



Manro v. City of Tulare

2003 | Cited 0 times | California Court of Appeal | December 31, 2003

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OPINION

Appellant Donald L. Manro asserts the City of Tulare (Tulare) violated the California Environmental Quality Act (CEQA) ¹ in a number of ways when it (1) approved a general plan amendment extending its land use planning boundaries, (2) certified a tiered environmental impact report (EIR) relating to the general plan amendment, and (3) recommended that the Local Agency Formation Commission for the County of Tulare (LAFCO) revise the sphere of influence for Tulare to correlate with the boundaries adopted by Tulare. Among other things, appellant contends (1) Tulare included an excessive amount of land within its new boundaries, (2) the EIR for the project was inappropriately tiered on a program EIR relating to a general plan update approved in 1993, and (3) the discussion of various aspects of the project failed to contain the information and analysis required by CEQA.

Based on our independent review of the administrative record, we determine that Tulare failed to proceed in a manner required by law in that the EIR's discussion and analysis of the cumulative impacts connected with the project, and of the feasible alternatives to the project, were legally inadequate. We will reverse the judgment and direct the superior court to enter an order granting the petition for a writ of mandate.

FACTS AND PROCEEDINGS

General Background

All cities in California are required to adopt a comprehensive, long-term general plan for the physical development of the city. (Gov. Code, § 65300.) The general plan must include seven elements-land use, circulation, conservation, housing, noise, safety and open space-and address each of these elements in whatever level of detail local conditions require. (Gov. Code, §§ 65301, 65302.) The land use element designates the intended general distribution and location of land uses within the city and its planning area.



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The current version of Tulare's general plan land use element contains four urban growth boundaries. Tulare's city limits form the innermost boundary. Outside its city limits, Tulare designated an urban reserve line (URL), which was intended to represent where growth would occur through 2005. Outside the URL, Tulare designated an urban development line (UDL), which represented a 20-year growth boundary. Finally, the planning area boundary (PAB) forms the outer ring. The stated purpose of the PAB was to comply with Government Code section 65300 by including land outside the city boundaries that, in the judgment of the city, related to its planning.

Two other boundaries, and their relationship to the four boundaries created by Tulare, are relevant to this case. The first is the urban development boundary for Tulare adopted by the County of Tulare. Generally, the County of Tulare uses urban development boundaries in an attempt to define the 20-year growth areas for cities located there. The second boundary is the sphere of influence (SOI) for Tulare adopted by LAFCO. SOI means the probable physical boundaries and service area of a local agency, like a city, as determined by LAFCO. (Gov. Code, §§ 56076, 56425 subd. (b).) Tulare sometimes describes its SOI as the area that ultimately will be annexed and served by the city. Tulare's 1993 General Plan Update and Creation of the URL

Between 1980 and 1990, the population of Tulare grew 48 percent to 33,249, and in 1992, it reached 36,512. At that time, Tulare proposed to update the land use and circulation elements of its general plan.

A draft of the EIR for the proposed general plan update (GPU) stated that the purposes of proposed revisions to the land use element were to encourage a balanced and generally concentric pattern of development for the city, to accommodate continued outlying agricultural activities, to provide public services efficiently, and to guide the pattern of residential and commercial growth. The proposed GPU stated that one of its growth pattern objectives was to "[m]aintain sufficient developable land within the Planning Area to avoid inflated land prices."

Among the significant land use and policy changes contained in the GPU was the creation of a URL which was "intended to mark the outer edge within which urban development" could occur during the time period through year 2005. The GPU also proposed expanding Tulare's PAB by 1,660 acres, i.e., approximately 9 percent.

To address the environmental implications of the proposed GPU, Tulare prepared a draft program EIR. (See Cal. Code Regs., tit. 14, § 15168.)² The draft EIR stated that the new land use and circulation elements were intended to balance the benefits of anticipated growth and change over the next 15 years with the desire to maintain and enhance those qualities that made Tulare a desirable place to live and work.

On December 7, 1993, the Tulare City Council approved the GPU (hereafter, the 1993 GPU) and certified its program EIR. The city council found that the new land use and circulation elements



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would promote economic development, provide a balance and mix of desired land uses, limit the potential for noncontiguous growth, and correlate land use with transportation goals. The city council also adopted a statement of overriding considerations, in which it found that the benefits of the 1993 GPU outweighed the adverse impacts and environmental risks associated with circulation, air quality and natural resources such as agricultural land. Tulare's 1994 General Plan Amendment and Creation of the UDL

During 1994, the County of Tulare began revising its policies relating to SOI boundaries that were tied to 20-year growth projections. In response, the Tulare City Council created a UDL based on a 20-year period by approving general plan amendment No. 94-02a (GPA 94-02a). In resolution No. 4044, approving that amendment, the city council found that the URL contained sufficient land for growth up to the year 2005 and amended "the land use map to reflect a 2015 [UDL]." It added policy Nos. 10 and 11 to the growth pattern section of the Tulare land use element. Policy 10: "Establish a year 2015 ... UDL and maintain a 20 year land supply when revising the UDL at five year intervals." Policy 11: "Maintain the city's ... SOI boundary at Liberty Avenue and expand the SOI where feasible to reflect the Tulare Land Use map."

With respect to CEQA compliance, the city council also determined that the program EIR prepared in connection with the 1993 GPU was adequate to cover the amendment. This determination was not challenged in court.

Tulare's 1999 General Plan Amendment and Boundary Expansions

In January 1999, staff of Tulare's Planning and Building Department introduced proposed general plan amendment No. 99-01 (GPA 99-01) which would update Tulare's URL, UDL and PAB, and would recommend that LAFCO update the SOI for Tulare. The proposed amendment included (1) adding 596 acres to the URL, (2) adding 1,725 acres to the UDL, (3) designating areas of approximately 6,146 acres within Tulare's existing PAB as "communities of interest" to square off and retain Tulare's existing SOI boundaries, and (4) recommending updates of the SOI boundaries to add 3,365 net acres.

To address CEQA compliance, Tulare's Planning and Building Department sent a letter to individuals and other agencies soliciting input as to whether a negative declaration or an EIR was required for GPA 99-01. Manro responded with a letter raising concerns about (1) the need for environmental analysis and mitigation beyond that described in the program EIR from the 1993 GPU, (2) the method of estimating developable land within various geographic areas covered by GPA 99-01, and (3) the need for the new EIR to analyze a no project alternative and to evaluate whether the existing boundaries contained land adequate for future development.

Subsequently, Tulare determined the GPA 99-01 project required an EIR to comply with CEQA. Tulare also decided it would act as the lead agency and would prepare an EIR tiering from the



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previously certified program EIR for the 1993 GPU. The required notice of preparation described the project as an "update of urban development lines and sphere of influence boundary."

Manro responded with additional written comments. He asserted that the calculations used to determine the land needed for residential development contained many errors, and he criticized the use of inaccurate estimates of currently occupied land. He argued that the use of a methodology designed to maximize the number of residential acres within the UDL, in order to minimize inflating land prices and maximize the choice for urban development, was contrary to both city and county policies.

Manro later submitted his own "Vacant Land Survey," the purpose of which was to provide "comprehensive data on vacant lots and parcels" and to support his earlier criticism of Tulare's methodology in estimating residential land needs for future development.

The draft EIR for GPA 99-01 was completed and required notices were posted. The draft EIR described the project as part of Tulare's five-year program to update its urban growth boundary lines. It stated that the Tulare Planning Commission recommended increasing the URL by 592 acres, the UDL by 2,257 acres, the PAB by 985 acres and the SOI by 3,864 acres. It identified significant unavoidable impacts from the project, due to the conversion of agricultural land to urban uses, and the effect future growth would have on air quality and traffic. The draft EIR also stated that the expansion of the urban growth boundary lines would significantly increase water demand, that it would potentially create groundwater overdraft, and that this impact was not reducible to insignificance.

Chapter 2 of the draft EIR identified three project objectives: first, to provide sufficient land within the URL to avoid inflated land prices due to lack of supply or limited choices; second, to establish a 20-year UDL with a planning horizon of 2000-2020; third, to update Tulare's SOI and PAB to recognize what Tulare calls its "historical sphere of influence boundary lines."

Chapter 13 of the draft EIR, entitled "Alternatives to the Project," discusses three alternatives to GPA 99-01, labeled the "no project," "high density," and "low density" alternatives, as well as three other alternatives considered by the Tulare Planning Commission which propose different locations for the expansion. The draft EIR predicted the no project alternative would limit the choices and availability of land for development, and it stated this result was inconsistent with the policy of avoiding inflated land prices. The draft EIR stated the no project alternative would allow significant amounts of agricultural land to be converted to urban uses, and estimated approximately 4,191 acres could be converted.

The high density alternative was based on requiring six dwelling units per acre, which would increase density from 12.36 persons per acre to 18 persons per acre and would require only minor additions to the existing UDL. The low density alternative assumed future residential development at



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one-third the density of the high density alternative, and it required significantly more land than the proposed expansion contained in GPA 99-01. The evaluations of the impact on agricultural resources of the high and low density alternatives, as well as of the alternative locations considered by the planning commission, state the conversion of agricultural land under these alternatives would be a significant effect. These evaluations, unlike the corresponding evaluation of the no project alternative, did not quantify the amount of agricultural land that could be converted to urban uses.

Chapter 14 of the draft EIR, entitled "Cumulative Impacts," defined the geographical scope of the area affected by cumulative impacts related to the project as "those areas beyond the current URL and up to and including the proposed PAB."

During the four months after the draft EIR was made available, public comments were received and the draft EIR was modified. A final EIR (FEIR) for GPA 99-01 was prepared and included the comment letters to the draft EIR as well as the responses to those comments. The FEIR retained the boundary expansions set forth in the draft EIR, except that the expansion of the UDL by 2,257 acres was reduced to 2,065 acres. The FEIR, like the draft, stated that it would tier and incorporate the final program EIR for the 1993 GPU, the final EIR relating to a school project, and the negative declarations prepared for GPA 94-02a and general plan amendments from 1995 and 1996 (collectively, the Tier Documents).

On the day of the scheduled city council hearing, Manro delivered a lengthy letter to the planning and building department setting forth his disagreements with the criteria used in the staff reports to determine the availability of land for future residential development, and responding to the treatment given to land availability data he had submitted earlier.

At the hearing, the Tulare City Council adopted resolution No. 00-4655, finding that (1) GPA 99-01 was "consistent and compatible with the rest of the City's General Plan," (2) the FEIR had been completed in compliance with CEQA, and (3) the information contained in the FEIR reflected the independent judgment and analysis of Tulare. The resolution certified the FEIR for GPA 99-01, and it adopted the findings, statement of overriding considerations, and mitigation monitoring program set forth in attachments to the resolution.

A notice of determination was filed with the Tulare County Recorder on June 8, 2000, stating that Tulare had approved GPA 99-01 and determined (1) the project would have a significant effect on the environment, (2) an EIR was prepared for the project, (3) mitigation measures were made a condition of approval of the project, (4) a statement of overriding considerations was adopted, and (5) findings were made pursuant to the provisions of CEQA.

Manro requested a rehearing, which request was not granted. On July 5, 2000, he filed a verified petition for writ of mandate alleging the approval of GPA 99-01, certification of the tiered FEIR, and request to LAFCO to revise the SOI of Tulare violated CEQA. The petition named Tulare, the Tulare



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City Council, and the director of the Tulare Planning and Building Department as respondents (collectively, respondents). A hearing was held and the superior court filed a written ruling denying the petition for writ of mandate on January 17, 2003. Manro filed a timely notice of appeal of the denial of his petition.

DISCUSSION

Manro's opening appellate brief sets forth 18 points supporting his contention that the writ of mandate should have been issued. The points are raised, however, largely by way of Manro's attempt to incorporate by reference the briefs he filed with the trial court. Further, many of the specific fact-based arguments supporting these points are not contained in Manro's appellate briefs, but are set forth in a 66-page document entitled "Appendix A, Facts and Commentary Related to Allegations" which Manro filed with his trial brief.

Similarly, respondents' appellate brief attempts to address many of the points raised by incorporating by reference (1) other documents and (2) arguments from their trial brief. Despite this reliance on extraneous materials, respondents' appellate brief does contain arguments that (1) tiering the EIR for GPA 99-01 on the Tier Documents was appropriate, (2) the EIR contained a sufficient range of alternatives and (3) the appeal should be dismissed on jurisdictional grounds.³

The reliance of each party on incorporation by reference has undermined the coherence of their appellate briefs. Moreover, attempts to incorporate arguments and authorities into an appellate brief by reference to trial briefs are not appropriate. Decisions published by the Courts of Appeal over the past 25 years have made this clear. (See, e.g., *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 109; *Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 334; *Balesteri v. Holler* (1978) 87 Cal.App.3d 717, 720; see also Cal. Rules of Court, rule 14.) We will rule only on those issues which are adequately raised in Manro's appellate briefs. Mindful of the legislative preference stated in section 21005, subdivision (c), however, we will comment on other issues to the extent the parties' briefing allows us to do so.⁴

I. Standard of Review

General plan adoption and amendment are "projects" subject to environmental review under CEQA. (Guidelines, § 15378, subd. (a)(1); see *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 794.)

An appellate court reviewing a challenge under CEQA to the certification of an EIR concerning a general plan or its amendment must independently review the administrative record to determine whether the lead agency committed a prejudicial abuse of discretion by (1) proceeding in a legally erroneous manner or (2) making a determination or decision unsupported by substantial evidence. (§ 21168.5; see Code Civ. Proc., § 1085 [procedures for traditional mandamus].)



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II. Adequacy of Information

Manro begins his opening brief with the assertion that the tiered EIR is not a good faith effort to provide information adequate for informed decision making.⁵ He states that "[t]he adequacy requirements for EIRs apply to various allegations and issue areas addressed in this brief." Because of the general nature of this argument, we do not analyze it separately, but will address it where appropriate in our discussion of other issues raised in Manro's briefs.

III. The Analysis of Cumulative Impacts Was Legally Insufficient

Manro asserts that the EIR for GPA 99-01 is defective because it fails to select a reasonable geographic area within which to analyze the cumulative impacts of the project, fails to explain the reasons for the geographical area selected, fails to provide information indispensable to the analysis of the cumulative impacts, and fails to adequately discuss cumulative impacts.

The Guidelines require Tulare to consider "past, present, and probable future projects producing related or cumulative impacts" (Guidelines, § 15130, subd. (b)(1)(A).) Tulare "must interpret this requirement in such a way as to `afford the fullest possible protection of the environment.' [Citations.]" (Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4th 859, 868.)

The Guidelines provide two alternative methods for satisfying the requirement that cumulative impacts be analyzed: the list-of-projects and the summary-of-projections approaches. (Guidelines, § 15130, subd. (b)(1).) Under either approach, the EIR must summarize the expected environmental effects of the listed projects or of the summarized projections. (Ibid.) Respondents' appellate brief does not identify or even address which method was used by Tulare. In their trial brief, respondents claimed the "subject EIR addressed and provided a list of present and possible future projects" and supported this claim by citing chapter 14 of the draft EIR, entitled "Cumulative Impacts."

A review of chapter 14 of the draft EIR, however, reveals neither a list of past, present and probable future projects producing related impacts nor any summary of projections from other planning or environmental documents "which described or evaluated regional or areawide conditions contributing to the cumulative impact." (Guidelines, § 15130, subd. (b)(1)(B).) A review of the EIR for the 1993 GPU, upon which the current EIR was tiered, also reveals no such list or summary, and in fact no discussion of cumulative impacts even approaching the analysis currently required. Because of these omissions, the current EIR is legally deficient.

Further deficiencies exist in the EIR's analysis of cumulative impacts. First, as recognized in chapter 14, a lead agency should (1) define the geographic scope of the area affected by the cumulative impact and (2) provide a reasonable explanation of the geographic limitation used. (Guidelines, § 15130, subd. (b)(3).) The EIR responds to the first part of this requirement by stating that, "[e]xcept where noted,



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the cumulative analysis discusses those areas beyond the current URL and up to and including the proposed PAB. This approach will include the city's proposed new URL, UDL, SOI and PAB, as well as the third high school and [College of the Sequoia's] farm and satellite campus sites." However, the EIR does not comply with the second part of this requirement because it includes no explanation of why this geographical limitation was used. By omitting the required explanation, the EIR is insufficient as an "informative document." (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573.)

The failure to include required information in an EIR ""may constitute a prejudicial abuse of discretion"" (Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 192) whether or not a different result would have occurred had the information been provided. It is the function of an EIR to inform the decision makers and the public. (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392.) Without the required explanation of the geographical limit used here, this court, like the public, is unable to analyze why Tulare did not consider the impact of GPA 99-01, together with the impact of other projects in the county or region, on such shared resources as water supply and air. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721-724 (Kings County Farm Bureau).)

For example, chapter 11 of the EIR recognizes that (1) Tulare lies in the Kaweah Groundwater Basin, (2) groundwater is Tulare's only water source, (3) Tulare used approximately 3 billion gallons of water in 1990, (3) it is estimated that water consumption in Tulare will grow to 4.7 billion gallons in 2005 and 6 billion gallons in 2015, and (4) to minimize groundwater overdraft, Tulare will need to follow the recommendations of its water system master plan. The statement of overriding considerations for GPA 99-01 states that the "potential overdraft of groundwater is outweighed by the continued urban development of Tulare in the form of new job opportunities, quality of life factors that include housing, schools, parks, retail development and logical and orderly development of neighborhoods." The map of the Kaweah Groundwater Basin shows other cities, such as Visalia, Exeter and Lindsay, also are located within that basin. This information clearly raises the possibility of a significant cumulative impact on the groundwater within the Kaweah Groundwater Basin.

Accordingly, we conclude that the impacts of GPA 99-01 and the further urban growth it addresses, when combined with the impacts from other urban growth boundaries adopted by cities within the county or region, could have a significant impact on resources shared throughout the county or region. Because of (1) the lack of the required explanation as to why the EIR did not look beyond the proposed PAB and (2) the failure to develop the administrative record to support that explanation, we do not reach the substantive question of what is the appropriate geographical scope for analyzing cumulative impacts. (See *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283 & fn. 25; *Kings County Farm Bureau*, supra, 221 Cal.App.3d at pp. 721-724.)

Finally, it appears that neither party has chosen the appropriate point of reference for analyzing cumulative impacts. Tulare looked at the area beyond the existing URL up to the proposed PAB. In



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contrast, Manro asserts that Tulare was required "to evaluate the totality of the environmental effects using essentially the same conditions existing at the GPU's inception." On remand, the parties should note that Tulare "is required to compare the newly authorized land use with the actually existing conditions; comparison of potential impacts under the amendment with potential impacts under the existing general plan is insufficient." (Christward Ministry v. Superior Court (1986) 184 Cal.App.3d 180, 190.) For example, in addressing the impact of the revised boundaries on groundwater, the comparison must begin with actually existing conditions rather than with the impacts from that portion of the growth occurring after the existing boundaries are exceeded.

IV. The Discussion of Project Alternatives Was Inadequate

Manro contends the GPA 99-01 EIR is deficient because (1) the discussion of alternative projects is inadequate in that one cannot accurately compare the impacts of the alternatives, (2) neither the high nor low density alternatives was feasible, (3) the discussion fails to include any comparative data about the effect of the project or any alternative on land prices, which was an important project objective, and (4) the project objectives were artificially narrowed to subvert CEQA review. In summary, Manro states, he is challenging Tulare's "compliance with the requirement to discuss a reasonable range of feasible alternatives."

Respondents counter that Tulare did consider a reasonable range of project alternatives and included a meaningful discussion of the alternatives in the EIR. They support this contention with one citation to the administrative record: the 10 pages contained in EIR chapter 13.

"[T]he requirement to set forth project alternatives within the [EIR] is ... crucial to CEQA's substantive mandate that avoidable significant environmental damage be substantially lessened or avoided where feasible. [Citations.]" (Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (10th ed. 1999) p. 431 (hereafter Remy).) Section 15126.6 of the Guidelines sets forth in detail the substantive requirements for the consideration and discussion of alternatives to the proposed project.

In considering and discussing alternatives to the proposed project, 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." (Guidelines, § 15126.6, subd. (a); see *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565 [consideration of alternatives judged against a rule of reason].)

Under the "rule of reason," the alternatives set forth in the EIR

"shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency



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determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making." (Guidelines, § 15126.6, subd. (f).)

A. Feasibility of Alternatives

An EIR must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. (Guidelines, § 15126.6, subd. (a).) Manro contends that neither the high nor the low density alternative was feasible, and that both were included only to make GPA 99-01 look good by comparison. Manro also criticizes the discussion of the alternatives because it does not address whether the alternatives would avoid or substantially lessen the environmental impacts of GPA 99-01.

The discussion of the alternatives does not comply with the substantive requirements of CEQA because it fails to disclose the "reasoning for selecting those alternatives" or "briefly describe the rationale for selecting the alternatives to be discussed." (Guidelines, § 15126.6, subds. (a) & (c).) The EIR states that the low density alternative "was selected because General Plan densities of the 'suburban residential' designation can allow for 2 [dwelling units per acre]" and that the high density alternative was selected for "discussion purposes." No reasons for selecting the three alternatives considered by the planning commission are stated.

Perhaps more importantly, however, it appears the high and low density alternatives—at least as formulated—were not feasible. Notwithstanding the reason given for selecting the low density alternative, the EIR concludes its discussion of that alternative by stating that it "would not meet [Tulare]'s goals of providing a diverse housing stock or maintaining affordable housing." In light of the reason for selecting the low density alternative and the statement from the conclusion, it does not appear that the low density alternative was feasible or even potentially feasible. When a lead agency chooses an untenable alternative and then rejects it on that very basis, the lead agency has not chosen a feasible alternative that allows for a meaningful comparison.

Though the selection of the high density alternative was less problematic, its rigidity in seeming to require the redesignation of all suburban residential to urban residential appears to have doomed the alternative from the start, thus making it infeasible also.

Because of the readily apparent shortcomings of both the high and low density alternatives, as they were formulated, we conclude that they were not "feasible" and therefore contributed little to the required discussion of alternatives to the project.⁶ At most, it may have been appropriate for the EIR to identify those alternatives as having been considered for inclusion in the range of feasible alternatives to be discussed in detail, but having been rejected as infeasible during the scoping process. (See Guidelines, § 15126.6, subd. (c).)



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Consequently, in any later EIR that addresses alternatives to a proposed revision to growth boundaries, Tulare should set forth the rationale for including a particular alternative in its detailed discussion of alternatives as required by the Guidelines. (Guidelines, § 15126.6, subds. (a) & (c).) Furthermore, the rationale should demonstrate that the factors set forth in Guidelines section 15126.6, subdivision (c) ⁷ do not eliminate the alternative from the detailed discussion of alternatives required in the EIR.

B. The Quantitative, Comparative Analysis of Alternatives

Manro argues that Kings County Farm Bureau, *supra*, requires a "quantitative, comparative analysis" of the relative environmental impacts of project alternatives, and that the discussion and information contained in the EIR was deficient. The proposed project in Kings County Farm Bureau was a coal-fired cogeneration power plant. (Kings County Farm Bureau, *supra*, 221 Cal.App.3d at p. 706.) In that case, the EIR did not quantify the reduction in water use that could be realized using a natural gas alternative, although the reduction was conceded to be significant. As a result, this court held "[t]he absence of this comparative data renders the analysis of the natural gas alternative incomplete and precludes meaningful consideration" of it. (*Id.* at p. 735.)

"The rigorous substantive standards for EIR adequacy that the court applied in Kings County Farm Bureau have not been applied by all courts, particularly where a challenged plan-level EIR will be followed by more EIRs for individual projects." (Remy, *supra*, at p. 444.) In particular, courts have held that EIR's for plan-level decisions are not required to have the degree of specificity or precision needed in EIR's for specific projects. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 746 [port master plan]; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 374 [hazardous waste management plan].) These holdings are consistent with the reasoning in Kings County Farm Bureau, in which this court recognized that "[t]he degree of specificity required in the EIR depends upon the degree of specificity involved in the underlying activity described in the EIR." (Kings County Farm Bureau, *supra*, at p. 733.)

Because this case involves the amendment of a general plan rather than the construction of a specific project, we will not require the degree of specificity required for a meaningful consideration of alternatives to a specific project. With this principle of specificity in mind, we turn to the Guidelines that address the consideration and discussion of alternatives to the proposed project.

In the context of a proposed revision to the land use element of the general plan, the projected impacts of the proposed amendment must be compared to the projected impacts of the selected alternatives, including a no project alternative. (Guidelines, § 15126.6, subd. (e)(3)(A).) The discussion of the no project alternative to the amendment of the land use element should analyze the impacts of that alternative by projecting what "would reasonably be expected to occur in the foreseeable future if the project were not approved" (*Id.*, subd. (e)(3)(C).)



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As the first step in applying these regulations, the rule of reason and the principle of specificity, we look to the projected impacts that were included in the EIR for the proposed amendment. If the EIR contains a projected impact for the proposed project, then a discussion intended to "evaluate the comparative merits of the alternatives" ⁸ generally should contain a parallel projection concerning such impact from the alternatives, unless making such a projection is not reasonably feasible. (See Kings County Farm Bureau, *supra*, 221 Cal.App.3d at p. 733.)

1. Quantitative Projections of Impact on Land Prices

Manro contends the EIR should have contained comparative data about the impact of GPA 99-01 and the alternatives on land prices. The EIR does not attempt to quantify the effect that GPA 99-01 would have on land prices, though it does state that the no project alternative "may cause limited choices and land availability leading to higher costs" and that it is thus inconsistent with a project objective and city policy.

Because the EIR makes no attempt to quantify the effect of either the no project alternative or GPA 99-01 on land prices, it is not necessary to include a quantitative estimate of the impact that the other alternatives would have on land prices. In addition, we conclude Tulare did not violate the rule of reason by not quantifying the projected impact of each alternative on land prices. Tulare could reasonably have concluded that estimating land prices over a 20-year time frame would have been speculative and would have produced unreliable results. Therefore, we conclude that Tulare did not violate CEQA by not quantifying estimates of the land price impacts that would occur under the proposed project and the selected alternatives. ⁹

2. Estimates of Agricultural Land Conversion

Tulare estimated the impact of the no project alternative on agricultural land by stating that "4,191 acres of agricultural land could be converted under the no project alternative." (Italics added.) There are two weaknesses in this estimate of future impact. First, the EIR does not show how the figure of 4,191 acres was derived. It states that the figure is indicated by land use summaries for vacant land, but the description of vacant land contained in chapter 3 of the EIR does not include that figure. Second, the use of the word "could" in connection with that figure leads to the inference that it is an upper limit on the potential agricultural land conversion, rather than an estimate of what "would reasonably be expected to occur in the foreseeable future if the project were not approved" as required by the regulation. (Guidelines, § 15126.6, subd. (e)(3)(C).) As a result of this ambiguity, we cannot determine if Tulare complied with the quoted Guideline or not.

In addition, the EIR does not include parallel estimates of the amounts of agricultural land that could be converted to urban uses under the other alternatives or under GPA 99-01. Specifically, no estimates of acreage converted are quantified in the discussion of the other alternatives contained in chapter 13 or in the discussion of the impact of GPA 99-01 on agricultural resources contained in



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chapter 4 of the EIR. As a result of these omissions, the alternatives analysis failed to comply with the requirement that "the projected impacts of the proposed plan or alternative plans ... be compared to the impacts that would occur under the existing plan," i.e., the no project alternative. (Guidelines, § 15126.6, subd. (e)(3)(A).) These omissions violate CEQA.

3. Estimates of Land Needed for Residential Development

With respect to the estimates of Tulare's residential land needs for the 2000-2020 time frame, the analysis of the alternatives in the EIR is not complete and, as a result, does not promote meaningful comparison. Under GPA 99-01, Tulare assumed (1) future growth would have a density of 12.36 persons per acre, (2) population growth rates of 3.0 percent, 3.66 percent and 4.0 percent, and (3) an overage factor of 40 percent. Based on these assumptions, the EIR produced estimates of Tulare's residential land needs and compared those needs to the land available. Under the 3.0 percent growth rate scenario, Tulare estimated that the available land exceeded its needs by 61 acres. Under the 3.66 percent growth rate and 4.0 percent growth rate scenarios, respectively, the available land was 1,190 and 1,899 acres less than needed for estimated residential development.

The estimates of the land needed for residential development under the high and low density alternatives stopped short of producing parallel figures regarding projected surpluses or deficits of available land. The analysis of the high density alternative considers only the 3.66 and 4.0 percent growth scenarios and stops after calculating that "[t]he 'high density' alternative would require 3,665 to 4,152 acres after factoring in a 40% overage. This alternative would potentially require only minor additions to the city's existing UDL." The corresponding paragraph in the description of the low density alternative stops its calculations in a different place: "Total land for Year 2020 would be 11,165 (7,855 + 3,310) to 12,208 (3,898 + 3,310) [sic] acres, with no overage factored in. The 'low density' alternative would require a significant expansion of the proposed UDL, since the proposed project estimates year 2020 land needs at 10,124 acres." ¹⁰ How Tulare calculated the figure of 10,124 acres is not disclosed and is not readily apparent.

To allow for the meaningful evaluation and comparison of each alternative with the proposed project, the discussion of the alternatives should include parallel calculations for the same projected impacts that were included in the discussion of the proposed project, unless completing the parallel calculations is not reasonably feasible. (See Guidelines, § 15126.6, subd. (d); Kings County Farm Bureau, *supra*, 221 Cal.App.3d at p. 733.) In this case, there was no impediment to performing the parallel calculations and, therefore, they should have been included in the EIR.

When estimated environmental effects of alternatives are quantified, the figures may be organized in a matrix for ease of comparison. (See Guidelines, § 15126.6, subd. (d).) The use of matrices is not mandatory, but is an effective way to communicate information to the public and agency decision makers and enable them to make an apples-to-apples comparison of the estimated environmental impacts that have been quantified. For example, if accurate matrices (one for each of the three



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population growth scenarios) had been prepared setting forth the calculations for the estimated effect of each alternative, then the confusion from using different calculations or stopping the calculations in different places would have been avoided.

4. Internal Consistency of Numbers Used

The figures used to discuss the alternatives contradict the figures used elsewhere in the EIR. The inconsistencies are numerous and we do not endeavor to catalog them all in this opinion. As a simple example, the paragraph on page 13.1 of the EIR that sets forth the description of the no project alternative refers to a nonexistent table 2-3 (probably intended to refer to table 3-4) and uses the figures of 4,604 and 3,992, respectively, for the acres currently available within the UDL for residential development and the acres in the existing reserve. On page 13.3 of the FEIR, these same figures were changed to 4,776 and 4,141, respectively. No explanation is offered for why the numbers in the FEIR were changed in some places and not others. To avoid confusion, when figures are changed in one place in an EIR, corresponding changes should be made throughout the document so that it is internally consistent and accurate.

5. Summary

The ability of the EIR to function as an informative document fostering meaningful public participation was undermined by the combined effect of (1) the failure to (A) show how Tulare calculated that 4,191 acres of agricultural land would be converted under the no project alternative and (B) identify what that figure represented, i.e., was it the reasonable expectation required by the Guidelines or an upper limit; (2) the failure to include parallel estimates of the amounts of agricultural land that would be converted to urban uses under GPA 99-01 and the other alternatives; (3) the failure to calculate and disclose figures that estimate the land needed for residential development under the alternatives; and (4) the typographical errors and internal inconsistencies in the numbers used in the FEIR's discussion of the alternatives. As a result, the draft EIR and FEIR failed to adequately serve the purpose of making the decision maker's reasoning accessible to the public and thereby protecting informed self-government. (See *Kings County Farm Bureau*, supra, 221 Cal.App.3d at p. 733.) We conclude, therefore, that the consideration and discussion of alternatives to GPA 99-01 was legally inadequate, and the inadequacy was serious enough to be prejudicial.

V. The Project Description Was Adequate

Manro raises three arguments regarding the project description: (1) that it is not stable, accurate and finite; (2) that GPA 99-01 destabilized the project description contained in the program EIR upon which its EIR was tiered; and (3) that the whole project was not described by the tiered EIR and the program EIR upon which it is based. Citing the proposition that "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, 199), Manro argues that the finite geography and



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time frame of the 1993 GPU were altered or nullified by GPA 99-01 to allow for expansion of the size and duration of the project over an indefinite period of time.

Manro recognizes that GPA 94-02a initiated the policy that changed the fixed time and space aspects of the 1993 GPU and instituted the process of updating a 20-year growth boundary every five years. Manro also recognizes that the approval of GPA 94-02a and the determination that the program EIR for the 1993 GPU was adequate to cover GPA 94-02a were not challenged in court.

Because application of the program EIR to GPA 94-02a was not the subject of a timely action or proceeding, the program EIR as it relates to the general plan as amended by GPA 94-02a is conclusively presumed to comply with the CEQA. (§ 21167.2; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130.) Thus, the changes made by GPA 94-02a to the policies and project description of the 1993 GPU are no longer subject to scrutiny under CEQA. As a result, Manro's argument that the project description was destabilized by GPA 99-01 fails.

We note, nonetheless, that Manro's assertion that a general plan must have a termination date to have an accurate and stable description is not supported by any authority cited. Changes to the description of a particular development project are distinguishable from changes to a general plan. The ability to change a general plan to extend the period of time that it covers without making its EIR obsolete appears to be controlled by the general principles of law that determine (1) when a new project is undertaken requiring a new EIR or (2) when a subsequent or supplemental EIR is appropriate. (See § 21166; Guidelines, §§ 15162, 15163.)¹¹

VI. The Use of Tiering for the General Plan Amendment

As noted previously, Tulare tiered the EIR for GPA 99-01 on the Tier Documents, which included the previously certified program EIR for the 1993 GPU.

Tiering is defined by section 21068.5 and Guidelines section 15385, and its use is addressed in sections 21093 and 21094 and Guidelines section 15152. Case law has addressed tiering in detail (e.g., *Stanislaus Natural Heritage Project v. County of Stanislaus*, supra, 48 Cal.App.4th at pp. 197-205), as have CEQA commentators (Remy, supra, at pp. 487-496, 530-535; 1 Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont.Ed.Bar 2003) §§ 11.3-11.8, pp. 431-436.2).

Manro asserts tiering the EIR for GPA 99-01 was improper because (1) the objectives of GPA 99-01 were contrary to the objectives identified in the underlying project, (2) GPA 99-01 was not consistent with the program EIR, and (3) changed circumstances required the preparation of a full EIR for the project or, alternatively, a subsequent EIR to address the changes.

In contrast, respondents argue GPA 99-01 was consistent with the underlying general plan and that



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certain aspects of Manro's argument are precluded because they are, in effect, an untimely attack on previously implemented changes to the general plan.

The dispute over consistency is based on section 21094, subdivision (b), which contains three criteria that must be met before tiering EIR's is appropriate:

"This section applies only to a later project which the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166."

After reviewing the sections of CEQA and the Guidelines addressing tiering as well as the case law that discusses and applies the consistency doctrine,¹² we are unable to resolve, because of the deficiencies in the briefing, whether GPA 99-01 was "consistent with" the underlying general plan for purposes of section 21094 and, if not, whether the erroneous use of tiering was prejudicial.

On one hand, Manro does not explain why the difference between tiering and the use of a new or subsequent EIR is anything other than semantic-that is, he fails to explain specifically what is missing from the "tiered" EIR that would have been supplied by a new or a subsequent EIR. Also, some of Manro's arguments are based on conflicts between GPA 99-01 and the 1993 GPU, rather than the general plan as it existed at the time GPA 99-01 was adopted.¹³

On the other hand, respondents' minimal analysis of the consistency question does not allow us to determine that GPA 99-01 is consistent with the underlying general plan. For example, respondents ignore Remy's construction and application of section 21094 to general plan amendments.¹⁴ According to Remy, the criteria in section 21094 "limit the kinds of projects that can benefit from the use of tiering. Projects requiring general plan amendments and most kinds of rezones will not qualify." (Remy, *supra*, p. 489, *italics added*.)

In addition, respondents misread the Guidelines when they assert a tiered EIR is appropriate to "evaluate[] the impact of a particular activity or activities undertaken to implement or modify the plan, program or policy. CEQA Guidelines, 14 Cal Code Regs Sections 15152 and 15385." (*Italics added*.) This assertion misstates the contents of the cited regulations, neither of which use the word "modify" or even "amend" with reference to tiering. Thus, neither regulation directly supports the proposition that the modification or amendment of a general plan is "consistent with" the underlying general plan for purposes of section 21094.

We recognize that certain aspects of GPA 99-01 conflict with the general plan's previous provisions. For example, the expanded growth boundaries conflict with the prior boundaries and expand the geographic scope of the general plan. We also recognize that other aspects of GPA 99-01 are consistent with the general plan, such as the requirement for a periodic revision of the growth



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boundaries.

Whether the conflicts are sufficient to render GPA 99-01 inconsistent with the underlying general plan for purposes of section 21094 in a way that resulted in prejudice is an issue that was not fully developed and will not be decided in this opinion. For instance, the substantive difference between the use of tiering and the use of a new or subsequent EIR may have been minimal, particularly with reference to the information presented to the public and the Tulare City Council. (See § 21005, subd. (a).)

We are thus unable to determine whether prejudicial error occurred in Tulare's use of tiering. (See *Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1044 ["[W]e look to substance rather than labels" when examining compliance with CEQA].) As a result, if Tulare decides on remand to readopt GPA 99-01, it will have to determine whether the uncertainty over the propriety of tiering is outweighed by its advantages.

VII. Mitigation Measures and the Program EIR

Manro asserts that the EIR for GPA 99-01 is defective because it fails to incorporate some of the mitigation measures developed in the program EIR, but does incorporate mitigation measures of relatively minor value—one of which is not enforceable. We note that Guidelines section 15168, subdivision (c)(3) does require that, if a lead agency seeks to rely on tiering from a program EIR, the lead "agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program." The factual basis for Manro's arguments concerning mitigation measures, however, is set forth by way of his attempted incorporation by reference. We therefore refrain from going further.

VIII. Substantial Evidence Supports Determinations Regarding Project Necessity and Future Land Needs

A number of Manro's arguments are based on his position that an excessive amount of land was included within the revised boundaries, per GPA 99-01, and on alleged errors committed by Tulare in determining the need for expanding the boundaries.

Manro asserts, for example, that inaccuracies in the information used by Tulare "resulted in estimated needs for residential lands for future development that bear no relationship to the areas within the various proposed growth boundaries reserved for future development." Similarly, he asserts that the project is unnecessary because the boundaries established contain too much land and this excess (1) is unlikely to affect land values in a way that promotes affordable housing and (2) is an aggressive assault on farm land that is contrary to the policy of conserving agricultural land.

In a related argument, Manro asserts that Tulare's evaluation of the evidence he submitted regarding



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the residential land needs was false and misleading, and that the evidence relied upon by Tulare was not substantial because it was not competently assembled and reported. He was not able to verify the validity of Tulare's estimates of developed residential lands inventory, he asserts, because of the failure to disclose information. The EIR, according to Manro, lacked information sufficient to determine whether or not GPA 99-01 actually satisfied the stated objectives. The evidence in the record about interim development, he says, is insufficient to support the decision to revise the growth boundaries, and Tulare made no effort to evaluate whether the existing URL had sufficient reserves of land for future residential use.

These arguments by Manro are heavily dependent upon his version of the facts and his methods of analyzing those facts. Tulare did not reach the same factual determinations as Manro, and it did not use his methods in reaching its decision regarding the land needed for future development.

For instance, table 3-4 in the FEIR contained Tulare's methodology for estimating residential land needs for the 2000-2020 time frame at 5,331 to 6,040 acres. The estimate was made using a 40 percent overage factor and assuming future public land needs of 13.3 percent. Manro challenges the use of both of these figures, claiming the 35 percent overage factor used by Tulare County is appropriate and the future public land needs should be reduced to 10.8 percent.

A May 24, 2000, memorandum from the senior planner to the city manager describes Manro's latter claim as follows. "Mr. Manro believes the public land needs an estimate of 13.3% (Table 3-4, FEIR) is too high and that 10.8% should be used. This represents a difference of approximately 120 acres."

In responding to a comment from the Tulare County Resource Management Agency that the 40 percent overage factor would tend to promote lower density, sprawl development, Tulare stated:

"The use of an overage factor is designed to take into account the five year period until the next update. Theoretically, until the next update, cities are operating with a 15 year plan rather than a 20 year plan. Additionally, some adjustment needs to be taken for the different size of cities. Otherwise, larger cities will always be allowed a greater, disproportionate share of land allocations."

"Challenges to the scope of the analysis, the methodology for studying an impact, and the reliability or accuracy of the data present factual issues, so such challenges must be rejected if substantial evidence supports the agency's decision as to those matters and the EIR is not clearly inadequate or unsupported [citations], unless the agency applied an erroneous legal standard [citation]." (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259.)

Applying this standard to Manro's challenge to the percentages chosen for the formula for estimating future residential land needs, we conclude that Tulare's decisions to use a 40 percent overage factor instead of 35 percent and to use a 13.3 percent public land needs factor instead of 10.8 percent are supported by substantial evidence. In addition, no legal standard for these percentages



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has been established by CEQA, the Guidelines or other applicable rule. Therefore, the chosen percentages did not violate a standard imposed by law.

As support for his other arguments, Manro presented evidence that conflicts with the determinations made by Tulare regarding the necessity of including more land within the various boundaries. For example, the vacant land survey he performed is evidence that supports his view. Also, Manro's challenge to the use of estimates regarding vacant land, in creating estimates of the amount of land needed for future residential use, raises questions about the reliability and accuracy of data as well as the methodology. These questions are addressed in the administrative record, which explains the data, methodology and assumptions used and contains the planning and building department's responses to Manro's criticism of those items. While recognizing that the administrative record contains conflicting evidence, we conclude the evidence supporting the determinations made by Tulare in estimating the future land needs for residential development is substantial. This substantial evidence includes the eight-page, May 15, 2000, planning director's review-staff report of GPA 99-01 and its exhibits as well as Tulare's responses to all of the comment letters it received.

When a lead agency's factual determinations differ from those of a citizen challenging the certification of the EIR, the lead agency's determinations will be upheld if supported by substantial evidence in the administrative record; this standard requires a reviewing court to resolve reasonable doubts in favor of the administrative findings and decision. (*Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d at pp. 392-393.)

Because substantial evidence supports Tulare's determinations about the amount of land needed for future development, Manro's arguments concerning those determinations fail to identify any reversible error.

IX. Summary

Manro is entitled to the issuance of a writ of mandate because the administrative record shows that Tulare did not comply with the substantive requirements governing the disclosure and analysis of the cumulative impacts arising in connection with GPA 99-01, or with the requirements that feasible alternatives to the project be examined.

DISPOSITION

Judgment is reversed and the matter remanded to the superior court with directions to grant Manro's petition for a writ of mandate vacating Tulare's certification of the FEIR, approval of GPA 99-01, and approval of the recommendation that LAFCO revise the sphere of influence for Tulare. Appellant is awarded costs on appeal.

WE CONCUR:



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HARRIS, Acting P.J.

GOMES, J.

1. Public Resources Code section 21000 et seq. All further statutory references are to the Public Resources Code unless otherwise indicated.
2. In all further citations, title 14, section 15000 et seq. of the California Code of Regulations will be referred to as the Guidelines.
3. This jurisdictional argument is a strawman based on a contrived interpretation of Manro's appeal as a challenge to the jurisdiction of the trial court. We reject this interpretation and treat Manro's appeal as it is described in the notice of appeal, i.e., an appeal from the ruling denying the petition for a writ of mandate.
4. In section 21005, subdivision (c), the Legislature has declared its intent that "any court, which finds ... that a public agency has taken an action without compliance with [CEQA], shall specifically address each of the alleged grounds for noncompliance."
5. Except as otherwise stated, reference to the EIR will include both the draft and the FEIR.
6. This determination disposes of the issues raised by Manro regarding the lack of substantial evidence to support an implied finding of feasibility.
7. The last sentence of that subdivision provides: "Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) unfeasibility, or (iii) inability to avoid significant environmental impacts."
8. Guidelines section 15126.6, subdivision (a).
9. Land price impacts are not impacts on the environment. Guidelines section 15126.5, subdivision (a), however, requires that analysis of alternatives evaluate their "comparative merits."
10. The parenthetical explaining the figure of 12,208 contains two typographical errors. It should add 8,898 acres (the estimated land required by a population growth of 53,392 people, i.e., 4.0 percent, assuming a density of six persons per acre) to 3,310 acres (the estimate of the number of acres occupied calculated by dividing the estimated 1998 population of 40,903 by an estimated density of 12.36 persons per acre).
11. Section 21166 provides: "When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: [¶] (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. [¶] (b) Substantial changes occur with



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respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. [¶] (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available."

12. E.g., *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342 (updated specific plan held inconsistent with county's general plan); *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99 (housing development was consistent with a master plan; EIR legally inadequate on other grounds); *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332 (residential subdivision project held inconsistent with land use element of county's general plan); *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90 (court found as a matter of law that certain provisions of the land use element conflicted with provisions in the circulation element of the general plan and, thus, held the general plan was internally inconsistent).

13. To the extent that GPA 94-02a changed a part of the underlying general plan and removed a provision inconsistent with GPA 99-01, no inconsistency exists and that aspect of the claim must fail. (See pt. V, ante.)

14. Manro cited to Remy's view of section 21094 in his trial and appellate briefs.

