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April 14, 2008

**By Overnight Mail and Facsimile**

David Bryant  
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Tulare County Resource Management Agency  
Government Plaza  
5961 South Mooney Boulevard  
Visalia, CA 93277

RE: Draft Environmental Impact Report for Tulare County General Plan 2030 Update  
SCH # 2006041162

Dear Mr. Bryant:

The Attorney General submits these comments pursuant to the California Environmental Quality Act ("CEQA") on the Draft Environmental Impact Report ("DEIR") for the Tulare County General Plan 2030 Update ("General Plan").<sup>1</sup>

**1. Introduction**

The general plan is "at the top of the hierarchy of local government law regulating land use[.]"<sup>2</sup> As the California Supreme Court has noted, this basic land use charter governing the direction of future land use is in the nature of a planning "constitution."<sup>3</sup> Taking some measure of control over future land use is the local government's affirmative duty. "The planning law . . . compels cities and counties to undergo the discipline of drafting a master plan to guide future

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<sup>1</sup>The Attorney General provides these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V, § 13; Cal. Govt. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

<sup>2</sup>*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773 (internal citation omitted).

<sup>3</sup>*Ibid*; *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 542.

local land use decisions.”<sup>4</sup> The Tulare County General Plan thus presents both an opportunity and a responsibility to the County – an opportunity to shape the future growth of the County, and a responsibility to ensure that such growth is consistent with State and local goals, including protecting the public health and welfare of the County’s inhabitants and protecting the environment.

According to the DEIR, the Plan anticipates that the population of Tulare County will reach 621,549 by 2030, an increase of approximately 254,000 people,<sup>5</sup> and that emissions of carbon dioxide (CO<sub>2</sub>) from this growth will increase by approximately 1.7 million tons/year. As you are aware, global warming presents profoundly serious challenges to California and the nation. While we commend the County for addressing greenhouse gas (“GHG”) emissions in the DEIR, we have concluded that the DEIR is not in compliance with the requirements of CEQA in significant respects. First, the DEIR does not disclose the actual growth that may occur under the proposed General Plan – which leaves much of the control over land uses and growth patterns to the market – and the GHG emissions that will result from such growth. Second, the DEIR considers only vehicle miles traveled and dairies as sources of GHG emissions, and neglects to consider other significant new sources of GHG emissions, including emissions from construction, residential and non-residential energy use, and other activities that will result from the build-out of the Plan. Third, the DEIR considers only a narrow range of alternatives, ignoring any alternative that would aggressively foster “smart growth” by more significantly limiting development to existing urban areas. Finally, the DEIR does not impose enforceable and quantifiable mitigation measures to mitigate the impact of the GHG emissions.

Because the analysis of GHG emissions is inadequate and incomplete, the DEIR does not comply with CEQA, and does not provide substantial evidence to support the County’s finding that the impacts of GHG emissions will be “significant and unavoidable.”

## **2. Climate Change Background**

Before discussing the General Plan and legal adequacy of the DEIR, it is important to understand why human-caused climate change is of particular concern to California and to the San Joaquin Valley.<sup>6</sup>

The impacts of climate change are not limited to remote parts of the world – they are being felt in California today. In California, global warming is causing damage to agriculture, losses to the Sierra snowpack, higher risks of fire, eroding coastlines, and habitat modification

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<sup>4</sup>*DeVita, supra*, 9 Cal.4th at p. 773.

<sup>5</sup>The County indicates that the General Plan is intended to accommodate 25% of this growth in the unincorporated areas, an increase of approximately 64,000 residents.

<sup>6</sup>The physics of climate change are well described in the Intergovernmental Panel on Climate Change, Fourth Assessment Report, “Frequently Asked Questions” (available at [http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1\\_Print\\_FAQs.pdf](http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_FAQs.pdf)) and need not be repeated here.

and destruction. Global warming affects public health directly, through heat-related illnesses and deaths caused by more hot days, and longer heat waves, and indirectly as higher temperatures favor the formation of ozone and particulate matter in areas that already have severe air pollution problems.<sup>7</sup>

The impacts of climate change are of particular concern to the San Joaquin Valley and Tulare County, especially in the areas of agriculture and public health. According to a whitepaper from the California Climate Action Team on the impacts of climate change on agriculture, “California’s cornucopia is predicated on its current climate and its supply and distribution of irrigation water[.]”<sup>8</sup> Rising temperatures will cause larger crops growing in warmer climates to use more water and also may stimulate more weeds and insect pests. Pollination – essential to many Valley crops – will be negatively affected if warming causes asynchronization between flowering and the life cycle of insect pollinators. And the occurrence of adequate winter chill, necessary for fruit trees to flower, may be lost for many fruit species.<sup>9</sup> Higher temperatures due to global warming also have an impact on the dairy industry, which is of special importance to Tulare County, by causing lower milk production and heat-related animal deaths. Dairy producers will no doubt recall the extended heat wave of 2006, which caused the death of thousands of cows and created a backlog of carcasses for disposal.<sup>10</sup>

The health related impacts of climate change are also of substantial importance to the County. A Stanford study details how for each increase in temperature of 1 degree Celsius (1.8 degrees Fahrenheit) caused by climate change, the resulting air pollution would lead annually to about a thousand additional deaths and many more cases of respiratory illness and asthma.<sup>11</sup> The effects of warming are most significant where the pollution is already severe. Thus, the study has serious implications for California overall and for the San Joaquin Valley in particular. Given that California is home to six of the ten U.S. cities with the worst air quality, including Visalia-Tulare, and that the San Joaquin Valley has some of the worst air quality in the nation, the State and the Valley are likely to bear an increasingly disproportionate public health burden if we do not significantly reduce our GHG emissions.

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<sup>7</sup>A summary of impacts to California, together with citations, is available on the Attorney Generals’ website at <http://ag.ca.gov/globalwarming/impact.php>.

<sup>8</sup>California Climate Change Center, *An Assessment of the Impacts of Future CO2 and Climate on Californian Agriculture* (March 2006) at p. 1, available at <http://www.energy.ca.gov/2005publications/CEC-500-2005-187/CEC-500-2005-187-SF.PDF>.

<sup>9</sup>*Id.*, Abstract.

<sup>10</sup>Williams, “Dairy producers regroup after cow deaths,” *Bakersfield Californian* (Aug. 5, 2006) available at <http://www.bakersfield.com/102/story/66292.html>.

<sup>11</sup> Jacobson, Mark Z., *On the causal link between carbon dioxide and air pollution mortality*, *Geophysical Research Letters*, Vol. 35 L03809 (2008).

The atmospheric concentration of CO<sub>2</sub>, the leading GHG, is now 380 parts per million (ppm),<sup>12</sup> higher than any time in the last 650,000 years,<sup>13</sup> and rising at about 2 ppm per year. According to experts, an atmospheric concentration of CO<sub>2</sub> “exceeding 450 ppm is almost surely dangerous” to human life because of the climate changes it will cause.<sup>14</sup> Thus, we are fast approaching a “tipping point,” where the increase in temperature will create unstoppable, large-scale, disastrous impacts for all the inhabitants of the planet.<sup>15</sup>

We must take prompt action and control of our future. In the words of Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change, “If there’s no action before 2012, that’s too late. What we do in the next two to three years will determine our future. This is the defining moment.”<sup>16</sup>

### **3. Description of the General Plan**

Pursuant to Government Code section 65302, subdivision (a) a general plan must contain a land use element that

designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space . . . and other categories of public and private uses of land. . . .

The distribution and general location of land uses under the Tulare County General Plan Update is almost impossible to discern from Plan documents. Maps typically accompany general plans.<sup>17</sup> While the General Plan does identify a limited number of land use designations (General Plan at pp. 5-5 to 5-12), it does not include any maps or diagrams identifying where the designations are, or the acreage available for development within each designation. A document entitled Board Update, dated April 2006, which was provided to the Board of Supervisors, includes detailed land use maps for certain limited areas – specifically, each of the 21 existing

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<sup>12</sup><http://www.esrl.noaa.gov/gmd/ccgg/trends/>

<sup>13</sup>IPCC 4<sup>th</sup>, WGI, Frequently Asked Question 7.1, *Are Increases in Atmospheric Carbon Dioxide and Other Greenhouse Gases During the Industrial Era Caused by Human Activities?* [http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1\\_Print\\_FAQs.pdf](http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_FAQs.pdf).

<sup>14</sup> See [http://www.nasa.gov/centers/goddard/news/topstory/2007/danger\\_point.html](http://www.nasa.gov/centers/goddard/news/topstory/2007/danger_point.html).

<sup>15</sup> See *ibid.*

<sup>16</sup>Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

<sup>17</sup>See *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307 [general plan maps are visual depictions of planned development policies indicating the geographic or spatial aspects of the plan].

unincorporated communities “hamlets.” These maps, however, are not included in the General Plan. Nor does the Plan contain a table or tables indicating the general location, extent and type of land uses that could occur in the various geographic areas of the County. Ultimately, it is “impossible to relate any tabulated density standard of population to any location in the County.”<sup>18</sup>

The General Plan contains a Goals and Policies Report that purports to set forth a “hierarchy of goals, policies, and implementation measures designed to guide future development in the County.” (General Plan at p. 1-3.) The policies and implementation measures are in many cases nothing more than statements of preferences and opinions, rather than definite commitments to adopt enforceable policies and specific standards, or to use the powers the County has to enact ordinances and control development.

For example, one policy states that the County shall “encourage” residential growth to locate in existing Urban Development Borders (“UDBs”), Urban Area Boundaries (“UABs”), and Hamlet Development Boundaries (“HDBs”), but none of the accompanying implementation measures provide enforceable requirements or standards that would ensure that this policy is followed.<sup>19</sup> (General Plan at pp. 2-16 to 2-21.) Similarly, while the Plan states a policy of discouraging “new towns” (*id.* at p. 2-12), the policy has only very broad, general criteria and appears to allow new planned communities at an unlimited number of locations in the County as controlled by the market.<sup>20</sup> In the area of Land Use, the Plan again states a series of policies that are said to promote smart growth, encourage mixed use and infill development, etc. (General Plan at pp. 5-12 to 5-19), but the accompanying implementation measures contain no enforceable requirements that would ensure that development occurs consistent with these policy statements. (*Id.* at pp. 5-22 to 5-24.)

Thus, despite the general goals of the Plan to direct development in urban areas and in unincorporated hamlets and communities, nothing in the Plan will prevent a significant portion of the future growth from occurring outside the UDBs, for example in the foothill areas in the far eastern part of the County that are far from services, jobs, and transportation.

Ultimately, it appears that, rather than being a “constitution” for future development, the General Plan will largely leave the shape of new development, in amount and in location,

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<sup>18</sup>See *Camp v. Board of Supervisors of Mendocino County* (1981) 123 Cal.App.3d 334, 350.

<sup>19</sup> According to the 2003 State of California General Plan Guidelines (“General Plan Guidelines”) at pp. 16-17, published by the Governor’s Office of Planning and Research, a general plan should contain implementation measures which are actions, procedures, programs, or techniques, that carry out the general plan policy, as well as standards, which are rules or measures establishing a level of quality or quantity that must be complied with or satisfied.

<sup>20</sup> Similarly the Plan states a policy to “discourage the creation of ranchettes. . . .” (Plan at p. 4-4), which are residences built on large lots from 1.5 acres up. This policy does not, however, impose any enforceable limitations on ranchette development.

primarily to the control of the market. This is as much as acknowledged in the DEIR which states repeatedly that “[w]hile the proposed General Plan Update includes policies intended to control the amount and location of new growth. . . it does not solidly advocate, promote or represent any one development scenario because any attempt to predict the exact pace and locations of future market-driven growth is considered speculative.” (DEIR at p. ES-7.)

#### 4. CEQA Requirements

An EIR is an informational document intended to provide both the public and government agencies with detailed information about the effects of a proposed project on the environment, to list ways in which those effects can be mitigated, and to discuss and analyze alternatives to the project.<sup>21</sup> A “project” is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. . . .”<sup>22</sup> The project must be adequately described in the EIR,<sup>23</sup> and the entirety of the project must be considered, not just some smaller portion of it.<sup>24</sup> A decision to approve a project “is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.”<sup>25</sup>

CEQA was enacted to ensure that public agencies do not approve projects unless feasible measures are included that mitigate the project’s significant environmental effects.<sup>26</sup> 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.”<sup>27</sup> The mitigation measures must be enforceable and the benefits quantifiable, rather than just vague

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<sup>21</sup>*Laurel Heights Improvement Ass’n v. Regents of University of California* (1988) 47 Cal.3d 376, 390-91 (citing Pub. Res. Code, § 21061; Cal.Code Regs., tit. 14, § 15003, subd. (b)-(e) (hereafter “Guidelines”).

<sup>22</sup> Guidelines, § 15378, subd. (a).

<sup>23</sup> Guidelines, § 15124.

<sup>24</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.

<sup>25</sup> *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-22 (quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829).

<sup>26</sup> Pub. Res. Code, § 21002.

<sup>27</sup> Pub. Res. Code, §§ 21002.1, subd. (b); *City of Marina Board of Trustees* (2006) 39 Cal.4th 341, 360.

policy statements.<sup>28</sup>

The CEQA Guidelines further provide that the EIR must discuss a “range of reasonable alternatives to the project or to the location of the project which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”<sup>29</sup> The EIR must include sufficient information about each alternative to provide meaningful analysis and comparison,<sup>30</sup> and must consider alternatives that could eliminate significant effects or reduce them to a less than significant level, even if the alternatives could impede the attainment of the project’s objectives to some degree.<sup>31</sup>

## **5. The DEIR Does Not Adequately Analyze GHG Emissions Under CEQA**

As the Legislature has recognized, global warming is an “effect on the environment” under CEQA, and an individual project’s incremental contribution to global warming can be cumulatively considerable and therefore significant.<sup>32</sup> The DEIR briefly and generally discusses global climate change, noting that California has passed Assembly Bill 32 (“AB 32”), the Global Warming Solutions Act of 2006, which requires the Air Resources Board to implement regulations to reduce GHG emissions statewide to 1990 levels by 2020. (DEIR at pp. 4-44 to 4-46.) The DEIR concludes that, even with mitigations, the GHG emissions from the project will be significant and unavoidable and will conflict with the goals of AB 32. (*Id.* at pp. 4-64 to 4-68). This analysis is deficient for the reasons discussed below.

### **a. The DEIR Does Not Adequately Disclose and Analyze All of the Potential Growth and GHG Emissions that May Result from the General Plan**

A general plan embodies an agency’s decisions as to how to guide future development, and any evaluation of the general plan “must necessarily include a consideration of the larger

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<sup>28</sup>See Publ. Res. Code, § 21081.6, subd. (b); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (agency must take steps to ensure mitigation measures are fully enforceable through permit conditions, agreements, or other measures).

<sup>29</sup> Guidelines, § 15126.6, subd. (a).

<sup>30</sup> Guidelines § 15126.6, subd. (d).

<sup>31</sup> Guidelines § 15126.6, subd. (b); see also *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456-57 [cannot exclude alternative simply because it impedes project objectives or is more costly].

<sup>32</sup>See Pub. Res. Code, § 21083.05 subd. (a); see also Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.

project, i.e., the future development permitted by the amendment.”<sup>33</sup> Thus, in order to comply with CEQA, the DEIR must describe and consider the full extent of the growth permitted by the Plan and must quantify the GHG emissions, both direct and indirect from that growth.<sup>34</sup>

Because the Plan does not include enforceable measures guiding how and where development will occur in Tulare County, the DEIR performs its analysis based on “assumptions” about “population growth and the market distribution of that growth throughout the County.” (DEIR at p. 2-7.) The DEIR states that the population of Tulare County is anticipated to reach 621,549 by 2030, an increase of approximately 254,000 people, and assumes that approximately 75% of that growth is expected to occur within the UDBs of the incorporated cities, with the remaining 25%, or approximately 64,000 new residents, in unincorporated communities, hamlets and development corridors. (*Id.* at pp. ES-5, 2-7.)

In fact, however, as discussed above, the proposed General Plan is so open-ended that it does nothing to constrain market-driven population growth in the County and appears to allow unlimited development far beyond the scope of what is assumed in the DEIR. The actual remaining capacity for development within the existing UABs and UDBs of unincorporated communities in Tulare County is over 126,000 residents, indicating that the existing potential for growth in unincorporated areas is nearly twice the 64,000 that the DEIR assumes.<sup>35</sup> Further, development is not limited to existing communities and hamlets, but can occur at the discretion of the County in new towns located in rural, undeveloped areas of the County. Such development is not only likely in the future – it is already in progress; the County is currently considering just such a development project, the Yokohl Valley Ranch, a 10,000 unit residential development to be located in the Sierra Nevada foothills on land that is currently set aside for agriculture.<sup>36</sup>

In order to comply with CEQA, it is not sufficient for the DEIR to disclose only an assumed level of growth based on population projections, and an assumed distribution of that growth based on general policies and statements of preference. Rather, it must disclose the full potential for market-driven growth that is permitted under the Plan, and must evaluate the extent and impact of GHG emissions if a significant portion of that growth is accommodated in rural,

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<sup>33</sup> *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409.

<sup>34</sup> See Guidelines, §§ 15126, 15358, subd. (a)(1), (2); *Las Virgenes Homeowners Federation, supra*, 177 Cal.App.3d at p. 307 [in adopting General Plan, County “necessarily addressed the cumulative impacts of buildout to the maximum possible densities allowed by those plans”]; see also *Christward Ministry v. Superior Court* (1986) 184 Cal.App. 3d 180, 194 [evaluation of general plan must include future development permitted by amendment].

<sup>35</sup> Tulare County General Plan Board Update (2006) at p. 8 [table showing estimate of population capacity within existing UDBs and UABs of unincorporated communities].

<sup>36</sup> See Notice of Preparation and Initial Study for Yokohl Ranch Project, available at <http://www.ceqanet.ca.gov/DocDescription.asp?DocPK=617530>.



undeveloped areas, as the Plan appears to allow.

**b. The DEIR Does Not Adequately Quantify the Emissions from the Assumed Growth**

In addition to failing to disclose the full amount of potential growth that may occur under the General Plan, the DEIR also fails to properly quantify the GHG emissions from the development it does disclose. The DEIR purports to quantify GHG emissions from the anticipated increase in vehicle miles traveled (“VMT”) in the assumed market-driven development, stating that CO<sub>2</sub> emissions will increase from 1,997,046 to 3,446,934 tons/year, (approximately a 73% increase). (DEIR at p. 4-50.)

There is no explanation or supporting analysis describing how the DEIR derives this number. It would seem impossible to determine VMT without knowing in general terms where the new development will occur in the County and the distance from workplaces and services. Development that occurs close to urban centers and mass transit will produce significantly less VMT (and GHG emissions) than development that occurs in the far foothills, away from the population centers. Since the General Plan relies on “market-driven” development and does not implement enforceable procedures to guide development, the assessment of GHG emissions from increased VMT is inaccurate and incomplete.

Second, the DEIR discusses only emissions related to VMT and dairy operations. While the DEIR notes that there will be increased emissions from the actual “buildout” of the Plan (including increased use of electricity, woodburning fireplaces, natural gas, and equipment), it states that it lacks information to quantify these emissions, and therefore makes no effort to do so. (DEIR at p. 4-50) These omitted emissions are almost certainly substantial. According to the California Energy Commission, residential, commercial, and industrial sources make up about 30% of the CO<sub>2</sub> emissions in the State,<sup>37</sup> and that does not include methane production from sources such as landfills and wastewater treatment.

There are a number of models available to assist the County in estimating future GHG emissions. One source of helpful information is the report issued by the California Air Pollution Control Officers Association (CAPCOA), “CEQA and Climate Change.”<sup>38</sup> The document discusses a variety of models that can be used to calculate GHG emissions. Similarly, the Attorney General’s Website provides a table of currently available models that are useful for calculating emissions.<sup>39</sup> Other models are available from a variety of sources,<sup>40</sup>

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<sup>37</sup>California Energy Commission, *Inventory of California Greenhouse Gas Emissions and Sinks: 1990 to 2004*, December 2006, Table 6.

<sup>38</sup>The document is available at <http://www.capcoa.org/>.

<sup>39</sup> [http://ag.ca.gov/globalwarming/ceqa/modeling\\_tools.php](http://ag.ca.gov/globalwarming/ceqa/modeling_tools.php).

<sup>40</sup> See, e.g., UPlan at <http://ice.ucdavis.edu/doc/uplan>.

The DEIR must fully quantify and consider all of the emissions from the project, including those resulting from the build-out.

**c. The DEIR Does Not Include All Feasible Alternatives and Does Not Quantify GHG Emissions from Those Alternatives**

The DEIR considers five alternatives which it terms the (1) No-Project alternative, (2) City-Centered Alternative, (3) Rural Communities Alternative, (4) Transportation Corridors Alternative, and (5) Confined Growth Alternative. (DEIR at pp. ES-8 to 9, 7-3 to 7-34.) Based on Table 7-1, which outlines the assumed population growth in unincorporated areas for each of the alternatives, it appears that the range of alternatives is narrow, representing a difference of only approximately 4% in growth in unincorporated areas (from 26% to 30%). (DEIR at pp. 7-3 to 7-4.) The alternatives thus ignore a range of “smart growth” alternatives that would concentrate development in already existing urban areas near mass transit and preserve more agricultural land and open space. A more intense “smart growth” alternative would appear to be feasible given the evidence that existing cities can currently accommodate all of the growth anticipated by the County.<sup>41</sup> Thus, in order to be consistent with CEQA, the DEIR must consider a broader range of alternatives that would focus more of the development in existing urban areas, or explain and provide evidence supporting a conclusion as to why such alternatives would be infeasible.

Moreover, while the DEIR purports to compare the impacts of the various alternatives, the discussion of the alternatives is inadequate. There are no anticipated population numbers provided for two of the alternatives (No-Project and Confined Growth alternatives), making it impossible to compare them to the other three alternatives (DEIR at pp. 7-3 to 7-4), and the discussion of alternatives does not even mention GHG emissions. (DEIR at pp. 7-14 to 7-34.) In order to comply with CEQA, the DEIR must quantify and compare the GHG emissions from each of the alternatives. Again, as discussed above, there are modeling resources available to the County for performing this analysis.

**d. The DEIR Does Not Impose All Feasible Measures to Mitigate GHG Emissions**

CEQA provides that a public agency should not approve a project as proposed if there are additional feasible mitigation measures that would substantially lessen the significant environmental effects of the project.<sup>42</sup> Further, in order to ensure that mitigation measures are actually implemented, they must be “fully enforceable through permit conditions, agreements, or

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<sup>41</sup>Tulare County General Plan: Policy Alternatives, Board of Supervisors Edition (August 2005) at p. 9, available at <http://generalplan.co.tulare.ca.us/documents.html>.

<sup>42</sup> Pub. Res. Code, § 21002.

other measures.”<sup>43</sup>

The DEIR refers to a series of policies in the General Plan that purport to mitigate GHG emissions related to general development. They include, for example, requiring any development to minimize air impacts, requiring the County to “consider” any strategies identified by the California Air Resources Board, studying methods of transportation to reduce air pollution, encouraging departments to replace existing vehicles with low emission vehicles, and identifying opportunities for infill. (General Plan at pp. 9-4 to 9-5.) While these policies are a positive step, they are general and unenforceable, as are the accompanying implementation measures. Further, the DEIR makes no attempt to quantify the extent to which these mitigation measures will reduce GHG emissions, instead simply jumping to the conclusion that the climate change impacts from the project would be “significant and unavoidable.” (DEIR at pp. 4-65 to 4-68.)<sup>44</sup>

In fact, there are many mitigation measures that are readily available to the County to decrease GHG emissions from new development. We are not suggesting that the County must adopt any specific set of mitigation measures, since this is a decision within its discretion. The County is, however, required by law to determine which measures are reasonable and feasible and to implement and enforce those measures. In considering which mitigation measures to implement, the County has many resources available. It can consider, for example, the measures set out in the CAPCOA document referenced above (pp. 79-87 and Appendix B-1), and those set forth in the list on the Attorney General’s website<sup>45</sup> (copy attached), and in the comments in the letter of the San Joaquin Valley Unified Air Pollution Control District (“APCD”) dated May 26, 2006, included in Appendix A to the Notice of Preparation. All of these sources provide concrete and enforceable recommendations, and address all aspects of project development that have an impact on GHG emissions, including conservation, land use, circulation, housing, open space,

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<sup>43</sup> Pub. Res. Code, § 21081.6, subd. (b); *Federation of Hillside & Canyon Ass’ns, supra*, 83 Cal.App.4th at p. 1261.

<sup>44</sup> The shortcomings of the mitigation discussion is further apparent in the DEIR’s discussion of mitigation measures for dairies, which addresses GHG reduction only incidentally in the context of reducing other air pollutants, and which fails to discuss many potentially significant mitigation measures that are available. (DEIR at pp. 4-66 to 4-67.) To take one example, methane digesters, which are increasingly being used on dairies in California, process animal waste under anaerobic conditions, yielding methane gas that is collected on site and can be sold directly to utilities or used to generate electricity, bringing in revenue to the dairy. See California Energy Commission, *Dairy Power Production Program, Dairy Methane Digester System 90-Day Evaluation Report, Eden-Vale Dairy*, December 2006 at p. 4; [http://cpuc.ca.gov/Final\\_resolution/68429.htm](http://cpuc.ca.gov/Final_resolution/68429.htm); <http://www.epa.gov/agstar/resources.html>; Fresno County Notices of Intention to Adopt a Mitigated Negative Declaration (Unclassified Conditional Use Permits 3215-3218).

<sup>45</sup> <http://ag.ca.gov/globalwarming/ceqa.php>.

safety, and energy. Other sources discussing mitigation measures are readily available.<sup>46</sup>

Finally, the DEIR states that the County will, at some unspecified future time, develop a GHG Emissions Reduction Plan that parallels requirements adopted by the California Air Resources Board. (DEIR at p. 4-67) While we commend the County for recognizing that such a plan is necessary, this reference to an as yet undeveloped and completely undefined plan cannot serve as mitigation for the project's GHG emissions, since deferring environmental assessment to some future date is counter to CEQA's mandate that environmental review be performed at the earliest stages in the planning project.<sup>47</sup>

We encourage the County to pursue adoption of a GHG Emissions Reduction Plan as part of its General Plan. To constitute effective mitigation, the County should consider including in the Plan a baseline inventory of the GHGs currently being emitted in the County from all sources, projected emissions for target years (e.g., 2020 and beyond), targets for the reduction of those sources of emissions that are consistent with AB 32 and Executive Order #S-03-05, and a suite of feasible emission reduction measures to meet the reduction target(s).<sup>48</sup> An effective plan would also likely include monitoring and reporting requirements so that the County will obtain information on the performance of its plan, and an adaptive management element to ensure that the Plan, once implemented, can be adjusted if necessary to meet the reduction targets.

In sum, given the wealth of resources available describing specific mitigation measures for GHG emissions, it is feasible for the County to develop and impose a set of mitigation measures that will be implemented and enforced as conditions of all future development projects. Since the County has not fully explored the extent to which there are feasible mitigation measures that would substantially reduce the global warming impacts of this project, it has not complied with CEQA.

**e. The DEIR Cannot Conclude, Without Fuller Analysis, that GHG Effects are Significant and Unavoidable and Inconsistent with AB 32**

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<sup>46</sup> See, e.g., [www.gosolarcalifornia.ga.gov/nshp](http://www.gosolarcalifornia.ga.gov/nshp) [discussing the California Energy Commissions' New Solar Homes Partnership which provides rebates to developers of six units or more who offer solar power on 50% of the new units]; [www.energy.ca.gov/efficiency/lighting/outdoor\\_reduction.html](http://www.energy.ca.gov/efficiency/lighting/outdoor_reduction.html) and [www.newbuildings.org/lighting.htm](http://www.newbuildings.org/lighting.htm) [energy efficient lighting]; [www.energy.ca.gov/title24/2005standards/](http://www.energy.ca.gov/title24/2005standards/) [feasible green building measures identified by the California Energy Commission's Compliance Manuals]; [www.vtpi.org/park\\_man.pdf](http://www.vtpi.org/park_man.pdf) [discussion of parking management programs that provide environmental benefits].

<sup>47</sup> Pub. Resources Code, § 21003.1; *Sunstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 (and cases cited therein).

<sup>48</sup> See the Attorney General's settlement with San Bernardino County, available at [http://ag.ca.gov/cms\\_pdfs/press/2007-08-21\\_San\\_Bernardino\\_settlement\\_agreement.pdf](http://ag.ca.gov/cms_pdfs/press/2007-08-21_San_Bernardino_settlement_agreement.pdf).

The DEIR concludes that the GHG emissions from the project will be significant and unavoidable. (DEIR at p. 4-68.) In light of the fact that the emissions are not fully quantified, enforceable mitigation measures are not imposed, and the efficacy of any mitigation are not analyzed qualitatively or quantitatively, this conclusion is unsupported and contravenes CEQA.<sup>49</sup>

**6. Conclusion**

This is a critical time for all of California. Scientists acknowledge that global warming is real. Unless we depart from the “business as usual” paradigm and embrace the new principles of “smart growth,” we risk pushing the environment past the “tipping point” into cataclysmic climate change. The stakes are too high for Tulare County to abdicate its responsibilities, allowing the market to control the future of the hundreds of thousands of people who currently live and work – and the hundred thousands more who will live and work – in Tulare County. The County, through its General Plan and the CEQA process, has the opportunity, and indeed the duty, to become one of the leaders in planning the future of California. The decisions the County makes today will determine what the County will look like in the coming years and 30 years from now, and they can help move California forward into a new era of development and sustainable growth, consistent with the State’s goals for a lower-carbon future.

Thank you for your consideration of these comments. We would appreciate the opportunity meet with County staff to discuss these comments further in an effort to work cooperatively on these issues.

Sincerely,

/S/

SUSAN S. FIERING  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

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<sup>49</sup> 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].