



**Sierra Club Loma Prieta Chapter
Celebrating 80 years of protecting the planet**

3921 East Bayshore Road, Suite 204, Palo Alto, CA 94303
loma.prieta.chapter@sierraclub.org
TEL - (650) 390-8411 | FAX - (650) 390-8497

Byron Turner,
Interim Director County of San Benito Planning & Building Department
2301 Technology Parkway
Hollister, CA 95023
(831) 637-5313

May 6, 2015

Dear Mr. Turner:

The Loma Prieta Chapter of the Sierra Club would like to submit the following comments regarding the Revised Draft Environmental Impact Report for the 2035 San Benito County General Plan. In 2013 the Loma Prieta Chapter of the Sierra Club and the Santa Clara Valley Audubon Society submitted a joint letter to the San Benito County Planning Department with comments regarding the Draft Environmental Impact Report (DEIR) for the General Plan. A letter was also submitted by Mr. Joseph Brecher on behalf of the Sierra Club. We will draw upon comments from both of those letters, as well as additional comments as appropriate for the 2015 RDEIR.

1. Introduction and Summary

While the RDEIR purports to contain expanded evaluation of impacts associated with potential distribution of new growth into New Community Study Areas described in the 2035 General Plan, we find it to be as confusing, and as insufficient in fulfilling the requirements of the California Environmental Quality Act as the previous DEIR.

The RDEIR identifies 21 secondary or indirect impacts of implementing the 2035 General Plan that would lead to significant adverse and unavoidable impacts. Per our following discussions, we believe that the number of significant impacts would be even higher.

One of the guiding principles of the 2035 General Plan is to “Encourage new growth in existing unincorporated communities, New Communities, or clustered developments in order to preserve prime farmland and rangeland, protect natural habitats, and reduce the financial, social, and environmental impacts of urban sprawl.” A predominate flaw with the document is that prime farmland and rangeland, and natural habitat will be diminished in both acreage and function, and urban sprawl will be promoted by New Communities and other growth that the General Plan is encouraging.

Particularly confusing is the inclusion of two very different scenarios in the Preferred Project. One (the Hollister-Centered Growth Scenario) “envisions that the majority of new population growth would occur in the unincorporated area of the County in and around the City of Hollister SOI [sphere of influence].” The second “the New Community Study Areas Plus Hollister General Plan Growth Scenario” includes four regions of planned new communities and a large Winery/Hospitality region. The RDEIR contends that proposed policies will mitigate such that the two scenarios would be equivalent for most impacts. This contention makes no sense, particularly as the policies contain weak language such as “coordinate and cooperate,” “shall encourage,” “shall promote,” “provide the option...to consider,” but have no enforceable provisions. Clearly, the first scenario would have less impacts on wildlife habitat and agricultural land, and would likely have less impacts on traffic, air and water pollution, greenhouse gas emissions than would the creation of new communities and vineyards dispersed in the northern region of the County.

The RDEIR is really nothing more than an attempt to justify and obfuscate the fact that “one of the primary purposes of the 2035 General Plan is to accommodate future urban development needs,” as stated in the RDEIR. The many elusive (and probably illusory) goals and policies that are supposed to protect the County’s rural character should be acknowledged for what they are – fluff and window-dressing. The inadequacy of these measures means, in turn, that the RDEIR’s conclusion that many potentially significant impacts will be rendered insignificant by employing the listed mitigation measures, is mere assertion, with no basis in fact.

2. Many supposedly mandatory requirements and mitigation measures are set forth in terms that have no precise definition, or rely on programs to be developed later, so it is impossible to know how or whether they would be applied

The County asserts that various mitigation measures will reduce the intensity of many perceived impacts to a level of insignificance. But many of these measures are so vague as to be useless, or are to be developed later, with no mechanism in place to compel the County to act. A court will not accept mitigation measures if there is “uncertainty as to whether the mitigation measures would ever be funded or implemented.” *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261. In that case, the court invalidated an EIR for the adoption of a general plan framework (GPF) because its listed mitigation measures exhibited the same defects as those discussed below:

Although the city adopted the mitigation measures, it did not require that they be implemented as a condition of the development allowed under the GPF and made no provision to ensure that they will actually be implemented or “fully enforceable” ([Pub. Resources Code] § 21081.6(b)). We therefore conclude that there is no substantial evidence in the record to support a finding that the mitigation measures have been “required in, or incorporated into” ([Pub. Resources Code] §21081 (a)(1)) the GPF in the manner contemplated by CEQA, and the city failed to provide that the mitigation measures would actually be implemented under the GPF ([Pub. Resources Code] § 21081.6(b)).

As noted above, the RDEIR relies upon so-called “mitigation” measures to support the conclusion that various potentially significant impacts will be reduced to a level of insignificance. But those measures won’t actually work or be enacted. Thus the actual severity

of the environmental damage is downplayed. This is impermissible under the law. See *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 80. The General Plan RDEIR provides no evidence, whatsoever, that the wishful thinking behind the listed mitigation measures can or will be translated into action. “[C]onclusions reached in [a] DEIR [must be] supported by complete and accurate facts and analysis. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 741. It must set forth “the specific sources and content of the data . . . relied upon.” *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 172. The terse assertions that the vague, unenforceable mitigation measures will render numerous environmental impacts insignificant fall far short of the State Supreme Court’s requirement that the CEQA process must disclose “the analytic route the administrative agency traveled from evidence to action.” *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

Examples of “toothless” or vague mitigation measures are:

“The County shall maintain an integrated network of open space lands that support natural resources, agricultural resources, recreation, tribal resources, wildlife habitat, water management, scenic quality, and other beneficial uses.”

Exactly how will this “integrated network” be established and maintained? Will there be a study delineating the network? Who will do it and pay for it? If a landowner’s parcel is found to be within the “integrated network,” will he or she be refused permission to develop? Would this not then be a “taking,” since planning and zoning would otherwise allow development at such a site?

Stream Setback Ordinance – “Adopt a Stream Setback Ordinance to apply to new construction or development proposed in or near an existing river, stream, creek, or any other watercourse within the county, and for each class of stream or river, designate a setback between developed areas and streams sufficient to protect them from degradation, encroachment, or loss. The California Department of Fish and Wildlife recommends a no disturbance buffer of 250 feet from the highwater outside mark for waterways with riparian vegetation, and 100 feet from the highwater mark for each channel without riparian vegetation.”

Again, the County is urged to adopt a stream setback ordinance, with no way to assure compliance. Furthermore, the measure notes the recommendation by the California Department of Fish and Wildlife as to the width of the buffer zone, but does not require that such a width be adopted. Why not?

Conservation Easements, “The County shall support and encourage the use of conservation easements to protect open space that contains valuable natural resources.”

There is no mandate that such easements be purchased or standards set forth as to when they are appropriate.

“Goal NCR-1 would preserve open space lands that provide wildlife habitat and conserve natural and visual resources. To better protect the rural landscape, future urban development projects would be subject to the open space policies contained under this goal. The policies **ensure** that the existing natural topography, rural and agricultural landscapes, and open space lands seen from recognized scenic corridors are protected and not converted to developed uses.”

But these policies are no more than a “wish list” and certainly can’t “ensure” the protection of scenic resources.

A smorgasbord of suggestions are offered to protect wildlife corridors and oak woodlands and other resources, but nothing specific is set forth. As the RDEIR candidly admits, “Since the 2035 General Plan is not a project level document, it does not include specific avoidance and minimization, nor does it list any compensatory requirement for impacts to special status species or loss of their habitats. There are no specific mechanisms identified for mitigating potential impacts to any special-status species from conversion of its habitat due to urban or agricultural development.” And even with the addition of a host of noble-sounding policies, the RDEIR concedes that it cannot stem the loss of valuable biological resources: “neither the Rangeland and Agricultural land use designations, or the 2035 San Benito County General Plan policies would prevent the overall net loss of special status species or individuals within the county associated with future urban development within natural habitat areas.”

This is the very defect condemned by the *Federation of Hillside & Canyons* case described at the beginning of this section. Under these circumstances, that case mandates that the County “require that [mitigation measures] be implemented as a condition of the development allowed under the [general plan].”

Over and over, the County is to prepare and adopt measures with no way to ensure compliance and no assurance that the adopted measures will be adequate. The CEQA Guidelines, §15126.4(a)(1)(B) forbid such a process: “Formulation of mitigation measures should not be deferred until some future time.” See also *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-09; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884.

3. Some mitigation measures do nothing to alleviate the impacts they are supposed to mitigate, or actually make things worse

a. For example, a potential significant impact is that development would “Convert ... Farmland ... to non-agriculture use.” Supposedly to deal with this problem, Mitigation Measure AG-1c would Amend Policy LU-8.3 as follows: “The County shall only accept applications for the establishment of New Communities” if they are ... “Accessible to existing major transportation routes and corridors, such as State highways.”

How does locating new communities near existing transportation routes stop the loss of farmlands that will be paved over by those communities?

Further, the General Plan includes new roads, some of which seem to have little purpose other than to accommodate new communities. For example the Plan includes a realignment of Highway 25 (instead of widening the existing road) and extension of Shore Road to Highway 101 in the area of a development that has been proposed (El Rancho San Benito) within one of the New Community Study Areas. Although current and expected traffic from Hollister might warrant widening of Highway 25 in the region, need for a new highway alignment is not demonstrated and the extension of Shore Road would not accommodate current traffic patterns. A policy restricting location of New Communities is meaningless if the roads are built in preparation for New Community proposals.

Another example: “The overall goal [of Goal NCR-1] is to preserve and expand the county’s extensive open space land, which conserves the visual resources within the open space lands.”

How can this be done while building hundreds of houses and paving over thousands of acres?

b. Similarly, the DEIR contains the hollow reassurance that “The Natural and Cultural

Resources Element also contains policies that would minimize impacts to agriculture related to large-scale solar and wind installations. Implementation of these policies would preserve open space that could contain agricultural resources.”

Yet the Panoche Valley solar farm, with its massive impacts and wildlife, was approved by the Supervisors with little difficulty.

c. One of the most egregious of these weak mitigation measures involves the supposed benefit of preserving off-site lands to “make up” for the loss of land to be developed. We see this especially in Mitigation Measure AG-1b, which proposes to “Amend Policy LU-3.10 to read: “The County shall work with [other agencies] to preserve agricultural and open space lands, to develop, adopt, and maintain an agricultural mitigation program that mitigates for the loss of agricultural land by requiring project applicants to preserve farmland of an equal or greater value to that being converted at a 1:1 ratio.”

Aside from the familiar problem that there is no way to compel the adoption of this program, the net effect of a 1:1 “preservation” of other farmland still means that the land to be developed will be lost forever. Offsite preservation can never make up for the permanent loss of agricultural land, open space, and wildlife habitat to development.

d. An example of contradictory “mitigation” deals with the perceived problem (Impact AG-2): that development would “Conflict with existing zoning for agricultural use, or the provisions of Williamson Act contracts.” Incredibly enough, Mitigation Measure AG-2a would “Amend Policy LU-3.11 as follows: For parcels not operated as part of a larger farming operation, the County shall consider not renewing current Williamson Act contracts on small parcels that are not devoted to commercial agriculture.”

It makes little sense to mitigate for the loss of agricultural lands protected under the Williamson act by not renewing contracts.

4. There are 21 different impacts that are significant and which can't be mitigated

The RDEIR lists significant unmitigated impacts to agricultural resources (conversion of important farmland to non-agricultural use; conflict with zoning for agriculture use or Williamson Act contracts; land use changes that result in conversion of farmland to non-agricultural uses), biological resources (loss or destruction of special status species and habitat; loss or destruction of riparian or other sensitive natural habitat), noise (development of new noise-sensitive land uses within areas subject to noise impacts; traffic noise level increases caused by development), population and housing (inducement of population growth), traffic and transportation (increase in vehicular traffic on state freeways and highways; increase in traffic on local roadway segments; increase in vehicular traffic at key intersections), and cumulative impacts to aesthetics, agricultural resources, biological resources, cultural resources, hydrology and water resources, and noise. The County simply concedes to the impacts, using this language repeatedly: “No measures in addition to proposed General Plan policies and mitigation identified in this RDEIR are available and within the jurisdiction of San Benito County to reduce the magnitude of this impact.” We believe that there would also be significant unmitigated impacts to aesthetics (beyond the conceded cumulative impacts), wetlands, and wildlife corridors.

This provides a perfect reason why the Plan needs to be withdrawn and strengthened, so as to eliminate these many impacts.

It should also be noted that the mitigation measures mentioned in the plan do not encompass all that could be done to lessen potentially significant impacts. Many of the measures discussed in

Section 21 dealing with alternatives, could just as well be denoted “mitigation” and be included in the proposed general plan.

5. The treatment of New Community Study Areas and Wine/Hospitality Priority Area is particularly troublesome

It is axiomatic that:

An EIR must include an accurate description of the project. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185. “Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the ‘no project’ alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1448.

The treatment of the specially designated (overlay) areas in the RDEIR falls woefully short of this requirement.

Per page 3-38 “The purpose of the Wine/Hospitality Priority Area is to identify areas of the County where the wine industry and wine tourism are encouraged, while protecting the agricultural character of the area. The purpose of the New Community Study Areas is to designate areas that the County wishes to study, but not yet approve, for future growth.”

The discussion of what these designations mean, what their impacts would be, etc. is confusing at best.

Under CEQA, “A legally adequate EIR must produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned.” [Citations.] It must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug. [Citations.] It must reflect the analytic route the agency traveled from evidence to action.” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733.

The overlay areas comprise a huge swath of land located at the very heart of the area with significant urbanization pressures. This region also contains a major portion of the County’s high quality agricultural lands and important wildlife linkages, as well as habitat for special status species. But, aside from some dotted lands on the map, the RDEIR provides no description of the acreages involved, and we are not told how and why these areas were selected for overlay status. Indeed, there is no explanation as to why overlay areas are needed, at all. Further, it is not clear whether these areas were included in assessment of the acreages to be impacted by development.

Discussion of the Wine/Hospitality Priority (WHP) designation is particularly lacking, though its impacts to other agriculture and to natural resources could be enormous. Most of the area designated for Wine/Hospitality is on lands that are otherwise designated as rangeland. Conversion to vineyards would result in a major loss of wildlife habitat and cattle range, and, because it is an agricultural activity, might not be subject to further review under CEQA. Many vineyards are fenced to prevent use of the lands by wildlife. This would result in both loss of

wildlife habitat and loss of important wildlife movement corridors. Conversion of thousands of acres of rangeland to vineyards has occurred throughout Central Coast counties, and has resulted in huge, unaddressed impacts to wildlife species and natural communities. There is no justification provided that would favor this industry and land use over others.

No standards are set forth as to how development within these areas is to be processed by Staff. Instead, we are told that “any developed land uses” within the New Community Study Area (NCSA) would require a general plan amendment. So what happens to land within that area in the meantime? It is essentially being left in limbo, outside the scope of the current planning effort. The purpose of a general plan is to guide development THROUGHOUT the county, rather than leaving a significant slice of land to be planned at some unknown future date. There is no attempt to set forth exactly how much development is wanted and/or anticipated in the overlay areas or to assess what the impacts would be if these goals were fulfilled.

The general plan should be amended so as to either adopt specific measures for the overlay areas, or delete the references entirely. The RDEIR claims that the scope of development in the NCSA and WHP areas can't be anticipated now, no analysis is presently feasible, and that developments within the NCSA's will require a major general plan amendment. Then what is the point of mentioning them, at all? On the other hand, if the County is determined to proceed with the concept of these special areas now, their effects must be analyzed in this EIR. “Even if a general plan amendment is treated merely as a ‘first phase’ with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a ‘first phase-general plan amendment’ must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment. Only then can the ultimate effect of the amendment upon the physical environment be addressed.” *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194.

One example of the confusion created by the two “Scenarios” (with and without the special overlay areas) and nebulous status of the special areas can be found in the discussion of Global Climate Change. On page 11-57 comparison is made of vehicle miles travelled (VMT's) and greenhouse gas emissions (GHG) between the two Scenarios. The discussion makes the assumption that development under Scenario 2 will be closer to San Jose than under Scenario 1, thus will result in lower VMT's and GHG. However, several of the New Community Study Areas are not closer to San Jose, so additional undisclosed assumptions are apparently being made. This discussion apparently also assumes that policies that would provide for improved transit and increased employment opportunities within San Benito County will not be effective.

6. Predictions of population, housing, and growth are highly speculative, and impacts are not fully assessed

The RDEIR assumes a population increase in San Benito County to 94,731 by 2035. It predicts a population increase of 36,102 people and 13,545 new housing units in unincorporated areas of the County by 2035. The sources of these numbers are highly speculative, and depend partially upon 2008, rather than more recent AMBAG projections. For its projections of job growth, it also departs from AMBAG projections, and projects a much larger growth in jobs. This is not analysis: it's wishful thinking.

It is apparent that the premise of the General Plan is to promote growth, without fully assessing

its impacts. The failure to make even a general attempt at assessing the effects of the full build-out allowed by the updated general plan is a fatal flaw. As the court stated in *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 409:

Even if a general plan amendment is treated merely as a “first phase” with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a “first phase-general plan amendment” must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment. Only then can the ultimate effect of the amendment upon the physical environment be addressed.

Furthermore, a proper analysis should incorporate a “worst-case scenario” in which full build-out occurs. See, e.g., *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1228-1229; *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1544.

The assessment of impacts of full build-out on hydrology and water availability is particularly lacking. It is stated in the RDEIR (page 13-7) that “The recent multi-year drought ... has resulted in groundwater declines of 10 to 20 feet within the majority of the subbasins in the San Benito Gilroy-Hollister groundwater basin. Water levels in the Bolsa subbasin appear to have dropped further between July 2014 and October 2014... If dry conditions persist, either the basin must be replenished with natural or imported water, or water demand must be decreased to prevent additional declines.”

Despite this admitted decline in ground water in one of the New Community sites, the RDEIR contends that impacts to hydrology are not significant. Despite the ongoing statewide water shortage, the General Plan depends upon an uninterrupted source of imported water to serve the predicted growing population.

The RDEIR further states “there is no difference in the potential impacts to hydrology and water resources that would result from the two growth scenarios because the County would apply the 2035 General Plan policies, including additional policies from mitigation measures contained in the certified EIR, equally in approving development, regardless of location.” The assertion that the two growth scenarios would result in equal population growth and that the location of growth would have no impact on ground water or other resources is not credible.

7. Impacts to Natural Resources have not been addressed adequately

a. Special Status Species: A short list of species is discussed that “are of greater conservation concern to the wildlife agencies and whose habitat usage tends to overlap with areas of development pressure...” As has been underscored by the Panoche Valley solar farm project that was approved by the County, any areas and habitats can be subject to development pressure, and all potential impacts to all special status species need to be addressed fully. No reference is given to verify that the wildlife agencies consider impacts to the shorter list of species to be of greater concern.

It is stated in the RDEIR that “The potential effects of the 2035 General Plan on biological resources were determined using a GIS biological data set overlain on a GIS 2035 General Plan

future land use data set.” It is not clear whether the General Plan land use data set included the New Communities and Winery overlays, nor is it stated what biological data set was used. California Natural Diversity Data Base (CNDDDB) contains only records of special status sightings that have been reported to that data system. Because species are not reported is not an indication that they do not occur in any given location or region.

It is stated that “Artificial and unvegetated biological communities... (including agricultural land, unvegetated drainages, ...) are unlikely to support special status plants.” Special status plants may occur at margins or within agricultural areas, so impacts need to be considered. For instance, saline clover (*Trifolium depauperatum* var. *hydrophilum*), a plant thought to be extinct, was discovered in agricultural land in the northern part of the County.

For California tiger salamander, California red-legged frog, steelhead, and vernal pool fairy shrimp, the RDEIR describes potential habitats in the County, including designated critical habitat, and states that “construction activities in or near these habitat areas could result in significant impacts” to the species. It needs to be made clear that impacts to any habitat of these species, whether within designated critical habitat or not, would be significant if not fully mitigated.

Indirect impacts to sensitive species and their habitats should include increased mortalities from traffic, and potential introduced diseases (such as feline leukemia and canine distemper) from domestic animals.

Ringtail (a Fully Protected species) is not included in the list of Special Status species potentially found in San Benito County.

b. Mitigation measures are inadequate: Mitigation Measures BIO-1a, 1b and 1c provide for baseline biological inventory, pre-development biological resource assessment, and preparation of guidelines for biological resource assessment. While biological inventories and assessments are necessary to determine impacts and appropriate avoidance or mitigation measures, inventories and surveys are not in themselves mitigation.

Mitigation Measures BIO 1c and 1d make very general statements regarding project mitigation and funding requirements. Nothing is provided in these measures beyond what is required for basic CEQA compliance. It is not specified that these measures will apply to the Wine/Hospitality (vineyard) overlay area.

Mitigation Measure BIO-5 is to “prepare and adopt a Habitat Conservation Plan (HCP) and a Natural Communities Conservation Plan (NCCP) for federal and state listed and candidate species in San Benito County in order to preserve natural communities, manage listed and candidate species’ habitats, and ensure long-term protection of these resources.” The RDEIR contends that this mitigation measure would reduce impacts to oak woodlands and other natural communities to less than significant. We do not agree: the HCP and NCCP would not necessarily protect habitat beyond that required for listed and candidate species, and would not ensure protection of oak woodland or other natural communities. Further, no time frame is

stipulated for adoption of the HCP/NCCP, so impacts could occur in the meantime. An HCP has been in the planning stages for over 25 years in this County, with no appreciable progress.

c. Wildlife corridors: the RDEIR includes some discussion of riparian corridors as movement corridors for wildlife. While riparian corridors are important for animal movement, upland habitat can also be important for movement corridors or linkages, and impacts to upland areas that link large habitat blocks also need to be considered and addressed. The RDEIR concedes that “fragmentation of habitat increases stress, and thereby increases susceptibility to disease, predation, climate change, etc.” This understates the importance of gene flow between metapopulations for the survival of some species, and the need for animal populations to have access to new areas, particularly in the face of habitat change due to human activity and climate change.

Mitigation Measure BIO-4 is to implement MM’s BIO-1a, 1b, and 1c. It is not clear why this should be listed as an additional mitigation measure. These measures, when applied on a project-by-project basis would not address the cumulative impacts that developments would have on wildlife corridors. We do not agree that impacts to wildlife movement corridors would be less than significant with the proposed mitigation measures.

8. The alternatives analysis in the RDEIR is inadequate

a. Introduction. CEQA’s requirements concerning alternatives have teeth. There is a “substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures.” *Mountain Lion Foundation v. Fish & Game Comm’n.* (1997) 16 Cal.4th 105, 134. See also *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1233. And an EIR “must focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733. Furthermore, “An environmentally superior alternative cannot be deemed infeasible absent evidence the additional costs or lost profits are so severe the project would become impractical.” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736. Finally, “An EIR is required to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.” *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872.

b. The two supposed alternatives presented in the RDEIR should have been incorporated in the preferred action. The RDEIR presents only two so-called “alternatives” to the proposed 2035 general plan.¹ The first, the City-Centered Growth Alternative, would direct urban growth to the City of Hollister and discourage new development in unincorporated areas. Even better, it would eliminate the New Community Study Area and Wine/Hospitality overlay land use

¹ The “no action” alternative, leaving the present plan in place, is summarily rejected, because a new plan is required under the law and the old plan, it is asserted, would allow even more rampant development than the new plan contemplates. The RDEIR maintains that the old plan lacks goals and policies designed to protect farmlands, air quality, biological resources, cultural resources, open space, and other resources. This assertion is questionable, however, since the proposed revisions excises several normative requirements now in the general plan, and replaces them with the unenforceable “goals” discussed in Section 2.

designations. The RDEIR acknowledges that this alternative “would decrease the magnitude of most anticipated environmental impacts associated with” the 2035 plan.

“The City-Centered Growth Alternative would decrease the magnitude of most anticipated environmental impacts associated with the proposed project because urban development would be directed to the City of Hollister, and away from natural resources and important farmlands not within the City’s SOI. In other words, environmental impacts would decrease in certain respects because the overall amount of growth and the density and intensity of such development in the unincorporated County would be markedly lower under this alternative. . . . this alternative would result in a compact and smaller development footprint and there would be fewer impacts on certain resources (e.g., agricultural resources, biological resources, aesthetic and visual resources, etc.) within the unincorporated County. . . . the City-Centered Growth Alternative would convert less open space and important farmlands, preserve scenic resources, reduce vehicle miles traveled and related automobile emissions, convert less sensitive plant and wildlife habitat, better protect undiscovered cultural resources, minimize flood hazards, reduce the exposure of structures and people to high wildfire risk, decrease the creation of impervious surfaces and surface water runoff associated with increased urbanization, better deliver public services, and reduce impacts associated with the construction of utilities and facilities needed to serve growth. Based on the foregoing, the City-Centered Growth Alternative would result in fewer environmental effects within the unincorporated County than the proposed 2035 General Plan Update project.” (page 21-18).

The benefits cited in the previous paragraph could be achieved with virtually no loss of the goals set forth for the 2035 plan. The RDEIR finds no conflicts with any goal, noting only that it would not “would not fully meet” three objectives. The purpose of the first one, to “Encourage new growth in existing unincorporated communities, new communities, or clustered developments” is to “preserve prime farmland and rangeland, protect natural habitats, and reduce the financial, social, and environmental impacts of urban sprawl,” a goal that would be *better* served by adopting the city-centered alternative. The other two are obviously secondary considerations.

The City-Centered alternative, therefore, should certainly be adopted. As the court noted in *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733, an alternative should be adopted if it is “capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” See also CEQA Guidelines, §15126.6(b). Furthermore, the fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project. *Citizens of Gillette Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181.

“Alternative” 3 would increase the minimum parcel size for agriculture zones from a maximum density of one dwelling unit per five acres to one dwelling unit per 20 acres. The purpose of the Agriculture land use designation is to maintain the productivity of agricultural land, especially prime farmland. The RDEIR asserts that this “alternative” “would decrease the magnitude of agriculture, open space, biological resource, and scenic resource impacts [because] it would substantially reduce the amount of scattered rural residential development that could occur by allowing one dwelling unit for every five acres.” It would also “would also result in better and more efficient delivery of public services, since fewer residences would be located in the rural parts of the County.” *Ibid.* It “would fully meet all the objectives of the proposed 2035 General

Plan project.” .

Since this measure would have substantial benefits and not interfere with any of the stated goals of the General Plan, it obviously should be adopted. But it should not be denoted an “alternative,” since that implies it would be enacted *instead of* the original general plan or the city-centered alternative.

c. Analysis of levels of significance of alternatives is unrealistic. Table 21-5 “Comparison of the Environmental Merits of Each Alternative” indicates that there are no significant changes in impacts between the Preferred Project, and Alternatives 2 and 3. This assertion makes no sense, unless the analysis includes only Scenario 1 of the Preferred Project. Per table 21-5 and the paragraph from page 21-18 previously cited, a long list of project impacts is reduced with both Alternatives 2 and 3. There is no justification provided to warrant the conclusion that these improvements would be insufficient to change the level of significance of impacts.

d. Other slow-growth measures should have been presented and analyzed. Despite giving lip service to preserving open space in San Benito County, thousands of acres of habitat and agricultural lands would be lost under the 2035 general plan. The DEIR should have considered lower-growth alternatives in which housing and business construction are reduced in order to lower the fevered in-migration rate posited by the AMBAG plan. As the Court noted in *Watsonville Pilots Ass'n v. City of Watsonville* (2010)183 Cal. App.4th 1059, “Given these significant environmental impacts of the project, the alternatives analysis should have included an assessment of a reduced growth alternative that would meet most of the objectives of the project but would avoid or lessen these significant environmental impacts.” Among other lower-growth scenarios, the County should consider implementing the set of ten basic principles developed by the Smart Growth Network. See www.epa.gov/dced/about_sg.htm#principles. The County should also consider adopting the Ahwahnee Principles for Resource-Efficient Communities.

Another alternative that should have been studied is to adopt the key provisions contained in the San Benito County Growth Control Initiative.² It stated: “Consistent with the countywide goal to maintain a rural atmosphere, and to direct development from environmentally hazardous areas, the vast majority of the County is identified for Agricultural Rangeland use (1 unit per 160 acres) and Agricultural Productive (1 unit per five and twenty acres). There is ample land outside areas designated Agriculture to meet County housing needs. The Land Use Element provides for areas of urban density in the Rural/Urban land use category and Areas of Special Study.”

In line with this policy, the Initiative contained a number of effective means of limiting urbanization:

- Section 6 added Policy 41, which imposed a limit on the number of building and placement permits issued, based on a formula that basically capped increased population at 1% per year.
- Section 7 added Policy 71, which established a Transferable Development Credits Program.
- Section 8 established a 20-acre parcel size for agricultural productive lands on the northern part of the County.
- Section 12 contained very strong provisions regarding uses in Agricultural lands. It divided the majority of the County’s lands into two designations – Agricultural Productive and Agricultural Rangeland. It limited uses on such lands to a specific list

² It should be recalled that this measure was approved by the Board of Supervisors, although defeated in a later referendum. Therefore, it can hardly be argued that it is “infeasible,” since the Board voted for it.

usually associated with agricultural activity, such as agriculture and horticulture and use by animals, and activities associated with those uses; a single family dwelling and agricultural housing; outdoor recreation, excluding major construction such as theme parks; visitor-serving structures with less than 16 units; mining; waste disposal if it is found that use of agricultural areas is imperative; limited commercial or professional uses and public and private facilities, infrastructure and utilities to serve local residents.

- Section 14 added Policy 16, which contained tight restrictions designed to protect visual resources by forbidding the creation of parcels or construction of houses on ridgetops or hillslopes, unless no other configuration would be possible.
- Section 15 added Policy 7C which generally limited the maximum floor area of development to 1% of the parcel or 40,000 square feet.

All of these measures should be included in the revised general plan or, at the very least, analyzed as a viable alternative.³

9. Conclusion

The proposed 2035 San Benito County General Plan is deeply flawed. While claiming to preserve the rural nature of the County, it allows, indeed fosters, rampant growth that will change the nature of the county forever. The hopes that the Plan's unenforceable, feel-good policies will somehow hold this inundation at bay or effectively mitigate the impacts are not credible. It thus fails in its basic mission to alert the public to the possible disaster that awaits the county under the new plan. That failure is a violation of the law.

San Benito County contains some of the last large pieces of open space and natural habitat in this region of California. The proposed general plan update encourages substantial urban development and conversion of agricultural lands and rangelands; it has designated much of north San Benito County for sprawling ranchettes and leaves thousands more acres subject to conversion to vineyards. The RDEIR does not fully disclose the extent or impact of proposed land uses, but instead gives an inaccurate impression that important resources will be protected.

With the presentation of the two scenarios (Hollister-Centered Growth Scenario and the New Community Study Areas Plus Hollister General Plan Growth Scenario), the 2035 General Plan is not a "plan" so much as a discussion of possibilities. Rather than guiding future growth, it seems to provide streamlining to development in particular regions in the north part of the county without providing adequate constraints or information for meaningful analysis.

These comments have set forth a large variety of ways the proposed general plan can be improved so as to lessen its likely severe environmental impacts. The CEQA Guidelines specify (14 CCR §15002) :

CEQA requires more than merely preparing environmental documents... [W]hen an EIR shows that a project could cause substantial adverse changes in the environment, the governmental agency must respond to the information by one or more of the following methods:

- (1) Changing a proposed project;
- (2) Imposing conditions on the approval of the project;
- (3) Adopting plans or ordinances to control a broader class of projects to avoid the adverse changes;

³ The County is obligated to respond to suggestions that a smaller development footprint be used, despite its adoption of so-called mitigation measures. See *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 616.

- (4) Choosing an alternative way of meeting the same need;
- (5) Disapproving the project;
- (6) Finding that changes in, or alterations to, the project are not feasible.
- (7) Finding that the unavoidable, significant environmental damage is acceptable as provided in Section 15093.

Alternative 2, the City-Centered Growth alternative, particularly if combined with Alternative 3, Increase Minimum Parcel Size for Agriculture Designation, would greatly reduce the many impacts of this project. The most obvious reason to choose the Preferred Project would be to accommodate developers, the wine industry, and other special interest groups. This is not an acceptable reason to dismiss the environmentally superior alternative.

The Sierra Club expects the County to *act* on these suggestions, rather than merely preparing rote responses to them. Failure to do so is a violation of the law and could subject the whole process to be overturned in court. We trust such a result can be avoided.

Sincerely,



Michael J. Ferreira

Chair, Conservation Committee
Sierra Club, Loma Prieta Chapter
3921 E. Bayshore Rd, Suite 204
Palo Alto, CA 94303
ph 650-390-8411