To: Calaveras Board of Supervisors

From: Tom Infusino, CPC Facilitator

Re: Inadequate Responses to Comments on the GPU DEIR

Date: 11/7/19

I. Background

Neither the Planning Commission during its May and June,2019 General Plan Update (GPU) hearing; nor the Board of Supervisors during its July 30-31, 2019, GPU hearing, addressed the CPC's concerns regarding inadequate responses to comments on the GPU DEIR. As we noted during testimony, the list of inadequate responses we have provided is a large percentage of the small sample of responses we reviewed. Below we remind the Board of Supervisors that the failure to properly respond to comments on the DEIR is a serious violation of the California Environmental Quality Act (CEQA). **Please review all the responses to comments prepared by your planning staff and consultants, and correct the inadequate responses.**

II. Written responses to comments must meet standards.

CEQA has clear requirements for responding to comments on a DEIR. (CEQA Guidelines, sec. 15088.) "The lead agency shall respond to comments raising significant environmental issues received…" "The written response **shall describe the disposition of significant environmental issues raised." "[W]**hen the lead agency's position is at variance with recommendations and objections raised in the comments" the response "must be addressed in detail **giving reasons why specific comments and suggestions were not accepted.** (*Ibid*.; see also *Banning Ranch Conservancy v, City of Newport Beach* (2017) 2 Cal.5th 918.) When provided with examples of mitigation measures implemented elsewhere, an agency must either implement them or explain why not. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1173.) **"There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.** The level of detail contained in the response, however, may correspond to the level of detail provided in the comment." "The response to comments

may take the form of a revision to the draft EIR or may be a separate section in the final EIR." (CEQA Guidelines, sec. 15088.)

From its earliest days to the present, over four decades of CEQA case law has noted the importance placed on adequate responses to comments. Where comments cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. "There must be good faith, reasoned analysis in response." (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.)

CDF's response to a comment regarding the efficacy of a mitigation measure was inadequate where it contained no analysis of the issues, contained no specific information justifying the rejection of the concern, and referenced a report that was unavailable. (*Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604.) "In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. (*San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 596 [122 Cal.Rptr. 100*]; Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist*., supra, 24 Cal.App.4th at pp. 841-842.) While the response need not be exhaustive, it should evince good faith and a reasoned analysis. (*San Francisco Ecology Center*, supra, 48 Cal.App.3d at p. 596; Guidelines, § 15088, subd. (b).)" *(Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.)

Ignoring non-duplicative public comments is prejudicial error. *(Environmental Protection and Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.App.4th 459.) An inadequate response to even one substantive comment can be enough to justify a writ of mandate remanding the decision to the lead agency. (*Gallegos v. California State Board of Forestry* (1978) 76 Cal.App.3d 945, 952-955.)

The requirements can be summarized as follows. First, there must be a response to the comment. Second, the response must be in writing in the EIR. Third, the response must describe the disposition of the issue raised. Fourth, a detailed comment must have a response at the same

level of detail. Fifth, the response must include reasons when suggestions in the comments were not accepted. Sixth, there must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice**.** Below we identify a partial list of the responses that do not meet CEQA standards.

III. Partial List of Inadequate Responses.

A) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 7-2 AND 7-5 BY THE AGRICULTURAL COALITION RESULTING IN THE IMPERMISSIBLE DEFERRAL OF MITIGATION FOR IMPACTS RESULTING FROM THE CONVERSION OF AGRICULTURAL LANDS TO OTHER DEVELOPED USES.

Comments 7-2 and 7-5 encouraged the County to adopt the mitigation measure proposed by the Agricultural Coalition, and developed in consultation with County staff, for the conversion of agricultural land to other uses through implementation of the General Plan Update. That mitigation measure would have included in the general plan a 2:1 mitigation ratio for the conversion of resource production lands.

In response to the comment, County staff recommended that a 1:1 mitigation ratio be applied to agricultural land (not including rangelands) pending development of a permanent standard in the future. Later, the Planning Commission and the Board of Supervisors removed the interim mitigation ratio, and deferred development of mitigation standards for both resource production lands and agricultural land to an undetermined time in the future.

As noted above, the response must include reasons why the suggestions in the comments were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice**.**

The response does not explain why any interim mitigation standard cannot be included in the General Plan. Also, the response does not explain why there needs to be another planning process, at an unspecified time in the future, to address an issue already thoroughly studied and addressed by local stakeholders, local experts, County planning staff and consultants, and recommended by the State Department of Conservation. Nothing more needs to be done that

was not done during the 13-year GPU process. There is no justification for deferring the adoption of a mitigation measure, and accepting significant impacts. .
In addition, there does not appear to be any evidence that a 2:1 mitigation ratio for the conversion of resource production land "could place an undue burden on new development and unnecessarily limit new development within the County." Indeed, the use of the word "could" is speculative, not evidentiary, and as the draft General Plan makes clear, limiting new development is indeed necessary. There is a huge excess of development capacity on non-ag lands. What logic says that restricting development on agricultural will chill the market for development?

As the EIR tells us, the Land Use Element and the Resource Production Element of the Draft General Plan include 24 goals, policies, and implementation measures related to protection of agricultural, forest, and mineral resources (pages 4.2-18 through 4.2-21). There is a long and storied history of ranching, mining, and logging in Calaveras County. Calaveras is a right-to-farm county. "Overall, agricultural production in the county rose 15% to 29 million dollars, with cattle and timber, our two largest commodities leading the way (2017 Crop Report)." Rural residential development does not pay for itself. Resource production does. If Calaveras County is in fact going to take its 24 goals, policies, and implementation measures designed to protect resource production land seriously, then the mitigation ratio should definitely be 2:1 for conversion of resource production land.

B) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENT 11-18 ON THE PROJECT DESCRIPTION, RESULTING IN THE IMPERMISSLBLE REJECTION OF MITIGATION MEASURES THAT ARE SPECIFIC AND MANDATORY.

Response 11-18, regarding the Project Description is inadequate. It states that the County does not want "inflexible time frames" or too much specificity, and instead wants flexible policies. However, this logic cannot be used as justification for rejecting general plan policies that mitigate impacts.

By definition, mitigation must be mandatory. The intent of CEQA is to be action forcing. It requires agencies to make commitments to adopt specific feasible mitigation measures. The County cannot avoid the responsibility to adopt proper mitigation measures and implementation timeframes simply by making the project description inconsistent with the concept of specific and mandatory mitigation. "[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.) If the County's manipulation of its project description to avoid impact mitigation were allowed, then CEQA would not protect the environment at all. Thus, Response 11-18 is not a good faith, reasoned analysis as required.

C) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-25, 11-36, 11-37, 11-41, AND 11-42 REGARDING AESTHETICS, RESULTING IN THE FAILURE TO ADOPT PROPER MITIGATION MEAUSURES.

Response 11-35 is not a good faith, reasoned response explaining in detail the reason that suggestions were not accepted. Response 11-35 does not explain why, after a 13-year planning process, the development standards and hillside guidelines must be deferred to an unidentified time in the future, without the required menu of feasible measures, objective standards of achievement, and commitment to adopt the program before impacts arise.

Also, the response mainly addresses impacts to existing designated Scenic Highways. Eligible state scenic highways, which the DEIR acknowledges is the entirety of Hwy 49 and other areas of Hwy. 4, are only addressed by Policy LU 4.1. Unfortunately, Policy LU 4.1 (as discussed in Comment 11-36) is implemented by 3 measures that are unenforceable, and therefore not adequate means of mitigating impacts along scenic highways.

Response 11-36 is unacceptable, as is Master Response #1. The three Implementation Measures or Policy LU 4.1 are deferred until an unspecified time in the future, without deferral justification and safeguards, and so are not mitigation measures.

Response 11-37 is not a good faith, reasoned analysis in response to the comment for proper mitigation measures. There is still no effective program to actually conserve and retain scenic resources. There is no Implementation Measure to "encourage their (resources) retention and expansion". The only IM is IM LU-5D regarding Special Events permit streamlining. This does nothing to retain scenic resources.

Response 11-41 is inadequate because it does not provide a sound justification for deferring the implementation program, without the required menu of feasible measures, objective standards of achievement, and commitment to adopt the program before impacts arise. There is no strengthening of implementation programs to mitigate impacts of new light and glare, or new impacts to nighttime views. Without timelines, deferred IM's are not enforceable mitigation. There is little motivation to adopt a controversial dark skies ordinance. Nothing has happened to pass such an ordinance for the last ten years at the planning commission, why should the future be any different without a means of enforcement? "Because an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 420 [253 Cal.Rptr. 426.]). In short, IM LU-4B "Adopt a dark sky ordinance" has no time frames for County implementation, thus is ineffective and unenforceable.

Response 11-42 is inadequate because it is not a good faith reasoned response. Master Responses #1, #2, and #3 reject timelines, specific standards and objectives for Implementation Measures, making them unenforceable. This response defers development impact mitigation indefinitely. Mitigation measures incorporated as Implementation Measures only work if there is a "when" or "before x happens" included.

CEQA requires that mitigation measures be enforceable commitments to reduce or avoid significant environmental impacts. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445; CEQA Guidelines, sec. 15126.4, subd. (a)(2).) An agency must commit to implement a mitigation measure using mandatory language. Otherwise, it does not qualify as a mitigation measure. (CEQA Guidelines, sec. 15126.4, subd. (a)(2); *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal. App.4th 173, 199.) "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." (*Federal Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1261.) The County cannot avoid the responsibility to adopt proper mitigation measures and implementation timeframes simply by making the project description and plan objectives inconsistent with the concept of specific and mandatory mitigation. "[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.) If the County's manipulation of its project description and plan objectives to avoid impact mitigation were allowed, then CEQA would not protect the environment at all.

D) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-109, 11-131, 11-142, 11-143, 11-144, AND IMPROPERLY APPLIED MASTER RESPONSES 1 THROUGH 4 REGARDING LAND USE, RESULTING IN THE FAILURE TO PROPERLY DRAFT, PROPERLY ADOPT, AND PROPERLY REJECT, MITIGATION MEASURES.

Response 11-109 is completely inadequate because it does not respond to the point of the comment. The point of the comment is that DEIR Land Use Chapter 4.9 does not reference or list any Implementation Measures for Land Use and Planning goals and policies. There are no specific IMs to detail how each goal and policy would be carried out, so there is no analysis of IMs or evidence that impacts of development would be mitigated. Without IMs being referenced

and analyzed, there is no evidence to conclude "less than significant impact", or "Mitigation Measures - None required." 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.]).

Response 11-131 is an inadequate boilerplate response, "See Master Response #4," that does not respond in good faith, with detail and supporting evidence, to explain why the suggestion in the comment was not accepted. The Comment provided a detailed and reasonable suggestion for a mitigation to lessen potentially significant negative environmental impacts of development to existing communities whose community plans would be rescinded or abandoned in the draft General Plan. The suggested measure would help implement Land Use Goals and Policies for these communities. The Comment requested inclusion of existing plan documents as "Placeholders until those community plans can be revised and adopted." This was done when Mariposa County adopted its general plan update. The Response did not even acknowledge this suggestion. The County didn't say why it disagreed with it and did not explain why the mitigation was not feasible.

Responses 11-142, 11-143, and 11-144 are dismissive boilerplate Master Responses. They did not explain in good faith how IMs that are optional and/or deferred without the required menu of feasible measures, objective standards of achievement, and commitment to adopt the program before impacts arise qualify as CEQA mitigation measures. Instead, the response tries to lump discrete comments together and use a “one-size-fits-all” response that lacks the necessary detail to address the discrete comments.

As a general rule, an agency cannot rely on mitigating a significant impact by developing a mitigation plan *after* project approval. "The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." (*Oro Fino Gold Mining Corporation v. County of El Dorado* (3d Dist. 1990) 225 Cal.App.3d 872, 884-885.)

The exception to the general rule is that deferral may be permissible under limited circumstances. First, the agency must provide a reason why the deferral is required. (San Joaquin Raptor Center v. County of Merced (207) 149 Cal.App.4th 645, 670-671.) Next, the agency must display a commitment to mitigating the impacts, list a menu of feasible mitigation measures, and identify 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.) An agency may not defer adopting specific mitigation measures by adopting merely a "mitigation goal" without specific performance criteria and a menu of feasible mitigation measures. Similarly, merely committing to study an impact or the feasibility of its mitigation in the future is not sufficient. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118-1119.) Mitigation measures are improperly deferred when there is no commitment to a specific performance criteria, and the mitigation is not in place at the time of project implementation. (*POET v. California Air Resources Board* (2013) 218 Cal.App.4th 681.)

The response ignored the list of Land Use Element IMs provided in the comment that are not commitments to mitigation. It dismissed all comments about lack of timelines, objectives, and commitment, optional wording, and deferred mitigation, by referring to boilerplate Master Responses 1, 2, and 3. These responses seem to reject all need for commitment or timelines/ objectives, or specificity. The Land Use Element implementation programs listed can be postponed indefinitely; there is no commitment. Such implementation programs do not qualify as enforceable CEQA mitigation when they include optional/vague wording, no commitment, and lack timeframes for completion?

E) THE COUNTY FAILED TO LAWFULLY RESPOND TO PUBLIC COMMENTS REGARDING ALTERNATIVES.

1) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENT 11-40 ON AESTHETICS BY REFERENCING EVIDENCE OUTSIDE THE RECORD TO SUPPORT ITS CLAIM THAT THE MINTIER DRAFT GENERAL PLAN WAS NOT A VIABLE ALTERNATIVE.

Response 11-40 is inadequate, because the County's rejection of the request in the comment is not supported by substantial evidence in the record. The County has not provided documentation to substantiate the claim that the 2011 draft Mintier General Plan "was not viable as a guiding policy document for development within the County" ..."deficient", and "not consistent with policy direction provided by the County Board of Supervisors." The County cannot make such allegations in the EIR regarding the Mintier Plan, and then at the same time refuse to include the plan in the administrative record for the EIR. (Planning Commission General Plan Hearing, May 22, 2019.)

Furthermore, the statement is far too conclusory and not sufficiently explanatory. With which policy directions from which Board of Supervisors was the Mintier Plan inconsistent? The response does not say. The publicly released products produced by Mintier and Associates were consistent with policy direction the BOS gave the consultants from 2007 until they were fired in 2012. Planning staff, general plan consultants, and county supervisors have all come and gone in the past 13 years of the General Plan Update. Politics and policy directions have changed, and then changed again. The BOS has never even seen the Mintier draft general plan. County Planning Director Willis, who decided the draft was not acceptable in 2012, is long gone from the County. The Board of Supervisors changed after the 2012 election, and changed again after the elections in 2014, 2016, and 2018. Without providing the Mintier Plan, what evidence is there that the Mintier draft plan and policies are not consistent with County policy direction?

2) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-169 TO 11-173 ON ALTERNATIVES, RESULTING IN THE FAILURE TO EVALUATE VIABLE POLICY ALTERNATIVES TO REDUCE IMPACTS, AND FAILURE TO SUFFICIENTLY DESCRIBE THE MAP-BASED ALTERNTIVES IN THE EIR

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; Cal. Code Regs., tit. 14,

sec. 15126, subd. (d); *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 443-445.)

Under CEQA, the range of alternatives that an EIR must study in detail is defined in relation to the adverse environmental impacts *of the proposed project*. An EIR must include a description of feasible project alternatives that would substantially lessen the project's significant environmental effects. (Pub. Resources Code, § 21061; Cal. Code Regs., tit. 14, § 15126.6, subds. (d), (f).) The project's environmental effects, in turn, are determined by comparison with the existing "baseline physical conditions." (Cal. Code Regs., tit. 14, § 15125, subd. (a); see *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.) (*In re Bay-Delta* (2008) 43 Cal.4th 1143, 1167.)

"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), emphasis added.) An EIR need not consider every conceivable alternative to a project or alternatives that are infeasible. (*Ibid.*; see also *Goleta, supra,* at p. 574.) [2] "In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of 'feasibility.' " (*Goleta, supra,* 52 Cal.3d at p. 565.) CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1; see also Cal. Code Regs., tit. 14, § 15364.)

"The issue of feasibility arises at two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency's later consideration of whether to approve the project. [Citation.] But 'differing factors come into play at each stage.' [Citation.] For the first phase--inclusion in the EIR--the standard is whether the alternative is *potentially* feasible. [Citations.] By contrast, at the second phase--the final decision on project approval--the decisionmaking body evaluates whether the alternatives are *actually* feasible. [Citation.] At that juncture, the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially

feasible." (*Mount Shasta Bioregional Ecology Center*, quoting *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)

An appellate court reviews for substantial evidence the conclusion certain alternatives do not merit extended discussion in the EIR. (*Preservation Action Council v. City of San Jose (*2006) 141 Cal.App.4th 1336 [Insufficient evidence to support the finding that the alternative not included in the EIR was infeasible]; *Uphold our Heritage v. Town of Woodside* (2007) 54 Cal.Rptr.3d 366 [The record did not support the City's finding that alternatives were infeasible].)

Comments 11-169 to 11-173 explain why the EIR should have evaluated one or more additional alternatives. The response to these comments are not in good faith as they do not reference evidence in the record to justify excluding additional alternatives from the record.

F) THE COUNTY FAILED TO LAWFULLY RESPOND TO PUBLIC COMMENTS REGARDING IMPACT ANALYSES.

1) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-102, 11-103, 11-104, 11-107, 11-115, 11-116, 11-118, 11-119, AND 11-120 REGARDING LAND USE, RESULTING IN THE FAILURE TO INCLUDE NECESSARY IMPACT ANALYSES IN THE FINAL EIR.

Response 11-102 is inadequate because it does not respond in good faith to the comment. It does not answer the comment's request, and does not recognize the need to analyze the ALUCP (Airport Land Use Compatibility Plan) for land use conflicts or inconsistencies with the Draft General Plan and Land Use Map, and to list any conflicts in the EIR. This is a standard impact analysis recognized in initial studies, and carried out in EIRs. The response is not responsive.

Response 11-103 is inadequate as it does not respond in good faith to the request that the EIR evaluate conflicts between the zoning ordinance and the GPU in the EIR. Inconsistencies/Conflicts in land use and planning between the GPU and the county's existing zoning uses are NOT acknowledged or analyzed in the DEIR. Again, this is a standard impact

analysis recognized in initial studies, and carried out in EIRs. IM LU-2A, referenced in the response, is not in the DEIR (NO IM's are in the Land Use Chapter of the DEIR). There is no analysis of zoning consistency with the General Plan, or what land use conflicts will occur after adoption of the General Plan. IM LU-2A to update the Zoning Ordinance also has no timeframe for implementation.

It could take years to update Zoning. It took years to pass one ordinance regarding the commercial cultivation of cannabis. Not including the unknown zoning conflicts with the GPU, the General Plan Update identifies the need for 43 additional zoning ordinance reviews and updates. Thus, the analysis of conflicts between the GPU and zoning is needed if the EIR is to serve its informational function. The Board of Supervisors really needs to know how much rezoning it is getting itself into by adopting the General Plan Update.

Response 11-104 is inadequate because it does not answer the question of whether Specific Plans have been reviewed for conflicts and consistency with the draft general plan. This is a routine analysis identified in initial studies and completed in EIRs. The response just says Specific Plans are required to be consistent, and would be amended after adoption.

The response does not explain why this potential conflict with Specific Plans is NOT discussed under Impacts and Mitigations in the DEIR (as requested), or in the Land Use Element. There is NO Implementation Measure for analyzing Specific Plans for consistency and amending them in the draft general plan or DEIR. This information is needed in the EIR if it is to serve its informational function. The Board of Supervisors really needs to know if existing specific plans will need to be substantially amended after approval of the General Plan Update. Such changes could affect the neighborhoods and the fiscal soundness of these major developments.

Response 11-107 is inadequate because it does not cure the failure of the EIR to review or analyze the impact of the rescision of existing adopted community plans' mandatory policies that are specifically designed to mitigate impacts of development for those unique communities. Existing adopted community plans, policies, and programs have not been analyzed in the DEIR. Once adopted, the draft General Plan will supercede the adopted community plans, and all

mitigations and implementation unique to the community will be lost. This analysis is needed so that the County can make the proper CEQA findings. "We therefore hold that a governing body must state a legitimate reason for deleting an earlier adopted mitigation measure, and must support that statement of reason with substantial evidence. If no legitimate reason for the deletion has been stated, or if the evidence does not support the governing body's finding, the land use plan, as modified by the deletion or deletions, is invalid and cannot be enforced." (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342; 359.)

Response 11-115 is inadequate because it is not based upon specified evidence in the record, and does not cure the failure of the DEIR does to analyze the potentially significant development impacts to existing established communities, due to loss of their existing specific policies and implementation measures in Community Plans. There are mitigation policies/programs in existing Community Plans that are NOT covered or duplicated in the Draft General Plan. (See Infusino, *Community plan policies can reduce the significant impacts of the General Plan Updat*e, 5/20/19.) This analysis is needed to properly inform decsionmakers of the impacts of their decision to rescind the community plans.

Response 11-116 is inadequate because it is not responsive to the comment regarding the inadequacy of DEIR's analysis of the physical impacts of development to:
1) established communities not included in the draft General Plan, and
2) all communities with existing mandatory policies and programs, that will now have those policies abandoned or replaced by "optional" general plan programs, and
3) communities with no community information included or analyzed in the DEIR.

Responses 11-118 and 119 are inadequate because they do not correct the DEIR to analyze the potential land use environmental impacts due to General Plan Update conflicts or inconsistencies with Title 17, the Airport Land Use Compatibility Plan, or with existing, adopted Community Plans.

Because response 11-120 is inadequate, the DEIR remains flawed. In Impacts & Mitigations 4.9-2, the DEIR does not acknowledge draft General Plan Update's land uses conflict and are inconsistent with Title 17 of the County Code of Ordinances, which is a land use and zoning regulation adopted for the purpose of avoiding or mitigating many significant environmental impacts of development, such as noise, lighting, traffic, incompatible uses, loss of open space and ag lands, and more. This is not a good faith effort at full disclosure.

2) THE COUNTY FAILD TO LAWFULLY RESPOND TO COMMENTS 11-148, 11-149, 11-154 THROUGH 11-157, AND 11-159 REGARDING CIRCULATION IMPACTS.

Response 11-148 fails to respond to the comment about capturing additional fair share funds from other road users.

Response 11-149 quotes CEQA Guidelines Section 15126.2 (a) stating, in essence, that the impact analysis need only address changes in existing physical condition, not existing deficiencies. This is only half true. CEQA first requires an accurate environmental setting. Among the other relevant aspects of the environmental setting, 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.) The allowance of continued development in the face of unfunded transportation needs is the "past mismanagement" that is the cause of the existing deficiencies. If this is not remedied, it will cause the same impacts under the General Plan Update. The EIR fails as an informational document because it refuses to address this issue. The excuse for not discussing the issue is not based upon a good faith and reasoned consideration of the County's CEQA obligations.

Responses 11-154, 11-155, and 11-156 relate to the comment requesting a Congestion Management Program. The responses do not address the request in the comment, nor do they explain why the suggestion in the comment was not accepted. The response states, "Because the County has not adopted a congestion management plan, and is not currently required to adopt such a plan per State requirements, this EIR is not required to evaluate consistency with such a

plan." It is true that the County has not exceeded 50,000 person threshold triggering the preparation of a Congestion. However, the request was not for an assessment of consistency with a plan that does not exist. The request was that the County begin a Congestion Management Program as mitigation now, because traffic congestion problems are apparent and the County population is already at 48,000 people.

Response 11-157 is to a comment that mentioned "conflicts between the RTP and the General Plan" and the CPC letter which highlighted the conflicts between the RTP and the GPU. The response stated that the CPC letter to CCOG does not reference "conflict", but "suggests that the Calaveras Council of Governments consider entering into a Memorandum of Understanding with the County to create and maintain consistency between the two documents. The CPC letter actually does lists a number of conflicts between the RTP and the General Plan. Response 11-157 is factually incorrect, and is not a good faith effort in response to the comment.

Response 11-159 addresses a comment about using LOS subcategories rather than allowing roads to go to degrade by an entire LOS category (e.g. C to D). The response stated that "…, defining minimum roadway facility operations by peak hour vehicle trips, rather than LOS, is not feasible. While additional subcategories of a given LOS grade may be established using other factors such as average vehicle delay or volume to capacity (V/C) ratio, the County has elected not to consider such options." Since using subcategories would reduce the allowable impacts of the General Plan Update, it would mitigate impacts. The County knows of a way to reduce plan impacts, but does not evaluate it in the EIR, it does not explain why it is infeasible, and it does not adopt it as a mitigation measure. The response does not explain why the suggestion was not adopted.