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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

SIERRA CLUB et al., Plaintiffs and Appellants, v. COUNTY OF TEHAMA et al., Defendants and Respondents.	C066996 (Super. Ct. No. CI62008)

In this case claiming a county's General Plan Update (GPU) violated the Planning and Zoning Law (Gov. Code, § 65000 et seq.) and the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq., hereafter CEQA;[1] Cal. Code Regs., tit. 14, § 15000 et seq., hereafter Guidelines[2]), appellants Sierra Club and Citizens Alliance for Rural Environmental Sustainability appeal from the trial court's denial of their petition

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[1] Undesignated statutory references are to the Public Resources Code.

[2] We accord the Guidelines, which are authorized by section 21083, great weight unless they are clearly unauthorized or erroneous. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, fn. 5 (*Vineyard*).)

for a writ of mandate (Code Civ. Proc., § 1085) against the County of Tehama and the Tehama County Board of Supervisors (collectively, the County). Appellants contend the GPU violates planning laws because it is internally inconsistent, uses false population projections, fails to state building intensity for commercial and other specific land use designations, and violates the Open Space Lands Act (Gov. Code, §§ 65560-65570). Appellants also contend the County violated CEQA because its environmental impact report (EIR) failed to fulfill its informational purpose, misrepresented greenhouse gas emissions, failed to adopt feasible mitigation measures for impacts, failed to include an adequate alternatives analysis, and made findings unsupported by substantial evidence. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Tehama County covers about 2,951 square miles, roughly midway between Sacramento and the Oregon border. The County jurisdictional lands amount to about 1,395,264 acres, or about 73.7 percent of the total acreage in the county. The general plan planning area consists of all areas in the county except the incorporated cities of Corning, Red Bluff, and Tehama, which are responsible for preparing their own general plans. About 26 percent of the planning area lands are within the jurisdiction of the National Forest Service, the Bureau of Land Management, or other state or federal entities. In 2007, the State Department of Finance (DOF) estimated the population of the unincorporated area at 40,917 people, with an average annual growth rate of 1.9 percent over a seven-year period. A 1983 general plan reflected the strong heritage of agriculture in the County.

In 2002, the County formed a General Plan Revision Project Advisory Committee. The committee made recommendations for a “General Plan Update 2008-2028,” which was subjected to public discussion and debate. The committee’s recommendation for a preferred land use map was rejected by County staff and was ultimately analyzed in the EIR as “Alternative 2” or the “majority opinion land use diagram.”

The County held 10 public meetings in July and August 2005 for public input regarding the GPU. In the summer of 2005, the County adopted an updated housing element (which was later readopted with the GPU adopted on March 31, 2009; an updated housing element was due by August 31, 2009). A background report for the GPU was prepared between 2005 and 2007.

In April 2007, the County released a draft GPU to the public, which stated an intent that agriculture remain one of the primary uses of land in the county, but which would allow urban development to supplant more than 35,000 acres of agricultural land. The County held a series of six public meetings in August and September of 2007.

On September 19, 2008, the County released for public review and comment a CEQA Draft Environmental Impact Report (DEIR) for the GPU (the CEQA Project).[3]

The planning commission held a public hearing on the Final Environmental Impact Report (FEIR or EIR) on February 5, 2009, received testimony, and voted 3:1:1 to recommend that the Board of Supervisors certify the FEIR and adopt the GPU.

During this review process, a major point of contention concerned population growth. The EIR set out a specific projection of growth at a rate of 2.2 percent per year, which totaled 55 percent over the span of the 2008-2028 GPU. At 2.2 percent per year, the estimated population in 2028 would be 63,647. But the EIR also spoke of a theoretical "buildout" population of 918 percent[4] for an estimated population of over 400,000 people. The theoretical buildout was derived by multiplying the number of acres in the County by the maximum potential buildout allowed by land use designations

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[3] Though titled as a General Plan "Update," the County said the GPU would "supersede and replace the existing [1983] General Plan in its entirety." We refer to the GPU as the CEQA "Project" despite the EIR's characterization of itself as a "Program EIR." We discuss the distinction, *post*.

[4] Contrary to the County's suggestion that appellants came up with the 918 percent figure, the 918 percent is stated in the DEIR.

in the GPU. The EIR said the buildout was unlikely to happen during the GPU period of 2008 to 2028, yet the EIR considered the buildout in its *cumulative* impacts analysis, while using the 2.2 annual percent rate (55 percent total) to describe other various impacts. The EIR concluded that with the buildout there would be significant, unavoidable impacts.

Appellants and others complained during the administrative process that this dichotomy between 55 percent and 918 percent rendered the EIR vague and inadequate.

Appellants and others also complained that the projected 55 percent growth rate over 20 years was unjustified, because that number could be reached within a few years due to pending development projects and "concept plans." These included (1) Sun City Tehama, approved for 3,700 housing units, (2) Morgan Ranch, on track for approval of 3,950 housing units, and (3) "concept plans"[5] submitted for Moore Ranch (5,026 housing units), Lake California (2,198 units) and Sunset Hills (8,308 units). Appellants and others commented that the projects approved and pending, coupled with "concept plans," totaled about 25,000 housing units, which conflicted with the GPU's projection of 10,068 new housing units (2.2 percent annual population growth) between 2008 and 2028. In its response to comments, the County acknowledged pending and approved development projects totaling 8,450 housing units but did not address the "concept plans."

Because theoretical buildout is a recurring theme in appellants' contentions, we set forth the background of this issue in some detail.

The DEIR stated:

"**Buildout Projection**

"Implementation of the 2008-2028 General Plan land use plan would allow for more housing, and therefore more potential population, than the existing General Plan.

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[5] We see no explanation of the term "concept plans" in the record or the appellate briefs.

Buildout is defined as the development of land to its theoretical capacity as permitted under the land use designation. However, buildout assumes theoretical optimum conditions by simply multiplying the number of acres by the maximum number of housing units allowed per acre. Buildout calculations do not take into account site-specific constraints, economic factors, market forces, and regulatory requirements imposed by local, state and federal agencies. Therefore, while the theoretical maximum buildout potential may produce 184,498 dwelling units with a resultant population of 416,197, the reality is that this number of units will not be built within the planning horizon of this General Plan. The existing General Plan does not include buildout projections. In order to compare the proposed project and the existing General Plan buildout potential, an analysis of the two documents was completed using the 2000 Census person per household statistics. **Table 4.0-1** illustrates the differences in buildout projections."

"**Planning Horizon Population and Housing Units**

"The land use forecasts estimate the number of new dwelling units that could be anticipated within the County through the planning horizon (2028) as well as the number of dwelling units that could be accommodated through buildout of residential land use designations. Population forecasts for the unincorporated area of Tehama County were derived by using the DOF population projections for Tehama County."

The DEIR further said, "For the 2008-2028 lifespan of the General Plan update, the population and housing unit count will be based on growth scenario #3 [2.2 percent annual growth] which establishes a 2028 population of 63,647 and a housing unit count of 28,215 for the unincorporated county area. Under cumulative conditions, the EIR will utilize the buildout projections shown in **Table 4.0-1** for impact analysis."

The DEIR's "[Section] 4.11 POPULATION AND HOUSING," under a discussion of cumulative impacts and mitigation measures, said that, using the theoretical buildout figures, the GPU could have a "cumulatively considerable" impact in population

and housing growth. The DEIR said the "buildout potential" represented substantial growth and "will have a potentially significant physical effect on the environment. Implementation of the Tehama County 2008-2028 General Plan and the associated land use designations would directly cause growth and the proposed General Plan does not contain any policies which would limit population growth. [¶] In Section 4.0, Introduction to the Environmental Analysis and Assumptions Used, there is a comparison of the theoretical maximum buildout of the 2008-2028 General Plan, with its 2008-2028 timeframe, to the buildout that could theoretically result from the current 1983 General Plan. (See **Table 4.0-1**) Full buildout of the 1983 General Plan could result in a hypothetical population of 321,580 living in an estimated 139,125 housing units. Based on that analysis, the 2008-2028 General Plan could theoretically result in 45,374 more houses and a buildout population of 95,387 more people than the 1983 General Plan buildout.

"Mitigation Measures

"The EIR contains mitigation measures where appropriate to reduce or eliminate potentially significant impacts associated with population growth in the County. For instance, as a result of population growth under the 2008-2028 General Plan there are lands that are currently vacant that will be converted to residential uses, which will ultimately increase the water supply needs of the County among other things. The proposed General Plan Open Space and Conservation Element contains policies that assist in reducing potential impacts to water supply resources (see Section 4.8 of this DEIR). However, even with implementation of 2008-2028 General Plan policies and mitigation measures, population growth will inevitably occur and housing and other services would need to be provided to accommodate this growth. Implementation of the Tehama County 2008-2028 General Plan and the associated land use designations would be a major factor that will contribute to the generation of growth. Furthermore, the 2008-2028 General Plan does not contain policies that significantly discourage

growth. New housing and population growth in Tehama County, when added to growth that is occurring in Shasta County and other adjoining counties, will also contribute incrementally to the cumulative population in the region. Related secondary impacts (e.g., traffic) are addressed in the topic-specific sections of this EIR. Overall, impacts related to housing and population growth as proposed in the proposed [GPU] would be **cumulatively considerable** and **significant and unavoidable**." (Original boldface.)

This same discussion was repeated in the DEIR's Section 6.0 "CUMULATIVE IMPACTS SUMMARY."

In response to citizen comments about the DEIR, the FEIR stated in its "Master Responses":

"MASTER RESPONSE 3.4.2 - POPULATION AND HOUSING GROWTH

"There are a number of comments expressing concern over the projected population and housing unit growth which may result with implementation of the 2008-2028 General Plan presented in the Draft EIR. As is stated numerous times in the Draft EIR, the maximum buildout population (416,197) and housing units (184,489) is not anticipated to occur during the 2008-2028 General Plan planning period. As stated in the Draft EIR, page 4.0-1:

" '[B]uildout assumes theoretical optimum conditions by simply multiplying the number of acres by the maximum number of housing units allowed per acre. Buildout calculations do not take into account site-specific constraints, economic factors, market forces, and regulatory requirements imposed by local, state and federal agencies. Therefore, while the theoretical maximum buildout potential may produce 184,498 dwelling units with a resultant population of 416,197, the reality is that this number of units will not be built within the planning horizon of this General Plan.'

"This determination was based on a number of factors, for instance: the fact that Tehama County has been in existence for 152 years (formed in 1856) and currently only has a population of 40,936, the historical growth at its highest point since 1970 was only

3.1 percent (1970 to 1980), a 3.1 percent annual growth rate would result in a 2028 population of 75,384 in the unincorporated County which nowhere near [*sic*] the buildout population. In fact, the unincorporated County population would have to grow[] by approximately 26 percent annually to reach the buildout population by 2028. As a result of the unlikelihood that the County can reach the buildout population during the planning period of the 2008-2028 General Plan, an analysis was conducted to determine a more realistic population and housing units potential, as well as commercial and industrial growth potential during the 2008-2028 planning period.

"As discussed in Section 4.0, starting on page 4.0-2, the Draft EIR analyzed three planning period growth scenarios based on published and readily accepted data. The planning period growth is based on the U.S. Census historic population growth and population projections published by the California Department of Finance (DOF) for Tehama County. The Draft EIR uses the planning period's largest growth scenario for existing conditions analysis. These projections are used as they are considered to be based on the latest, most accurate State of California approved information available at the publication of the Draft EIR. This analysis determined that the potential growth with implementation of the 2008-2028 General Plan would result in a 2028 population of approximately 63,647 and increase of 22,711 over the 2008 population. The number of housing units in 2028 was projected to be 28,215, an increase of 10,068 over the 2008 housing units. Therefore, the projected population and housing unit growth for the proposed General Plan is considered acceptable for environmental impact analysis.

"The Draft EIR clearly states on page 4.0-7: [¶] 'For the 2008-2028 planning period of the General Plan update, the population and housing unit count will be based on growth scenario #3 which establishes a 2028 population of 63,647 and a housing unit count of 28,215 for the unincorporated county area. Under cumulative conditions, the EIR will utilize the buildout projections shown in Table 4.0-1 for impact analysis.'

"Additionally, the potential population increase was analyzed for its environmental impact, in Impact 4.11.1 of the Draft EIR. A limit on growth was discussed in under [*sic*] this impact. It was determined that other than implementation of an alternative land use plan that reduces the potential for future growth below that of the existing General Plan, or adopting a limitation on the issuance of building permits throughout the county, there are no other mitigation measures that would reduce future growth in Tehama County. Unlike a project-level document where the direct effect of a project on population growth can be determined, in this instance the 2008-2028 General Plan as a policy document can only suggest where growth would be appropriate, and rely on market forces to determine when or if that growth will occur. By establishing special planning areas focusing growth adjacent to the I-5 corridor, including policies to encourage compact urban forms, efficient provision of services and the potential for transit oriented design, the 2008-2028 General Plan reduces, but cannot reduce to a less than significant level, the impacts associated with population growth. As a result this impact remains significant and unavoidable.

"Therefore, the projected population and housing unit growth for the proposed General Plan is considered acceptable for environmental impact analysis." (Boldface omitted.)

On March 9, 2009, appellants submitted to the County a letter commenting on the FEIR, reiterating their concerns.

On March 16, 2009, the Board of Supervisors conducted a public hearing and voted 4:1 to direct staff to prepare findings and a statement of overriding considerations[6] supporting certification of the FEIR and adoption of the GPU.

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[6] An agency may approve a project despite the fact that it will cause significant, unavoidable environmental risks, if the agency adopts a "statement of overriding considerations," stating that economic, legal, social, technological, or other benefits

On March 31, 2009, the Board of Supervisors adopted a resolution certifying the FEIR for the GPU by a 3-2 vote and filed a Notice of Determination with the County Clerk. (§ 21152.) The Board adopted 137 pages of findings detailing the grounds for its determination, including findings that the GPU is internally consistent and in compliance with Government Code section 65300 et seq. (authority for and scope of general plans) and Government Code section 65560 (open space lands).

County Resolution No. 21-2009, which certified the FEIR, explained in its "INTRODUCTORY FINDINGS" on population growth forecast:

". . . [The] 'buildout' estimate is speculative and does not provide a reliable basis upon which to evaluate the direct environmental impacts of the [GPU].

"Numerous factors make it speculative and unlikely that such worst case buildout growth will actually occur as a consequence of the [GPU], including various site[-]specific constraints that preclude maximum density development on any given property (e.g., slope, wetlands, floodplains, soils unsuitable for building, etc.), social and economic forces limiting population increase and development in Tehama County, market forces that control demand for growth in Tehama County (i.e., limit the number of persons desiring to reside, do business in, or otherwise pursue or generate development in, Tehama County), and future discretionary actions of the Tehama County Board of Supervisors and other regulatory agencies. The Board specifically notes that a considerable portion of the worst case 'buildout' population estimate is related to the Special Planning Areas identified in the [GPU]. As set forth in the [GPU], the Board has reserved complete discretionary authority to determine whether and when development occurs in those areas, and at what density. Absent future affirmative discretionary actions by the Board, these areas are reserved exclusively for agricultural use. Any such

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outweigh the unavoidable adverse environmental effects. (§ 21081, subd. (b); Guidelines, § 15093.)

decisions will require further separate review under CEQA. The reservation of such complete discretion, and the requirement of further CEQA review (including incorporation of feasible mitigations identified at that time), further renders speculative the possibility of such worst case maximum density growth actually occurring, and further makes such maximum density 'buildout' growth an unreliable basis for environmental review.

"The Draft and Final [EIR] contain[] an analysis of the amount of growth that is likely to occur as a consequence of the [GPU], based upon population growth statistics and projections provided by the [DOF] (i.e., a 2028 population of 62,647). Having received, reviewed, and considered the entire record, both written and oral, relating to the Tehama County 2008-2028 [GPU] and associated Draft and Final [EIR], the Board of Supervisors concurs with the analysis and conclusions of the Draft and Final [EIR] and finds that the amount of growth forecast by the EIR is accurate and reasonable, and provides a reliable basis for environmental review of the direct impacts of the [GPU]. The Board specifically disagrees with the alternative population growth (and associated development) estimates presented by various parties and contained in the administrative record, and concludes, based on the analysis and information contained in the Draft and Final [EIR] and the administrative record, that the population growth analysis set forth in the Draft and Final [EIR] is accurate and reasonable and provides the reliable data necessary to evaluate the direct environmental effects of the [GPU] and to permit preparation of a meaningful and accurate report on those impacts.

"The Draft and Final [EIR] utilize the maximum density 'buildout' population growth estimate to evaluate the combined cumulative impacts of the [GPU] and other reasonably foreseeable projects. Although there remains considerable uncertainty that the maximum density population growth estimate and associated development will actually occur even under cumulative conditions, the EIR adopts a deliberatively conservative approach and assumes that this growth estimate could occur under

cumulative conditions. Without contradicting, or reducing the import of, the Board's findings regarding the evaluation of the [GPU's] direct impacts, the Board concludes that such a conservative approach is appropriate for evaluation of cumulative impacts (which necessarily requires consideration of future projects in addition to the [GPU] itself)."

Regarding infeasibility of a growth cap, the Board's findings said, ". . . During the public review and hearing process, several commenters and members of the public proposed that the [GPU] include specific limitations on the amount of future growth, and consequent residential, commercial, industrial, and other development, permitted by the County (i.e., a growth cap). Such a limitation, if implemented, could reduce or avoid many of the significant and unavoidable impacts identified in the EIR (but could make other impacts more severe, due to an inability to establish the amount, density, and compactness of development needed to fund and support the infrastructure necessary to mitigate those impacts). . . . [T]he Board finds that specific economic, legal, social, technological, or other considerations make imposition of such a growth cap infeasible and undesirable for each of the following separate, independent, and severable reasons:

"• Such a growth cap would interfere with the attainment of the Project Objectives calling for the County to '[a]ccommodate a reasonable amount of growth,' '[f]ocus growth adjacent to the I-5 corridor in the northern portion of the County,' and '[a]ddress . . . the need for moderate priced workforce housing'; and

"• Such a growth cap would make achieving the amount, density, and compactness of development necessary to support and fund the infrastructure . . . contemplated by numerous goals, policies, and implementation measures of the [GPU] (including goals, policies, and implementation measures that serve to mitigate various environmental impacts) impracticable and infeasible.

"• Such a growth cap would significantly impede the development of the Special Planning Areas designated in the [GPU], the existence of which is central to the County's

strategy for coordinated development in Tehama County, and assists in reducing development pressure on agricultural and resources lands elsewhere. A growth cap would mandate that development occur slowly, which is impracticable and infeasible for master-planned developments of the nature contemplated for the Special Planning Areas.

"• While the best available evidence shows that population growth in Tehama County will occur at an *average* [original italics] of 2.2% per year, it is predictable that the actual growth rate will fluctuate above and below this amount from year to year. Moreover, such fluctuations may be desirable if, for example, an upward deviation is caused by the development of a master-planned community in a Special Planning Area in one or more years, and accompanied by a downward deviation in later years as demand for housing is thereby satisfied. An annual growth cap would eliminate the flexibility necessary for the County to take advantage of such fluctuations.

"• Such a growth cap would conflict with numerous Goals, Policies, and Implementation Measures set forth in the Economic Development Element of the [GPU] . . . ."

Appellants filed a petition for writ of mandate on April 28, 2009.[7] The petition complained the GPU was internally inconsistent and violated planning laws by failing to provide for protection of permanent undeveloped open space, including protection of biological resources, agricultural lands and scenic viewshed resources. The petition complained the FEIR violated CEQA by having an inadequate Project description; an inadequate alternatives analysis; an inadequate analysis regarding impacts to agricultural resources, air quality, land use, traffic and circulation, water resources, water quality and

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[7] We take the filing date from the statement of decision. The copy of the petition presented in the joint appendix bears no court filing stamp, in violation of California Rules of Court, rule 8.124(b)(1)(B), which by cross-reference of rule 8.122(b)(3), requires that a joint appendix contain documents "filed or lodged in the case in superior court."

public services; an inadequate evaluation of the Project's contribution to global warming; and an inadequate analysis of cumulative impacts. The petition asked the trial court (1) to order the County to vacate its approval of the FEIR and GPU and prepare a new EIR, and (2) to enjoin the County from issuing approvals/permits or undertaking any construction/development without full compliance with California law.

After briefing and a hearing of counsels' arguments, the trial court issued a written ruling on June 25, 2010 denying the writ petition and the request for injunctive relief. On October 5, 2010, the trial court issued a 55-page statement of decision.

On October 25, 2010, the trial court entered judgment in favor of the County.

On December 14, 2010, the trial court entered an amended judgment in favor of the County, adding a cost award and incorporating by reference its statement of decision.

On December 14, 2010, appellants filed a notice of appeal from the October 25, 2010 judgment. We will liberally construe the notice to be an appeal from the amended judgment entered on December 14, 2010. (Cal. Rules of Court, rule 8.100(a)(2) ["notice of appeal must be liberally construed"].)

DISCUSSION

I. Land Use Planning Laws

A. General Principles and Standard of Review

Government Code section 65300 requires each city and county to adopt "a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning." Government Code section 65302 requires that a general plan include a diagram or diagrams and text setting forth "objectives, principles, standards, and plan proposals," and include (a) a land use element, (b) a circulation element, (c) a housing element, (d) a conservation element, (e) an open space element, (f) a noise element, and (g) a safety element.

The adoption of a general plan or an amendment to a general plan is a legislative act reviewable by traditional mandamus. (Gov. Code, § 65301.5 ["adoption of the general plan . . . or the adoption of any amendment to such plan or any part or element thereof is a legislative act which shall be reviewable pursuant to Section 1085 of the Code of Civil Procedure"].)

Government Code section 65751 states, "Any action to challenge a general plan or any element thereof on the grounds that such plan or element does not substantially comply with the requirements of Article 5 (commencing with Section 65300) shall be brought pursuant to Section 1085 of the Code of Civil Procedure."

". . . A legislative act is presumed valid, and a city [or county] need not make explicit findings to support its action. [Citations.] A court cannot inquire into the wisdom of a legislative act or review the merits of a local government's policy decisions. [Citation.] Judicial review of a legislative act under Code of Civil Procedure section 1085 is limited to determining whether the public agency's action was arbitrary, capricious, entirely without evidentiary support, or procedurally unfair. [Citations.] A court therefore cannot disturb a general plan based on violation of the internal consistency and correlation requirements unless, based on the evidence before [the city or county], a reasonable person could not conclude that the plan is internally consistent or correlative. [Citation.]" (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195 (*Federation Hillside II*).)

B. Land Use Element

Appellants argue the land use element violates Government Code section 65302, subdivision (a),[8] by failing to provide "population densities" or "building intensities" for

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[8] Government Code section 65302, subdivision (a), requires that a general plan include "[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, including agriculture, natural resources, recreation, and enjoyment of scenic beauty,

the nonurban land use designations "commercial," "industrial," "resource lands," "public facilities," and "special planning." In response, the County argues, as it did in the trial court, that this contention is barred by the failure to exhaust administrative remedies. The trial court agreed with the County, as do we.

Exhaustion of administrative remedies is a jurisdictional prerequisite to judicial relief. (*Endangered Habitats League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 237 (*Endangered Habitats*).)

When the public agency complies with its CEQA duty to give a public hearing or other opportunity for public participation, section 21177 prohibits the filing of a CEQA writ petition "unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." (§ 21177, subd. (a).) The party filing the petition must have "objected to the approval of the project orally or in writing. . . ." (§ 21177, subd. (b).) The Legislature designed section 21177 to codify the exhaustion of remedies doctrine. (*Endangered Habitats, supra*, 63 Cal.App.4th at p. 238.) The doctrine of exhaustion of administrative remedies requires that appellants or someone else must have raised the issue with particularity during the administrative proceedings. (*California Native Plant Society v. City of Rancho Cordova* (2009)

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education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land for public and private uses shall consider the identification of land and natural resources pursuant to paragraph (3) of subdivision (d). The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify and annually review those areas covered by the plan that are subject to flooding . . . . The land use element shall also do both of the following: [Designate parcels zoned for timberland production and consider the impact of new growth on military readiness activities for land use on land adjacent to military facilities]."

172 Cal.App.4th 603, 616 (*California Native Plant*); *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909.)

Here, appellants claim the issue was raised in the administrative proceeding on two occasions.

First, on March 9, 2009, appellants submitted a letter to the County, commenting on the FEIR. The entire comment under the heading "**Violation of State Planning Laws**" stated:

"**A. GP is internally inconsistent**

"Under California law, a general plan must be integrated and internally consistent, both among the elements and within each element. (Gov[]. Code[,] § 65300.5.) If there is internal inconsistency, the general plan is legally inadequate. *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 103 (*Concerned Citizens*).)

"Caltrans noted in its comments that the GP has competing goals and policies, 'where one encourages infill and concentric growth adjacent to existing developed areas with little discussion in the General Plan or DEIR. The other, provides substantial discussion of the characteristics desired to allow growth at higher densities, to encourage leap frog development away from existing communities as long as the parcels are large enough to financially support basic services.

"In response to Comment Letter 17, County simply states that the Housing Element will need to be updated in August of 2009, and that the 2.2% growth assumed in the GP is similar to the growth assumed in the existing Housing Element. The response ignores the vast difference between the growth *actually provided for* by the GP and the average annual growth of 1.8 to 2.1 percent used in the Housing Element. The GP and the Housing Element *are* inconsistent.

"In response to Caltrans, County dismisses the comments as raising planning issues, but California law requires internal consistency in a general plan. This legal

requirement is mandatory, and not up to a discretionary determination by the decision makers of a willingness to comply.

"**B. Open Space Lands Act of 1972 (Gov[]. Code[,] § 65560 et seq.**)

"The GP also violates the Open Space Lands Act of 1972. (Gov[]. Code[,] § 65560 et seq.) There are multiple Government Code sections contained in the Act that require a County to provide for protection of open space. (See Gov[]. Code[,] §§ 65561, 65562, 65563, 65566 and 65567.) The County must have an open space preservation plan, and any action taken by the County to update its general plan must be consistent with the required plan. (*Id.*) The GP violates this statutory scheme and the EIR failed to account for the requirements." (Original boldface and italics.)

Nothing in appellants' letter raised the issue they seek to raise in the courts about a failure to provide "population densities" or "building intensities" for nonurban "commercial," "industrial," "resource lands," "public facilities," and "special planning" land use designations.

Appellants claim the issue was also raised in a November 2008 letter from a citizen (Letter 22) commenting on the DEIR, which said, "At the heart of most of the problem with the Update and the DEIR lies the Plan's failure to provide a comprehensive land use program for the County, Government Code [section] 65000 et seq. [Fn. omitted.] The statute requires that the general plan provide clarity regarding land use designations and population densities, and the fact that the GPU does not do so renders the Plan invalid." A footnote in the letter referred to an attachment which quoted part of section 65302 and then said, "The distribution and general location of land uses is almost impossible to discern from the Plan documents. While the Plan does identify a number of land use designations, it does not include any maps or diagrams or the acreage available for development within each designation. [¶] Ultimately, it appears that, rather than being a 'constitution' for future development, the GPU will largely leave the shape of

new developments, in amount and in location, primarily in the control of an administrator, planner and a consultant."

The County responded: "The commenter suggests that the problem with the proposed General Plan is the failure to provide a comprehensive land use program for the County. [¶] The commenter is referred to Figure 2.0-2 of the 2008-2028 General Plan for a visual representation of proposed County land use designations as well as Table 2-2 of the General Plan for acreages by land use type. Land use designations and their associated development density allowances are also described in the 2008-2028 General Plan (pages 2.0-13 through 2.0-24). [¶] The commenter does not raise any issues related to the adequacy of the Draft EIR and is referred to Master Response 2.4.1 for a discussion of the informational and analytical requirements of Environmental Impact Reports."

Nothing in Letter 22 raised the issue appellants seek to raise in the courts concerning deficiencies in densities and intensities of nonurban "commercial," "industrial," "resource lands," "public facilities," and "special planning" designations.

We conclude the doctrine of failure to exhaust administrative remedies bars appellants' challenge to the land use element.

C. Internal Consistency

Appellants argue the GPU lacks internal consistency in violation of Government Code section 65300.5, which provides, "In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." Appellants fail to show grounds for reversal.

Courts have uniformly construed Government Code section 65300.5 as promulgating "a judicially reviewable requirement 'that the elements of the general plan comprise an integrated internally consistent and compatible statement of policies.' [Citations.]" (*Concerned Citizens*, *supra*, 166 Cal.App.3d at p. 97.) In *Concerned Citizens*, this court found facial inconsistency in a general plan that indicated current

county roads would be able to accommodate projected traffic during the life of the plan, but also said problems would surface in future years as homes and businesses were constructed. (*Id*. at p. 98.) There was also a lack of correlation in that the land use element called for substantial population increases without discussing the inadequacy of state highways, and the circulation element identified problems with state highways but said funds were unavailable for recommended modification and offered no solution other than to seek funding from other government agencies. (*Id*. at pp. 100-103.) This court said: "The requirements of internal integration and consistency . . . must be read in light of the recognized purposes of a general plan. . . . 'The general plan is atop the hierarchy of local government law regulating land use. It has been aptly analogized to "a constitution for all future developments." [Citation.] The Legislature has endorsed this view in finding that "decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan, and should proceed within the framework of officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors." ([Gov. Code,] § 65030.1.)' " (*Concerned Citizens*, *supra*, 166 Cal.App.3d at p. 97.) "If a general plan is to fulfill its function as a 'constitution' guiding 'an effective planning process,' a general plan must be reasonably consistent and integrated on its face. A document that, on its face, displays substantial contradictions and inconsistencies cannot serve as an effective plan because those subject to the plan cannot tell what it says should happen or not happen. When a court rules a facially inconsistent plan unlawful and requires a local agency to adopt a consistent plan, the court is not evaluating the merits of the plan; rather, the court is simply directing the local agency to state with reasonable clarity what its plan is." (*Ibid*.)

A court cannot disturb a general plan based on violation of the internal consistency requirement unless, based on the evidence before the city or county, a reasonable person could not conclude that the plan is internally consistent. (*Federation Hillside II*, *supra*, 126 Cal.App.4th at p. 1195.) The city or county has broad discretion to weigh and balance competing interests in formulating development policies, and a court cannot review the wisdom of those decisions under the guise of reviewing a general plan's internal consistency and correlation. (*Id*. at p. 1196 [claim that lack of available funding guarantees rendered circulation element inadequate to accommodate future population growth did not render general plan inconsistent].)

In *Environmental Council v. Board of Supervisors* (1982) 135 Cal.App.3d 428 (*Environmental Council*), this court rejected a claim that a general plan amendment redesignating a 190-acre parcel from permanent agricultural to agricultural-residential was internally inconsistent with the long-term goals of the general plan. This court said, "While it may be true that the Sacramento County general plan expresses general policies of maintaining and enhancing the agricultural environment by minimizing urban expansion in directions which would conflict with agricultural pursuits, and that the policy planning staff has consistently opposed the agricultural-residential use of the property in question, it does not necessarily follow that the Board's decision reclassifying the property from agricultural to agricultural-residential is inconsistent with the broad policy expressed in the general plan to maintain agricultural lands. 'Obviously, the fact that the Legislature provided for amendments of a general plan indicates that it recognized the need for review, updating and correcting.' [Citations.] We cannot say as a matter of law that the Board acted arbitrarily or capriciously in its legislative capacity." (*Id*. at p. 440; see also *Hernandez v. City of Encinitas* (1994) 28 Cal.App.4th 1048, 1070-1071 [rejecting rigid notion of internal inconsistency]; *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 800-801 [rejecting narrow view of inconsistency].)

Here, appellants claim the GPU is inconsistent in three ways.

First (and most important, appellants claim), the land use map has resulted in a false "projection" of population growth that is inconsistent with the practical realities of growth in the County, because the County admits that the projection of a population of over 400,000 people by 2028 is simply the arbitrary result of multiplying the allowable number of residences by the acreage for various residential designations. This argument relies on the discussion in the EIR of a theoretical maximum population, developed without considering any "site-specific constraints, economic factors, market forces, and regulatory requirements." However, the EIR is not the GPU, and we agree with the County that the EIR's consideration of the improbable, worst-case scenario in no way translates into a facial inconsistency within the GPU.

Second, appellants argue the GPU is internally inconsistent because of a "conflict between goals to encourage infill and competing goals to leap frog development up I-5 and conflicts with the existing Housing Element." Appellants selectively quote a portion of comments to the DEIR made by Caltrans, stating that there are competing and opposing objectives "where one encourages infill and concentric growth adjacent to existing developed areas with little discussion in the General Plan or DEIR. The other[] provides substantial discussion of the characteristics desired to allow growth at higher densities, to encourage leap frog development away from existing communities as long as the parcels are large enough to financially support basic services . . . ." Appellants then say, "The Caltrans comment letter discussed cites to the internally inconsistent portions of the GPU; the conflict between Goals LU [Land Use]-5 and LU-1, LU-3 and LU-4."[9]

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[9] Caltrans's letter commented that project objectives in the DEIR "include, consistent with Goal LU-5, 'Focus growth adjacent to the I-5 corridor . . . .' Another objective consistent with Goal LU-1, LU-3, and LU-4 states, 'Accommodate a reasonable amount of growth (i.e., housing and employment) principally within existing developed or urbanized areas.' [¶] These are competing and opposing objectives [as quoted in appellants' brief and in our text]. It [leap-frog development] also creates a need for increased travel from existing communities to serve the outlying development areas.

In the administrative proceedings, the County responded, "The commenter raises policy and planning issues with this comment. The commenter does not raise any issues regarding the adequacy of the Draft EIR with this comment. The comment is submitted for the review of the Planning Commission and Board of Supervisors."[10]

This presentation in appellants' brief fails to explain what any of the cited land use goals are, or how they are inconsistent. The appellate court is not required to do the parties' work for them. (*Garrick Development Co. v. Hayward Unified School Dist*. (1992) 3 Cal.App.4th 320, 334 [appellant may not simply incorporate by reference arguments made below rather than brief the arguments on appeal].)

In any event, we see no fatal inconsistency within the four corners of the GPU cited by appellants.

Goal LU-1 is "To plan development within the County in a manner which will provide opportunities for current and future residents to enjoy rural, community oriented living environments that are similar to those currently found in the County. Encourage higher densities where appropriate, and promote in-fill development to discourage agricultural land conversion demands."

This issue questions whether the north and south I-5 corridor Special Plan areas are consistent with Goals LU-4 and LU-8. By its nature, the General Plan is crafted to rely on the Interstate system, which makes the provision of adequate mitigation for traffic impacts crucial for the continued efficient operation of the freeway consistent with Land Use Goal LU-2, Public Services Goal PS-3, and the goals, policies and implementation measures of the Circulation Element. We again request that the applicable goals, policies, and implementation measures of the General Plan be revised to clearly address the State highway system to mitigate the impacts to the highway system."

[10] Appellants' brief, in its discussion of this second point, also says the County responded to a different comment letter (Letter 17) that the housing element would need to be updated in August 2009, and that the 2.2 percent growth assumed in the GPU was similar to the growth assumed in the existing housing element. This appears to relate to the theoretical projection which we have already said did not create a fatal inconsistency.

Goal LU-3 is "To promote a development pattern which, whenever possible, maximizes the use of existing infrastructure prior to the construction of new infrastructure. Develop a land use pattern which, to the maximum extent feasible, minimizes the expenditure of public funds for infrastructure construction and maintenance."

Goal LU-4 is "To designate lands for commercial and industrial development that are appropriate for these purposes and allows opportunities for business and industrial firms. Encourage compact development contiguous to existing urban centers, discourage linear and leapfrog development patterns."

Goal LU-5 is "To promote a development pattern that will accommodate growth, consistent with other stated goals and for the growth projected for the planning period (2008-2028)."

Appellants fail to explain how these goals are internally inconsistent. Instead, it appears appellants claim the EIR does not preserve these goals. However, at this point we are concerned only with the planning laws, not with CEQA.

We agree with the County that appellants' argument fails because they cite no facial inconsistency within the four corners of the GPU.

Third, appellants claim internal inconsistency in that the GPU purports to preserve agriculture, yet there are no enforceable policies or mitigation measures adopted to preserve agricultural lands. There is no internal inconsistency. (*Environmental Council*, *supra*, 135 Cal.App.3d at pp. 439-440.)

We conclude appellants fail to show any fatal internal inconsistency in the GPU in violation of planning laws.

D. Population Projections

Under a separate subheading claiming violation of planning laws, appellants repeat their argument that the theoretical buildout scenario of 400,000 people by 2028 -- a 918 percent population increase -- results in an internal inconsistency in the GPU and

results in growth inducement not addressed by the EIR. We have already rejected this point in connection with the planning laws. We address the point in connection with CEQA, *post*.

E. Agriculture

Under yet another subheading, labeled "Conflicts Regarding Agriculture," appellants repeat their argument that the GPU is internally inconsistent because it expresses the importance of agricultural preservation yet would allow conversion of farmland with no mitigation requirements. We have already rejected this point in connection with the planning laws and will address the point in connection with CEQA, *post*.

F. Open Space Lands Act

Appellants argue the GPU fails to provide for protection of permanent undeveloped open space, including protection for biological resources, agricultural lands and scenic viewsheds, in violation of the Open Space Lands Act. (Gov. Code, § 65560 et seq.) We disagree.

The Open Space Lands Act requires every city and county to have an open space plan by December 1973 (Gov. Code, § 65563), including an "action program consisting of specific programs which the legislative body intends to pursue in implementing its open-space plan" (Gov. Code, § 65564). "Any action by a county or city by which open-space land or any interest therein is acquired or disposed of or its use restricted or regulated, whether or not pursuant to this part, must be consistent with the local open-space plan." (Gov. Code, § 65566.)

Appellants argue there is no evidence in the record that the County had a compliant open-space plan or an action program. However, appellants fail to cite any evidence whatsoever. Yet, as noted by the County, the record shows the GPU addressed open-space resources. Accordingly, appellants have forfeited this contention. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [substantial evidence

review is forfeited if appellant fails to cite evidence favorable to the judgment]; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934-935 (*Tracy First*) [in substantial evidence challenge, appellant must lay out the evidence favorable to the other side and show why it is lacking; failure to do so is fatal].)

Appellants argue the GPU is inconsistent with any open-space provisions in the 1983 general plan, as the 1983 general plan stated, "The preservation of agriculture was identified by the Citizens of Tehama Advisory Committee (CTAC) as the priority issue to be addressed by the General Plan" and did not provide for market-driven expansion of urban uses into agricultural open spaces.

However, the GPU replaces the 1983 general plan in its entirety, as stated in the County's resolution adopting the GPU: ". . . the Tehama County 2008-2028 General Plan Update . . . shall supersede and replace the existing Tehama County General Plan, with the exception of the Housing Element."[11] Therefore, appellants' citation of the 1983 GPU is unavailing.

We conclude appellants fail to show any ground for reversal based on the planning laws.

II. CEQA

A. General Principles and Standard of Review

"The purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061.) "An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account

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[11] The housing element must be updated more frequently. It was updated in June 2005, and was due to be updated again by August 31, 2009.

of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. . . . The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines, § 15151.)

A reviewing court's purpose in reviewing an EIR "is not to pass upon the correctness of its conclusions, but only upon its sufficiency as an informative document. [Citation.]" (*Las Virgenes Homeowners Federation*, *Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 305 (*Las Virgenes*).)

CEQA actions in traditional mandamus are subject to review for abuse of discretion. (§ 21168.5;[12] *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 566-569.) The burden is on the challenger. (*California Native Plant*, *supra*, 172 Cal.App.4th at p. 614.) We review the agency's action, not the trial court's decision. (*Ibid.*)

"Abuse of discretion means the agency did not proceed as required by law or there was no substantial evidence to support its decision. (Pub. Resources Code, §§ 21168, 21168.5; *Laurel Heights I* [*Laurel Heights Improvement Assn. v. Regents of University of California* (1988)] 47 Cal.3d [376,] 392, fn. 5 ['the standard of review is essentially the same under either section']; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1375.) In reviewing the adequacy of an EIR, the court does not determine whether the agency's factual determinations were correct, but determines only whether they were

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[12] Section 21168.5 provides: "In any action or proceeding, other than an action or proceeding under Section 21168 [acts subject to administrative mandamus], to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence."

supported by substantial evidence. (*Laurel Heights I*, *supra*, at pp. 392-393.) On appeal, we independently review the administrative record under the same standard of review that governs the trial court. [Citation.]" (*Federation Hillside II, supra*, 126 Cal.App.4th at p. 1199.)

"[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, 'scrupulously enforcing all legislatively mandated CEQA requirements' [citation], we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, on factual questions, our task 'is not to weigh conflicting evidence and determine who has the better argument.' [Citation.]

"In evaluating an EIR for CEQA compliance, then, a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts. For example, where an agency failed to require an applicant to provide certain information mandated by CEQA and to include that information in its environmental analysis, [the Supreme Court] held the agency 'failed to proceed in the manner prescribed by CEQA.' [Citations.] In contrast, in a factual dispute over 'whether adverse effects have been mitigated or could be better mitigated' [citation], the agency's conclusion would be reviewed only for substantial evidence. Thus, in *Laurel Heights I*, [the Supreme Court] rejected as a matter of law the agency's contention that the EIR did not need to evaluate the impacts of the project's foreseeable future uses because there had not yet been a formal decision on those uses [citation], but upheld as supported by

substantial evidence the agency's finding that the project impacts described in the EIR were adequately mitigated [citation]. . . ." (*Vineyard*, *supra*, 40 Cal.4th at p. 435.)

B. Project EIR/Program EIR/Tiering

As a preliminary matter, we address the nature of this EIR for the GPU.

The EIR called itself a "Program EIR" -- a label adopted by the County on appeal in arguing the EIR could properly defer detail until individual projects are proposed in the future.[13] Yet the County's brief on appeal also refers to the EIR as a "first tier" CEQA document. We will explain the EIR was more accurately a phased or tiered project EIR, rather than a program EIR, but the distinction is without consequence in this case, because tiered EIRs and programmatic EIRs both allow deferral, and appellants do not claim grounds for reversal based on the label.

A "program EIR" is "an EIR which may be prepared on a series of actions that can be characterized as one large project" and are related in specified ways. (Guidelines, § 15168, subd. (a).) An advantage of using a program EIR is that it can allow the lead agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts. (Guidelines, § 15168, subd. (b)(4); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1169 (*Bay-Delta*).) A "program EIR" is distinct from a "project EIR." A project EIR is prepared for a specific project and must examine in detail site-specific considerations. (Guidelines, § 15161; *Bay-Delta*, *supra*, 43 Cal.4th at p. 1169.)

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[13] The FEIR said it was a "Program EIR," and "A program EIR evaluates the broad policy direction of a planning document, such as a general plan, and does not examine the potential site-specific impacts of the many individual projects that may be proposed in the future consistent with the plan. Upon approval of the General Plan and certification of this EIR, additional CEQA compliance including negative declarations, mitigated negative declarations, or the preparation of project-level EIRs will be required for site-specific projects and other actions that may be proposed within the program area."

A general plan amendment is a CEQA "project." (Guidelines, § 15378, subd. (a) [" 'Project' means 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, and that is any of the following: [¶] (1) . . . the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700."].)

Bay-Delta addressed an EIR for a long-term, comprehensive plan for CALFED, a consortium of federal and state agencies formed to address pollution problems of the Bay-Delta area. (*Bay Delta*, *supra*, 43 Cal.4th at pp. 1151-1152.) The Supreme Court held in part that the EIR complied with CEQA by identifying potential sources of water and analyzing associated environmental effects in general terms. (*Id*. at pp. 1169-1177.) The level of detail contained in the EIR's impact analysis was consistent with its first-tier programmatic nature. (*Ibid*.) Compelling CALFED at the first-tier stage to provide greater detail about potential sources of water for second-tier projects would undermine the purpose of tiering and burden the program EIR with detail that would be more feasibly given and more useful at the second-tier stage. (*Id.* at p. 1173.) The EIR complied with CEQA in analyzing the impacts in general terms and deferring project-level details to subsequent project-level EIRs. (*Ibid*.)

In *Al Larson Boat Shop*, *Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729 (*Al Larson Boat Shop*), the Court of Appeal noted that a "program EIR," which is an optional procedure, cannot be used for the amendment of a general plan or similar plan-level decision, because section 15378 of the Guidelines defines a general plan amendment as a "project" for which an EIR is required. (*Id*. at p. 741, citing Pub. Resources Code, § 21151 [agency must prepare EIR for any "project" that may have significant effect on environment] & Guidelines, § 15378 [general plan amendment is a project].) The court reasoned that the EIR should have been labeled a "tiered EIR," but the distinction was not significant because "[t]he level of specificity

of an EIR is determined by the nature of the project and the 'rule of reason' [citation], rather than any semantic label accorded to the EIR." (*Al Larson Boat Shop*, *supra*, 18 Cal.App.4th at pp. 741-742, fn. omitted.) *Al Larson Boat Shop* involved a five-year plan to increase port cargo handling capacity in the short term through the means of six anticipated projects. (*Id.* at pp. 737-738.) The court held that, for purposes of determining whether the EIR complied with CEQA, the "project" was the amendment's five-year plan, rather than approval of any of the anticipated projects, since the amendment did not commit the board to a definite course of action with respect to the locations for the anticipated projects, but merely indicated their preferred locations. (*Id*. at pp. 742, 743.)

A CEQA treatise takes issue with *Al Larson Boat Shop*, citing the absence of clear authority *prohibiting* using a program EIR *format* for general plan amendments and noting the program EIR format is "tailor-made" for such situations, but cautioning that agencies would be prudent to avoid the label "program EIR" for documents that could be called "first tier EIRs" (though the latter term did not occur in the Guidelines). (Remy et al., Guide to CEQA [(]California Environmental Quality Act[)] (11th ed. 2007) p. 637 (hereafter, Remy).).

As set forth in section 21068.5, " 'tiering' or 'tier' means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report."

Section 21093 says the Legislature finds and declares that tiering will promote development projects by "(1) streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues in successive environmental impact reports, and

(3) ensuring that environmental impact reports prepared for later projects which are consistent with a previously approved policy, plan, program, or ordinance[,] concentrate upon environmental effects which may be mitigated or avoided in connection with the decision on each later project. The Legislature further finds and declares that tiering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports. [¶] (b) To achieve this purpose, environmental impact reports shall be tiered whenever feasible, as determined by the lead agency."

The Guidelines further discuss the concept of tiering. " 'Tiering' refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project." (Guidelines, § 15152, subd. (a).) "Tiering is appropriate when the sequence of EIRs is: [¶] (a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR. . . ." (Guidelines, § 15385.) "Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including *general plans* . . . . This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. . . . Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed." (Guidelines, § 15152, subd. (b), italics added.) "Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval,

such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand." (Guidelines, § 15152, subd. (c).) General Plan EIRs may be used in a tiering situation. (Guidelines, § 15152, subd. (h).)

In practice, the first tier may consist of a general plan, which discusses agency-wide policies and cumulative impacts, while the second tier may consist of a specific plan EIR, which discusses a particular region, and a third tier may consist of an ordinary development project EIR for a particular site. (*Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 36-37.)

" 'Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases.'" (*Bay-Delta, supra*, 43 Cal.4th at p. 1170.)

"An EIR on an amendment to a local general plan 'should focus on the secondary effects that can be expected to follow from the . . . amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.' (Guidelines, § 15146, subd. (b).) An EIR on the adoption of a general plan 'need not be as precise as an EIR on the specific projects which might follow.' [Citation.]" (*Al Larson Boat Shop*, *supra*, 18 Cal.App.4th at p. 747.)

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

Las Virgenes noted a project EIR referred to prior EIRs for the county's general plan and a specific area plan. The earlier EIRs assumed a " 'worst case' scenario of buildout densities when evaluating [the] environmental impact[s] of development as planned and mapped out in the development policy maps." (*Las Virgenes*, *supra*, 177 Cal.App.3d at p. 307.) In holding the project EIR complied with CEQA, the Court of Appeal said, "The County, in adopting its General Plan and the [specific area plan], necessarily addressed the cumulative impacts of buildout to the maximum possible densities allowed by those plans. In addition, as required, mitigation measures were proposed and any overriding benefits of development were noted. It was not necessary for the project EIR to recover this ground." (*Ibid*.)

Though not specifically articulated by appellants, we do not believe that construing this EIR as a tiered EIR would result in later site-specific projects piggybacking onto this EIR's statement of overriding considerations. "A later EIR shall be required when . . . the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR." (Guidelines, § 15152, subd. (f).)

We recognize that, "[w]here a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR . . . and need not be discussed in detail." (Guidelines, § 15152, subd. (f)(1); see also Guidelines, § 15130, subd. (e) [if a cumulative impact was adequately addressed in a prior EIR for a general plan, and the project is consistent with that plan, an EIR for such a project should not further analyze that cumulative impact, as provided in Section 15183, subd. (j)]; & Guidelines, § 15183, subd. (j) [projects consistent with development density established by general plan for which an EIR was certified do not require additional environmental review, unless necessary to examine project-specific effects].)

However, the Guidelines state that "[s]ignificant environmental effects have been 'adequately addressed' if the lead agency determines that (A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental impact report; or [¶] (B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project." (Guidelines, § 15152, subd. (f)(3)(A)-(B).) This subdivision previously contained a third option for concluding that previously identified significant effects had been adequately addressed -- "[T]hey cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent's willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effects." (Guidelines, former § 15152, subd. (f)(3)(C).) This court found this language invalid in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 124, and the Guideline was amended in 2003 to delete the invalid subdivision. (Cal. Code Regs., tit. 14, § 15152, subd. (f)(c)(3) Register 2003, No. 31-Z (July 22, 2003) p. 1205.) This court said the invalid language violated CEQA insofar as it would allow an agency, in approving a later project that has significant unavoidable impacts, to forgo making a statement of overriding considerations specifically tied to that project. (*Communities for a Better Environment v. California Resources Agency*, *supra*, 103 Cal.App.4th at p. 124.) "[A]n agency . . . could adopt one statement of overriding consideration for a prior, more general EIR, and then avoid future political accountability by approving later, more specific projects with significant unavoidable impacts pursuant to the prior EIR and statement of overriding considerations. (*Ibid.*) "Even though a prior EIR's *analysis* of environmental effects may be subject to being incorporated in a later EIR for a later,

more specific project, the responsible public officials must still go on the record and explain specifically why they are approving the later project despite *its* significant unavoidable impacts." (*Id*. at pp. 124-125, original italics; see discussion in Remy, *supra*, at pp. 605-610.)

Thus, this EIR's conclusion that buildout would result in immitigable cumulative impacts would not relieve future site-specific projects from being subjected to environmental review. Indeed, the EIR specifically acknowledges that future projects will be subject to such review (fn. 13, *ante*), and the resolution certifying the final EIR stated that any decisions on specific development projects "will require further separate review under CEQA . . . (including incorporation of feasible mitigations identified *at that time*) . . . ." (Italics added.)

We conclude the GPU EIR in this case is properly viewed as a tiered EIR. As will appear, some of appellants' arguments miss the mark because appellants fail to recognize the propriety of the tiering aspect of this EIR for the GPU.

C. Substantial Evidence

We next dispatch appellants' argument that the findings are not supported by substantial evidence. We agree with the County that appellants' deficient briefing forfeits this contention.

The Board adopted 137 pages of findings. Appellants' argument consumes less than a page and a half of its brief, contains no citations whatsoever to the record, fails to identify any specific findings it challenges, and fails to meet appellants' burden to acknowledge evidence supporting each challenged finding. Appellants merely assert, "The findings are flawed to the extent that they relied entirely upon the flawed project description and faulty impacts analyses." Appellants tell us this point is "derivative" of their other contentions, and their comments with respect to those contentions "also necessarily raised the issue with respect to any findings that might rely upon the faulty portions of the EIR. [¶] To the extent any of the challenged conclusions were not based

on substantial evidence in the Record, then the corresponding Findings are similarly deficient."

This argument is insufficient for appellate review. This court said in *Tracy First*:

" 'We review CEQA decisions to determine if they are supported by substantial evidence in the record as a whole [citation], and whether the agency abused its discretion by failing to proceed in a manner required by law. In this case, as in most, those questions revolve around the EIR. [Citation.] "An EIR is an informational document which provides detailed information to the public and to responsible officials about significant environmental effects of a proposed project. [Citations.] It must contain substantial evidence on those effects and a reasonable range of alternatives, but the decision whether or not to approve a project is up to the agency. [Citations.]" [Citation.] Review is confined to whether an EIR is sufficient as an informational document. "The court must uphold an EIR if there is any substantial evidence in the record to support the agency's decision that the EIR is adequate and complies with CEQA. [Citation.] [¶] CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive." [Citation.]

'As with all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant's failure to carry his burden. [Citation.]' [Citation.]" (*Tracy First, supra*, 177 Cal.App.4th at pp. 934-935.)

In *Tracy First*, the appellant argued substantial evidence did not support the EIR's conclusion that the project would not result in wasteful, inefficient, or unnecessary consumption of energy. (*Tracy First*, *supra*, 177 Cal.App.4th at p. 934.) The appellant claimed the conclusions of the City's expert were unsupported by facts and the City failed to follow energy consumption standards in an appendix. The real party in interest argued the appellant forfeited the contention by failing to set forth fully the EIR's

analysis of energy impacts. (*Ibid*.) This court held that the appellant forfeited its substantial evidence contention (though the court went on to discuss the lack of merit in the contention), because the appellant "ma[de] no attempt to set forth fully the facts relating to the City's decision to certify the EIR with respect to the energy analysis. Instead, Tracy First simply makes the bare assertion that the opinion of the City's expert that the project would not result in wasteful, inefficient, and unnecessary consumption of energy was not supported by facts and there was no Appendix F analysis." (*Id*. at p. 935; see also *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 877-878 [appellants forfeited contention that prior EIRs were deficient in failing to address cumulative impacts of regional growth; appellate court was not required to comb through 7,000 pages of record to locate claimed deficiencies].)

Here, appellants' opening brief fails to specify which findings it claims are unsupported by evidence, fails to lay out the evidence favorable to the other side, and fails to show why that evidence is lacking. Appellants' reply brief does not adequately respond to the County's forfeiture argument. The reply brief merely states, "As discussed in the [A]OB, the challenge to the Findings is based upon the challenges to the EIR's flawed project description and faulty analysis of the various areas of impacts, mitigation measures and alternatives as set forth in the [A]OB. To the extent the Court determines that any of the challenged conclusions were not based on substantial evidence in the Record, then the corresponding Findings are similarly deficient. Thus, there is no need to reiterate all of the other arguments raised in the brief in the section challenging the Findings."

We conclude appellants have forfeited their challenge to sufficiency of evidence supporting the findings.

Under the heading "The Findings are Not Supported by Substantial Evidence," appellants also argue the statement of overriding considerations is not supported by

substantial evidence because the statement relies on the assumption that the GPU provides for a "reasonable amount of growth," but that assumption is not supported by substantial evidence. Again, appellants forfeit the contention by failing to set forth evidence supporting the statement. Moreover, the County's selection of an annual growth rate of 2.2 percent matched its own experience and was nearly identical to the DOF prediction of 2.1 percent. Appellants' argument appears to be based on their own assumption that all applications for new housing will be approved (which we discuss *post*). Additionally, the statement of overriding considerations identifies 22 different considerations as positive benefits of the GPU, and the adopting resolution says each finding by itself "constitutes a separate, independent, and severable overriding consideration warranting approval of the project, despite the unavoidable impact." Appellants fail to even mention the other considerations.

Appellants have forfeited their substantial evidence contentions.

D. Informational Purpose

Appellants argue the EIR fails to fulfill its informational purpose. They say the EIR uses a population projection of 2.2 percent growth per year for analysis of Project impacts, while using full buildout figures, vaguely applied, only in the "cumulative impacts"[14] analysis. Appellants say they and others commented during the review process that the artificially inflated allowance for a 918 percent population increase resulted in an inadequate CEQA document.

However, under this heading, appellants fail to show grounds for reversal. They merely argue that the public is entitled to a full description of the population growth

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[14] "Cumulative impacts" are "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. . . ." (Guidelines, § 15355; see also Guidelines, § 15130, subd. (a)(1) [cumulative impact is an impact "created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts"].)

actually authorized by the GPU, and a significant amount of essential information was withheld. This ignores the principle -- which we discuss *post* -- that an EIR is not required to include speculation about future environmental consequences of unspecified, uncertain future development.

Under this heading, appellants -- without discussion -- incorporate by reference other portions of their appellate brief. We address those portions elsewhere in this opinion.

E. Project Description and Objectives

Under a subheading labeled "**Project Description and Project Objectives**," appellants argue the EIR is legally insufficient because the County did not consistently analyze an accurate version of the Project but rather varied between population projections, using a 2.2 percent growth rate to describe some impacts (such as air quality impacts), while assuming full buildout or a 918 percent increase in population between 2008 and 2028 when analyzing cumulative impacts.

Under the same subheading, appellants argue that no substantial evidence supports the 2.2 percent figure, because that projection was proven inaccurate by the fact that development projects approved or pending at the time of DEIR review exceeded the full amount of projected housing units predicted by the County for the entire planning period of 2008-2028. Appellants argue the entire amount of growth projected by the 2008-2028 GPU would occur within the first few years of the planning period.

These contentions implicate matters of procedure subject to de novo review and factual dispute subject to substantial evidence review. (*Vineyard*, *supra*, 40 Cal.4th at p. 435.) We conclude appellants fail to show grounds for reversal.

1. The 2.2 percent figure

As with appellants' other substantial evidence arguments, their argument that no substantial evidence supports the 2.2 percent figure is forfeited by their failure to state

evidence supporting the County's position. (*Tracy First*, *supra*, 177 Cal.App.4th at pp. 934-935.)

Here, appellants again fail to set forth evidence favorable to the judgment. They refer to the statement of facts portion of their appellate brief, which cites their own evidence and then merely states, "The FEIR's responses to comments include[] Master Response 4.3.2 [*sic*; 3.4.2], which contains the County's rationale for reliance on the 2.2% growth rate. This Master Response directly contradicts the County's response to comments where the County acknowledge[s] the pending and approved development projects. The DEIR listed most of the projects discussed by the citizens in their letters to the County, and the FEIR acknowledged this planned growth."

Appellants fail to set forth evidence favorable to the County. For example, the DEIR said: "Historic population and dwelling unit growth for unincorporated Tehama County is exhibited in **Figure 4.0-1**. Since 1970, the unincorporated area of the County has increased by 22,895 persons for an average of 605 persons per year which represents an average annual growth of 2.2 percent. Most of this growth occurred between 1970 and 1990 when the population of the unincorporated area of the County grew by 72.6 percent or 3.6 percent annually. Between 1990 and 2008, the average annual population growth rate decreased to 1.8 percent. This reduction in population growth percentage reflects the larger base population of the County over time. As a result, while the County is increasing in population, it takes more growth to result in a percentage of change similar to those occurring between 1970 and 1990. In recent years there appears to be an upward trend in the annual growth rate of the unincorporated area of the County, increasing from 1.5 percent between 1990 and 2000 to 1.7 percent between 2000 and 2008."

Appellants' one-sided presentation of evidence is fatal to their substantial evidence claim.

2. Theoretical buildout

We turn to appellants' complaint that the County did not consistently analyze an accurate version of the Project but rather varied between population projections, using a 2.2 percent growth rate to describe some impacts (such as air quality impacts), while assuming full buildout or a 918 percent increase in population between 2008 and 2028 when analyzing cumulative impacts. We conclude appellants fail to show grounds for reversal.

The County received a comment that the DEIR did not use the basic development forecast consistently throughout the document for analysis. The FEIR responded (in Response 22-17): "Because of the variety of areas analyzed in the Draft EIR, baseline assumptions are not necessarily the same. While each section uses the projected growth as one of the bas[e]s for the analysis, each section has it[s] own individual data/assumptions used for analysis. For example, in order to prove a systematic discussion of the biological resource impacts and mitigation measures for the proposed 2008-2028 General Plan, the analysis is organized by affected species and resource type, not by individual components of the proposed 2008-2028 General Plan. This offers a programmatic overview of the proposed 2008-2028 General Plan. Similarly, cultural resource, geology and soil, and hydrological impacts are resultant upon more than simply population and housing numbers. For example, one acre of graded land can result in a similar level of impact to cultural resource, geology and soil, and hydrological impacts regardless as to whether one house, four houses, or a row crop farm is implemented."

The County received another comment from the public "that the growth assumptions used in the Draft General Plan and D[r]aft EIR are inconsistent th[r]oughout the various analysis topics in the Draft EIR and are less than may occur in the future and therefore the Draft EIR does no[t] adequately address the whole of the project and consider all reasonably foreseeable future activities." The FEIR responded (in Response 22-11) that "buildout projections are based on the maximum dwelling unit per acre

potential a certain land use is permitted. This projection is purely a unit per acre calculation and does not reduce units because of environmental, infrastructural or other type of constraints that would limit the number of units on a parcel. Therefore, under buildout conditions, growth would not exceed the assumptions identified in the Draft EIR. As a result, the Draft EIR does consider the maximum development potential for the whole of the project and considers all reasonably foreseeable future activities."

On appeal, appellants disagree with the County's method but fail to explain or cite authority as to how it rendered the EIR inadequate. Appellants cite case law for general CEQA principles, e.g., "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) A project description that gives conflicting signals to decisionmakers and the public about the nature and scope of the project is fundamentally inadequate and misleading. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 84 (*CBE v. Richmond*); *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655-656 [conflict in EIR for mining project, where project description indicated no increases in mine production were being sought, yet also provided for substantial increases in mine production].)

However, as we have seen, "[t]he level of specificity of an EIR is determined by the nature of the project and the 'rule of reason' . . . ." (*Al Larson Boat Shop*, *supra*, 18 Cal.App.4th at pp. 741-742.) "Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand." (Guidelines, § 15152, subd. (c).) General Plan EIRs may be used in a tiering

situation. (Guidelines, § 15152, subd. (h).) The GPU EIR was not required to analyze environmental impacts for speculative hypothetical future development as part of the "project" (i.e., the GPU).

Additionally, when future development is unspecified and uncertain, the EIR is not required to include speculation about future environmental consequences of such development. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 395-396; see also Guidelines, § 15064, subd. (d)(3) ["A change which is speculative or unlikely to occur is not reasonably foreseeable"].) When an initial project may involve future expansion, the EIR for the project must analyze such expansion if it will likely change the scope or nature of the initial project or its environmental effect and the expansion "is a reasonably foreseeable consequence of the initial project." (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 396.) Conversely, when future development is unspecified and uncertain, the EIR is not required to include speculation about future environmental consequences of such development. (*Id*. at p. 395; see also Guidelines, § 15064, subd. (d)(3).) "Of course, if the future action is not considered at that time, it will have to be discussed in a subsequent EIR before the future action can be approved under CEQA." (*Laurel Heights I, supra*, 47 Cal.3d at p. 396.)

In *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018 (*ECS v. Sacramento*), this court said: "California courts, in construing the Guidelines, are sensitive to the steamroller effect of development. Early approval of a project often generates sufficient momentum for future development despite the cumulative degradation of the environment. [Citation.] Yet premature environmental review requires rank speculation as to possible future environmental consequences, a needlessly wasteful drain of the public fisc. [Citation.] To achieve a balance to provide meaningful environmental review that is not too early or too late, we must therefore be guided by standards of reasonableness and practicality. [Citations.]" (*ECS v. Sacramento*, *supra*, at p. 1031.) This court went on to hold that environmental

analysis of unspecified and uncertain development that might be approved in the future under a memorandum of understanding between the city and county would be speculative, wasteful, and of little value. (*Id*. at p. 1032.)

In *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437 (*Save Round Valley*), the Court of Appeal held an EIR for a subdivision of single-family residences was not deficient in failing to consider the possibility that the future lot owners might build a second dwelling on their lot pursuant to a local ordinance allowing such dwellings, because the possibility was remote and speculative. (*Save Round Valley*, *supra*, at pp. 1449-1450.) "Whether a conditional use permit to build a second unit will ever be sought depends initially upon the desires of future lot owners, who are unknown. Although a conditional use permit can be sought for a second unit, there is no factual basis for believing that a future lot owner is likely to do so. Any conclusions about their intentions to build second units would therefore be pure speculation." (*Id*. at p. 1450.)

The court in *Save Round Valley* distinguished a case involving an office building (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61): " '[E]xperience and common sense indicate that projects which are under review are "reasonabl[y] foreseeable probable future projects." A significant investment of time, money and technical planning in the construction of a high-rise office building has necessarily occurred before a project is even submitted to the [city's office of environmental review] for initial review. . . . Ordinarily an office building project that is awaiting environmental approval has reached a stage of development where the developer, financial institutions, and contractors almost certainly view its construction to be a very real probability, and not without reason.' [Citation.] The speculative possibility that owners of the subdivided lots will seek to build second dwelling units in the present case cannot reasonably be analogized to the proposed office buildings omitted in the EIR's in *San Franciscans for Reasonable Growth*. Here, there is not even an owner of the proposed subdivided lots, let alone any investment of time, money, or

planning by an owner to build a second unit on a lot." (*Save Round Valley*, *supra*, 157 Cal.App.4th at p. 1452.)

In *Friends of the Sierra Railroad v. Tuolumne Park & Recreation District* (2007) 147 Cal.App.4th 643 (*Friends of Sierra Railroad*), the Court of Appeal held that, even though prediction of *some* future development was not speculative, an EIR was not required when there were "no specific plans . . . on the table." (*Id*. at p. 657; see *id.* at p. 651.) There, the public agency, without environmental review, sold land containing an unused but historic railroad right-of-way to a Native American tribe. The right-of-way crossed the tribe's land, which the tribe would likely develop but had not yet announced plans. (*Id*. at pp. 647, 658.) The appellate court held the transfer was not a project requiring CEQA review. Although some development was reasonably foreseeable, review of impacts on the historic resource would have been premature in the absence of any concrete development proposals. (*Id*. at p. 658.) Environmental review has to take place as early as feasible, but it also has to be late enough to provide meaningful information for environmental assessment. (*Id*. at p. 654.) The tribe was not required to create development plans before buying the property. Although the park/recreation district would not have another opportunity for CEQA review, another agency would. (*Id*. at p. 660.)

Thus, the EIR in this case was not required to analyze specific impacts of the theoretical buildout.

Insofar as the EIR elected to consider the theoretical buildout in its discussion of *cumulative* impacts, appellants fail to show grounds for reversal. Appellants do not mention Guidelines section 15145, which says, "If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." Though not argued by appellants, we are satisfied (as we discuss, *ante*) that the consideration of buildout in the discussion of cumulative impacts will not lead to future specific projects being

piggybacked onto the GPU EIR's conclusion of significant but unavoidable impacts and overriding considerations to accept such unavoidable impacts. (*Communities for a Better Environment v. California Resources Agency*, *supra*, 103 Cal.App.4th 98.)

Appellants offer no analysis or authority making it improper to consider the worst case scenario of buildout in the cumulative impacts analysis. If appellants mean to dispute the conclusion of unavoidable significant impacts, their remedy is political, not legal.

Appellants cite *City of Redlands*, which said, " '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.' " (*City of Redlands*, *supra*, 96 Cal.App.4th at p. 409.) However, the GPU EIR in this case *did* consider specific impacts of future development, at the projected growth rate of 2.2 percent per year, as well as considering cumulative impacts of buildout. In *City of Redlands*, the problem was that the county portrayed the general plan amendment as a clarification of the respective powers of the county and city in land use matters, but in reality the county was making substantive changes giving itself more power and reducing the city's authority. (*Id*. at pp. 406-408.) Appellants offer no analysis as to how *City of Redlands* supports their appeal.

Appellants note that *City of Redlands* quoted from *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194. There, a city adopted a general plan amendment creating a solid waste management facilities designation for a specific landfill without preparing an EIR. (*Christward Ministry*, *supra*, at p. 185.) The city asserted no EIR was required because a special use permit and an EIR would be required for development of any new use at the landfill site. (*Id*. at p. 192.) The Court of Appeal

disagreed, concluding the city had impermissibly "chopped up" the project into separate projects. (*Id*. at p. 195.) Here, the County did prepare an EIR, and appellants offer no discussion as to how *Christward Ministry* supports their appeal.

Appellants argue, "Because the County adopted a GPU that includes an oversupply of residential lands by a factor of 400, the Project Description is necessarily so vague that it cannot meet CEQA's requirements. There is no way to determine from the GPU where residential development will occur and what impacts it may have." However, no such specificity was required for the GPU EIR.

We recognize that, "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712 (*Kings County*).) Here, however, these CEQA goals have not been thwarted.

We conclude appellants fail to show grounds for reversal based on the 2.2 percent annual growth figure or the theoretical buildout.

F. Impacts Analyses and Mitigation Measures

1. Air quality and greenhouse gas emissions

Appellants argue the EIR failed to quantify greenhouse gas (GHG) emissions generated by the project and failed to adopt all feasible mitigation measures. Appellants say their argument is that the County failed to proceed in a manner required by law, which presents a question of law subject to de novo review. However, we agree with the County and the trial court, that appellants actually challenge the adequacy of the analysis and mitigation, which present factual matters subject to substantial evidence review. Appellants challenge factual determinations made by the Board regarding the methodology for quantifying GHG emissions, determining their significance, and the feasibility of mitigation measures. Under either standard of review, we conclude appellants fail to show grounds for reversal.

a. Background

In 2006 (two years before this DEIR was released for comment in September 2008), California enacted the Global Warming Solutions Act (Health & Saf. Code, § 38500 et seq. (added by Stats. 2006, ch. 488 (Assem. Bill No. 32), which took effect January 1, 2007. The legislation requires the state to reduce its GHG emissions to 1990 levels by 2020, but it does not impose any direct requirements on local government. (Health & Saf. Code, §§ 38501, 38550.)

In a matter unrelated to this case, in April 2007, the Attorney General sued the County of San Bernardino for failing to analyze the impact of the county's general plan on climate change. Those parties settled their litigation in August 2007, with the County of San Bernardino agreeing to create a GHG emission reduction plan within 30 months of the settlement, including (1) an inventory of known or reasonably discoverable sources of GHG, (2) an inventory of GHG emissions levels in 1990, currently, and projected for 2020, and (3) a target for reducing emissions attributable to the county's discretionary land use decisions and internal government operations. Of course, the settlement is not binding on anyone other than those signing the settlement agreement. (*Berglund v. Arthroscopic & Laser Surgery Center of San Diego*, *L.P*. (2008) 44 Cal.4th 528, 536 [a settlement is a contract and therefore not enforceable against nonparties].)

Also in 2007, new CEQA legislation (Sen. Bill No. 97) required the Office of Planning and Research (OPR) to prepare, and the Resources Agency to adopt by January 2010, "guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions . . . including, but not limited to, effects associated with transportation or energy consumption." (§ 21083.05 (Stats. 2007, ch. 185, § 1).) The statute requires the OPR to update the guidelines "periodically" to incorporate "new information or criteria established by the State Air Resources Board pursuant to [the Global Warming Solutions Act]." (§ 21083.05, subd. (c).) As a prelude to the guidelines, the OPR in June 2008 issued a "Technical Advisory" on CEQA and

climate change as "informal guidance" (of which the trial court here took judicial notice). "The Advisory suggests the lead agency should make a good faith effort, based on available information, to identify and quantify GHG emissions; assess the significance of the impact on climate change[;] and identify alternatives or mitigation measures to reduce the impact." Draft guidelines implementing Senate Bill No. 97 were not available until January 2009.

Also in January 2008, the California Air Pollution Control Officers Association (CAPCOA) issued a "white paper" on evaluating GHG impacts in CEQA cases.[15]

Meanwhile, in 2008, the Legislature passed Senate Bill No. 375 (Stats. 2008, ch. 728), requiring the Air Resources Board to set regional targets for GHG emissions by September 20, 2010. (Gov. Code, § 65080, subd. (b)(2).)

The DEIR used one of the OPR Advisory's models -- URBEMIS -- to quantify carbon dioxide emissions that would be produced during the planning horizon based on the 2.2 percent annual growth rate. The EIR explains the URBEMIS model estimates criteria pollutants from area and mobile emission sources associated with development based on specific types of land uses. Based on the model, the DEIR estimated that carbon dioxide emissions would be 545,683 tons per year.

The DEIR, using OPR's Technical Advisory and the San Bernardino settlement, quantified projected GHG emissions, found them to be significant, and included in the DEIR a mitigation measure to include in the GPU a new policy (General Plan Goal OS-2). As found in the trial court's statement of decision and undisputed by appellants, this measure mirrored the San Bernardino settlement. The measure stated the County shall work with the Tehama County Air Pollution Control District (TCAPCD) and the California Air Resources Board to develop a Climate Action Plan that shall include, at

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[15] The County mentions a later CAPCOA publication on the same subject in June 2009, but the cited page in the record refers to the January 2008 publication.

a minimum, (1) an inventory of 2008 GHG emissions within the TCAPCD, (2) an inventory of 1990 GHG emission levels within the TCAPCD, (3) an estimate of 2020 GHG emission levels within TCAPCD, (4) specific targets for reducing current and projected 2020 GHG emissions, and (5) specific and general tools and strategies to achieve the reductions.

In November 2008, appellants submitted a comment letter criticizing the GHG analysis. Others made similar comments. In response, the County observed the Attorney General had not submitted any comment on the GPU. Thereafter, the Attorney General sent a letter to the County stating that the Attorney General's silence did not imply endorsement. In January 2009, the County released the FEIR, which included the same mitigation measure and concluded that, even with mitigation, the impacts would be significant and unavoidable. Consistent with the FEIR, the measure now appears in the GPU as implementation measures under Goal OS-2.

Also in January 2009, OPR released a draft of the amendments mandated by Senate Bill No. 97. After the close of the EIR comment period, appellants submitted a letter claiming the GHG analysis was inadequate. After the County certified the EIR and approved the GPU, OPR in April 2009 transmitted its proposed guidelines to the Resources Agency, which adopted them on March 18, 2010. Pursuant to Guidelines, § 15007, subdivision (e), which sets forth the effective date for amendments to the Guidelines, the new Guidelines were not binding on the County until nearly 12 months after it certified the EIR and approved the GPU.

The GPU includes 24 policies and implementation measures relating to GHG emissions.

b. Analysis

Appellants begin their arguments on this matter with the sentence, "The GPU accommodates a population increase of more than 370,000 people within the next 18 years, which will guarantee major increases in driving, and concomitant increases

in emissions of air pollutants." This opening salvo, as well as appellants' repetition of the point, betray appellants' misplaced focus on the theoretical buildout, which we have already rejected, and appellants' steadfast unwillingness to recognize the well-documented estimated 2.2 percent annual growth rate. Future specific projects will have to undergo their own environmental review, which will include air quality and greenhouse gas emissions. We agree with the County that it was entitled to use the 2.2 percent annual growth estimate in evaluating GHG emissions (as other impacts). We accordingly reject any argument by appellants based on the theoretical buildout.

Appellants claim the County managed to avoid an honest discussion by characterizing this area of law as a "moving target" lacking established standards. Appellants say this avoidance is precluded by *CBE v. Richmond*, *supra*, 184 Cal.App.4th 70, in which the Court of Appeal set aside an EIR for a Chevron refinery project due to inadequate discussion of GHG emissions. Chevron argued the vagueness of the proposed mitigation measures was justified because the scientific information about GHG was constantly changing. (*CBE v. Richmond*, *supra*, at p. 96.) In rejecting the argument, the court "recognize[d] the ever-changing nature of this complex scientific field" but said "the difficulties caused by evolving technologies and scientific protocols do not justify a lead agency's failure to meet its responsibilities under CEQA by not even attempting to formulate a legally adequate mitigation plan. [Citation.]" (*Ibid.*; see also Guidelines, § 15144 ["Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can."].)

However, appellants' reliance on *CBE v. Richmond* is misplaced. That case involved a site-specific project. In contrast to *CBE v. Richmond*, here the uncertainties claimed by appellants resulted not from the "moving target" of scientific information, but from the uncertainties of impacts of future projects in the tiered nature of this EIR.

Moreover, the County notes that, while it brought up the moving target of the law and science of GHG emissions, the County did not rely on it as an excuse.[16]

Where devising specific mitigation measures early in the planning process is impractical, " ' "the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." ' " (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 377 (*Rio Vista Farm Bureau*) ["Any further and more detailed statement of mitigation measures at this formative stage in the County's hazardous waste disposal plan would have been neither reasonably feasible nor particularly illuminating"].)

Appellants complain the implementations measures are "horatory," not mandatory. However, they offer no legal authority on this point. Moreover, as they acknowledge, the EIR does not claim these measures will reduce impacts to an insignificant level. Rather, the FEIR stated impacts after mitigation would be "Significant and Unavoidable."

Appellants argue the EIR "ignored" GHG emissions generated from water usage and construction activities, in "direct contravention" of OPR's guidance. Appellants cite

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[16] We note that in *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, which was published while this appeal was pending, the court held that the city did not abuse its discretion when, after reviewing several studies and noting varying conclusions, the city concluded that the project's cumulative impact on GHG emissions was too speculative to determine. (*Id*. at pp. 937, 941.) As here, when the EIR for the project at issue in *Rialto* was certified, there were no legal or regulatory standards for determining whether a given project's GHG emissions should be considered cumulatively considerable. (*Id*. at p. 940.) Subsequently, guidelines were adopted in 2010. (*Id*. at p. 940 & fn. 18, citing Cal. Code Regs., tit. 14, § 15064.4, titled "Determining the Significance of Impacts from Greenhouse Gas Emissions.") We have no occasion in this appeal to address the new guidelines.

the entire 20-page June 2008 Technical Advisory and attachments, which does not meet their burden as appellants. (Cal. Rules of Court, rule 8.204(a)(1)(C) [appellate brief must "[s]upport any reference to a matter in the record by citation to the volume and page number in the record where the matter appears"].) We observe the Technical Advisory said, "Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO_2 and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities." Appellants argue, "There is no question that County could feasibly have included" data on water usage and construction activities. However, they cite no evidence in the record supporting this factual assertion. As noted by the County, emissions from construction activities will depend on site-specific projects which are unknown at this stage of a tiered project.

In their reply brief, appellants claim the County's respondent's brief acknowledged the County did not include an assessment of GHG emissions that will result from water usage and construction activities but implied the County made up for it by overestimating other emission sources. We see no such statements and find no such implication in the cited page of the respondent's brief.

We conclude appellants fail to show reversible error regarding air quality or GHG emissions.

2. Impacts to agriculture

Appellants argue (1) the EIR failed to identify and/or consider feasible mitigation measures for the loss of farmland, and (2) the County failed to adopt feasible mitigation measures. However, the only mitigation measure urged by appellants is a requirement of mandatory conservation easements. Such a measure was considered and rejected by the County. Thus, though appellants argue legal inadequacy of environmental review, they really present a mere disagreement with the County's conclusions, for which their remedy is political, not legal.

The EIR concluded the Project would ultimately result in conversion of more than 35,000 acres of farmland, and that this loss constitutes a "Significant and Unavoidable" environmental impact.

Before addressing appellants' main point, we dispose of a nonissue. Appellants' reply brief complains there is no estimate of how many of the 35,000 acres of farmland are "prime" farmland (defined in the DEIR as having the best combination of physical and chemical characteristics for crop production and having been used for irrigated crop production within the last three years). Appellants pretend they raised this issue in their opening brief, by saying in their reply brief that the County's respondent's brief "dismisses" appellants' concern that the number of acres of "prime" farmland was unidentified in the EIR. Appellants' reply brief complains that the County's brief merely cites to the DEIR's statement of 35,000 acres of farmland, which did not specify the number of acres of "prime" farmland. However, we do not read this contention in appellants' opening brief, nor does it appear that the County understood appellants to be assigning reversible error in the failure to specify the number of acres of "prime" farmland that will be converted to urban uses. Appellants' opening brief, in its introductory paragraph under the subheading "**Impacts to Agriculture**," said: "The total planning area contains approximately 74,126 prime agricultural acres, and it is unclear from the DEIR how many of these acres are anticipated to convert to urban use with implementation of the GPU." However, appellants did not claim this rendered the EIR inadequate and did not offer any analysis on this point. Rather, appellants moved on to the substance of their contention -- that the EIR failed to consider and adopt feasible mitigation measures. Before addressing the contentions, the County's respondent's brief says: "First, to correct Appellants' misrepresentation that it is 'unclear,' many acres of prime agricultural acres will be converted, the EIR sets forth at 7 AR 1864 exactly how many acres may be converted." The cited page lists the 35,000 number. We conclude appellants have forfeited any challenge concerning "prime" acres by failing to raise it in

their opening brief. (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19 [reviewing court may disregard claims perfunctorily asserted without development and without clear indication they are intended to be discrete contentions]; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 763-766 [appellant cannot raise new points in reply brief].)

We now turn to the point adequately raised in the opening brief. Appellants complain the County refused to adopt any specific mitigation measures and merely included a permissive measure "encouraging" the use of conservation easements. Appellants argue such horatory, as opposed to mandatory, conservation easements are useless. Appellants suggest that, because they view conservation easements as feasible mitigation measures, the County was required to adopt them. However, that is not the law. Again, appellants' remedy is political, not legal.

CEQA requires that public agencies adopt *feasible*[17] mitigation measures for significant environmental impacts, but CEQA recognizes that economic or social conditions may make some mitigation measures *infeasible*. (§ 21002;[18] Guidelines, §§ 15126.4, 15370.) "CEQA does not expressly require a public agency to find that mitigation measures adopted for a project are feasible or that they will be implemented.

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[17] "Feasible" under CEQA means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (§ 21061.1.)

[18] Section 21002 provides, "The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

Rather, CEQA requires the agency to find, based on substantial evidence, that the mitigation measures are 'required in, or incorporated into, the project'; or that the measures are the responsibility of another agency and have been, or can and should be, adopted by the other agency; or that mitigation is infeasible and overriding considerations outweigh the significant environmental effects. (§ 21081; Guidelines, § 15091, subd. (b).)" (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260 (*Federation Hillside I*).)

Resolution No. 21-2009 identified as a significant impact the conversion of farmland to nonagricultural uses and adopted mitigation measures both in the GPU and the EIR. The Resolution said the measures were incorporated as "policies and implementation measures" in the GPU and "substantially lessen the significant impact associated with re[]designation of agricultural land to urban uses. These policies and implementation measures require protection of agricultural lands, open space, and natural resources (which include grazing, timber, and wildlife lands) by not allowing land divisions intended for residential use to be developed in areas that are not specifically designated for residential use; establish protective criteria for appropriateness of conversion of agricultural land to other uses; provide for the preservation and conservation of agricultural lands through the classification of agricultural lands based on criteria that lands be capable of supporting agricultural activities and maintaining the eligibility of agricultural lands to be placed within the County Agricultural Preserve Program; protect existing agricultural and natural resource lands from residential development by the establishment of a minimum 300-foot residential building setback from classified agricultural lands; and support the clustering of residential and non[]agricultural land uses away from agricultural operations whenever possible. When this is not possible and agricultural conversion is justified, development will be directed to less valuable farmland."

The Resolution also adopted mitigation measure 4.2.1 from the EIR: "The County shall promote the protection of agricultural resources by encouraging new development to protect one acre of existing farmland of equal or higher quality for each acre of Prime Farmland, Unique Farmland or Farmland of Statewide Importance that would be converted to non[]agricultural uses. This protection may consist of the establishment of farmland conservation easement, farmland deed restriction, or other appropriate farmland conversion in perpetuity, but may also be utilized for compatible wildlife conservation efforts. The farmland to be preserved shall be located within Tehama County and must have adequate water supply to support agricultural use. As part of the consideration of land areas proposed to be protected, the County shall consider the benefits of preserving farmlands in proximity to other protected lands. (This mitigation measure has been incorporated into the Tehama County 2008-2028 [GPU] as a new implementation measure under General Plan Policy AG-1.2.)"

The County expressly considered and rejected the notion of mandatory conservation easements as a blanket mitigation measure, stating in Resolution No. 21-2009:

"Imposing a requirement that the proponent(s) of each public or private project involving conversion of agricultural land must, in every case, provide a conservation easement protecting other agricultural land would further reduce (but not eliminate) the impacts resulting from redesignation of agricultural lands. Although Mitigation Measure MM 4.2.1 encourages the use of conservation easements, and the County may indeed impose such requirements upon specific development projects where deemed appropriate, having weighed the pros and cons, the Board finds that specific economic, legal, social, technological, or other considerations make an inflexible requirement for such conservation easements infeasible and undesirable for each of the following separate, independent, and severable reasons: (1) public and private projects involving the conversion of agricultural lands take many different forms, with different economic and

practical constraints. An invariable requirement that conservation easements be obtained would deprive the County of the flexibility needed to address such matters on a case-by-case basis; (2) such an added requirement, if not variable by the County, would impede development in areas that the Board has determined, from a policy standpoint, considering a broad range of factors (e.g., proximity to other developed areas, suitability for master-planned development, proximity to present or prospective infrastructure, etc.) are an appropriate location for such development (specifically conflicting with and rendering less desirable the development of the Special Planning Areas designated in the [GPU], the existence of which is central to the Board's strategy for coordinated development in Tehama County); and (3) such an added requirement, if not variable by the County, would impede the development necessary to achieve the Project Objectives calling for the County to '[a]ccommodate a reasonable amount of growth,' '[f]ocus growth adjacent to the I-5 corridor in the northern portion of the County' (which contains a considerable portion of the redesignated agricultural land), and 'address . . . the need for moderate priced workforce housing.' Similarly, Alternative 1 (the 'No Project' alternative) would not change the designation of any lands, and would therefore avoid this impact; however, . . . that Alternative would be inconsistent with the Project Objectives of the [GPU] and infeasible.

"For the foregoing reasons, this impact is significant and unavoidable. Pursuant to Public Resources Code section 21081, subdivision (a)[19] and CEQA Guidelines

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19 Section 21081 provides in part, "no public agency shall approve or carry out a project for which an [EIR] has been certified which identifies one or more significant effects on the environment . . . unless both of the following occur:

"(a) The public agency makes one or more of the following findings with respect to each significant effect: [¶] (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. [¶] (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by

section 15091, subdivision (a) [tracking the language of section 21081], the Board hereby finds that specific economic, legal, social, technological and other benefits of the [GPU] outweigh this significant impact, as further set forth in the Statement of Overriding Considerations . . . .”

Appellants have the burden to demonstrate insufficiency of each of the three grounds, by setting forth all of the evidence material to the County’s finding and showing that the evidence could not reasonably support the finding as to each ground. (*California Native Plant*, *supra*, 172 Cal.App.4th at p. 626.) Here again, appellants fail to do so. They merely say the County “relies upon vague ‘benefits.’ ” Accordingly, they have forfeited the matter. (*Tracy First*, *supra*, 177 Cal.App.4th 912.)

Appellants also claim the County fails to acknowledge the goal of preserving agriculture in the County, but mitigation measure 4.2.1 expressly stated, “The County shall promote the protection of agricultural resources . . . .” Appellants fail to meet their burden.

Moreover, appellants cite no authority *requiring* the County *to mandate* conservation easements to protect agricultural lands. They merely cite authority that agencies may use conservation easements as mitigation measures. (E.g., *Building Industry Assn. of Central California v. County of Stanislaus* (2010) 190 Cal.App.4th 582.) They also cite section 21083.4, subdivision (b), which says a county must require one or more of specified oak woodlands mitigation alternatives -- including conserving

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that other agency. [¶] (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the [EIR].

“(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.”

oak woodlands through the use of conservation easements -- to mitigate the significant effect of the conversion of oak woodlands. Appellants cite no authority *requiring* an agency to mandate conservation easements to protect agricultural lands.

We conclude appellants fail to show grounds for reversal based on impacts to agriculture.

3. Water supply

Appellants argue the EIR's discussion of water sources for the Project is inadequate, in that the EIR acknowledges that there is insufficient water to meet the demands of the Project (indeed there are existing water shortages) and that new water sources will need to be developed, but the FEIR then simply concludes that the Project's impact on water supply would be significant and unavoidable, with no feasible mitigation measures. We see no basis for reversal.

Once again, appellants base their arguments on the theoretical buildout, which we have explained is not a basis for concluding this EIR is deficient. Appellants say the EIR admits the GPU will ultimately result in an increased water demand of 50 million gallons per day. However, that number is found in the cumulative impacts analysis and refers to the theoretical buildout only.

a. Background

Using the 2.2 percent annual growth rate, the DEIR projected that, by 2028, daily water use would increase by 2.725 million gallons. The DEIR said there is sufficient water during normal years to support the contemplated growth (at 2.2 percent annually), but surface water supplies, during dry/drought years, may be compromised. The DEIR discussed various water impacts that would be less than significant. The DEIR identified two significant impacts -- Impacts 4.8.3 and 4.8.7.

Impact 4.8.3 of the DEIR said "Implementation of the proposed General Plan would potentially result in a substantial depletion of groundwater supplies or substantial interference with groundwater recharge such that there would be a net deficit in aquifer

volume or a lowering of the local groundwater table level throughout Tehama County. This is considered a **potentially significant** impact." (Original boldface.)

The DEIR noted that GPU policies and implementation measures would assist in reducing this impact, e.g., Policy OS-1.1 addresses sound watershed management and its associated implementation measures, OS-1.1a and OS-1.1b encourage maintenance of ordinances to protect water supplies, OS-1.1d calls for an incentive program encouraging retrofitting existing development with low-flow water fixtures, OS-1.1f and OS-1.1h encourage preparation of water supply plans and discourage export of groundwater. As another example, Policy OS-1.6 encourages new water storage projects, and its implementation measure OS-1.6a investigates potential federal and state funding for water storage facilities. Policy OS-1.7 and associated implementation measures OS-1.7b and OS-1.7c encourage all new development to incorporate conservation measures including water reuse, low-flow appliances and fixtures, and improved irrigation systems, and implementation measure OS-1.7a requires development project approvals to include a finding that all feasible and cost-effective options for conservation and water reuse are incorporated into project design. Policies in the Public Services Element of the GPU include measures to ensure that water supply is available in time to meet the demand created by new development and that development be located in an area with adequate water supply and distribution systems. Implementation measures require that adequate water supply sources for development be identified at the time of tentative map approval. The DEIR said that these GPU policies and implementation measures would reduce impacts to groundwater resources, but impacts associated with increased groundwater extraction, coupled with reduced recharge rates during dry or drought years would be considered a significant and unavoidable impact to the local groundwater table level. Under "Mitigation Measures," the DEIR said "None required."

Impact 4.8.7 of the DEIR addressed cumulative impacts including consideration of the theoretical buildout. It said, "Implementation of the proposed General Plan would

potentially increase the demand for water from both surface and groundwater sources throughout Tehama County, which could result in water shortages or reduce recharge to aquifers. This is considered a **cumulatively considerable** impact." (Original boldface.) This cumulative impact discussion repeated the GPU policies and implementation measures that would help reduce the impacts and concluded the impact "is considered **cumulatively considerable** and is considered a **significant and unavoidable** impact." (Original boldface.)

In response to comments that the discussion about water supply was inadequate, the FEIR noted this was the first phase of a tiered project.

The FEIR -- in addition to findings regarding the various water impacts that could be mitigated to a less than significant level -- concluded Impacts 4.8.3 and 4.8.7 were significant and unavoidable with no mitigation measures feasible. The County adopted these findings in its resolution certifying the EIR.

b. Analysis

Appellants argue the FEIR does not even attempt to mitigate impacts and abandons the DEIR's reliance on GPU goals and policies as mitigation, simply concluding no mitigation is feasible. Appellants cite the FEIR's summary for Impact 4.8.7 (potential increased demand for water from surface and groundwater sources could result in water shortages), which interlineates the words "General Plan policies and implementation measures provide sufficient mitigation" and replaces those words with these: "<u>None feasible</u>." (Original underlining.)

However, this is consistent with the DEIR, which said GPU policies and implementation measures would help reduce, but not eliminate, impacts, and no mitigation measures were required. Thus, the County did not abandon implementation of GPU goals and policies to reduce the impact. Moreover, in its resolution certifying the EIR, the County found the GPU's impact on water supply would be significant; the GPU contained policies to reduce such impacts, but the impacts would still be significant; and

no other feasible mitigation measures would reduce this impact. The County found that implementation of the GPU policies and affiliated implementation measures would substantially lessen impacts to groundwater resources, but increased extraction rates during dry years as a result of GPU buildout, combined with impacts in neighboring counties, will result in an impact that is cumulatively considerable. "The only effective means to render this impact less than significant would be to preclude or substantially limit future population growth (and consequent groundwater usage) from occurring. [S]uch a measure would be inconsistent with the Project Objectives of the Tehama County 2008-2028 [GPU] and infeasible." The County adopted a statement of overriding considerations, recognizing water supply as one of the unmitigated impacts.

Appellants cite *Vineyard, supra*, 40 Cal.4th 412, in which the Supreme Court said, "future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis. An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project. [Citation.]" (*Id.* at p. 431.)

However, the *Vineyard* court also said, "CEQA should not be understood to require assurances of certainty regarding long-term future water supplies at an early phase of planning for large land development projects." (*Vineyard*, *supra*, 40 Cal.4th at p. 432.) This is because other statutes addressing the coordination of land use and water planning demand that water supplies be identified with more specificity at each step as land use planning and water supply planning move forward from general phases to more specific phases. (*Id.* at pp. 432-434, citing Gov. Code, § 66473.7 & Wat. Code, §§ 10910-10912.)

Moreover, *Vineyard* involved a private developer's plan to develop specific land (6,000 acres) into a master planned community (22,000 housing units, along

with schools, parks, and commercial and office uses), and a specific plan for the first portion of the development. (*Vineyard*, *supra*, 40 Cal.4th at pp. 421-422.) While it was a phased project, it is different from a county's general plan. The *Vineyard* project was a specific project involving development over a number of years. Therefore, the EIR had to assume that all phases of this specific project would eventually be built. (*Id*. at p. 431.) In contrast, here, we have a general plan that allows for growth but does not have specific plans for specific projects for all the growth allowed.

Thus, this case is more like *Bay-Delta*, *supra*, 43 Cal.4th 1143, which addressed the EIR for a long-term, comprehensive plan for CALFED, a consortium of federal and state agencies formed to address problems related to the Bay-Delta waters. (*Id*. at pp. 1151-1152.) The Supreme Court held in part that the EIR complied with CEQA by identifying potential sources of water and analyzing the environmental impacts of supplying water for each identified potential source in general terms. (*Id*. at pp. 1169-1173.) The level of detail contained in the EIR's impact analysis was consistent with its first-tier programmatic nature. (*Ibid*.) Compelling CALFED at the first-tier stage to provide greater detail about potential sources of water for second-tier projects would undermine the purpose of tiering and burden the program EIR with detail that would be more feasibly given and more useful at the second-tier stage. The EIR complied with CEQA in analyzing the impacts in general terms and deferring project-level details to subsequent project-level EIRs. (*Ibid*.)

Our high court in *Bay-Delta* distinguished *Vineyard* on the ground that *Vineyard* involved a site-specific project for a master planned community and was not comparable to the broad, general, multiobjective, policy-setting, geographically dispersed CALFED Program. (*Bay-Delta*, *supra*, 43 Cal.4th at p. 1171 & fn. 10.) The *Bay-Delta* court also distinguished *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, which appellants note was authority cited by *Vineyard*. The *Bay-Delta* court said *County of Stanislaus* found an EIR defective for failing to identify water

sources, but the project in *County of Stanislaus* involved proposed commercial land development with readily quantifiable water requirements on an identified site. (*Bay-Delta*, *supra*, 43 Cal.4th at p. 1171.) The Supreme Court said, "Although the project in *Stanislaus* was to be developed 'in four overlapping phases over twenty-five years' [citation], it was in no relevant sense comparable to the broad, general, multiobjective, policy-setting, geographically dispersed CALFED Program." (*Bay-Delta*, *supra*, 43 Cal.4th at p. 1171.)

Appellants argue the *Bay-Delta* decision is not controlling because (1) it dealt with the CALFED program, which will be implemented over 30 years, and the sources of water will depend upon future decisions between willing buyers and sellers, and (2) the EIR there did identify potential water supplies with as much specificity as possible, on a region-by-region basis, which allowed decision makers to consider the consequences of water acquisitions before approving the project, while leaving more site-specific details for later project-level EIRs.

In their reply brief, appellants argue *Bay-Delta* does not apply to population growth within a county. They argue that, under the County's reasoning, the next building permit applicant should be required to analyze water supply for the structure and activities -- which, according to appellants, "makes no sense." These points need no response.

We agree with the County that the EIR's analysis was open and transparent to the public and the decision makers. Any remedy for appellants' dissatisfaction is political, not legal.

Appellants' reply brief claims the County's respondent's brief raises a "new argument not raised at the trial court level" by arguing the County was not required to analyze potential sources of water supply because increased demand would likely be met through groundwater pumping, the impacts of which are well documented. However, the cited page of respondent's brief merely says that, consistent with *Vineyard*, the GPU EIR

recognizes the long-range implications of providing new water supplies to support the anticipated growth, and the future supply would likely come from groundwater pumping, and this source and its impacts were well documented. We do not read this as an excuse not to analyze potential sources of water supply.

We conclude appellants fail to show grounds for reversal based on water supply.

4. Traffic and circulation

Appellants argue the County inadequately responded to comments by Caltrans during the EIR review process. We again conclude appellants fail to show grounds for reversal.

Caltrans submitted numerous comments on the DEIR. The FEIR responded in detail to these comments.

After the FEIR was released, appellants sent a letter to the County, challenging the adequacy of the response to comments on numerous fronts. As concerns Caltrans, appellants' letter stated:

"Other Impacts

"Responses to comments submitted by agencies and the public regarding traffic impacts (FEIR, Response to Comment Letters E and 22) . . . are insufficient and do not provide a reasoned response to the significant environmental issues raised by the commenters.

"For example, with respect to impacts to traffic and circulation, County responded to Caltrans by claiming 'it would be too speculative at this time to evaluate specific transportation impacts associated with the special planning areas.' (FEIR, p. 3.0-35.) County went on to explain to Cal[t]rans that evaluating potential circulation impacts of the various alternatives would be expensive, and so were not required. (FEIR, p. 3.0-36.) The general attitude in the responses to comments is that this is a program EIR, and so a superficial analysis is acceptable. As set forth in detail above, this approach violates CEQA."

On appeal, appellants rely on the principle that " 'where comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response*.' " (*Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1022, italics added by *Rural Landowners*.)

The County argues (and the trial court found) that appellants failed to exhaust administrative remedies with respect to claimed deficiencies in County's responses to Caltrans's concerns. Appellants reply they did exhaust administrative remedies by their letter, which we have quoted.

However, the only discernible point in that letter disputed propriety of the programmatic or tiered nature of the project. Thus, appellants wanted the County to analyze traffic impacts based on the theoretical buildout. We have already resolved this matter.

On appeal, for the first time, appellants argue the County's response completely ignored the issue of "vehicle miles traveled" (VMT). Appellants did not raise this point in their letter to the County claiming deficiencies in the County's responses to Caltrans during the environmental review. In any event, the page of the FEIR cited by appellants shows the County did not ignore VMT but said, "The technical analysis for the reduction in vehicle miles traveled will need to occur when the Specific Plans for these areas are developed." Again, appellants' argument turns on the theoretical buildout.

We conclude appellants show no grounds for reversal based on traffic and circulation.

5. Land use

Appellants say subdivision (d)(5) of section 15063 of the Guidelines requires EIRs to evaluate growth-inducing impacts, and growth inducement may constitute an adverse impact if it is inconsistent with the area's land use plans. Appellants argue the GPU is

inconsistent with the Cottonwood Creek Watershed Group (CCWG) 2007 Watershed Management Plan and with the County's Groundwater Management Plan. Appellants again fail to show grounds for reversal.

a. Watershed management plan

Appellants say that the CCWG submitted comments that the GPU conflicted with the Watershed Management Plan in various respects, particularly the watershed plan's objectives around growth in the North I-5 corridor. The County responded the watershed plan was not really considered because it was finalized two months after issuance of notice of preparation of this EIR. The County further responded that consideration of the watershed plan would not have made any difference. There may be a conflict in that the GPU would interfere with the watershed plan's goal to maintain the rural and agricultural nature of the Cottonwood Creek Watershed. The County said this area was "logical" and would affect a relatively small portion of the Cottonwood Creek Watershed.

Appellants argue the analysis of this conflict is insufficient. However, appellants offer no legal analysis or authority explaining or supporting their position. We therefore need not address it. (*In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3 (*Marriage of Nichols*) [reviewing court may disregard contentions unsupported by legal analysis].) We also need not address the County's arguments that other deficiencies in appellants' briefing also result in forfeiture.

b. Groundwater management plan

Appellants say the County's AB3030 Coordinated Groundwater Management Ad-hoc Technical Advisory Committee submitted comments suggesting that the groundwater plan play a greater role in shaping the conservation and open space element of the GPU, in what appellants describe as an "apparent hope that the GPU would be consistent with and supportive of the Groundwater Management Plan." Appellants say the DEIR acknowledged the GPU would result in negative groundwater recharge, and there was insufficient water supply to fulfill the needs of project growth, and yet the County's

response to the Ad-hoc Committee's comments simply dismissed the issue, noting the commenter did not raise any issue related to the adequacy of the DEIR.

Appellants' entire argument on appeal is that "Inconsistency with the Tehama County Groundwater Management Plan was ignored by County staff, and these [are] significant impacts that must be evaluated." Appellants say nothing more. We disregard this argument, which is unsupported by legal analysis or authority. (*Marriage of Nichols*, *supra*, 27 Cal.App.4th at pp. 672-673, fn. 3.)

G. Alternatives Analysis

Appellants contend the EIR violated CEQA by failing to include an adequate analysis of alternatives. We disagree.

Guidelines section 15126.6, subdivision (a), says, "An EIR shall describe 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. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. [Citations.]"

The process of selecting alternatives begins with establishment of project objectives. (*Bay Delta*, *supra*, 43 Cal.4th at p. 1163.)

Here, the DEIR identified 11 objectives: (1) provide a legally adequate GPU that reflects an updated vision for the County's future and provides a blueprint for future land use decisions; (2) protect the County's rural character and maintain the total amount of land designated for agriculture; (3) provide for use and protection of natural resources;

(4) provide incentives to encourage good land stewardship such as streamlined approval process for environmentally superior projects; (5) accommodate a reasonable amount of growth; (6) provide adequate opportunities for future residential and non-residential growth; (7) avoid reduction of allowable densities within existing residential areas; (8) focus growth adjacent to the I-5 corridor in the northern portion of the County in order to facilitate circulation, reduce transportation-related air quality impacts, minimize agricultural conversion, and reduce impacts to sensitive biological species along the Sacramento River corridor; (9) identify performance standards and desired improvements for roadways, including currently congested areas; (10) increase access to public open spaces and publicly owned recreation trails over the next 20 years; and (11) address other issues of concern to the community, such as the need for moderately priced workforce housing, the needs of an increasingly aging population, incentives for historic preservation, and the effects of global climate change.

The County initially considered five alternatives: Off-Site Alternative, Transfer of Development Potential Alternative, the No Project Alternative, Land Use Plan Option A Alternative, and Two Urban Growth Areas Alternative. Before releasing the DEIR, the County rejected the Off-Site Alternative as infeasible because it would not address issues pertinent to the establishment of land use designations and policies to regulate orderly development in the county. The County also rejected the Transfer of Development Potential Alternative as infeasible because the County did not have jurisdiction over the cities, and the County had more land available for development than the cities could accommodate.

Consistent with Guidelines section 15126.6, subdivision (c), the DEIR "briefly explain[ed]" the reasons for rejecting these two alternatives during the scoping process rather than analyzing them fully in the DEIR.

The DEIR examined at length the other three alternatives:

(1) the No Project Alternative, which would maintain the existing general plan, updating only the housing element as required by law;

(2) the Land Use Plan Option A Alternative, a reduced density option with a lower buildout population and fewer housing units; and

(3) the Two Urban Growth Areas Alternative, which would confine the future areas of growth into areas surrounding the cities of Red Bluff and Corning.

The DEIR displayed the alternatives and their significant effects, as compared to the project and its significant effects, in a matrix format allowing comparisons.

During the public hearing process, a commenter proposed a greenhouse gas reduction alternative that would specifically ensure the County did its part toward reducing greenhouse gas emissions.

The Board, in its resolution certifying the EIR (Resolution No. 21-2009), made detailed findings explaining its reasons for rejecting the three alternatives analyzed in the DEIR as well as the greenhouse gas reduction alternative.

Appellants argue the alternatives discussed in the EIR were predestined to fail, because the project objectives were too narrowly defined (i.e., to focus development in the northern I-5 corridor), such that *only* the proposed project could meet the objectives, and all of the alternatives were infeasible.

However, CEQA does not require the EIR to propose alternatives that could achieve the specific I-5 objective. Guidelines section 15126.6, subdivision (b), says: "Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, *even if these alternatives would impede to some degree the attainment of the project objectives*, or would be more costly." (Italics added.)

Moreover, " 'CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose.' [Citation.] 'An EIR need not consider every conceivable alternative to a project.' [Citations.] 'Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.' [Citation.] No single factor 'establishes a fixed limit on the scope of reasonable alternatives.' [Citation.]" (*California Native Plant*, *supra*, 177 Cal.App.4th at p. 980.)

Appellants think *Kings County* supports their claim that the alternatives were inadequate because the project objectives were too narrow. We disagree. In *Kings County*, an applicant sought approval to build a coal-fired cogeneration plant. (*Kings County*, *supra*, 221 Cal.App.3d at pp. 735-737.) Before environmental review, the applicant entered into a utility contract with PG&E, which it would be unable to fulfill if the project were to substitute natural gas as an alternative fuel source. (*Ibid.*) The appellate court held it was improper for the county to use the applicant's contract as an excuse not to analyze a natural gas alternative to the project. (*Id.* at p. 737.) "Environmentally superior alternatives must be examined whether or not they would impede to some degree the attainment of project objectives." (*Id.* at p. 737.) The contract must be considered in the review process but it did not preclude consideration of otherwise feasible alternatives. (*Ibid.*) *Kings County* has no bearing on the case before us.

The alternatives analysis here was adequate.

III. Summary

We conclude appellants fail to show grounds for reversal of the judgment.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1)-(2); see also *Chaparral Greens v. City of Chula Vista*

(1996) 50 Cal.App.4th 1134, 1151 [prevailing respondent in CEQA case was entitled to costs].)

MURRAY, J.

We concur:

RAYE, P. J.

HULL, J.