
# CHAPTER 1

## CEQA REQUIREMENTS FOR A GENERAL PLAN EIR

The goal of scoping is to solve "many potential problems that would arise in more serious forms later in the review process." (CEQA Guidelines, sec. 15083.) To ensure that everyone is clear on the County's CEQA responsibilities, this document will review the basic requirements of a program EIR on a General Plan. It will also make suggestions for constructive ways to integrate the CEQA process and the General Plan Update to utilize and inform public participation.

We strongly encourage the board of supervisors, county counsel, planning staff, and EIR consultants to review this information. We strongly encourage the County to strictly follow the CEQA Guidelines and case law referenced in this letter in order to promote the purpose of CEQA: to provide the greatest feasible protection of the environment. Developing a good and legally sufficient EIR will help the county avoid a successful challenge of its general plan EIR by any party, saving the taxpayers significant cost. Please note that the legal claims made below are supported by quotations from and citations to the Public Resource Code, the CEQA Guidelines, and to case law; much of it from the California Supreme Court and our own Third District Court of Appeal. We strongly encourage you to ignore consultants who tell you the information we provide here is incorrect without providing some accurate citation to contrary legal authority of equivalent weight. Remember, most of the EIRs found lacking by the courts have been written by such consultants.

Solving problems takes work on all sides. We have done our part to date by frequently stating our concerns regarding potential problems with the general plan and by participating in the general plan update process from its inception. **If you take issue with some of the guidance in these comments, which is intended to ensure full compliance with CEQA, we respectfully ask that you respond to us in writing and/or set up a meeting so that the issues can be resolved.**

We strongly believe that an adequate EIR is essential to informed public participation and decisionmaking. Unfortunately, we have seen other cities and counties try to circumvent the CEQA process during general plan updates, to avoid taking a serious look at alternatives and mitigation measures to protect the human and the natural environment. We urge you not to follow that path.

## A. FORMAT AND SUBSTANCE OF AN EIR

### 1) GENERAL STANDARDS

That the enactment or amendment of a general plan is subject to environmental review under CEQA is well established. (De Vita v. County of Napa (1995) 9 Cal.4th 763, 793-795; Muzzy Ranch (2007) 41 Cal 4th 372, 384.)

While judicial review of CEQA decisions extends only to whether there was a prejudicial abuse of discretion, "an agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: while we determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564), we accord greater deference to the agency's substantive factual conclusions." (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, (2007) 40 Cal.4th 412, 435.)

"A program EIR, as noted, is 'an EIR which may be prepared on a series of actions that can be characterized as one large project' and are related in specified ways. (Cal. Code Regs., tit. 14, § 15168, subd. (a).) An advantage of using a program EIR is that it can '[a]llow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.' (*Id.*, § 15168, subd. (b)(4).)" (In re Bay-Delta (2008) 43 Cal.4th 1143, 1169-1170.)

"[T]he 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98, 110; citing Laurel Heights Improvement Association v. Regents of University of California (1988) 47 Cal.3d 376, 390.) When trying to determine if staff, or consultants, or the Board of Supervisors are proceeding properly with the EIR, the public must ask: Is what they are doing affording the fullest possible protection to the environment? If the answer is no, the County should do something else.

An EIR should employ "an inter-disciplinary approach that will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors." (CEQA Guidelines, sec. 15142.) EIRs should be "analytic rather than encyclopedic." (CEQA Guidelines, sec. 15006, subd. (o).) "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."

That means you may have to hire outside help to do technical traffic and air quality studies. That means you need to quantify impacts when impacts can be quantified. (See Attached Data Analysis Letter, 2010.) You can use qualitative analysis as well, but not as a substitute for otherwise available quantitative analysis. You can't just say traffic will get worse; you have to do the math and show how a conclusion was reached.

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).) EIRs should "emphasize feasible mitigation measures and alternatives to projects." (Pub. Resources Code, sec. 21003, subd. (c).) At the end of the day, the EIR should have enough detailed information to allow the Board of Supervisors and the public to understand the choices among general plan alternatives, and to logically advocate for the one they think best. In the case of a General Plan EIR, we strongly recommend that the alternatives be sufficiently defined, and the analysis be sufficiently detailed, to allow the board to select any of the alternatives, without further environmental review or project description. We also encourage the County to be prepared to take the best components of

each alternative, and to combine them into a General Plan, even if supplemental environmental review would be required. We hope that you will not lose sight of the goal to produce the best plan, and to afford the fullest protection to the environment. Anything less is not in the interest of the county's taxpayers.

"The EIR shall cite all documents used in its preparation including, where possible, the page and section number." (CEQA Guidelines, sec. 15148.) "A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (People v. County of Kern (5th Dist 1974) 39 Cal.App.3d 830, 841-842 [115 Cal.Rptr. 67], quoting Silva v. Lynn (1st Cir. 1973) 482 F.2d 1282, 1285.) 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.4th 674.) "Argument, speculation, unsubstantiated opinion, or narrative evidence which is clearly erroneous or inaccurate … does not constitute substantial evidence." (CEQA Guidelines, sec. 15384.)

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

Ultimately, the board will be required adopt findings of fact supported by substantial evidence in the record. The EIR is the summary of the record. The findings of facts rationally explain the board's findings based upon information in the EIR. When citations to the record back up factual statements in the EIR, which in turn back up the County's well-reasoned ultimate findings of fact, then the record forms tidy chains of facts and reason that support the County's findings. When that chain is broken by unsupported or uncited statements in the EIR, the chains of facts and reason fall apart, and the findings of fact fail to conform to the law. Information scattered in EIR or buried in appendix is not a substitute for good faith reasoned analysis. (California Oak Foundation v. City of Santa Clarita (2005) 133 Cal.App.4th 1219, 1239.)

The general plan background documents prepared in 2008 and 2014, and the draft setting sections distributed in 2013, frequently included uncited "facts" and outdated information. (See CPC Baseline Report Comments, 2008; CPC Comments on the Environmental Setting Section, 2013; CPC comments on the 2014 Draft General Plan.) The County should make sure to correct these problems in the EIR rather than carry them forward.

## 2) WHAT CONSTITUTES AN ADEQUATE EIR?

As noted above, the EIR should provide a sufficient degree of analysis to allow decisionmakers to make an intelligent judgment. In addition, it must reflect a good faith effort at full disclosure. (CEQA Guidelines, sec. 15151.) "A prejudicial abuse of

discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 712 [270 Cal.Rptr. 650].) A failure to comply with the law subverts the purposes of CEQA and thus cannot be deemed harmless, if it omits material necessary to informed decision-making and informed public participation. (Planning and Conservation League v. Department of Water Resources (App. 3. Dist. 2000) 83 Cal.App.4th 892).

That means that the EIR must admit the full truth about the proposed general plan, warts and all. If you are wondering whether the EIR is being done right, ask yourself, "Are we holding back any information that may reflect badly on the project or one of the alternatives when it comes to adverse impacts or infeasible mitigation? If the answer is yes, then disclose the additional information. CEQA requires full disclosure regardless of how any staff member, consultant, or decisionmaker may feel about the information.

## B. CONTENTS OF A DRAFT EIR

### 1. BRIEF SUMMARY

An EIR must 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.) The most common EIR flaws in this section are the failure to admit the numerous areas of controversy, and the failure to comprehensively list the issues to be resolved. Since an EIR is used and commented upon by distant state and federal agencies, and by property owners who reside outside the county, there is an obligation to let these people know the controversies that have arisen, even if they may appear obvious to those who live in the area. Also, the list helps the public and officials to ensure that the stubborn issues do not get swept under the rug. Finally, these requirements are directly connected to the standard that the EIR reflect a good faith effort at full disclosure. There is no room for spin or denial in an EIR.

### 2. PROJECT DESCRIPTION

The project description shall contain the precise location of the project on a detailed map, the objectives of the project, a description of the project's technical, economic, and environmental characteristics, and a statement of the intended uses of the EIR. (CEQA Guidelines, sec. 15124.)

General Plan EIRs usually have no problems identifying the location of the project and providing a map. They often do *not* provide a sufficient project description to allow for proper quantitative analyses of impacts. This is another reason why quantified objectives are so useful in a general plan. They give the county the parameters need to evaluate the impacts of the plan. If the EIR ends up including phrases like, "It would be too speculative to assess the impacts of this general plan policy," then the project description is inadequate, and the general plan is substandard. For example, a policy to

"consider streamside setbacks in the future" is too speculative to allow for the evaluation of the impacts of future development on riparian areas. On the other hand, a policy that would "require 50-foot development setbacks from streams pending completion of a new and more effective standard in ten years," has sufficient specificity to allow for environmental review.

General Plan EIRs sometimes neglect to include a comprehensive list of the intended uses of the EIR. This list is needed to reassure the public that the County has properly consulted, during the EIR process, with the many agencies who will use the EIR in the future. It also helps to reassure the public that the County will continue to properly consult with these agencies as they implement their shared jurisdiction over county resources including land, water, highways, emergency response, wildlife, wetlands, and air quality.

"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." (Id. at pp. 192-193.) A "curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (Id. at pp. 197-198.) A project description should account for reasonably foreseeable future phases of proposed projects if they may change the scope of the initial project or its environmental impacts. (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d 376, 393-399 [253 Cal.Rptr. 426.]. 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.4th 1591; Center for Sierra Nevada Conservation (App. 3 Dist. 2012) 202 Cal.App.4th 1156, 1171.) 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.4th 890.)

The tragedy of starting with the wrong project description is that the project description is the foundation from which the rest of the EIR is constructed. When a project description is wrong, the impact analyses are wrong, the alternatives are wrong, the mitigation measures are wrong, and the findings of fact are wrong. There is no recovery from a flawed project description.

### 3. DESCRIPTION OF THE PROJECT'S ENVIRONMENTAL SETTING

"An EIR must contain an accurate description of the project's environmental setting. An EIR "must include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) There is good reason for this requirement: "Knowledge of the regional setting is

critical to the assessment of environmental impacts.... The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to "afford the fullest possible protection to the environment." (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible." (Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4th 859, 874.) 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 (App. 3 Dist. 1999) 76 Cal.App.4th 931, 952.) "Finally, use of existing conditions as a baseline makes the analysis more accessible to decision makers and especially to members of the public, who may be familiar with the existing environment but not technically equipped to assess a projection into the distant future." (Neighbors for Smart Rail (2013) 57 Cal.4th 439, 455-456.)

Information on the setting may come from a variety of sources. This is why coordination with outside agencies is so important. Air quality data is available from the State Air Resources Board. Wildlife habitat data and fire risk maps are available from state agencies. Water supply information can be gleaned from utility district data.

Setting information in the form of both maps and numerical data is especially useful in a General Plan EIR, because of the large geographic scope of the project. It helps to know not only what the impact is, but where it will be felt. For example, it is not enough to say that 10 intersections will go to level of service F, it is also important to know where they are.

Among the most relevant aspects of the environmental setting that must be disclosed in an EIR, is that the agency must divulge harm to the environment caused by current and past mismanagement, and any efforts being made to remedy that harm that might affect the proposed project. (Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4th 859, 874.) So often in the past, EIRs would list the regulatory setting, and then say that the impact will be mitigated by all these outside agencies, so the project impact will be insignificant. Too often however, these outside agencies had track records of failing to effectively mitigate significant impacts, and so should not have been relied upon for impact mitigation. In other instances, the outside agency plans specifically called for active efforts at the local level to mitigate the impact, and so when a local agency did not do so, but merely passed the buck back up to the outside agency, it resulted in a mitigation shell game without any effective on the ground fix. To avoid this in the future, the courts have gotten very strict about both identifying conflicts with other agency plans (as noted below), and about identifying regulatory failures. So for example, a lead agency cannot simply rely on the existing wastewater treatment plant to mitigate future water pollution impacts, if that plant has numerous past permit violations. Also, the past permit violations must be disclosed in the EIR as part of the environmental setting. An EIR cannot rely on current levels and techniques of law

enforcement to mitigate the impacts of crime, if there is a decade long history of increasing per capita levels of criminal activity.

Another important use of the environmental setting is in helping the County establish the proper thresholds of significance for impacts. "[T]he significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." (CEQA Guidelines, sec. 15064, subd. (b).) An EIR can be ruled inadequate when it uses an inappropriate noise threshold for an area or adjacent use. (Los Angeles Unified School Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1026.)

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].) This is a key consideration in evaluating the impacts of a General Plan. The project description's impacts must be compared to the current environmental baseline at the time the NOP was issued. That is the current snapshot in time. In addition (not instead), the project description's impacts must be compared to the impacts of continued development under the existing general plan, during the time horizon of the new plan, and at plan buildout.

The setting section of the DEIR must discuss any inconsistencies between the proposed project and existing general plans and regional plans. (CEQA Guidelines, sec. 15125.) This requirement is especially critical in a General Plan EIR. The General Plan Guidelines encourage cities and counties to review the plans of other neighboring areas, and of other agencies with jurisdiction; and to tailor general plans to conform, so that all the government agencies are pulling in the same direction, toward the same goals, as citizens and taxpayers prefer. For example, it is ridiculous to try to designate new areas for intensive new development if the long-term plans of water supply and transportation agencies show that they cannot fund service to the areas. By identifying conflicts among plans in the DEIR, the County can work on ways to eliminate these conflicts in the final general plan.

"The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data." (CEQA Guidelines, sec. 15064, subd. (b).)

## 4. SIGNIFICANT ENVIRONMENTAL EFFECTS OF THE PROPOSED PROJECT

The environmental effects that must be considered in an EIR include, direct and indirect effects, short and long-term effects, physical changes in an area, potential health and safety problems, changes in ecological systems, changes in population distribution and concentration, changes in land use, effects on public services, and effects on natural resources including water, scenic beauty, etc. (CEQA Guidelines, sec. 15126.2, subd.

(a).) There is a good list of impact topics in the County's NOP. It is worthy to note that among the impact that must be evaluated and mitigated are the energy use and conservation impacts of the general plan. These should be evaluated in accord with Appendix F of the CEQA Guidelines.

A common mistake in General Plan EIRs is the failure to consider short-term significant effects. For example, if the County commits to full impact mitigation, but then only commits to developing that mitigation between years 5-10 of plan implementation, then the EIR must disclose that the impacts will remain significant in the short term, from 5 to 10 years, until the mitigation program is developed. "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 (2013) 57 Cal.4th 439.)

Another common mistake is trying to use the terms "Program EIR" and "tiering" as excuses to dodge analyzing critical environmental impact analysis at this time. "Calling it a 'program' does not relieve the County from having to address the significant environmental effects of that project. Respondents are therefore incorrect in asserting that the County may (1) deem the environmental effects of adopting the specific plan, whatever those effects may be, to be significant, then (2) approve the specific plan, and then (3) at some later time determine what the significant environmental effects are of the specific plan that has already been approved." (Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 202-203.) "[A] decision to 'tier' environmental review does not excuse a governmental entity from complying with CEQA's mandate to prepare, or cause to be prepared, an environmental impact report on any project that may have a significant effect on the environment, with that report to include a detailed statement setting forth '[a]ll significant effects on the environment of the proposed project.' (Pub. Resources Code, § 21100.)" (Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 197.) "'[T]iering' is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause." (Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 199.)

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

feasible mitigation measures the impact still exceeds the threshold, then the conclusion is that the impact is significant and unavoidable.

The common mistake is to skip logical steps in the above analytical process. Often an impact is deemed significant, an agency adopts a short list of mitigation measures, and then jumps to the conclusion that the impact is mitigated. There needs to be an evaluation of the *degree to which* the mitigation measures will reduce the impacts, and a determination of whether the residual impact remains significant. A good example of this process can be found in the attached CEQA guides to air quality impact analysis produced by Sacramento, and by the Bay Area Air Quality Management District.

Another common mistake occurs with school impacts, because mitigation fees are capped by the state, and deemed sufficient to reduce impacts to insignificance by law. As a result, many DEIRs skip the step associated with actually measuring the impacts. This is not permitted. An EIR is an impact disclosure document. Just because the mitigation is capped, does not exempt the lead agency from analyzing the impact. The residual impacts still need to be disclosed so that the public and the decisionmakers can make an informed decision. These "insignificant" impacts can easily run into the tens of millions of dollars, and can affect decisionmaking. In addition, increases in school attendance can trigger off-site impacts on traffic and public transportation that also need to be evaluated and mitigated. (Chawanakee Unified School District v. County of Madera (2011) 196 Cal.App.4th 1016.)

There are also special rules when it comes to evaluating water supply impacts. 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.)

Finally, it is important to remember that 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$^{th}$ 1184.) Thus, it is not enough for an EIR to show the additional traffic trips on a highway for an entire day. That does not explain how a person's life is affected. The EIR needs to identify the time delay for somebody commuting during peak traffic periods on that road. That explains how the primary project impact affects real people.

## 5. MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS

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. (CEQA Guidelines, secs. 15002, subd. (a)(3),

15021, subd. (a)(2), 15091, subd. (a)(1).) A mitigation measure is something that avoids an impact, minimizes an impact, reduces the impact over time, restores the impacted environment, or compensates for an impact by providing substitute resources or environments. (CEQA Guidelines, sec. 15370.) The EIR must distinguish between mitigation measures proposed by a project proponent for inclusion in a project and those that, if included as conditions of approval, could reasonably be expected to reduce the level of impacts. (CEQA Guidelines, sec. 15126.4, subd. (a)(1)(A).)

The biggest mistake made in General Plan EIRs is the random rejection of mitigation measures without a rational reason. (Masonite Corp. v. County of Mendocino (July 26, 2013) 218 Cal.App.4th 230.) A mitigation measures is not infeasible simply because a member of the board of supervisors does not like it, is prejudiced against environmental protection, or doesn't believe in global climate change (for example). Whether a mitigation measure is proposed by staff, commenting agencies, or members of the public, it cannot be rejected without a reasoned analysis based upon facts in the record. (See CEQA Guidelines, sec. 15088, subd. (c).) We discourage the County from wasting valuable staff time trying to justify the rejection of mitigation measures that have proven effective in other communities. We encourage the County to embrace sound solutions to ongoing problems. When seeking mitigation measures, we encourage the County to review information provided in our appendix to these comments in the folder labeled "Mitigation Measures & Alternatives."

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]). *In City of Marina*, the program EIR on campus expansion identified needed mitigation for significant off-site impacts on drainage, water supply, traffic, wastewater management, and fire protection. Certification of EIR without adoption of a feasible mitigation measure was an abuse of discretion under CEQA. Adopting a statement of overriding considerations did not justify certification of the EIR absent adoption of the mitigation measure. (*City of Marina v. Board of Trustees* (2006) 39 Cal.4$^{th}$ 341.)

a. STANDARDS FOR THE ADEQUACY OF MITIGATION MEASURES

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

A common problem in a General Plan EIR is the philosophical collision between a county's desire to keep General Plan policies noncommittal, and CEQA's requirement that there be substantial evidence of a commitment to mitigation. On the one hand, counties are often poorly advised or lobbied to keep General Plan policies noncommittal

so that the County cannot be held accountable for policy failures. The County, besieged by numerous significant impacts associated with its laissez faire general plan, then seeks to rely on these noncommittal policies as part of their impact mitigation program. However, CEQA requires that mitigation measures be enforceable commitments. (Neighbors for Smart Rail (2013) 57 Cal.4th 439, 445.)

One way to resolve these conflicting requirements is the adoption of quantified Objectives or Standards in the General Plan, to complement a series of optional policies. For example, a General Plan program to protect agricultural lands could list a number of optional programs. The County can commit to investigating and trying some of these programs, and, for example, to not converting more than 5,000 acres of agricultural land to urban uses over the next 25 years.

"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." "In balancing a proponent's prior shortcomings and its promises for future action, a court should consider relevant factors including: the length, number, and severity of prior environmental errors and the harm caused; whether errors were intentional, negligent, or unavoidable; whether the proponent's environmental record has improved or declined; whether he has attempted in good faith to correct prior problems; and whether the proposed activity will be regulated and monitored by a public entity." (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d 376, 420 [253 Cal.Rptr. 426.]).

Another common mistake is the unfounded assumption that a mitigation program will fully mitigate an impact. As discussed above, if an agency or a program has a poor track record of mitigating impacts, then its future action cannot be relied upon for impact mitigation. For example, since the Regional Transportation Plan has a many hundred million dollar funding shortfall, it would be wrong to rely on the Regional Transportation Plan to mitigate future traffic congestion impacts. As the courts have noted, “[E]even where a developer’s contribution to roadway improvements is reasonable, a fee program is insufficient mitigation where, even with that contribution, a county will not have sufficient funds to mitigate effects on traffic.” (Endangered Habitats League v. County of Orange (2005) 131 Cal.App.4th 777.) We strongly recommend that mitigation measures be evaluated for their economic feasibility. Many consultants will say that this is not required, or that it is outside the scope of an EIR. But CEQA Guidelines, section 15131, subd. (c), requires economic analysis of mitigation measure feasibility.

### b. DEFERRAL OF THE FORMULATION OF SPECIFIC MITIGATION STRATEGIES UNTIL AFTER PROJECT APPROVAL

Generally, an agency cannot rely on mitigating a significant impact by developing a mitigation plan *after* project approval. "The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant,

and that environmental decisions be made in an accountable arena." (Oro Fino Gold Mining Corporation v. County of El Dorado (App. 3 Dist. 1990) 225 Cal.App.3d 872, 884-885 [274 Cal.Rptr. 720].) However, this may be permissible if the agency displays a commitment to mitigating the impacts by identifying performance criteria that the measures must satisfy. (Sacramento Old City Association v. City Council of Sacramento (3d Dist. 1991) 229 Cal.App.3d 1011, 1028-1029; Friends of Oroville (App. 3 Dist. 2013) 219 Cal.App.4th 832, 838.)

A common mistake in General Plan EIR is the improper deferral of impact mitigation. Often a jurisdiction is poorly advised to make no commitments in the general plan that it can be held accountable for in the future. This advice is contrary to that in the State's General Plan Guidelines, and can result in the County's attempting to remain noncommittal in the policies it also wants to count as impact mitigation. That kind of deferral is not allowed by CEQA unless the County commits to achieving specific performance criteria through program implementation.

For example, the county could not rely on a policy like this for mitigation: "Consider adopting a mitigation fee program for the open space impacts of new development." There is no commitment, and no performance criteria. On the other hand, the County could rely for mitigation on a policy that said, for example, "Within four years of plan adoption, the County will develop an open space mitigation program, to protect 80% of the existing agricultural land in the County from conversion to other uses. The program components will be selected from among the following list of feasible protection measures." (Followed by a list of feasible options.) The latter policy establishes a time-specific commitment, a mitigation standard, and a list of possible actions, just as the court approved in Sacramento Old City Association. In this fashion, the County can provide for flexibility in program development, while still providing clear standards for achievement.

Again, it's critical to note that while CEQA allows flexibility in this fashion, it does *not* allow the County to avoid making specific commitments to mitigate impacts simply because someone may one day hold it accountable.

c. MITIGATION MONITORING AND REPORTING

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.) "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." (Federation of Hillside & Canyon Associations v. City of Los Angeles (2000) 83 Cal.App.4th 1252, 1260 – 1261)

A common mistake is based on the misconception that no mitigation monitoring plan is required at the time of General Plan approval, because General Plan law allows a County one year to develop an implementation plan. Actually, the Government Code provision that allows a County one year to develop an implementation plan predates the

CEQA requirement and asks for a more advanced set of work products. The CEQA requirement in the Public Resources Code still applies to General Plan EIRs.

Another common myth is that some General Plan policies are self-implementing, and therefore their role as mitigation measures need not appear in the monitoring plan. There is no such thing as self-implementing policies or mitigation measures. This term is generally erroneously applied to policies that actually add additional burdens within existing work assignments. For example, they add new staff responsibilities during project review or new enforcement burdens during inspections. These policies that serve as mitigation measures still need to be in the monitoring and reporting plan and their implementation needs to be assigned to a specific staff, as does the monitoring and reporting on their implementation.

For example, a new "self-implementing" policy/mitigation may call for project proponents to select a list of greenhouse gas mitigation measures to incorporate into their project, to achieve a 40% reduction in greenhouse gas emission. To monitor the policy implementation staff during project review may need to keep a running tab of the selected greenhouse gas mitigation measures adopted by projects. Monitoring policy effectiveness may entail appointing building inspectors to see that the mitigation measures selected are actually installed. The inspector may have to report back to planning staff as to whether the condition of approval was complied with, and a final map can be issued. These mitigation monitoring responsibilities need to be spelled out in the monitoring and reporting plan.

## 6. ALTERNATIVES TO THE PROPOSED ACTION

### a. GENERAL PRINCIPLES

An EIR must evaluate a range of reasonable alternatives to the project capable of eliminating any significant adverse environmental effects of the project, or reducing them to a level of insignificance, even though the alternatives may somewhat impede attainment of project objectives, or may be more costly. (Pub. Resources Code, sec. 21002; CEQA Guidelines, sec. 15126, subd. (d); Citizens for Quality Growth v. City of Mount Shasta (3d Dist. 1988) 198 Cal.App.3d 433, 443-445 [243 Cal.Rptr. 727]; (In re Bay-Delta (2008) 43 Cal.4th 1143, 1162-1167.)

"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.4th 859, 872-873.)

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

The number of alternatives considered is limited by what is reasonably feasible. (Citizens for Open Government (App. 3d Dist. 2012) 205 Cal.App.4th 296, 312-313.) Throughout the development or the range of alternatives, keep asking yourself, "Are we fostering meaningful public participation and informed decisionmaking?" "Are we being unreasonable in eliminating an alternative from consideration?"

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

One problem that crops up are alternatives insufficiently defined to allow for detailed comparison with the project description. We hope that the County will provide maps and text for the general plan alternatives, so that they can be fairly compared with the project description.

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

In this instance, there is a new problem. The Mintier and Associates draft general plan, that could have contributed to the development of a general plan alternative and mitigation measures, has been withheld from the public. This interferes with the interactive public participation processes that is needed in a general plan update, and is essential in the CEQA process. This is contrary to the notion of a broad and public administrative record. **This bad faith failure to disclose critical information that could be used to achieve CEQA's purpose to protect the environment, makes the general plan EIR hugely vulnerable to challenge by any aggrieved party**. In over 25 years of CEQA practice, I have witnessed counties and agencies that failed to evaluate a range of feasible alternatives in an EIR. However, I have never witnessed a County take

such extreme steps to prevent an alternative even being seen. No reasonable County seeking to approve a defensible general plan would take such action.

b. ALTERNATIVES DEEMED INFEASIBLE

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

The essential ingredient in determining an alternative's feasibility if 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.4th 892.) Thus, it is important not to define the objectives so narrowly as to preclude the consideration of feasible alternatives. (Rural Land Owners Association v. Lodi City Council (3d Dist. 1983) 143 Cal.App.3d 1013, 1025-1026.)

When an alternative is found financially infeasible, some analysis of revenue and cost figures will be needed to support the finding. (Burger v. County of Mendocino (1975) 45 Cal.App.3d 322, 327.) The fact that an alternative project size might be less profitable and produce less tax revenue did not itself render the alternative infeasible, without evidence that the reduced profitability was sufficient to render it impractical to proceed with the project. (Preservation Action Council v. City of San Jose (2006) 121 Cal.App.4th 1490.) "[A]an EIR should not exclude an alternative from detailed consideration merely because it 'would impede to some degree the attainment of the project objectives.' (Cal. Code Regs., tit. 14, § 15126.6, subd. (b).)" (In re Bay-Delta (2008) 43 Cal.4th 1143, 1165.)

c. QUANTITATIVE AND COMPARATIVE ANALYSES

CEQA requires a "quantitative, comparative analysis" of the relative environmental impacts and feasibility of project alternatives. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 730-737 [270 Cal.Rptr. 650].) As we stated in our letter of 2010, we encourage the County to prepare an EIR that will include quantitative and comparative analyses of the general plan project description and alternatives. (Attachment, Data Analysis letter 2010.) That includes running the traffic models, the air quality model, measuring agricultural land loss, estimating greenhouse gas impacts, calculating water supply impacts, and measuring noise impacts for the general plan project description *and all alternatives.* While a matrix of quantified impacts may be a useful way to provide a comparison, the mere ranking of alternatives by presumed but unsubstantiated impacts is not acceptable. This

is especially critical when doing a program EIR. A program EIR is supposed to, "Provide an occasion for a *more exhaustive consideration of effects and alternatives* than would be practical in an EIR on an individual action," and to "Allow a Lead Agency to consider *broad policy alternatives* and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (CEQA Guidelines, sec. 15168.)

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

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

We feel the EIR should include a Success Through Accountability alternative. This alternative would balance the noncommittal goal and policy language with quantified objectives the County would strive to achieve, specific standards the County would enforce, identified programs the County would try to implement, designated funding sources the County would seek, and mitigation implementation and effectiveness monitoring the County would employ to track its progress.

This alternative would include a map and policies that better ensure the focusing of growth in existing communities. The plan would identify each individual communities existing ability to meet the needs of new growth, along with each communities needs to feasibly accommodate additional levels of development with transportation, water supply, wastewater disposal, and other infrastructure.

That alternative could, for example:

- Set public safety goals and threshholds for the creation of new parcels in areas classified as high or very hire fire risk, and to mitigate law enforcement impacts.

- Set circulation standards that address not only Level of Service, but also pedestrian access, bicycle facilities, noise, protection of habitat, cultural and historical resources, vehicle miles traveled, and scenic beauty.

- Set measurable objectives for the creation, maintenance, and enhancement of neighborhood and regional parks and recreation facilities.

- Set real, measurable standards to ensure continued preservation of agricultural lands, forest lands, open space, wildlife habitat, scenic beauty, and historic and cultural resources.

- Establish standards for protecting and maintaining natural, cultural and historical resources critical for local tourism and recreation income, including mines, prehistoric sites, rivers, lakes, trails, and scenic beauty.

- Establish standards that ensure the construction of workforce housing and child care facilities.

- Establish standards for green residential, commercial, and industrial construction.

- Establish standards for greenhouse gas reduction that would apply to all projects requiring a tentative map.

- Include performance measures and benchmarks to be met at years 5, 10, and 15 of the general plan, along with options to be implemented if the standards are not being met.

Additional components that may be suitable for including in this alternative are identified in Chapter 2.

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

It seems obvious from public comment during the general plan update that some local residents like the county the way it is want a more safety-focused, low-cost, conservation-oriented general plan. We hope that County staff will again gather local groups and individuals together to help develop these alternatives, before time and money is spent on EIR technical analyses of straw-man alternatives having nobody's support. Such a set of straw-man alternatives would fail to "foster meaningful public participation and informed decisionmaking." (CEQA Guidelines, sec. 15126.6 subd. (f).)

e. THE "NO PROJECT ALTERNATIVE"

As suggested above in the environmental setting section, there can be some confusion when it comes to evaluating the "no project" alternative. An EIR must include an analysis of the "no project" alternative. (CEQA Guidelines, sec. 15126.6.) "When a project is the revision of an existing land use plan … the 'no project' alternative will be the continuation of the existing plan." (CEQA Guidelines, sec. 15126.6, subd. (e).) As noted above, the project description and the alternatives must also be compared to the existing baseline environment at the time the NOP was issued.

7. UNAVOIDABLE SIGNIFICANT ENVIRONMENTAL EFFECTS

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

For example, if one alternative will result in getting a $5 million sewage treatment plant for free, that is a $5 million benefit. On the other hand, if the alternative results in roadway impacts costing $10 million to fix, that is a $10 million cost. Thus, rather than struggling to try to balance sewage treatment benefits with traffic congestion impacts, it becomes a simple math exercise to compare the sewage treatment value to the roadway costs. (See, CEQA Guidelines 15141.)

## 8. SIGNIFICANT IRREVERSIBLE CHANGES

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

## 9. GROWTH INDUCING IMPACTS

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

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

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

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

Growth inducing impacts can result from a General Plan that does not provide for a jobs - housing balance. For example, if the land use designations facilitate the creation of many low-paying jobs, but insufficient affordable housing for the workers, that affordable housing will need to be produced elsewhere. Thus the jobs-housing imbalance is growth inducing. Sometimes EIR preparers try to avoid the requirement to evaluate such growth inducing impacts using the excuse that such future growth is too speculative to evaluate. This excuse has not and will not work. "In *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144 [39 Cal.Rptr.2d 54], the court considered a proposed construction of a country club and golf course and attendant facilities. It was contended there that an EIR was not required because the growth-inducing impacts of the proposed project were too remote or speculative, and EIRs would be prepared in connection with any application for a housing development. The court responded, "The fact that the exact extent and location of such growth cannot now be determined does not excuse the County from preparation of an EIR.... [R]eview of the likely environmental effects of the proposed country club cannot be postponed until such effects have already manifested themselves through requests for amendment of the general plan and applications for approval of housing developments." ( *Id.* at pp. 158-159, fn. omitted.)" (Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 368-369.)

## 10. CUMULATIVE IMPACTS

"'Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines, sec. 15355.) In some cases, a cumulative impact "results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." (CEQA Guidelines, sec. 15355.) An EIR must discuss significant cumulative impacts, and/or explain why the cumulative impacts are not significant. (CEQA Guidelines, sec. 15130; Citizens to Preserve Ojai v. County of Ventura (2d Dist. 1985) 176 Cal.App.3d 421, 432; Citizens for Open Government (App. 3d Dist. 2012) 205 Cal.App.4th 296, 320.)

a. THRESHHOLDS OF SIGNIFICANCE

Problems often arise in evaluating the significance of cumulative impacts.

In many cases, the existing environmental conditions (e.g. air quality, traffic congestion, etc.) may already be cumulatively significantly impacted, even without the additional development in a general plan. At times, consultants have argued that in such situations, additional cumulative impacts should not be considered significant. The courts have disagreed. In fact, the courts have concluded the opposite. Namely, the more severe the existing environmental problems are, the lower the threshold for treating the project's cumulative impacts as significant. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 718-721 [270 Cal.Rptr. 650].) The relevant question is whether any additional amount of effect should be considered significant in the context of the existing cumulative effect. (Communities for a Better Environment v. California Resources Agency (App. 3 Dist. 2002) 103 Cal.App.4th 98; Mount Shasta Bioregional Ecology Center (App. 3 Dist. 2012) 210 Cal.App.4th 184, 210-211.)

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

b. SCOPE

The California Supreme Court has ruled that lead agencies have an obligation under CEQA to consider geographically distant environmental impacts of their activities. (Muzzy Ranch (2007) 41 Cal.4th 372, 377-388) The lead agency must justify its choice of scope for each cumulative impact analysis. (CEQA Guidelines, sec. 15130, subd. (b)(3).) The scope will be different for different impacts, because different cumulative impacts affect different geographic areas. For example, the cumulative air quality impact analyses of major projects should consider the cumulative impacts over the entire air basin. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 721-724.) Similarly, cumulative traffic congestion impacts on inter-county highways will be felt across the county line, and the analysis should not stop at the county border. Cumulative impacts on localized wildlife populations may only come from local projects, while cumulative impacts on migratory wildlife may accrue from throughout their migratory range. Water removed from the Mokelumne River may not only impact local fish populations in Amador County, but also salmon and steelhead populations in the Delta.

c. DETAILED ANALYSIS

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

d. MITIGATING THE IMPACTS OF INCREMENTAL DEVELOPMENT

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

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