Natural Diversity Database. January, 2011.

⁴ *Ibid.*

⁵ California Department of Fish and Wildlife. 2014. *Fully Protected Animals*. Available at: https://dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html.

(7) Changes to agricultural zoning are not presented in an understandable manner; biological resources are not adequately protected under proposed policy changes.

The rationale behind the changes in zoning for Agricultural Districts—including changes to the roll-out zoning of Williamson Act lands—is not described in terms that enable the reviewer to understand what is accomplished as a result of these changes, or how the changes might impact the character of EDC and its natural environment. The discussions that *are* presented are disjointed, and make getting a grasp on the picture of the change—and its associated impact—impossible.

The discussion on impacts to wildlife habitat as a result of agricultural expansion is equally confusing:

Page 3.4-28 states: *“The 2004 General Plan EIR raised the concern that “[a]gricultural expansion has the potential for far greater impacts on the extent and connectivity of habitat than residential development, as a greater area of land in larger contiguous patches is generally more greatly disturbed.” However, land conversion data from the FMMP does not support this concern. The conversion data for the three most recent reporting periods indicate that the amount of Other land converted to Agricultural was far outweighed by the amount of Agricultural land that converted to Other lands. The Other land category is not limited to wild land habitats as it also includes rural residential uses. Agricultural land that has been converted to Other land most probably became rural residential or other nonwild land land-use type. A certain amount of wild land habitat is being converted to agricultural use, but the amount is small, as shown in Table 3.4-4.”*

Data from the Farmland Mapping and Monitoring Program (FMMP) neither support nor refute the concern that agricultural expansion has a greater potential to impact habitat connectivity than residential development. In fact—especially in light of the type of expansion proposed in Agricultural Districts under this dEIR—agricultural expansion will have a significant impact on wildlife habitat, especially because many of the mitigation measures that apply to residential development will not apply in Agricultural Districts (e.g., disturbance of natural areas, such as riparian/stream habitats, development on slopes $\geq 30\%$, on-site grading, Important Biological Corridor restrictions, etc.). That is not to say the impact on wildlife habitat will be *less* in areas of residential development than in Agricultural Districts, but in truth, this argument is specious; what is the value—and meaning—of such a discussion? Is it intended to persuade the reviewer that letting Agricultural Districts “off the hook” for impacts to wildlife and wildlife habitat is an acceptable trade-off for benefits that might be gained from agricultural expansion?

This discussion is particularly odd because close examination of the data source for Table 3.4-4 makes the reviewer wonder why the author of the table chose to present those specific data. The summary table from the Department of Conservation (DOC) shows that between 2008 – 2010 EDC’s inventory of agricultural land declined by 1,742 acres, and “Other Land” (low-density residential) plus urban gained 1,513 and 75 acres, respectively, or 1,588 acres total from the ledger of agricultural land.⁶ It is not clear why the (104 agricultural land/1,808 other land) data was used instead. In any case, it is not at all certain what this discussion (including the table) adds to the dEIR in terms of elucidating the relative impact of the expansion of agricultural land on wildlife and wildlife habitat.

If a discussion of relative impacts *is* to be had, it ought to include a discussion of the “addition” of 17,241 acres to Agricultural Districts, the expansion of new, allowable uses and activities in these Districts, and

⁶ California Department of Conservation. *California Farmland Conversion Report*. April, 2014. <http://www.conservation.ca.gov/dlrp/fmmp/Documents/fmmp/pubs/2008-2010/fcr/FCR%200810%20complete.pdf>

exemptions from environmental protections—but it does not. This makes the data presented in the table all the more confounding. It is “information” that serves only to add volume to the report, without adding meaning and clarity.

Please include in an appendix to the final EIR:

- A description of each of the current agricultural zones, what they will be changed to, and what this means in terms of how the land can or will be used in the future. Compare new uses to “old” uses.
- A description of why these changes are beneficial/necessary.
- Describe what it means, exactly, for Williamson Act lands to roll out into a new zoning classification as opposed to the past zoning roll-out designation for these lands (in terms of impact to agriculture, open space, wildlife habitat, etc.)
- Describe why Agricultural Districts are being allowed exemptions for disturbance of natural areas (riparian/stream habitats, etc.), development on slopes $\geq 30\%$, on-site grading, Important Biological Corridor restrictions, etc. Who benefits from these exemptions?
- Identify where the 17,241 acres “came from.” That is, discuss what this land was zoned prior to its inclusion in Agricultural Districts, and how this change will impact EDC’s biological resources and the viability of agriculture in EDC.

(8) Enforcement of Ordinances called into question.

A recent article in the Mountain Democrat (July 7, 2014; Chris Daley) cited a Grand Jury report that indicated the following:

...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.”

This is an obvious matter of concern; if ordinances are developed but not enforced, what assurance is there that mitigation measures developed to protect wildlife and wildlife habitat under this dEIR (or in the 2004 General Plan) will be enforced?

Please provide in an appendix to the final EIR:

- **The EDC department responsible for overseeing and enforcing the mitigations proposed in this dEIR.**
- **Describe the staffing levels and funding of departments responsible for mitigation oversight, and include an estimate of whether it is likely they can handle their respective workload(s).**
- **Describe whether EDC staff will be responsible for overseeing and reviewing projects post-implementation to make certain they are in compliance with ordinances (including mitigation measures), or if subsequent compliance “monitoring” will be reliant upon complaints from the public (residents).**
- **Describe who will handle public “complaints” regarding mitigation violations, and to what degree EDC staff is obligated to respond to complaints from the public.**

(9) This dEIR is difficult to review.

The dEIR is disorganized and difficult to review. It is full of confusing statements, any understanding of which is undermined by the imprecise use of language, the inclusion of undefined terms, and—in too many cases—contradictory statements. It also “asks” the reviewer to take leaps of faith, to rely on claims made in the dEIR; it does not provide information upon which to reasonably evaluate project impacts and impact mitigations.

For instance, meaningful review is complicated by the fact that the reviewer must make an attempt to estimate project impacts to biological resources when “the experts” make no attempt to do so, stating that “[t]here 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 “No specific level of future development was forecast during this analysis because there is no reasonable way to know how many of the uses allowable under the project may be approved in the future, and the locations of such uses cannot be known at this time.”(pages 3.4-29 & 30; 3.4-25)

To exacerbate difficulty of review, these nebulous accounts of development potential are often accompanied by statements of “significant and unavoidable” impacts. **Without concrete information on the magnitude of development, and the viability of mitigation programs, this “conclusion” is unsubstantiated.**

The reviewer is put in a similar situation (required to perform an evaluation in the absence of supporting information) when attempting to estimate the value of mitigations. In this instance, the reviewer is asked to put full faith in the efficacy of not yet developed mitigation programs. **What remains is not an impact analysis at all; it is a series of development proposals whose magnitude cannot be estimated, coupled with “mitigation measures” that—while presented as viable measures—have for the most part not been developed (and may never be developed).**

CEQA intends EIR documents to be easily understood by the public; that is what is prescribed. This document does not accomplish that goal.