November 15, 2005

Mariposa Board of Supervisors
Mariposa Planning Commission
Mariposa, CA 95338-5024

Dear Members of the Board and Commission:

This letter provides comments on the adequacy of the Mariposa County General Plan Draft Environmental Impact Report (DEIR) for Mariposas for the Environment and Responsible Government (MERG).

The DEIR notes numerous impacts that will occur as a result of buildout and implementation of the General Plan. However, at this stage there appear to be inadequacies under CEQA that must be rectified in a recirculated draft EIR. This is because new significant impacts have been identified and because of the magnitude of the revisions required. (Public Resources Code, sec. 21092.1.)

We urge the County to commit the resources necessary to allow the consultants to conduct the additional analysis and mitigation formulation which will be necessary to fully answer our comments. In preparing a recirculated DEIR, we request that a revised DEIR in legislative revision format, so that the public and decision-makers can better understand the changes made.

To summarize, we are particularly concerned that the DEIR is inadequate for the reasons listed below. We have identified mitigation measures or alternatives for each of these issues which also make up our key General Plan revision requests.

1. The EIR does not fully disclose impacts or under reports impacts because the location and extent of land uses within the Community and Town Plan areas to be expanded is unclear. These areas must be decreased in size to their current boundaries.

2. The DEIR drastically underestimates buildout potential.

3. The Alternatives do not include a Phased Growth/Reduced Scale alternative which would substantially reduce impacts, particularly in traffic and to our rural...
character, while providing for more moderate, expected growth rates over the 20 year Plan period. The revised Enhanced General Plan Alternative with Full Mitigation would meet this goal.

4. All available mitigation has not been explored. Key policy revisions, which would mitigate impacts, are needed. These include:

1. Protection of the 160-acre minimum parcel size where it currently exists.

2. 160-acre parcel size minimums between Mt. Bullion and Bear Valley and Mt. Bullion and Mariposa.

3. Elimination of the clustering allowance (which reduces minimum parcel size from 5 acres to 2.5 acres) outside the community areas in order to maintain the traditional rural land use pattern in the county.

4. Creation of detailed Design Guidelines and a discretionary design review process.

5. Use of a range of permitted densities in residential land use designations to provide for the potential to mitigate impacts on a case by case basis as projects are proposed. (The densities currently outlined would be a maximum.)

6. Addition of greater definition to the Rural Economic Use designation to reduce potential land use and scale incompatibility.

7. Target roadway Level of Service C.

8. Scale Residential designated area outside Community and Town Planning Areas back to extent of area in existing General Plan.

Our comments are organized largely around the following critical CEQA elements:

- Adequacy of the Alternatives discussion
- Appropriateness of the Standards of Significance
- Adequacy of the Impacts discussions
- Adequacy of the Mitigation Measures
1. INTRODUCTION

Each of these subjects is introduced generally below and specific examples relative to the General Plan DEIR are given in our comments on individual DEIR sections.

A. Alternatives

1. Full range of alternatives not supplied.

A full range of alternatives, consistent with CEQA Guidelines Sections 15126, subd. (f) and 15126.6, is needed which will produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. (San Bernardino Valley Audubon Society v. County of San Bernardino (1984) 155 Cal.App.3d 738.) "The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decisionmaking." (CEQA Guidelines, sec. 15126.6, subd. (f).) This has not been accomplished in the DEIR.

B. Standards of Significance

1. Local environmental impact thresholds not utilized.

Environmental thresholds, which are appropriate to local conditions in Mariposa County, should also be used. CEQA notes that an "impartial definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." (CEQA Guidelines, Section 15064 (b).) Further, "In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected. If the Lead Agency expects that there will be a substantial body of opinion that considers or will consider the effect to be adverse, the Lead Agency shall regard the effect as adverse." (CEQA Guidelines, Section 15064 (c).) The EIR fails to take into account the significance of an activity may vary with the setting. (Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1026.)

Lack of locally appropriate standards can be found throughout the EIR and should be rectified. We give examples later in these comments.
C. Environmental Impacts

1. Impacts over-generalized, discussion by subareas needed.

The DEIR discusses numerous impacts and we feel that this will help us all better understand the Plan that is under consideration. However, many of the impacts have been overgeneralized and as a result may appear less than significant. When the county is looked at in more detail - area by area and neighborhood by neighborhood, impacts can be more clearly seen. We feel that a more detailed approach, more specific to subareas of the county would provide a more useful and accurate analysis and is needed to ensure a legally adequate EIR. This is made impossible by the fact that the Plans for many of the Community and Town Areas have not yet been prepared.

2. Impact discussion not specific in many cases. Implementation success often not measurable.

"The courts have favored specificity and use of detail in EIRs." (Whitman v. Board of Supervisors (2d Dist. 1979) 88 Cal.App.3d 397, 411 [151 Cal.Rptr. 866].) In Whitman, the Court found that the discussion of cumulative impacts lacked "even a minimal degree of specificity or detail" and was "utterly devoid of any reasoned analysis." The document relied on unquantified and undefined terms such as "increased traffic" and "minor increase in air emissions".

"The EIR, with all its specificity and complexity, is the mechanism prescribed by CEQA to force informed decisionmaking and to expose the decisionmaking process to public scrutiny." (Planning and Conservation League v. Department of Water Resources (2006) 133 Cal.App.4th 892, 910.) A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues (citation) but affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives." (People v. County of Kern (5th Dist 1974) 39 Cal.App.3d 830, 841-842 [115 Cal.Rptr. 67].) quoting Silva v. Lyon (1st Cir. 1973) 482 F.2d 1282, 1285.)

Please note that while the DEIR is in essence a Program EIR, this does not dismiss the agency's responsibility to address impacts in as great detail as possible given the action at hand or to create mitigation measures for which implementation success is measurable. "A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible." (CEQA Guidelines, Section 15162, subd. (c) (5).)
D. Mitigation Measures

1. All available mitigation not explored.

CEQA requires lead agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15062, subd. (a)(2), 15021, subd. (a)(1). A number of very constructive mitigation measures have been recommended. However, it is important to explore all available mitigation measures even if they are not selected (CEQA Guidelines, sections 15126, subd. (e) & 15126.4; Stevens v. City of Glendale (1981) 125 Cal.App.3d 986.) In some cases, the DEIR "drops the ball" when, in fact, additional mitigation measures may be available. We urge the consultant and staff to work a bit harder to identify mitigation measures. We have submitted a number of mitigation measures for consideration in these and previous comments. These and all other available mitigation measures should be discussed and the reasons for choosing one over the other(s) should be stated.

In most cases, we maintain that because it is a land use plan that is under consideration, changes to the draft land use map should be the first tier of mitigation attempted rather than reliance on other forms of regulation. As an example, decreasing the size of the Area Plan expansion areas will provide more effective mitigation than a series of policies aimed at trying to fix the impacts of the expansion.

2. Evidence not given that mitigation measures will be effective in many instances.

The administrative record must contain substantial evidence supporting the agency's view that the measures will mitigate the impacts. "A clearly inadequate or unsupported study is entitled to no judicial deference." (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California, (1988) 47 Cal.3d 376, 422 & 409 fn. 12 [253 Cal.Rptr. 426].)

"Argument, speculation, unsubstantiated opinion, or narrative evidence which is clearly erroneous or inaccurate does not constitute substantial evidence." (CEQA Guidelines, sec. 15384.) Evidence must be given to demonstrate that the recommended mitigation measures are capable of: (a) "avoiding the impact altogether by not taking a certain action or parts of an action"; (b) "minimizing impacts by limiting the degree or magnitude of the action and its implementation"; (c) "rectifying the impact by repairing, rehabilitating, or restoring the impacted environment"; (d) "reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action"; or (e) compensating for the impact by replacing or providing substitute resources or environments. (CEQA Guidelines, sec. 15370.) In virtually all of the impact discussion and mitigation measure sections in the DEIR, adequate information is not given to evaluate whether or not a mitigation measure is capable of meeting any of these mandates.
3. Future study and ordinance creation not assured mitigation.

In some cases, further study or the adoption of as yet unwritten ordinances is recommended as mitigation with no assurances as to the outcome. The courts have discounted this approach in numerous instances. In *Kings County Farm Bureau v. City of Hanford* (1999) 221 Cal.App.3d 662, the EIR's groundwater impact analysis was determined to be inadequate because it relied on a vague "mitigation agreement" without demonstrating that water would be available for purchase. The time for studying impacts is now, in the EIR, before approval of the project. "The EIR has been aptly described as the 'heart of CEQA' [Citations]. Its purpose is to inform the public and its responsible officials of the environmental consequences of their decision before they are made. Thus the EIR 'protests not only the environment but also informed self-government.'" (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 563-564; see also Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 353.)

Similarly, the time for identifying mitigation measures and mitigation standards is now, before approval of the project. In *Oro Fina Gold v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-885, the post-approval formulation of plans was considered inadequate mitigation, because "in the absence of overriding circumstances, the CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, it was noted that mitigation measures are only adequate if the EIR demonstrates that the approving agency possessed "meaningful information" reasonably justifying an expectation of compliance. "When approving a project that is general in nature (e.g., updating a general plan), the lead agency must develop and approve whatever general mitigation measures are feasible, and cannot merely defer the obligation to develop mitigation measures." (Citizens for Quality Growth v. City of Mount Shasta (Ct. Dist. 1988) 196 Cal.App.3d 433, 442 [245 Cal.Rptr. 727]). Under limited circumstances, deferral of mitigation may be permissible, if the agency displays a commitment to mitigating the impacts by identifying performance criteria that the measures must satisfy. (Sacramento Old City Association v. City Council of Sacramento (3d Dist. 1991) 229 Cal.App.3d 1011, 1026-1029 [280 Cal.Rptr. 478].)

The future creation of Town and Community Plans, or the preparation of a rural character threshold (in future standards (Measure 4.3-1a(2)), for example, do not meet the legal standards for mitigation deferral. We maintain that where mitigation measures in the DEIR recommend further study or adoption of ordinances, and fees, the DEIR has not demonstrated a commitment to mitigation below the significance level. The evidence in the EIR will not support a finding that the County "has made a binding commitment to implement the mitigation measures or, more appropriately, that they are incorporated into the project or required as a condition of project approval in a manner that will ensure their implementation." (Federation of Hillside and Canyon Associations v. City of Los Angeles (2000) 135 Cal.App.4th 255, 262.) The trial EIR must provide information that will give evidence of assured mitigation.

6
4. Plan policies which serve as mitigation, and mitigation measures in general, must include a required time frame to ensure implementation.

Policies and implementation measures within the Plan and DEIR mitigation measures are not assured of implementation because timing has not been assigned. Those that are expected to serve as mitigation must have timing assigned to assure mitigation effectiveness.

5. Overriding considerations not supported in DEIR.

Finally, we should note that the DEIR does not include information which would substantiate the feasibility of the proposed mitigation measures or the proposed environmentally superior alternative. We expect this will also be the case with additional mitigation measures and the alternative recommended in this letter. We note that the final EIR must respond to specific suggestions for mitigating significant impacts with good faith and measured analysis. (Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1029.) Any findings of fact rejecting mitigation measures or alternatives must be supported by substantial evidence in the record.

Similarly, there is no evidence in the EIR to support a statement of overriding considerations in favor of the proposed project. Ultimately, any statement of overriding considerations must be supported by substantial evidence in the record. (Sierra Club v. Contra Costa County (1992) 10 Cal.App.4th 1212, 1223.)

E. Reliance on Previous EIRs

The General Plan DEIR relies extensively on analysis in a number of Community Plan and Town Plan EIRs which were prepared some time ago. Conditions have changed since these EIRs were adopted. In addition, the DEIR does not include a scoping document which makes it clear how the analysis in these previous documents are applicable to the DEIR. (See CEQA Guidelines, sections 15155 & 15162.)

II. COMMENTS ON INDIVIDUAL DEIR CHAPTERS

A. Introduction

On page 4-1, the DEIR states, "Social, economic, or beneficial impacts are therefore not considered adverse impacts under CEQA and are not considered in this EIR." Actually, while economic and social effects are not treated as significant effects on the environment, they
are relevant in three ways in EIRs. First, an "economic or social effect of a project may be used to determine the significance of physical changes caused by the project." (CEQA Guidelines, sec. 15131, subd. (b).) Second, "an EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes." (CEQA Guidelines, sec. 15131, subd. (c).) Finally, economic or social changes may be used to evaluate the feasibility of mitigation measure and alternatives. (CEQA Guidelines, sec. 15131, subd. (c).)

B. Summary

An EIR shall contain a brief summary (up to 15 pages) that identifies the significant effects of the project, the proposed mitigation measures and alternatives, the areas of controversy, and the issues to be resolved. (CEQA Guidelines, sec. 15123.)

Page 2-11 lists only a few general areas of controversy. In order to provide the required good faith effort at full disclosure, the final EIR must provide a comprehensive list. Based upon these comments alone, the areas of controversy regarding the General Plan include:

General Areas of Controversy:

- Lack of quantitative objectives in the General Plan.
- Lack of standards that will apply to achieve General Plan policies.
- Lack of clear timing regarding General Plan policy and mitigation implementation.
- Delays in implementing critical mitigation.
- Lack of consideration for the cost and feasibility of mitigation, and

Specific Areas of Controversy:

- Expansion of Mariposa and other Town Area boundaries.
- Density credit for unbuildable acreage.
- Lowering the minimum lot size from 160 acres to 40 acres among public land inholdings.
- The inadequacy of rangeland protection.
- The need for a stronger buildable lot policy.
- The need for more specific design review criteria.
- Lack of an effort to improve the housing element despite past poor performance in implementing the element.
- The need for traffic and other impact mitigation fees.
- The need for a tree canopy retention policy.
- The need to limit development in the 100-year floodplain.
- The lack of landscape level planning for conservation of agricultural land and mineral land resources, for protection of native plants and wildlife, for designation of areas
unsuitable for wells or septic systems, for maintenance of scenic highways, and for
protection from catastrophic wildland fires.

- Lack of a prescribed land use designation for public facilities.
- Lack of a mechanism to balance residential general plan amendments with concurrent
  reductions in unit capacity elsewhere in the County.
- The need for a comprehensive set of policies to address air quality.
- The removal of the policies to mitigate light and glare impacts.

The Summary in the DEIR lists a number of impacts deemed unavoidable. However, in some
instances we believe that the County has not made an adequate attempt to mitigate the impacts.
Also, in some instances, the County has not demonstrated that the impact cannot be mitigated.
For example:

On Page 2-13, the DEIR lists among the significant unavoidable impacts, "Impact LC-6. Build-
out of the proposed General Plan might impact the County's mineral production industry. This
would result in a significant impact." The DEIR explains that the impact is due to residential
land use classifications being applied to sand and gravel resource areas. The DEIR does not
indicate how many units of residential development are being accommodated on these mineral
resource lands. There is no way to determine the County could remove the residential land use
designation from these mineral lands, and still have a General Plan that provided sufficient
residential development to meet the demands of the foreseeable future. However, given the huge
excess residential capacity in this plan, it is hard to believe that the mineral resource lands need
to be sacrificed to meet projected housing demand. In El Dorado County, there is a policy
referred to as Measure A, that restricts residential development on and around mineral resource
lands. Mariposa should consider a similar policy to mitigate impacts to mineral resources, and to
reduce impacts from mineral resource operations near residential areas.

On page 2-14, the DEIR lists among the significant unavoidable impacts, "Impact PS-2. Build-
out of the proposed General Plan could create a demand for additional school capacity that
cannot be met by existing or planned capacity, which would be a significant impact." At this
time, some school districts are crowded, while others have excess capacity. Consider providing
an approval preference for projects proposed in school districts with existing capacity.

On page 2-15, the DEIR lists among the significant unavoidable impacts, "Impact AQ-2. Build-
out of the proposed General Plan could create significant impacts to air quality from emissions
greater than the listed significance thresholds would remain." Please consider adding a detailed
air quality section to the General Plan. Many cities and counties have detailed air quality
sections in their general plans. Such policies can go a long way toward improving air quality and
reducing smoke and haze.

On page 2-17, the DEIR lists among the significant unavoidable impacts, the conversion of
Williamson Act agricultural lands to residential use. The DEIR indicates that approximately
2200 acres of Williamson Act lands (not protected by other conservation easements) are give
residential land use designations under the proposed General Plan. However, the DEIR does not quantify the housing accommodated by those land use designations. There is no way to determine if the County could remove the residential land use designations from these Williamson Act lands, and still have a General Plan that provides sufficient residential development to meet the demands of the foreseeable future. However, given the huge excess residential capacity in this plan, it is hard to believe that the Williamson Act lands need to be sacrificed to meet projected housing demand.

Pages 2-17 through 2-20 describe significant and unavoidable impacts associated with biological resources. The County claims that its major problem is the lack of comprehensive habitat maps for the County. This is not entirely true. There State of California has detailed vegetation maps for the County that are available free on-line at the CEKES web site. In addition, the SNIP project identified critical watersheds and lands that would provide efficient biological reserves by providing the most valuable habitats with the least number of acres. In addition, the U.S. Forest Service, the Fish and U.S. Wildlife Service, and State Department of Fish and Game have habitat capability models, threatened and endangered species mitigation, and game management plans. All these tools are available to the County for landscape level planning to protect threatened wildlife, and to manage for healthy fish and game populations. Site specific mitigation for discretionary projects alone will create significant impacts, by inadvertently fragmenting habitat and reducing habitat quality. This General Plan is the County's only opportunity to do landscape level planning to protect critical wildlife corridors, roosting and nesting habitat, and rare plant; and to ensure healthy populations of fish and game species. With knowledge of the needs of these species on the landscape, the County can allow continued development that will avoid fragmenting habitat, and may even restore degraded habitat qualities. This is necessary mitigation.

The Summary also lists General Plan impacts that the DEIR deems to have been reduced to a level of insignificance. We disagree with many of these conclusions. For example:

The DEIR states that, with regard to, "Impact PS-1. Build-out of the proposed General Plan would increase demands for public services and utilities. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential." However, the DEIR does not provide sufficient information to determine the financial feasibility of reducing these impacts. Thus, we do not accept the conclusion that the impact is less than significant.

The DEIR states that, with regard to, "Impact HW-3. Build-out of the proposed General Plan could reduce groundwater quantity by taking more water, particularly from crystalline rocks, than is recharged. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential." However, the current "buildable-lot" policy allows the creation of a lot based upon merely a paper study indicating the likelihood that water is present, and a paper warning that it may not be present. There is a long history in the Sierra foothills of detrimental reliance upon such paper water. Thus, we do not accept the conclusion that the impact is less than significant.
The DEIR states that, with regard to, "Impact HW-5. Build-out of the proposed General Plan could result in placing housing within flood hazard areas. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential." However, the policies still allow for non-river dependent development in the flood hazard zone. Thus, we do not accept the conclusion that the impact is less than significant. This flood hazard zone development is especially curious given the ample amount of land in this hilly County that is both outside the flood hazard zones, and available for development in the General Plan.

C. Project Description

The project description shall contain the precise location of the project on a detailed map, the objectives of the project, a description of the project's technical, economic, and environmental characteristics, and a statement of the intended uses of the EIR. (CEQA Guidelines, see, 15124.)

"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 (3d Dist. 1977) 71 Cal.App.3d 185, 195, [119 Cal.Rptr. 396].) "A curated or distorted project description may satisfy the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decisionmakers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e. the 'no project' alternative) and weigh other alternatives in the balance." (Id. at pp. 192-193.)

Chapter 2 of the DEIR attempts to describe the buildout population of the project. The DEIR is inaccurate because the buildout calculations are inaccurate and low for the following reasons:

1. Assumed residential densities were applied to the buildout total in the various Area Plan expansion areas. Interim Land Use Maps are included in the General Plan for these expansion areas. However, the full range of urban uses can eventually be permitted in these areas consistent with the General Plan (residential, commercial, public, and recreation with the addition of industrial in the Town Planning Areas. (See General Plan page 5-16.) It is impossible to inventory the full buildout of the county and the resulting specific and cumulative impacts of the General Plan without knowing the actual extent and general location of the uses eventually expected in the expanded Town and Community Areas. For example, there is evidence in the record that a large area of the Mariposa expansion area may be slated for an Industrial designation. At a minimum, the DEIR should note that revised EIRs would be needed if uses were selected for these areas that are more intense than those shown on the Interim Land Use Maps. It appears that the effect of not finalizing land use maps for large areas of the county at this time may have the effect of artificially dividing the project into small pieces, thus diminishing the appearance of overall cumulative impact which is not the intent of CEQA (Sections 15165 and 15166).
(Please note that it is now clear what land uses are proposed for the Mariposa expansion area: an interim land use plan is included in Volume II, while the text of the General Plan notes that existing zoning will be retained (General Plan page 5-24, para. 1)).

2. The cumulative acreage totals for each land use designation are never specified in the General Plan or Technical Background Report which is normally given in chart form in General Plans.

3. The full buildout must assume buildout without the decreases applied for slope and topography in General Plan Table 1-5 for a number of reasons: First, the clustering policy in the Land Use Element (Section I, General Plan page 5-5 and Section 5.4.02.D, General Plan page 5-31) could allow for full density on each parcel. Secondly, there is very little real constraint to development on the relatively large parcel sizes permitted in the county. Most parcels of the ultimate size allowed will have a buildable area. The slope constraint methodology used to decrease assumed development potential was not based on actual buildout experience in a similar area which has reached the degree of development permitted in Mariposa County. In more urbanized areas of the State, the experience has been that full zoning development rights are eventually utilized by property owners.

4. Full extent of Rural Economic land use designations cannot be understood at this time since these designations have not been applied.

Pages 2-46 and 2-11 of the EIR indicate that the State Department of Finance (DOF) projects the County’s population will reach 25,426 by the year 2050. Historically, DOF population projections have been overestimates in counties in the Sierra foothills. However, the DEIR provides no explanation why a General Plan with a 20-year time horizon is trying to accommodate a population of over 50,000, with all the significant impacts associated therewith. Nor does the DEIR explain why the “alternative” accommodates a population of over 39,000, with all the significant impacts associated therewith. The final EIR can and should consider an action alternative that actually reduces impacts relative to the project, while still accommodating DOF projections for the next twenty years.

D. Land Use

1. Impact #LU-1, Physical division of an established community.

1. Has it been demonstrated that proposed mitigation will be effective? (CEQA Guidelines, sec. 15170) A number of the land use policies which are listed as mitigation including 5-1a, 5-2a, 5-4a, 5-7a, and 5-9a are vaguely worded and it has not been demonstrated that they will serve to reduce potential land use impacts. For example, Policy 5-1a reads: “New development shall be in keeping with the County’s rural character”. Implementation Measures 5-1a(1) reads: “Described character for each of the planning areas is to be defined by Area Plans.” While the future preparation of Area Plans and writing of regulations to define thresholds for what is rural...
character is a good idea, there is no evidence that the as yet unwritten standards can provide adequate mitigation, for example: 1.) There is no assurance that the rural character regulations will be adopted. 2.) There is the potential that the regulations will be developed in an "unaccountable arena" since it is unclear whether or not they will result from a discretionary approval. If staff were to create the standards, there would be no public opportunity to review them for the ability to carry out the mitigation expectation. 3.) No performance criteria are established to guide development of the standards or against which implementation can be measured.

We understand that future tiers of regulation (such as zoning ordinances and design guidelines) will always follow a General Plan. However, a basic understanding of the required features and process of such further regulation is required to understand mitigation of impacts discussed in this EIR. Section 5.5.03-C of the General Plan discusses the various tiers of design review and notes that other Elements of the General Plan make certain aspects of design review mandatory such as in Historic Districts. However, it is not clear how design review for commercial, industrial, and public buildings will be carried out and discussion of residential design guidelines is avoided. Discussion of landscaping and sign guidelines is vague. Additional mitigation measures should be added as follows to add specificity and ensure mitigation:

Add: See recommendations calling for specific Design Guidelines and process in this letter under Visual Impacts.

Add: Policy 5-2a; Implementation Measure 5-2a(1); Policy 5-4a; Implementation Measures 5-4a(1), (2), and (3); and Policy 5-7a shall include the additional phrase: "provided that significant environmental impacts are not identified by their location/".

2. Impacts Not Discussed. In addition, the fact that a number of Community and Town Area boundaries have been expanded consistent with the General Plan is not discussed in this section. The DEIR discusses the Mariposa area expansion. However, a number of other Plan Areas are permitted for substantial expansion including Bear Valley, Mt. Bullion, and Catheys Valley. Though it is not known what the Area Plans for these locations will eventually include, the General Plan allows for the full range of urban uses (residential, commercial, industrial, job center, recreation and public) in the Town Planning Areas. Only industrial and multi-family uses are deleted from the Community Plan Areas. Special Planning Area land uses are to be defined at a later date. (General Plan page 5-18.) A worst case scenario of urban uses in these areas must be assumed in the DEIR relative to these expansion areas with resulting significant impacts. As a result, the following mitigation should be added:

Add: Reduce all expanded Community and Town Plan Areas to existing boundaries.

There is also a real potential for the areas between Mt. Bullion and Bear Valley are, Mariposa and Mt. Bullion areas to suburbanize under proposed land use designations, further decreasing the visual separation and character of these communities, resulting in significant impacts. This
impact is not discussed in the DEIR. As a result, the following mitigation should be added:

Add: The area between Mt. Bullion and Bear Valley, defined by Highway 49 North and Pendola Garden South, shall be designated Agriculture/Working Landscape, 160 acre minimum parcel size.

The Natural Resource Land Use designation has been applied to areas which include many parcel sizes which are larger than its 40-acre minimum. The result will be further subdivision bringing with it loss of community character, and impact to locally important agriculture. These impacts have not been discussed in the DEIR. As a result, the following mitigation should be added:

Add: The Natural Resource Land Use designation shall have a minimum parcel size of 160 acres.

2. Mitigation Measure #LU-1.1a and 1.1b.

These measures call for preventing premature urbanization of the Mariposa Expansion Area until a new Town Plan can be adopted. However, it has not been demonstrated how these measures will be effective: 1.) They only apply in the short term; 2.) The term ‘premature urbanization’ is vague; 3.) Urban expansion would be allowed by measure LU-1b; however, this would not mitigate the basic impact, that of a greatly expanded urban area, dividing and changing the essential character of the Mariposa area; 4.) There is still the assumption that a major expansion will occur when the Town Plan is revised. Expansion of the Mariposa area could include expanded industrial and airport uses as well as up to 19 square miles of additional suburban residential densities. This can only be defined as sprawl which is counter to the General Plan goals and policies listed in the impact discussion and which are assumed to act as mitigation.

Has all available mitigation been explored? (CEQA Guidelines, sec. 15126.4.) The most effective available mitigation of this impact is simply reducing substantially the size of the Town and Community Plan areas which are slated for expansion in the General Plan. This mitigation option is not discussed in the DEIR. The following mitigation should be added:

Add: Reduce boundaries of the Mariposa Town Plan Area to existing boundaries.


The DEIR concludes that this impact will be less than significant. This is an unlikely result based on the history of land use in California. Impacts of incremental urban conversion are likely unavoidable. This is a common impact conclusion in General Plan EIRs in agricultural areas. (Examples include the Nevada County General Plan EIR, 1995.)
The Standards of Significance on Table 4.1-1 in the DEIR do not reflect local conditions relative to agriculture. They do not include the issues of farmland of local importance or the value of privately owned open space lands within the County which could be significantly reduced under buildout of the General Plan. The following Standard of Significance should be added:

Add: Conversion of unique farmland, farmland of local importance, or privately owned undeveloped or agricultural lands in ownership patterns of 20 acres or.

(This standard better reflects Mariposa County's rural and suburban level of impact concern as well as the importance of relatively small, moderately productive farmland when compared to the statewide inventory of farmland. In addition, loss of open lands is not just a concern from an agricultural or timber standpoint, but also from a community character standpoint.)

4. Land Use Impacts Not Discussed.

1 Land use incompatibility. This impact was not discussed in the DEIR and is basic to any discussion of impacts in a land use plan. The issue of community character is extremely important in a rural community, as noted throughout the General Plan and must be addressed with a standard of significance and an impact discussion in the EIR.

Add: Local Standard of Significance: Introduction of land uses into an area which are not normally expected in the prevailing land use of the area or change in the established character of a neighborhood.

Mitigation: These should be identified by further analysis, but should include the more specific design guidelines wording discussed in the Visual Impact section of this letter.

2 Community Character. This impact is not discussed. Again, the size of the Community and Town Plan areas is a critical concern in these impact areas. The Corbett Valley Plan area is 26 square miles in size, as an example. Since the density and intensity allowed in the expansion zones of the Area Plans is not clear in the General Plan, it is possible that very large suburbanized areas of 5-acre lots and associated commercial and other urban uses could result. This is counter to the first two guiding policies of the Land Use Element calling for Smart Growth development patterns and preservation of rural quality. As demonstrated in the EIR, the amount of growth that buildout of this scale would result in will result in significant unavoidable impacts in a number of areas, most critically that of traffic.

Channeling growth to Community and Town Regions has merit. However, there are limits. This is true from the center outward pattern of development was how most cities in the U.S. developed. Over time, small cities became big cities and city centers and old neighborhoods changed.
often became heavily impacted by significant environmental impacts such as traffic, noise, air quality, land use conflicts, and poor public services and facilities. There is a limit to the extent that growth pattern can be allowed before the quality of life in rural communities is negatively impacted. Policies can recommend that services be available and impacts be avoided, but the reality is that this is difficult to achieve when growth overwhelms existing communities. The size of the Community and Town Plan areas where expansion is recommended must be substantially decreased to previous boundaries.

Add: Mitigation recommended under section 2A previously.

Add: All residential land use designations shall include a range of residential densities permitted, clearly stating that the maximum permitted is just that. This will enable mitigation on a case by case basis to include reduction in maximum permitted densities of project specific impacts as they are identified.

.3 Commercial Sprawl. The impact on the rural character of Mariposa County by the future siting of Rural Economic Land Use designations (General Plan Section 3.4.03) has not been discussed. Many policies in the Plan are aimed at stopping sprawl countywide. However, Rural Economic uses are allowed just about anywhere. More importantly, they are permitted to be of a size that could result in leaping development, nuclei for future sprawl land use compatibility, and visual impacts. As mitigation, these policies must be tightened up to truly ensure that new locally oriented commercial services are only allowed to serve the localized population, not to create new traffic attractors. In general, a population of 1,000 only generates a need for neighborhood commercial uses of 2.5 acres or 20,000 to 50,000 square feet of building area. But in the draft General Plan, parcel size is required to be at least 20 acres in size for commercial uses. With a building maximum allowed of 25%, up to 280,000 square feet of commercial buildings (the size of many one to two anchor shopping malls) could be constructed on a 20-acre parcel. This must be considered growth inducing and certainly out of character in a rural area. As a result, the following mitigation should be added:

Add: The Rural Economic Land Use designation shall be revised to prohibit commercial developments over 5 acres in size, with a 25% maximum building coverage. Commercial uses in this designation shall be sized to serve only the local population, defined by a market study when uses are proposed.

.4 Open Space. Loss of Open Space as the County urbanizes has not been discussed in the DEIR.

.5 Clustering. The impact of the General Plan clustering policy area vs. density policy has not been discussed. There is the real potential for this policy to result in clusters of housing outside the Area Plan boundaries which are counter to the traditional rural land use pattern in Mariposa, and which have the potential to form the nuclei of future development expansion areas. In addition, the buildout of a traditional 5-acre lotting pattern in these outlying areas will preclude
future urbanization of these areas. The clustering policy will also ensure greater buildout overall since physical constraints will not reduce development potential. This will exacerbate already significant impacts identified in the DEIR.

**Add:** Eliminate clustering policy in residential designations outside Area Plan boundaries. Where clustering policy is used, require deed restrictions or conservation easements to ensure remaining property does not receive development entitlements in the future.

**E. Traffic and Circulation**

As an overall comment, the traffic section of the DEIR is not based on factual analysis. A traffic study was not prepared for the DEIR, making it impossible to fully understand the traffic impacts of full buildout of the General Plan. 2010 and 2025 projections from the Regional Transportation Plan (RTP) are referred to. However, impacts under full General Plan buildout are not determined.

1. **Standards of Significance appropriate to local concerns/conditions not used.**

   **1. Level of Service D will cause significant impacts in a rural area.** Level of Service (LOS) D is established as the target roadway level of service for the County in the General Plan and, as a result, is used in the DEIR. This is not an appropriate level of service for a rural area. LOS C is a common target in rural areas. As an example, the 1995 Nevada County General Plan uses LOS C in rural areas (Circulation Policy 4.1). The artificially high Level of Service D used in the DEIR and General Plan creates an impact analysis that is not meaningful to Mariposa County.

2. **Traffic impacts to quality of life need standard of significance.** Thresholds for traffic related quality of life impacts in rural neighborhoods must also be developed. The combination of traffic noise, speed, and amount of traffic combined can significantly impact the quality of life in neighborhoods and rural areas. This threshold is much lower than that for Level of Service on arterial roadways and highways (generally under 1500 ADT) and must be addressed with appropriate policies and mitigation measures. Bypass roads, reduction in densities, deeper front yard setbacks on impacted roads, traffic calming features and other methods can be used to address traffic related quality of life impacts.

3. **Road standards needed.** Minimum road standards should be included in the DEIR to provide a measurable impact evaluation criteria for General Plan traffic impacts as well as future project level impacts since they are not included in the General Plan. Consistency with minimum road standards is one of the most important criteria for local and collector roads in rural areas as opposed to Level of Service. It is common to include roadway standards in General Plans. As an example, the City of Grass Valley General Plan (1999) includes roadway standards.
2. Impacts TT-1 and TT-2, Impacts to State highways, county roads, and county intersections.

Even with the minimal RTP analysis, it is concluded that LOS E will be reached by 2025 on SR 140 from Hornitos Road to Mariposa and SR 140/49 through the Town of Mariposa. With a lower threshold of LOS C or analysis at full buildout, we expect that additional roadways will exceed target thresholds. With no data available, the DEIR assumes that all are likely that all of the intersections in the County are operating at or above the standard of LOS D.9 (DEIR page 4-17) Because long-term State funding is needed to mitigate these impacts, which cannot be assured, impacts are considered to be significant and unavoidable in the DEIR. We maintain throughout this letter that all available mitigation measures must be explored, particularly in the case of unavoidable impacts.

Has all available mitigation been explored (CEQA Section 15126.2)? All available traffic impact mitigation has not been explored fully in the DEIR. Significant traffic impacts should not be designed into the plan. A key tenet of the draft General Plan is to protect rural quality. Yet the DEIR concludes that growth consistent with the General Plan will result in significant and unavoidable traffic impacts. As a result, the following mitigation measures should be added:

Add: Scale back all Community and Town Plan areas which are proposed for enlargement to existing boundaries.

Replace Policy 9-1e with: Standards for all County roadways shall be included within the General Plan.

Policy 9-12 on General Plan page 5-34 shall be revised to require use permits for all uses adding 15% to daily traffic.
F. Public Service and Utilities Impacts

Except for roads, the General Plan does not establish level of service criteria or other service standards for the various public services and utilities. Without making it clear what standards will be required, who will pay for the capital facilities and ongoing annual costs, and whether or not improvements will be required concurrent with development, it is not clear that mitigation can be assured. It is typical of General Plans to establish such standards. For example, the 1996 Grass Valley General Plan includes standards for acres/1,000 population for parks (page 8-7). The 1995 Nevada County General Plan includes quantified standards for county services, jail, libraries, and parks (page 65). The Sierra County General Plan Public Facilities Element includes standards for water, fire protection, sheriff protection, schools, general government, libraries, private utilities, postal services, medical services, animal control, and solid/toxic waste facilities (Table 5-13). Without these types of standards for all services and utilities, mitigation cannot be assured, nor can success of any degree of mitigation be measured.

1. Water and Sewer.

Policy 9-5a and Implementation Measure 9-5a(1) are listed (DEIR page 4-25) as providing assurance that no project will be approved without an approved source for water and wastewater services. However, this policy and measure use the terminology "should." Mitigation is not assured.

Add: wording in above noted policies should be changed to "shall" to ensure mitigation. In addition, it should be specified in these measures that all public services and facilities for new development shall be developer funded to ensure that fiscal impacts to the County are avoided.

2. Parks and Recreation.

The DEIR concludes that there is not enough park land in the county to serve future growth (DEIR page 4-25) and that the policies in General Plan Chapter 12 will ensure adequate provision of parks and recreation facilities as the County grows. However, these policies merely call for the establishment of target service levels (Policy 12-1a), keeping maintenance costs down (Policy 12-1b), and identifying funding for parks and recreation (Policy 12-5a). These policies do not provide assurance of mitigation at this time and do not provide a schedule for when the appropriate measures will be completed.

Add: require inclusion of LOS criteria in the General Plan. Add performance criteria requiring that new development will pay for needed parks and recreation facilities concurrent with development and that all parks and recreation facilities for new development shall be developer funded to ensure that fiscal impacts to the County are avoided.

Likewise, it should be made clear in the General Plan that developers will be required to pay for new facilities concurrent with development or mitigation cannot be assured.

4. Impacts Not Discussed.

Impacts to General Government were not discussed in the DEIR.

G. Biological Resources

1. Impacts BR-1, BR-2, BR-3, BR-4, BR-5, BR-6, BR-8 Impacts to endangered, rare, or threatened plant or wildlife species, nesting sites, habitat for sensitive wildlife species, sensitive native plant communities, wildlife migration corridors, waters of the U.S.

No biological inventory of any type was prepared for the General Plan. As a result, it is impossible to determine the actual potential for impacts.

In addition, the General Plan policies/measures generally cited as mitigation for all of these impacts are not specific enough to ensure mitigation. (Policies 11-2d and 11-4a and associated implementation measures are cited as mitigation for most of these impacts.) The associated implementation measures rely on future adoption of conservation standards and are not directive in nature (using "should" rather than "shall"). As an example, Implementation Measure 11-2d(1) states: "Implement requirements for minimum building and grading setback lines from all waters of the State..." There is no assurance that adequate standards will be adopted. As a matter of fact, stream setbacks are a common area of controversy in the preparation of General Plans and the decision on ultimate setbacks is often made on a political basis rather than based on sound technical rationale.

Without specific and directive mitigation wording, impacts must still be assumed to be significant and unavoidable.

Add: Specific performance criteria should be added to the General Plan in Policies 11-2d, 11-4a, and 11-5a and associated implementation measures which will require that conservation standards, tree protection standards, erosion control standards, and grading standards be adopted which will ensure that plant and wildlife impacts will be reduced below the significant level. Critical standards should be included in the General Plan at this time. For example, mitigation of impacts to streams and other waters could be simply assured at this time by requiring the generally accepted 50 foot setback from the high water mark of intermittent water bodies, and a 100 foot setback from perennial water bodies. A direct prohibition of construction on slopes over 30% is common in General
Plans and should be added.

2. Mitigation Measure BR-1.

The site-specific biotic surveys called for in Mitigation Measure BR-1 apply only to discretionary projects. The impacts that will result from extensive development allowed on existing legal parcels and via non-discretionary projects has not been recognized. Significant, unavoidable impacts must still be assumed, as a result.


The site-specific nesting surveys called for in Mitigation Measure BR-3 apply only to discretionary projects. The impacts that will result from extensive development allowed on existing legal parcels and via non-discretionary projects have not been recognized. Significant, unavoidable impacts must still be assumed, as a result.


This measure calls for the creation of a Comprehensive Vegetation Community Map after Plan adoption. This measure inordinately passes on understanding of impacts to future study. In addition, there is no assurance that preparation of the map will result in mitigation. In fact, the wording in the measure related to its future use is vague: *Measures could then be taken to prevent the loss of greater than 25% of the given habitat type... Habitats of sensitive wildlife species will be avoided to the extent possible.* (Emphasis added.) It must be assumed that impacts will be unavoidable without specific and directive mitigation wording.

5. Mitigation Measure BR-5.

The site-specific sensitive plant surveys called for in Mitigation Measure BR-5 apply only to discretionary projects. The impacts that will result from extensive development allowed on existing legal parcels and via non-discretionary projects have not been recognized. Significant, unavoidable impacts must still be assumed, as a result.


The site-specific wildlife travel corridor surveys called for in Mitigation Measure BR-6 apply only to discretionary projects. The impacts that will result from extensive development allowed on existing legal parcels and via non-discretionary projects have not been recognized.
Significant, unavoidable impacts must still be assumed, as a result.

In addition, the mitigation wording is vague: 2If migration corridors are found at the prospective project site they will be avoided to the extent feasible 3 (Emphasis added.) The assumption that 50% retention of a corridor will ensure mitigation has not been demonstrated. Significant, unavoidable impacts must still be assumed.


The site specific wetland surveys called for in Mitigation Measure BR-8 apply only to discretionary projects. The impacts that will result from extensive development allowed on existing legal parcels and via non-discretionary projects have not been recognized.

8. Impacts Not Discussed.

The impacts of general loss of plant and wildlife habitat including overall tree canopy loss were not discussed in the DEIR relative to biotic impacts.

11. Hydrology and Water Quality

1. Impact HW-2, Degraded surface water quality.

The erosion impacts that will result from extensive development allowed on existing legal parcels and via non-discretionary projects have not been recognized in this discussion.

In addition, Implementation Measure 11-5a (1) which is cited as mitigation is vaguely written, calling for erosion control to be included in the County Grading Ordinance with no performance criteria noted and Implementation Measure 11-5a(2), also cited as mitigation, calls for review and update the provisions of the County Grading Ordinance as needed 3 (Emphasis added.) As noted previously, Implementation Measure 11-2d is also vaguely worded. It does not provide for minimum building and grading setbacks from all waters of the State 3 as described in the DEIR (page 4-45). Rather it requires future determination of these setbacks.

Significant, unavoidable impacts must still be assumed until specific mitigation which can be demonstrated to be effective is devised.

2. Impact HW-4, Groundwater quality.

This impact discussion has not demonstrated that groundwater impacts will not occur as
development proceeds with both individual and shared septic systems in Mariposa County. The clustering of development encouraged by the General Plan is cited as mitigation (DEIR page 4-46) because community disposal systems could be used. There is no evidence given that these shared systems, which are also septic systems as opposed to treatment plants, will be more effective in reducing impacts than individual systems.

Significant, unavoidable impacts must still be assumed until specific mitigation which can be demonstrated to be effective is devised.

I. Air Quality

1. Impact AQ-2. Emissions greater than those listed in significance thresholds or air quality plans.

We agree that this is an unavoidable impact. However, the DEIR does not explore all available mitigation. Clearly, eliminating the Community Plan and Town Plan expansion areas will reduce overall urbanization and resulting traffic and air quality impacts. The newly recommended mitigating Policy AQ-2a calls for establishing land use patterns that minimize impacts to air quality; this would seemingly call for such a measure yet is so vague in its wording as well as in its associated implementation measure AQ-2a(1) wording “require applicants to address cumulative and long-term air quality impacts.” That mitigation cannot be assured.

Add: Reduce all expanded Community and Town Plan Areas to existing boundaries.

Implementation Measures AQ-2(h)(5) and 2(h)(7).

These measures deal with reduction of dust from dirt roads in a very non-specific manner.

Conclude the benefits to air quality from the paving of unpaved roads. Consider placing a 15 mph speed limit on unpaved roads (emphasis added). The impacts of dust from dirt roads in rural areas are significant and are not specifically discussed in the DEIR. In particular, the impact of increasing densities in the areas outside the existing Area Plan areas where dirt roads are still permitted is not acknowledged.

J. Historic and Cultural Resources

1. Impact HC-1. Disruption of potentially eligible National or California Register historic properties.

This impact is considered to be less than significant in the DEIR because of a number of General Plan policies cited. However, the policies cited are neither specific nor directive. Mitigation cannot be assured. For example, Implementation Measure 14-5a(1) reads: Attempt to increase
the number of historic resources in Mariposa County that are preserved, protected and/or rehabilitated. Implementation Measure 14-4a(1) reads: "The County should prepare and adopt Historic Guidelines." Implementation Measure 14-4a(2) reads: "Demolition of County-identified historic structures should require review from the Historic Sites and Records Preservation Commission." Implementation Measure 14-5a(1) reads: "The County... should identify new or expanded historic districts." (Emphasis added.) Within the entire structure of Historic and Cultural Resources Element policies and implementation measures cited in the DEIR, there is no assurance that historic resources will actually be preserved and, most importantly, not demolished.

Significant, unavoidable impacts must still be assumed until specific mitigation which can be demonstrated to be effective as described below:

Add: All mitigating policies described in the DEIR shall be required to be mandatory. In addition, Policy 14-6a should be revised to read: "Demolition of all structures over 30 years shall be reviewed for local, Statewide, or National historic or cultural importance. If determined to be important, demolition shall not be permitted unless the structure is beyond repair."

2. Impacts Not Discussed.

Many structures in the County are of local historic or cultural importance simply because of their age and appearance, though most would not qualify for State or National register status. Loss of these structures would result in significant impacts which have not been discussed in the DEIR. In addition, in many communities with demolition review processes, historic structures are still lost because it is often argued that the cost of repair will be more than new construction. Unless it is made clear in demolition standards that cost is not an issue, but rather, that the concern is whether or not the structure can be repaired, impacts due to loss of structures will likely be significant. The measure recommended above would mitigate this impact.

K. Noise

Contrary to the usual practice, no noise analysis was prepared for the General Plan or the EIR. The potential noise impacts due to buildout of the General Plan simply cannot be understood without the usual noise impact analysis. Existing and future traffic noise levels along roads and highways, in particular, are readily calculable.

In addition, the key policy and Implementation Measure which are intended to protect County residents from future noise impacts are vague:

Policy 15-2c reads: "Measure that new development does not produce noise levels that create an
unacceptable noise environment in those existing areas of the County where the noise environment is deemed unacceptable, and also in those locations deemed noise sensitive. Acceptable noise levels are not defined. In most general plans, this type of policy normally includes a chart which outlines acceptable noise levels for various land uses in decibels. Without this chart, there are no criteria by which to determine level of impacts. (See sample chart, General Plan page D-12).

It should also be noted, however, that the noise acceptability chart should be adjusted to reflect the lower acceptable noise levels in rural Mariposa County. A 55 dB outdoor level would be more appropriate, less where ambient levels are lower.

Implementation Measure 15-2(1) reads: "The County shall assess development activities and determine whether the Noise Element shall be updated or whether to undertake studies to create noise studies and noise exposure indices." This should be the job of the General Plan or the DEIR; without these studies at this time, impacts of Plan buildout cannot be understood.

Add: Noise Acceptability Levels chart within the General Plan.

L. Visual Impacts

1. Impact VR-1. Impacts to scenic routes and vistas.

Implementation Measures 11-1a(1), (2), and (3) are cited as mitigation for visual impacts along the County’s scenic routes. However, these implementation measures are vague in their wording and avoid directing that design guidelines be established for all critical issue areas and land use categories. For example, the General Plan needs to specifically state that design guidelines will be prepared for the full array of design issues including grading, landscaping, signage, etc. in all use categories. Currently, a listing of a full array of design issues to be addressed is only found within the Rural Economic Land Use text of the General Plan (General Plan page 5-40).

Where clear criteria are possible at the General Plan level, they are avoided. For instance, Implementation Measure 11-1a(2) reads: "Develop subdivision design standards for placement of structures on ridgelines and open hillside." Again, there is reliance on future development of standards with no performance criteria given and, thus, no mitigation assured. The critical issue of a simple prohibition on ridgeline development is not addressed. This prohibition is common in General Plans since it is a development practice that has clear negative impacts. A prohibition on development on 30% slopes is also avoided in this Implementation Measure which would address another critical impact in a direct, unambiguous manner. This measure is also common in General Plans throughout the State.

The added Mitigation Measure VR-1 does not add specificity other than providing for guidelines (for which there are no clear performance criteria) in the short term before a Scenic Highway.
Overlay Zone can be adopted.

2. Impact VR-2, Visual Character of Mariposa County.

This impact again cites policies and implementation measures that are vague in wording and which lack performance criteria to ensure that mitigation will occur. For example, Policy 5-1a reads: "New development shall be in keeping with the County's rural character." Associated Implementation Measure 5-1a(1) reads: "Rural character for each of the planning areas is to be defined by Area Plans." Again, while the future preparation of Area Plans and writing of regulations to define thresholds for what is rural character is a good idea, there is no evidence that the as yet unwritten standards can provide adequate mitigation, for example: 1.) There is no assurance that the rural character regulations will be adopted. 2.) There is the potential that the regulations will be developed in an "unaccountable arena" since it is unclear whether or not they will result from a discretionary approval. If staff were to create the standards, there would be no public opportunity to review them for the ability to carry out the mitigation expectation. 3.) No performance criteria are established to guide development of the standards and assure mitigation.

Policy 5-2a's associated Implementation Measure 5-2a(1) cited as mitigation calls for development to occur outward from Area Plan boundaries, yet the Area Plans have been greatly expanded in the General Plan with significant potential for urban sprawl and associated visual impacts.

Implementation Measure 11-2d cited as mitigation does not specify setbacks to be required from streams and lakes; the setback chosen can vary greatly in its ability to mitigate visual impacts. Implementation Measure 11-4a(2), also cited as mitigation, calls for the County to "minimize" removal of trees. Again, vague wording with no ability to measure results and assure mitigation.

This impact discussion does note that visual character standards are needed for future Recreation and Resort Uses (Mitigation Measure VR-2). However, no performance criteria are given to guide their development.

Much more specific mitigation is needed to address the overall visual impacts of buildup under the General Plan. This includes scaling back the Area Plan expansion zones and other issues of development scale discussed in the land use section of this letter. In addition, the General Plan, in its section on Design Review (General Plan pages 5-30 to 52) does not make it clear how the design review process will work in the County. General Plan Section C-4 (General Plan page 5-32) merely lists a number of ways that the process could be implemented. Sections D and E (General Plan page 5-32) tout the positive aspects of landscaping and sign regulations, but do not require them.

Relative to visual impacts, mitigation must be specific, directive, and include appropriate performance criteria or mitigation cannot be assured.

Add: Design guidelines shall be prepared for the County and within each Area Plan boundary and adopted by the Board of Supervisors within 2 years of General Plan adoption.

Guidelines shall include standards for all land use categories with the following exceptions:

Agricultural structures - no guidelines
Residential - guidelines within all Historic Districts shall be required.

Design Guidelines shall be developed in the following issue areas with performance criteria noted:

Site design. See E(3)(a), General Plan page 5-40.

Viewshed. See E(3)(b), General Plan page 5-40.

Structures, landscaping. See E(3)(c), General Plan page 5-40.

Grading. See E(3)(d), General Plan page 5-40. Add: Construction and grading shall not be permitted on 30% slopes.

Site development. See E(3)(d), General Plan page 5-40. Add: Ridgeline development shall not be permitted. And Structures shall individually not exceed 10,000 square feet in size outside the Area Plan boundaries and 20,000 square feet within the Area Plan boundaries.

Lighting. See Mitigation VR-3. It should be made clear that all new development includes all land uses - commercial, industrial, public, recreational, and residential.

Signage. Signage standards shall be developed to comply with the overall goal or compatibility with rural character. Sign standards must, at a minimum, include the following criteria:

Signs shall be designed to be an integral part of the structure.

Signage size standards shall be based on the minimal size needed to be read by passing motorists.

One sign per place of business shall be permitted.

No off site signage shall be permitted.

No internally lit signage shall be permitted. 
Temporary sign standards shall be developed and, at a minimum, shall be limited to no more than 60 days per year per parcel.

The design guidelines shall be implemented via a discretionary design review process at the Planning Commission level for regions outside the Area Plan areas and by appointed community design boards within Area Plan boundaries.

M. Unavoidable Adverse Impacts

This section is supposed to describe the unavoidable adverse impacts of the project, and to explain why the project is being proposed despite these significant effects. (CEQA Guidelines, sec. 15126.2, subd. (b)). The section notes that the proposed General Plan will have significant impacts on mineral lands, traffic, schools and air quality. However, there is no explanation in this section why the General Plan is being proposed despite these significant impacts. This is not a good faith effort at full disclosure. (CEQA Guidelines, sec. 15151.)

N. Irreversible Impacts & Short-term Uses v. Long Term Productivity

CEQA requires that, in this section of the DEIR, "Irrevocable commitments of resources should be evaluated to assure that such consumption is justified." (CEQA Guidelines, sec. 15126.2, subd. (c).) The 4-paragraph analysis is virtually devoid of any specificity with regard to the resource trade-offs. There is no quantification of the resources lands sacrificed to residential development. There is no mention of the forests and the mineral resource lands sacrificed to residential development. There is no explanation that justifies the General Plan's sacrifice of these resources to so grossly over-supply the market for residential development. This is not a good faith effort at full disclosure. (CEQA Guidelines, sec. 15151.)

O. Growth Inducing Impacts

The FRR must "Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment." (CEQA Guidelines, sec. 15126.2, subd. (d).) However, this section of the DEIR merely discusses the theory of growth inducing impacts, while failing to evaluate the growth inducing impacts of the General Plan. There is no quantification of impacts, and no real disclosure. This is an unjustified and grossly over-supplies the residential development market. While the
Department of Finance projects County population will grow from 17,991 in 2005 to 20,600 by the year 2020, the proposed General Plan accommodates a population 39,000 to 51,000. (DEIR, Table 2-4.) Such a huge over-supply will have growth inducing effects, and the DEIR should disclose these in this section.

Impacts Not Discussed.

The sizes of a number of Community Plan and Town Plan areas have been increased in the General Plan. Within these areas, commercial land uses and in the case of the Town Areas, industrial land uses are permitted but the maximum extent is not defined at this time. It is noted that existing zoning districts will be retained in the short term in these expansion areas, for instance in the Mariposa area, (General Plan page 5-24, line5). But land use designations are not limited by the General Plan. In addition, in the regions outside the Plan areas, Rural Economic (commercial, resort, and recreation) uses are permitted only limited by a 1000-person market radius for commercial uses. Lot size is required to be at least 20 acres in size for commercial uses. With a building maximum of 35%, up to 280,000 square feet of commercial buildings could be constructed on a 20-acre parcel. In general, a population of 1000 generates a commercial need for approximately 2 to 5 acres of commercial, 20,000 to 50,000 square feet of building.

Anything more than this must be considered growth inducing and certainly out of character in a rural area. There are similar concerns relative to the size of potential resorts.

The potential for these policies to increase urbanization in general must be discussed. In particular, the potential for the creation of new rural commercial nodes to spark general plan amendment requests with further growth inducing impacts and associated physical impacts must be explored.

In addition, the General Plan calls for a buildout capacity that far exceeds the period of the Plan (See General Plan page 1-17) and assumes a growth rate which has not been experienced over a continued span of time in Mariposa County. These assumptions and provisions must be considered growth inducing.

Add: An adopted growth rate similar to that experienced over the past 20 years and a land use map that will not facilitate a buildout beyond what is needed over the next 20 to 30 years is needed to mitigate these impacts. The measures recommended throughout this letter would accomplish these goals.

P. Cumulative Impacts

"Cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." In some cases, a cumulative impact "results from the incremental impact of the project when added to other
An EIR must discuss significant cumulative impacts, and/or explain why the cumulative impacts are not significant. (CEQA Guidelines, see 15130; Citizens to Preserve Ojai v. County of Ventura (2d Dist. 1985) 176 Cal.App.3d 421, 432 [222 Cal.Rptr. 247].) It must summarize their "expected environmental effects" and "examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (CEQA Guidelines, see 15130.) The more severe the existing environmental problem is, the lower the threshold for treating the project's contribution to the cumulative impact as significant. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 718-721 [270 Cal.Rptr. 850]; Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 88, 120.)

"It is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them." [Citation.] A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval. [Citation.] An inadequate cumulative impact analysis does not demonstrate to an apprehensive citizen that the governmental decisionmaker has in fact fully analyzed and considered the environmental consequences of its action." Citizens to Preserve Ojai v. County of Ventura (2d Dist. 1985) 176 Cal.App.3d 421, 431 [222 Cal.Rptr. 247]. (Citing San Franciscans for Reasonable Growth v. City and County of San Francisco (1st Dist. 1984) 151 Cal.App.3d 61, 79 [198 Cal.Rptr. 634].)

In Whitman v. Board of Supervisors (2d Dist. 1979) 88 Cal.App.3d 397, 411 [151 Cal.Rptr. 866], the Court found that the discussion of cumulative impacts lacked "even a minimal degree of specificity or detail" and was "utterly devoid of any reasoned analysis." The document relied on unquantified and undefined terms such as "increased traffic" and "minor increase in air emissions".

The three-paragraph discussion of cumulative impacts in the DEIR provides no detailed treatment issues of and no quantification of the impacts. It provides no frame of reference for the General Plan's cumulative impacts, when added to past impacts. What percentage of our mineral lands will be lost to residential development, and will the local industry survive? What is the expected shortage of classrooms, and how will schools currently at capacity cope? What current roads and intersections will fall below the LOS, and how much congestion are they likely to get? How many more respiratory illness episodes will we get due to the worsening air quality? Can the wildlife survive the next round of habitat loss, or will this margin of habitat loss push species to local extinction? Instead of quantifying the impacts, the analysis used vague terms such as "traffic increases" and "greater numbers of people." This does not meet the standards noted.
above for an adequate discussion of cumulative impacts.

As discussed throughout these comments, we conclude that the cumulative impacts of General Plan buildout cannot be understood without understanding the impacts of buildout in the Town Plan and Community Plan areas to be expanded. Since land use designations have not been finalized in these expansion areas, nor have buildout calculations by land use designation been provided, impacts cannot be fully determined.

Economic uses in outlying areas are also not well defined.

The cumulative impacts of the proposed plan combined with plans of other jurisdictions (such as the National Park Service) and individual area plans have not been discussed. The individual area plan EIRs have been referred to, but there is no discussion of the impacts of each plan combined together. (An example of this approach is in the Sierra County General Plan EIR, 1983.)

Q. Alternatives

As demonstrated in the DEIR, the amount of growth that buildout of the General Plan will result in is expected to generate significant unavoidable impacts in the areas of traffic, schools, mineral production, and air quality. The various Town Plan and Specific Plan EIRs concluded that unavoidable impacts will occur in the areas of traffic, domestic water supply, water quality of Maxwell Creek, water quality of Big Oak Creek, and small town atmosphere. In addition, throughout this letter, we have identified a number of additional significant impacts which may not be avoidable by simple mitigation including land use impacts (agriculture, division of an existing community, land use compatibility, community character), noise impacts, biotic resource impacts, and visual impacts. CEQA Guidelines Section 15126.6 requires that a full range of alternatives be presented with the intent of identifying alternatives which can mitigate otherwise significant impacts of the project as proposed. Thus, an alternative must be devised which would reduce the significant, unavoidable impacts listed in the DEIR as well as those which we believe will be identified in a revision of the DEIR.

1. Full Range of Alternatives.

An EIR must evaluate a range of reasonable alternatives to the project capable of eliminating any significant adverse environmental effects of the project, or reducing them to a level of insignificance, even though the alternatives may somewhat impede attainment of project objectives, or may be more costly. (Pub. Resources Code, sec. 21002; CEQA Guidelines, sec. 15126.6.)

A full range of alternatives is not outlined in the DEIR. Two of the three development alternatives (1 and 4), provide for a buildout greater than that of the proposed General Plan and thus are more impacting, which is not the intent of CEQA. The DEIR claims that Alternative 3, the General Plan Enhanced Alternative would permit lesser development than that of the General Plan as proposed by making certain policies mandatory (Ashsulled) rather than recommended (Ashouldbe) and by eliminating land use designations in the expanded Mariposa Town Planning Area. While this alternative responds in part to some of MERG's past comments, it is still not an adequately mitigating alternative. First, it has not been demonstrated that the wording change in various policies will translate to a lower buildout as claimed. Second, the expanded Mariposa Town Planning Area cannot be left with no land use designations in order to comply with State general plan law. In addition, the expansion area boundary would apparently still exist keeping open the future possibility of urbanization of this entire area. Also, most of the policies in Alternative 3 are the same as the in the proposed General Plan. A true alternative would include policies that eliminate more of these impacts. Finally, Alternative 3 does not recognize the expansion proposed in a number of other Community and Town Planning Areas. As currently written in the DEIR, Alternative 3, the Enhanced General Plan Alternative, does not include substantial enough changes to the Land Use Map to provide for a wider range of buildout numbers for an adequate alternatives discussion. Again, there is no evidence submitted that the lower buildout cited can be guaranteed under the policy revisions or the minor map changes recommended in this alternative.

We must argue that another alternative should be discussed to permit reasonable choice. It must be an alternative which can be demonstrated to avoid to the greatest extent possible significant and significant, unavoidable impacts expected of the large Community and Town areas.

We have recommended in past comments a Phased Growth: Reduced Sprawl Alternative which would have down-scaled Community and Town Plan areas and a maximum growth rate of 1.5% per year (the recent statewide growth rate). The DEIR's Enhanced General Plan Alternative, revised to include full mitigation as recommended in this letter would achieve these goals.

The intent of the phased growth aspect of this revised Enhanced General Plan Alternative with Full Mitigation is to ensure that the County will not grow at a rate greater than that which the County has experienced in the past decade (20% or 25% per year). At this rate, in 20 years, a population of approximately 24,000 could be expected, which would be an appropriate target. This phasing will enable the county to avoid the imports of growth, which can be difficult to address under a rapid growth rate. Such impacts include provision of public facilities and services, school construction, and road improvements. It would enable the county to implement new ordinances and plans that are recommended in the General Plan as needed to handle new growth before it arrives, such as revised Ares and Town Plans, design guidelines, a revised zoning ordinance, etc.
As part of this revised Enhanced General Plan Alternative with Full Mitigation, the Land Use Map would be revised to ensure that the ultimate buildout of the County does not eventually urbanize the expansion areas proposed around a number of Community and Town Plan areas. The 160-acre minimum parcel size would be retained where it has been reduced. This would serve to reduce a variety of impacts associated with a larger buildout and sprawl including land use and traffic impacts. The maximum buildout capacity of the Land Use Map with full mitigation recommended in this letter including these critical map changes must be calculated in the revised DEIR. We assume that the buildout will be substantially less than the 39,000 assumed in the DEIR.

The revised Enhanced General Plan Alternative with Full Mitigation would substantially reduce the following impacts identified as unavoidable in the DEIR as compared to the Enhanced General Plan Alternative as currently written: traffic, schools, air quality, and mineral production. Unavoidable impacts identified in the various area plan EIRs would be reduced or eliminated in the following areas: traffic, traffic safety, impacts to small town character, inadequate water supply for residential development and possibly impacts to Maxwell Creek and Big Creek.

The revised Enhanced General Plan Alternative with Full Mitigation described above could be feasibly implemented and thus implementation would not be "remote and speculative". It would meet the broad project objectives stated in the DEIR. It would reduce impacts to a greater degree than that of the General Plan Enhanced Alternative as currently written.

MRG supports adoption of the revised Enhanced General Plan Alternative with Full Mitigation. The mitigating effect and buildout capacity of this revised alternative should be described in the Final EIR and in the Environmental Findings upon adoption of the General Plan.

2. Explanation of Alternatives Not Evaluated.

If the revised Enhanced General Plan Alternative with Full Mitigation is rejected for discussion, the DEIR should include an explanation. The Goleta II case discusses this issue. Our concern is that it be made clear which alternatives were considered but rejected, particularly if an infeasible determination was made, so that we can fully participate in the discussion. An EIR must explain in detail why various alternatives are deemed unfeasible. "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. We do not impugn the integrity of the Regents, but neither can we countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials." (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d 376, 414 [253 Cal.Rptr. 426].)

Page 7-104
3. Quantification of Impacts of Alternatives.

CEQA requires a "quantitative, comparative analysis" of the relative environmental impacts and feasibility of project alternatives. (Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 730-737 [270 Cal.Rptr. 650].) Impacts have not been quantified under each Alternative discussion in the DEIR. An adequate analysis requires a map or some form of inventory which shows the differences between the proposal as well as the land uses proposed under each of the alternatives. A chart comparing acreage of various land use alternatives under each alternative is necessary to truly understand each proposal. This would allow quantification of a number of impacts which are discussed in a qualitative manner including loss of open space and agriculture. Quantification of impacts to all of the potentially impacted roadways is also needed under each of the alternatives to allow for a reasoned choice.

***************

Thank you again for the opportunity to comment.

[Signature]
Thomas P. Infusino, Esq.
P.O. BOX 702
Pine Grove, CA 95665

[Signature]
Laurie Oberholtzer
City and Environmental Planning Consultant
310 Nevada St.
Nevada City, CA 95959
for MERG