

To: Calaveras Board of Supervisors
From: Tom Infusino, CPC
Re: Inadequate Analysis of Alternatives in GPU EIR
Date: 11/8/19

I. Background

Throughout the General Plan Update there have been alternatives proposed for consideration. During the 2010 Alternatives Workshops held throughout the County, four alternatives were discussed. The Board of Supervisors also decided to evaluate two alternatives for community plan maps for Valley Springs in the GPU EIR. When providing input during preparation of the GPU in 2013, the CPC asked for a plan that would include more of the new and existing community plans and more policies from the optional water, economic, and energy elements. During scoping prior to preparation of the EIR in February of 2017, the CPC proposed a Success Through Accountability alternative that would reflect commitments to timely implementation and monitoring, and a Community Planning Element alternative that included additional community plans with implementation measures for their policies. In July of 2017, the CPC encourage the County to evaluate 2011 Mintier General Plan as an alternative. Each of these alternatives had the potential to better reduce one or more of the significant impacts of the GPU. However, the comparative merits of THESE ALTERNATIVES ARE NOT ANALYZED IN THE EIR. In fact **NO POLICY ALTERNATIVES ARE EVALUATED IN THE EIR.** Instead the EIR includes only land use map-based conceptual alternatives that are not even mapped to allow for meaningful comparative analysis.

Below we remind the Board of Supervisors that the failure to evaluate alternatives is a serious violation of CEQA. An EIR is a competition of ideas to reduce impacts. In such a competition, it is expected that the BOS will ultimately favor one alternative over another. However, it is completely unacceptable for the BOS to declare a winner without even holding the contest.

Please respect the people who participated in the GPU process enough; please care about

the health and safety of future residents enough, please respect the rule of law enough; to evaluate policy alternatives the in the EIR.

II. An EIR must evaluate a broad range of alternatives with the potential to reduce significant environmental impacts.

An alternatives analysis is supposed to look at a broad range of alternatives to reduce plan impacts and to inform decision makers and the public. This is especially true when it is in a Program EIR like the one in question. (CEQA Guidelines, secs. 15126.6, 15168.) “[T]he discussion of alternatives shall focus on alternatives to the project or the location which are capable of avoiding or substantially lessening any significant effects of the project, even if those alternatives impede to some degree the attainment of project objectives, or would be more costly.” (CEQA Guidelines, sec. 15126.6, subd. (b)(1).) There needs to be sufficient information about the alternative to allow the decisionmakers to make a rational choice. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437 [A decision to approve an alternative analysis based upon the “barest of facts” and “vague and unsupported” conclusions” precluded informed decisionmaking and public participation and was therefore an abuse of discretion.]

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.)

"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.)

"There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (Cal. Code Regs., tit. 14, § 15126.6, subd. (a).) The rule of reason "requires the EIR to set forth only those alternatives necessary to permit a reasoned choice" and to "examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project." (*Id.*, § 15126.6, subd. (f).) An EIR does not have to consider alternatives "whose effect cannot be reasonably ascertained and whose implementation is remote and speculative." (*Id.*, § 15126.6, subd. (f)(3).)

CEQA requires a "quantitative, comparative analysis" of the relative environmental impacts and feasibility of project alternatives. An inadequate discussion of alternatives in an EIR is an abuse of discretion. (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692, 730-737.) An EIR must explain in detail why various alternatives are deemed infeasible. This discussion of alternatives must be "meaningful" and must "contain analysis sufficient to allow informed decision making." "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 403-404; See also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344 [EIR ruled inadequate for lacking a quantitative discussion of increased ambient nighttime noise levels].)

"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 EIR should "identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination." (CEQA Guidelines, sec. 15126.6, subd. (c); *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437 [A lead agency must explain why a suggested alternative is rejected as either unable to be accomplished, not satisfying the goals of the project, or not advantages to the environment.]; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 205-206 [In rejecting an alternative an agency must disclose the analytic route it traveled from substantial evidence to action].) The explanation for rejecting alternatives must be reasoned and based upon evidence in the record. (*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].)

III. The analysis of alternatives in the GPU EIR is flawed.

A) The EIR unreasonably reject evaluating proposed alternatives without a basis in evidence in the record. .

The EIR's response to comments indicated that it was infeasible to consider any policy alternatives in the EIR. (See Response 11-169 to 11-173.) This is ridiculous. There is no CEQA exception to avoid evaluating policy alternatives in an EIR. Even the General Plan Guidelines, that have an entire chapter dedicated to CEQA compliance, explain that:

"The EIR for a general plan must describe a reasonable range of alternatives and analyze each of their effects (CEQA Guidelines § 15126.6). Each of the alternatives should avoid or lessen one or more of the significant effects identified as resulting from the proposed general plan. **A reasonable range of alternatives would typically include** different

levels of density and compactness, different locations and types of uses for future development, and **different general plan policies.**” (OPR, 2017 General Plan Guidelines, Chapter 10, p. 271, emphasis added.)

The EIR’s conclusory response to comment 11-40 indicates that the 2011 Mintier General Plan was an unsuitable alternative because it "was not viable as a guiding policy document for development within the County," was "deficient," and was "not consistent with policy direction provided by the County Board of Supervisors." However, there were no examples of these problems provided, and the County refused to include the 2011 Mintier General Plan in the record to support its claims.

B) The analysis of the alternatives included in the EIR did not provide sufficient detail or meaningful evaluation.

The alternative land use maps are described in the GP EIR, but they are neither in the EIR nor in the record. These maps are “conceptual”. There was no way to see where the actual boundaries of the communities changed. There was no way to see where the land use designations would be changed. As a result, there was no way to determine where and how much impacts would be decreased, if at all. The comparison of alternatives was a purely theoretical exercise, not a meaningful evaluation of the comparative merits of three land use maps from which the decisionmakers or the public could choose.

Even if the details were provided, the analysis would not have been meaningful, for the alternatives would not have informed the public or the decisionmakers. Nobody in the public was debating the merits of the alternatives evaluated. No decisionmaker had proposed the alternative map concepts. Except for a few landowners near Copperopolis who made comments at the Planning Commission hearing in May and June of 2019, the debates over the land use maps were over by the time the EIR was prepared.

The debates that continued revolved around how best to reduce the impacts of the land use map. Should the county promote more job-generating economic development that might reduce commuting impacts? Should the County regulate independent property owners or search for incentives to motivate the willing property owners to reduce development impacts? Were

prescriptive standards or performance standards needed to inform those seeking project approvals; or should a majority of the BOS have complete and ongoing discretion to approve applications on a project by project basis, regardless of the effects on communities, even those that did not elect them? Were timelines needed for implementation programs, or should the BOS have complete and ongoing discretion when and if to implement programs to reduce impacts? Were community plans needed to ensure the BOS addressed local needs, or should a majority of the BOS have complete and ongoing discretion to alter the fate of communities, even those that did not elect them? Should the focus of the policies be on those few developments that are coming, or be expanded to consider the health and safety of the many people who already reside in the county? While these policy considerations were reflected in proposed alternatives, the GPU EIR did not evaluate any of those policy alternatives. As a result, the analysis of alternatives not only violates CEQA, but also does a great disservice to the many people with diverse opinions who actively participated in the GPU process. The flawed alternatives analysis failed to fairly assess the comparative merits people's assertions, and failed to present their local government representatives with the most important thing that it must: a choice.