

AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS

June 7, 2010

Dan Breedon
Butte County Planning
7 County Center Drive
Oroville, CA 95965

Re: Butte County General Plan 2030 Draft Environmental Impact Report

Dear Mr. Breedon:

AquAlliance is submitting the following comments, questions, and suggestions for the Butte County General Plan 2030 (“General Plan”) Draft Environmental Impact Report (“DEIR”).

Project Description

The DEIR asserts that the “projected 2030 buildout of the unincorporated county includes, “13,700 additional residential units, 33,800 new residents, as well as the development of 1.8 million square feet of new retail and office space and 1.1 million square feet of new industrial space by 2030.” However, on page 3-56 in the Project Description (“Project”) chapter for the General Plan 2030 and the Airport Land Use Plan (“ALUCP”) override, it is revealed that the General Plan actually could permit:

- ◆ *61,100 new dwelling units*
- ◆ *150,900 new residents*
- ◆ *19.1 million square feet of new retail/office space*
- ◆ *19.4 million square feet of new industrial space (p. 3-56)*

Which depiction is the accurate Project description for the public, policy makers, and for the purposes of CEQA? Butte County needs to present a definable Project and analyze it under the California Environmental Quality Act (CEQA). The DEIR states, “However, as discussed in Chapter 3, it is extremely unlikely that maximum theoretical buildout would ever occur under General Plan 2030. Therefore, an analysis of maximum theoretical buildout is not required by CEQA.” (p. 4.8-34) Presenting the Project and then avoiding analysis because an unidentified actor or actors decided that it really won’t happen at the numbers expected, is confusing at best and is an attempt to circumvent CEQA requirements. The *sine qua non* of an environmental

impact report (EIR) is an accurate project description.¹ Any evaluation of the General Plan “must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment.”² In order to comply with CEQA, the DEIR must therefore describe and consider the full extent of the growth permitted by the Plan and must quantify the impacts. (*Id.*) It is quite simply a CEQA requirement that an EIR must evaluate the project’s potential to affect the environment, even if the project does not ultimately materialize.³

For the purposes of our comments, the Project definition will be what the DEIR refers to as the “maximum theoretical buildout,” the 61,100 new dwelling units, 150,900 new residents, 19.1 million square feet of new retail space, and 19.4 million square feet of new industrial space.

General Comments

A) As stated in the General Plan, policies are intended to guide “[d]ecision-making as the County works to achieve a goal. Such policies, once adopted, represent statements of County regulation. A policy is on-going and requires no further implementation. The General Plan’s policies set out the standards that will be used by County staff, the Planning Commission and Board of Supervisors in their review of land development projects and in decision-making about County actions.” (p.5) Policy statements viewed as guidance are understandable, but how will they become regulation? How will this comply with CEQA? Large portions of the DEIR and General Plan consist of unenforceable statements of goals and objectives, using terms like “support” or “encourage,” rather than “require.” For example: “Policies HS-P4.1 and HSP4.2 support the efforts of public and private entities to study levee stability and design and reconstruct levees that do not meet flood protection standards.” (DEIR p. 4.8-32); “Policy PUB-P6.5 encourages permanently protected and maintained open space in new development using mechanisms such as conservation easements and development agreements.” (DEIR p. 4.12-55); “Carpooling shall be encouraged by providing additional carpool pickup and park-and-ride locations near transit centers and at freeway interchanges.” (GP p. 174) These advisory statements do not constrain or direct growth in an enforceable manner.

There are many “shall” policy statements in the General Plan that are referenced in the DEIR.

¹ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730; *County of Inyo v. City of L.A.* (1977) 71 Cal.App.3d 185, 199.

² *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 (citation omitted).

³ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 279, 282.

They are grand statements of intent, but there is no expressed mechanism that will make them enforceable. These many “shall” policies provide the County with too much discretion and the public and policy makers with too little direct and clear understanding of the impacts from the Project. Rather than presenting an exhaustive list of impacts, the County has chosen to obfuscate the impacts and defer facing mitigation requirements to a future time. The DEIR states on page 2-3 that, “Rather than mitigating impacts from implementation of General Plan 2030 through mitigation measures in this EIR, the policies and land use map in General Plan 2030 are *intended* to prevent the majority of environmental impacts altogether.” (emphasis added) The intentions behind this path may be honorable, but the DEIR lacks honest disclosure and discussion of the serious and significant impacts that will arise from the development of the Project. The DEIR goes on to say that, “As described in Section D, the General Plan 2030 process involved a wide variety of stakeholders and interests. As a result, this General Plan is intended to meet multiple, and sometimes competing, policy objectives. Therefore, the County *may not be able to adhere to every policy in every decision that it makes to implement this Plan*. The Board of Supervisors will have discretion over which policy objective it will follow in instances in which there are competing policy objectives affecting a single decision.” (emphasis added)

While AquAlliance appreciates that the County divulges that there is the potential to have major policy directives ignored that are relied upon for mitigation in the General Plan and DEIR, CEQA mandates that public agencies not approve projects unless feasible measures are included that mitigate the project’s significant environmental effects.⁴ CEQA therefore requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.”⁵ The mitigation measures must be enforceable, rather than just vague policy statements.⁶ The DEIR fails these requirements.

As mentioned above, the DEIR fails to divulge impacts from the Project and asserts that policies will form the basis for mitigation even with the Supervisors’, “[m]ay not be able to adhere to every policy in every decision that it makes to implement this Plan. The Board of Supervisors

⁴ Pub. Resources Code, § 21002.

⁵ Pub. Resources Code §§ 21002.1, subd. (b); *City of Marina Board of Trustees* (2006) 39 Cal.4th 341, 360.

⁶ See Pub. Resources Code § 21081.6, subd. (b); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 & n.4 (agency must take steps to ensure mitigation measures are fully enforceable through permit conditions, agreements, or other measures).

will have discretion over which policy objective it will follow in instances in which there are competing policy objectives affecting a single decision.” Expanding the quote from the previous page, the DEIR contends that, “However, by incorporating policies intended to avoid environmental impacts and by steering development to existing incorporated and unincorporated cities and communities, General Plan 2030 is largely self-mitigating. Rather than mitigating impacts from implementation of General Plan 2030 through mitigation measures in this EIR, the policies and land use map in General Plan 2030 are intended to prevent the majority of environmental impacts altogether.” (p.2-3)

With all of the unenforceable policies and actions presented in the DEIR that is theoretically analyzing the impacts from “[6]1,100 new dwelling units, 150,900 new residents, 19.1 million square feet of new retail/office space, and 19.4 million square feet of new industrial space,” how is this possible? The County owes all policy makers, from both incorporated and unincorporated jurisdictions, and the public a complete answer to that question. It is like BP oil suggesting that they have contained the worst, documented environmental disaster in the United States merely because they say they have done so. The County must provide demonstrable proof through specific avoidance and mitigation measures and present it in a supplemental EIR, so the public may actually have a substantive document on which to comment.

The General Plan states that, “Some policies in this Plan are also required as means to mitigate environmental impacts under the California Environmental Quality Act (CEQA). These policies all use the imperative “shall,” and in all cases are mandatory. These policies will be marked with an asterisk (*) in the Final General Plan.”¹ (p. 13) Unfortunately, the footnote informs the reader that the County is unable to determine which policies will rise to this level of significance: “At the time of publication of this Public Review Draft General Plan, the list of policies that are required for environmental impact mitigation under CEQA has not been finalized. This list will be provided separately for use during the review of the Public Review Draft General Plan, and incorporated into the Final General Plan document prior to adoption.” (General Plan p. 13) Additionally, it must be determined and presented to the public and policy makers how the “shall” policies with asterisks will be enforced. The public and policy makers are again unable to grasp the significance of the whole of the Project due to a chosen phasing strategy by the County. A general plan must be more than a statement of broad but unenforceable policies and goals for the future. The General Plan must state “with reasonable clarity” what the plan is, not just what is hoped for with yet undetermined environmental impact mitigation under CEQA.⁷

⁷ *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97.

Section 21081.6 of the California Public Resources Code requires public agencies to “adopt a reporting and monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.” A Mitigation Monitoring and Reporting Program is required for the proposed Project. The DEIR should have identified significant adverse impacts with avoidance and mitigation measures. Please present all avoidance and mitigation measures and a summary table in a supplemental EIR for public review and comment.

B) It is still noted that Butte County has a weak objective regarding the environment. “Address the protection, enhancement, utilization and management of natural resources and the environment. “ DEIR p.3-10 How will the County “address” environmental protection when it has failed to disclose the myriad, potential impacts to the environment and disclose avoidance and mitigation measures?

C) The Specific Plan areas designated on the Land Use map Figure 3-3 should be removed from the Butte County General Plan 2030. New residential growth should occur in the incorporated towns and cities, not the County. Potential growth in areas adjacent to existing, incorporated communities should be left to the planning of the communities where there is greater potential for more efficient use of land and the ability to provide services.

Biological Resources

A) Figure 4.4-1 fails to illustrate the important wildlife areas that have been preserved by fee title, with conservation easements or are mitigation areas from prior development. This should be corrected as it will assist the understanding of policy makers and the public with the values from existing protected lands and the potential incompatibilities with activity on adjacent lands.

B) There is a very contradictory paragraph on page 6-4 of the DEIR “Although growth and development under General Plan 2030 would not result in environmental impacts to biological resources, development in Butte County and elsewhere in the region would contribute to the on-going loss of undeveloped natural lands, which could impact special-status species, sensitive natural communities, federally-protected wetlands, and wildlife and fish movement corridors. This cumulative impact would be *significant and unavoidable*.” How will there be no impacts to biological resources when significant and unavoidable impacts are expected? This lack of clarity renders the document useless. These contradictory statements are also found elsewhere in the DEIR.

Hydrology and Water Quality

A) The water quality section (pp.4.8-12 to 4.8-14) discloses the Central and Southwest plumes in the Chico Urban Area, but neglects to reveal the numerous additional ground water plumes that have plagued not only the Chico Urban Area, but also Oroville. The DEIR acknowledges that other “[g]roundwater contaminants of concern in Butte County include arsenic, chromium, copper, dioxin, and polynuclear aromatic hydrocarbons,” but fails to disclose the locations, extent of the ground water pollution, and the hazards to human and environmental health. A true accounting of all past and current ground water contamination and the location must be disclosed and analyzed. Completely absent from the DEIR is any mention of the gas additive MTBE, which has affected numerous areas of Butte County. Documentation and a map illustrating the cumulative contaminated areas must be presented in a supplemental EIR.

B) Where is a water supply analysis for the Project? Ground water supply and recharge is briefly discussed with an acknowledgment that at least 75% of Butte County’s residents depend on groundwater. (pp.4.8-14 to 4.8-15) This is a serious omission.

C) What is the *original* source of the following conclusory statements? “Of the 3.77 MAF of annual rainfall, less than half is used.⁷ Therefore, more than 2 MAF are currently available for recharge or discharge via surface and subsurface outflow, although this amount will not always be available.” The source is listed as the Butte County *General Plan Technical Update Background Report*, page 12-16, but what scientific data produced the information?

Land Use

A) As currently drafted, the General Plan is not a true planning document. It creates a set of unenforceable preferences and policies for how growth will occur in the County on the available land. The County can transform the General Plan from an aspirational document to the legally-required constitution for future development by ensuring that goals and objectives are linked to specific and enforceable worded policies and implementation measures. Such measures can include, for example, development phasing so that land is not developed until available infill (areas in or adjacent to developed areas) has been used to the maximum extent feasible, and coordination between a County and the cities in its jurisdiction about where future growth will occur.

B) The DEIR acknowledges that the General Plan would have “significant land use impacts” if there was a, “Conflict with any applicable plan, policy, or regulation of a government agency with jurisdiction over land in unincorporated Butte County that has been adopted for the purpose of avoiding or mitigating an environmental effect.” *Id* p. 4.9-29 The DEIR acknowledges the

federal Bureau of Land Management and Forest Service plans with which it must be compatible to avoid significant impacts. Noticeable absent from the federal plans section is any mention of, let alone coordination with, the Vernal Pool Critical Habitat designation and the *Recovery Plan for Vernal Pool Ecosystems in California and Southern Oregon*. This is a very serious omission that affects over 50,000 acres in Butte County (see attachments).

C) The General Plan and a supplemental EIR must consider down-zoning to more fully comply with AB 32, the Recovery Plan for Vernal Pool Ecosystems in California and Southern Oregon, protection of groundwater recharge areas, and the pending Habitat Conservation Plan.

Growth Inducing Impacts

Direct Impacts

Page 6-2 *The proposed General Plan 2030 also includes policies that would maintain the rural character of Butte County and minimize the environmental impacts of anticipated growth.*

Placing an additional 150,000 more people in the unincorporated areas of Butte County will not maintain a healthy rural character nor minimize environmental impacts as expressed above.

There is a greater chance for both urban and rural health found in the Concentrated Growth Alternative. It would meet all of the Project's objectives and is the environmentally superior alternative and would most certainly reduce the severity of most environmental impacts associated with the project. It is not clear, therefore, why the County failed to fairly evaluate the alternatives in chapter five.

Page 6-3 *As a result, while the proposed General Plan 2030 and ALUCP override would result in increased local growth, policies included in General Plan 2030 would reduce the potential for negative impacts associated with direct growth inducement to a less-than-significant level. How will this be done? As discussed on page two of these comments, the DEIR has failed to describe and consider the full extent of the growth permitted by the Project. CEQA requires that an EIR evaluate the project's potential to affect the environment, even if the project does not ultimately materialize, but that has not been done in the Project's DEIR.*

Indirect Impacts

The DEIR concludes that, "[t]he proposed General Plan 2030 and ALUCP override would result in a *less-than-significant* indirect negative growth inducing impact." As illustrated for direct impacts immediately above, the DEIR has failed to describe and consider the full extent of the growth permitted by the Project. Therefore the Growing Inducing section is out of compliance with CEQA.

Cumulative Impacts

A) *CEQA Guidelines* Section 15130 requires that an EIR include a discussion of cumulative impacts “...when the project’s incremental effect is cumulatively considerable, as defined in [*CEQA Guidelines* Section 15065(c)].” Cumulatively considerable effects are those “...incremental effects of an individual project that are significant when viewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (*CEQA Guidelines* Section 15065(c)) Unfortunately, not only has the DIER failed to analyze the Project’s potential impacts and propose avoidance and mitigation measure, but it has also not adequately incorporated the cumulative effects from past, present, and future projects in the region to provide a straightforward cumulative impact analysis.

B) The DEIR concludes that the, “majority of impacts associated with General Plan 2030 and the ALCUP override would be reduced to a *less-than-significant* level,” but there is acknowledgement of some significant and unavoidable impacts. They include the conversion of Prime Farmland, Farmland of Statewide Importance; impacts to special-status species, sensitive natural communities, federally-protected wetlands, and wildlife and fish movement corridors; hydrology and water quality impacts at both the project and cumulative level; impacts to airports that are completely avoidable; a substantial permanent increase in ambient noise levels, traffic and transportation; and violation of air quality standards conflicting with the State goal of reducing greenhouse gas emissions in California to 1990 levels by 2020. (DEIR pp. 6-4 to 6-6.) In light of the fact that the Project is not properly defined, the impacts are not adequately quantified, enforceable mitigation measures are not imposed, and adequate alternatives are not considered, these conclusions are unsupported and contravene CEQA.⁸

C) “Because General Plan 2030 includes residential densities that are not consistent with the Airport Land Use Compatibility Zones in the ALUCP, adoption of this document requires an override of the ALCUP.” (p.3-2) The DEIR is inadequate due to its failure to assess impacts resulting from planning deviations from the State Aeronautics Act Handbook, a requirement of CEQA Guidelines section 15154(a). The County is subject to all of the SAA and Public Resources Code section 21670.1. As mentioned above, the impacts to the airports are completely avoidable.

⁸ See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 (lead agency cannot simply conclude that there are overriding considerations that would justify a significant and unavoidable effect without fully analyzing the effect.)

Conclusion

AquAlliance looks forward to a supplemental EIR that will contain a more transparent project description, and full analysis of project and cumulative impacts, and a more impartial assessment of alternatives. Please keep AquAlliance informed of future opportunities to participate in meetings, hearings, or comment periods that pertain to the Butte County General Plan 2030 and its implementation process.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Vlamis". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping underline.

Barbara Vlamis, Executive Director
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