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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

DON MANRO,

Plaintiff and Appellant,

v.

CITY OF TULARE et al.,

Defendants and Respondents.

F073201

(Super. Ct. No. VCU258532)

OPINION

APPEAL from a judgment of the Superior Court of Tulare County. Bret D. Hillman, Judge.

Donald L. Manro, in pro. per., for Plaintiff and Appellant.

Koczanowicz & Hale, Martin D. Koczanowicz and David P. Hale, for Defendants and Respondents.

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Through a process that ran from 2011 to 2014, defendant City of Tulare (city) produced an update to its general plan (GPU) and an environmental impact report (EIR) examining the environmental effects of the update. On October 7, 2014, the city approved the GPU and certified the EIR. Appellant Don Manro, in propria persona, filed a petition for a writ of mandate in the trial court seeking a ruling that the EIR was

inadequate under the California Environmental Quality Act (§ 21000 et seq.)¹ (CEQA). The trial court denied the petition and Manro appeals. We will affirm.

FACTS AND PROCEDURAL HISTORY

Under the Planning and Zoning Law (Gov. Code, § 65000 et seq.), each city and county in California is required to adopt “a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which ... bears relation to its planning.” (Gov. Code, § 65300.) The general plan is the ““basic land use charter governing the direction of future land use”” in a locality. (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 542.) It is “at the top of ‘the hierarchy of local government law regulating land use.’” (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773.) The general plan “has been aptly analogized to ‘a constitution for all future developments.’” (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183.) Local government action adopting or amending a general plan is regarded as a “project” subject to environmental review under CEQA. (*DeVita, supra*, at pp. 793-794; Guidelines for the Implementation of the California Environmental Quality Act, § 15378, subd. (a)(1)².)

The city adopted an updated general plan on April 15, 2008. Manro and the Sierra Club challenged the approval of that update in the superior court, which granted relief. This result led the city to initiate a new process for approving a GPU and associated EIR beginning in 2011. That process led to the approvals at issue now.

The city issued a notice of preparation of the EIR on July 17, 2012. The draft EIR was issued on November 1, 2013, and written public comments were received from then until December 16, 2013.

¹Subsequent statutory references are to the Public Resources Code unless otherwise noted.

² California Code of Regulations, title 14, section 15000 et seq. (Guidelines).

General plans are required to include “elements” dealing with the following topics: land use, circulation (i.e., transportation), housing, conservation, open space, noise, and safety. (Gov. Code, § 65302.) General plans for localities within the San Joaquin Valley Air Pollution Control District (SJVAPCD) must also include provisions on air quality. (Gov. Code, § 65302.1.) The GPU reviewed in the EIR at issue in this case covered each of these elements, except for the housing element, which was approved separately in 2010. In addition to the GPU, the EIR reviewed a transit-oriented development plan and a climate action plan, but those plans are not at issue in this litigation.

The draft EIR explained that the GPU was based on growth projections for a period ending in 2035 and for an area that included the city and some additional undeveloped land outside the city limits. The line enclosing this area is known as the urban development boundary (UDB). The purpose of the EIR was to analyze the environmental impacts of the reasonably foreseeable development within this area and time period and in accordance with the policies in the GPU.

The land included within the UDB was chosen “to accommodate Tulare’s projected 2035 population and future commercial and industrial growth,” based on “an economic analysis that explored the City’s historical growth rates and projected future growth rates.” Within the UDB, the EIR calculated a “maximum theoretical buildout,” representing the largest amount of development that would be allowed by the GPU on all the included land. This maximum development would include 15,115 dwelling units for 50,725 new residents, 15 million square feet of new retail and office space, and 27 million square feet of new industrial space.

The draft EIR found, however, that the maximum development allowed by the GPU was unlikely to happen and not reasonably foreseeable because “not every parcel that is allowed to develop will develop, and not every parcel that develops will be built out to the maximum allowed” The EIR’s environmental impact analyses were based

instead on a projection of the quantity of development likely actually to take place. Factors contributing to this projection included development projects already pending, “assumptions about the actual density and intensity at which development is likely to occur,” and an analysis of each vacant parcel to determine the likelihood that it will be developed at all by 2035. The projection yielded figures that were lower than the maximum for residential development and far lower for commercial and industrial development: 12,520 new dwelling units for 42,017 new residents, 2.2 million square feet of new commercial space, and 2.0 million square feet of new industrial space.

Based on this expected quantity of development, the draft EIR discussed potential environmental impacts of the GPU in 15 issue areas. In five of these areas, the draft EIR found there would be significant impacts that would be unavoidable even with the adoption of mitigation measures: agriculture, air quality, greenhouse gas emissions, hydrology and water quality, and noise. As required by CEQA in cases in which a project with significant, unavoidable environmental impacts is approved, the city prepared a statement of overriding considerations. (§ 21081, subd. (b); Guidelines, § 15093.) In this statement, the city found the benefits of the development contemplated by the GPU outweighed the unavoidable impacts.

The final EIR, including revisions to the draft EIR and responses to public comments, was issued on April 11, 2014. On August 11, 2014, the city’s planning commission voted to recommend that the city council certify the EIR and approve the GPU. The city council held a public hearing on October 7, 2014, after which it certified the EIR and approved the GPU.

Manro filed his petition for a writ of mandate under CEQA in the trial court on November 7, 2014. He also filed a trial brief in which he argued that the EIR was deficient in several respects: the methodology for determining the quantity of land to be included within the UDB was erroneous; the discussion of the impact of future development on groundwater resources was inadequate; the city did not adopt adequate

provisions to mitigate the loss of farmland to development; the discussion of project alternatives was inadequate; and the discussion of cumulative groundwater and noise impacts was inadequate.

The trial court held a hearing on the petition on November 2, 2015. In a written ruling issued November 10, 2015, the court rejected all of Manro's contentions and denied the petition.

The court also ruled on the city's motion to exclude evidence of certain matters discussed in Manro's trial brief. Manro's brief discussed information related to the methodology used to determine the quantity of land to be included within the UDB. As the brief admitted, Manro received some of this information during settlement negotiations. The court granted the motion in part, ruling that evidence of this information was inadmissible under Evidence Code section 1152, which protects statements made in settlement negotiations.

DISCUSSION

I. Standards of review and substantive legal standards under CEQA

If a CEQA petition challenges agency action that is quasi-adjudicatory in character, the trial court's role is only to determine whether the action is supported by substantial evidence in the record. (§ 21168.) If the agency action was quasi-legislative in character, the trial court reviews the action for abuse of discretion. The agency abuses its discretion if it does not proceed in the manner required by law or if the decision is not supported by substantial evidence. (§ 21168.5.) "Substantial evidence" is defined in the Guidelines as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).) The formulations in sections 21168 and 21168.5 embody essentially the same standard of review. Both require the trial court to determine whether the agency acted in a manner contrary to law and whether its determinations were supported by substantial evidence, and neither

permits the court to make its own factual findings. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392, fn. 5; *Burbank-Glendale-Pasadena Airport Auth. v. Hensler* (1991) 233 Cal.App.3d 577, 589-590.) The Court of Appeal reviews the trial court's decision de novo, applying the same standards to the agency's action as the trial court applies. (*Neighbors of Cavitt Ranch v. County of Placer* (2003) 106 Cal.App.4th 1092, 1100.)

The EIR has often been called the heart of CEQA, functioning both to disclose the environmental impacts of a proposed project before it can be approved and to identify measures to mitigate the impacts, measures which must be adopted if feasible. (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 706.) An EIR must include discussion of a possible environmental impact if substantial evidence in the administrative record supports a fair argument that the impact will be significant. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (*Amador*).) Having considered all such possible impacts, the EIR then must "identify and focus on" those that will in fact be significant. (Guidelines, § 15126.2, subd. (a).) If the agency has determined that a possible impact will not be significant, the EIR must make a finding to that effect. (Guidelines, § 15128.) The EIR also must describe and impose feasible mitigation measures, if any exist, that could minimize significant impacts. (Guidelines, § 15126.4, subd. (a)(1).) If more than one mitigation measure is available, the EIR must discuss each and describe reasons for the measure or measures it selects. (Guidelines, § 15126.4, subd. (a)(1)(B).) If no mitigation measures are feasible, the EIR must say so. (Guidelines, § 15091, subd. (a)(3).) An EIR can find that the feasible measures available to avoid or mitigate a significant impact are within the jurisdiction of another agency that has adopted them or can and should adopt them. (Guidelines, § 15091, subd. (a)(2).) In any event, the EIR's findings must be supported by substantial evidence. (§ 21081.5.)

An agency is forbidden to approve a project unless it finds there are no significant impacts; or imposes mitigation measures to reduce all significant impacts to an insignificant level; or finds feasible mitigation measures are not available to reduce all significant impacts to an insignificant level; or finds feasible mitigation measures are within the jurisdiction of another agency. (§ 21081, subd. (a); Guidelines, § 15091, subd. (a).) If the EIR finds there are significant impacts that cannot feasibly be mitigated to an insignificant level, it must reject the project or adopt a statement of overriding considerations when approving it. (§ 21081, subd. (b); Guidelines, § 15093.)

The degree of specificity and detail required in an EIR for a general plan is less than that required in an EIR for a construction project. This is because the effects of a general plan can be predicted with less accuracy. (Guidelines, § 15146, subd. (a).) An EIR for a general plan “should focus on the secondary effects that can be expected to follow” from adoption of the plan, but “need not be as detailed as an EIR on the specific construction projects that might follow.” (Guidelines, § 15146, subd. (b).)

II. Analysis of Manro’s contentions in this appeal

In this section, we will evaluate each of the arguments made in Manro’s appellate briefs. We must first point out, however, that Manro does not, in any instance, present a complete and coherent argument. This is an important deficiency. To construct a prevailing argument on appeal, an appellant—even a self-represented appellant like Manro—generally must frame a clear issue, recite the specific legal principles applicable to the issue, cite the specific facts in the record that are relevant to the issue, present an analysis in which the legal principles are applied to the facts, and state a conclusion according to which prejudicial error was committed under the applicable standard of review. We cannot say this was done here on any point. Our review of Manro’s briefs and oral arguments in the trial court discloses a similar failure below. Our discussion in this opinion is guided by the principle of charity of interpretation, and we have done our

best to identify specific arguments to which we can respond. But the inadequacy of Manro's submissions remains a factor in our decision to uphold the city's action.

A. *Trial court's failure to address arguments*

Manro's first point, in part IV.A. of his opening brief on appeal, is that the trial court's written order took issue with numerous statements made in his trial brief's statement of facts—which he did not intend as claims for relief—while largely disregarding the legal arguments made in the trial brief's section headed “Argument.” Our review of the trial court's order confirms this. The court's analysis examines parts IV.A. through IV.E. of Manro's trial brief, which mixes a factual recitation with various criticisms of the EIR and of the city's conduct, while saying little or nothing about part V., which undertakes to present legal arguments.

Since our review of the trial court's ruling is an independent review of the city's action, however, we need not concern ourselves further with deficiencies in the trial court's order. If Manro has not shown that the city committed a prejudicial abuse of discretion, we must affirm the judgment even if the trial court's stated reasoning contains errors. Therefore, we will focus on Manro's challenges to the *city's* action as he has chosen to present them in his appellate briefs.

B. *Quantity of land included within the UDB*

In parts IV.B. through IV.D. of his opening appellate brief, Manro discusses several points related to the notion, elaborated in his trial brief, that the UDB encloses substantially more land than necessary for the amount of development projected. It is undisputed that, as described in the EIR, the GPU projects that only a portion of the land within the UDB will be developed by 2035. As we will explain, Manro has not demonstrated that the EIR's treatment of the UDB failed to conform to CEQA or was unsupported by substantial evidence.

The fact that the UDB encloses more land than is *likely* to be developed means it is *possible* the actual quantity of development within the UDB by 2035 will be greater than

the EIR projects. According to part IV.B. of Manro's opening brief, this means the EIR's description of the project fails to provide adequate information to readers. He says readers cannot "verify" that the project description is "accurate, finite and stable."

The Guidelines list the required components of an EIR's project description. These include the location and boundaries of the project; a statement of the project's objectives; a "general description of the project's technical, economic, and environmental characteristics"; and a statement of the intended uses of the EIR. (Guidelines, § 15124.) It has been held that the project description must also be "accurate, stable and finite"—that is, the project cannot be given inconsistent descriptions in different parts of the EIR—since readers cannot accurately weigh the project's costs and benefits without a consistent conception of what the project is. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.)

Manro has not identified any failure to satisfy these requirements. The project here is a general plan, not the actual future building projects that will take place in the city. The EIR cannot provide a stable, accurate description (as opposed to a projection) of the actual future development itself because that is unknown. It would be absurd to require the project description in an EIR for a general plan somehow to guarantee that the actual amount of future development within the UDB will not exceed the amount projected. Further, there is no reason why a general plan should not define a development boundary so that it includes land on which development is reasonably likely, even though it is unlikely that *all* the included land will be developed. Since the city cannot know the actual locations where development will take place, it can reasonably include in the UDB areas where development might happen and then make a prediction about how much of that land will actually be developed. That is what happened here, and it was well within the city's discretion. Just as a lead agency enjoys substantial discretion in its choice of methodology for determining the significance of environmental impacts (*Center for Biological Diversity v. Department of Fish & Wildlife*

(2015) 62 Cal.4th 204, 228), we should also defer to the city's reasonable choice of methods for estimating the likely locations and density of future development.

In part IV.B. and again in part IV.D., Manro also argues that the EIR should have analyzed impacts the environment would sustain if more development than the projected amount should occur within the UDB, up to the maximum theoretical buildout. Manro says, "the vacant developable area within the UDB defines the capacity of Respondents' project in which the environmental impacts will occur," so the EIR fails in its informative purpose because it does not tell the reader what the impacts would be if all that area were developed. Manro further contends that, even if the vacant area within the UDB is not fully developed, the existence of land within the UDB in excess of that needed for expected growth will have various impacts. For instance, development will be at excessively low densities, leading to longer travel distances and increased vehicle emissions, and prices of developable land will be reduced by excess supply, leading to pressure for development that would not otherwise occur.

Manro has not established these points. The EIR was required to analyze possible environmental impacts if substantial evidence in the record supported a fair argument that the project would cause these impacts and they would be significant. (*Amador, supra*, 116 Cal.App.4th at p. 1109.) The amount of development expected under the GPU is based on a methodology explained in the EIR, and the impacts analyzed are based on that expected amount of development. To show the EIR should have analyzed impacts of additional development, Manro would have to point to substantial evidence in the record supporting a fair argument that the EIR's projection is too low. He has not done this. Similarly, to show that the UDB defined in the GPU would cause development to accelerate beyond the level predicted by the EIR, or would result in a pattern of development causing air quality impacts not considered by the EIR, Manro would have to point to substantial evidence in the record supporting a fair argument that these things

would happen and would amount to significant impacts. Again, he has not done so. His claims on these points are instead based on speculation.

Parts IV.B. and IV.D. also refer to an “exclusion of quantitative information” from the EIR and the city’s use of “*undisclosed* calculations utilizing undisclosed data based upon unverifiable methods” These references are not clearly explained in Manro’s appellate briefs, but they appear to be related to a discussion in his opening trial brief about an absence in the EIR of figures indicating the acreage of land available for residential development within the UDB. We do not discern in Manro’s submissions any persuasive argument why the EIR was required to include such figures. The land to be opened for residential development is not concealed in the EIR. The parcels included within the UDB and the land uses to be allowed on them are shown on a map.

In part IV.C. of Manro’s opening brief, he argues that the UDB defined by the GPU is inconsistent with the sphere-of-influence (SOI) boundary established for the city by the Tulare County Local Agency Formation Commission (LAFCO). Manro says CEQA required the EIR to analyze this inconsistency as a potentially significant impact. Specifically, he claims a departure from the SOI boundary could increase the amount of land opened to potential future development by the GPU, leading to impacts associated with increased capacity.

The Guidelines indicate that a project’s conflict with existing land use plans and policies can be a significant impact that must be analyzed in an EIR. An agency preparing an EIR should consider whether the project would “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.” (Guidelines, appen. G, § X, subd. (b).) The EIR in this case states

that one of its purposes is to correct deficiencies on this issue found by the trial court in the prior litigation.³

The EIR has a section on potential conflicts with other land use plans. That section explains that LAFCO is charged with the responsibility for drawing SOI boundaries and states that, under LAFCO's policy No. C-5, if a general plan's UDB is consistent with Government Code section 56425,⁴ "the SOI will be placed coterminous with" the UDB by LAFCO.

The EIR includes a map comparing the new UDB with the existing SOI boundary. They are not identical. The UDB includes some land excluded from the SOI and vice versa. The UDB encloses 33 square miles and the SOI includes 32 square miles.

Manro's submissions do not support his claim that there is a conflict between the GPU and LAFCO's policy. Instead, as far as the record before us indicates, LAFCO's policy is to conform SOI boundaries to city and county general plans: When a city or county creates a new UDB, LAFCO at its next review delineates a new SOI coterminous with the new UDB. Manro's own trial brief assumes LAFCO is waiting for this litigation to end so it can amend Tulare's SOI. If LAFCO's intention and policy are to amend the SOI to conform to the UDB in the GPU, then there is no conflict between the two agencies' policies even if the two boundaries are different at present. The boundaries will be brought into conformity in due course.

In his trial brief, Manro asserted that when LAFCO adjusts the SOI, the land area included within it will have to be "drastically reduced" relative to the UDB area in the

³The parties have not provided us with the record of the prior litigation. A copy of the trial court's tentative order granting the CEQA petition in that case is included in the appellate record, however. It states that the development boundary contemplated by the GPU conflicted with the LAFCO's policy No. C-5. That policy sets forth LAFCO's procedures for establishing SOI boundaries.

⁴Government Code section 56425 sets forth procedures to be employed and factors to be considered when a LAFCO determines an SOI.

GPU. He seems to mean LAFCO will want to establish an SOI that includes only an amount of land equal to the amount within the UDB that the GPU predicts will actually be developed. This assertion is based on Manro's notion that the EIR fails to describe the project properly because the UDB encloses more land than the city expects to be developed by 2035. This notion is incorrect, as we have said.

For these reasons, we conclude there is no substantial evidence in the record supporting a fair argument that there is a significant impact arising from a conflict between the GPU and LAFCO's land use policy. Manro thus has not shown that the EIR was required to analyze this alleged conflict.

Manro also alleges an inconsistency between the GPU and county policies but does not explain what these county policies are or what the conflict is. He further states the GPU conflicts with documents called the San Joaquin Valley Blueprint and the Tulare County Regional Blueprint, but concedes these are products of advisory bodies and have no regulatory force.

C. Cumulative impacts

Manro claims the EIR's treatment of cumulative impacts is inadequate. A cumulative impact is the effect of a project on some aspect of the environment viewed in conjunction with the effects of other projects in the area on that aspect of the environment. An EIR must discuss a cumulative impact of a project if the project's incremental effect is significant when viewed in connection with the impacts of other projects. (Guidelines, §§ 15065, subd. (a)(3), 15130, subd. (a), 15355.) The purpose of the requirement to consider cumulative impacts is to avoid carrying out the environmental review of a project "in a vacuum," since "[o]ne of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." (*Communities for a Better Environment v.*

California Resources Agency (2002) 103 Cal.App.4th 98, 114, overruled on other grounds by *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109, fn. 3.)

Manro's criticism, both in the trial court and on appeal, focuses on the notion that the "geographic limits" of the EIR's treatment of cumulative impacts are insufficiently explained.

The EIR includes the following discussion about the geographic area considered in the cumulative impact discussion that is part of the analysis of each type of environmental impact (the impacts on agricultural resources, air quality, land use, etc.) examined by the EIR:

"Cumulative impacts may occur over different geographic areas. The cumulative [impact] discussions in [the EIR's 15 sections discussing the various types of impacts] explain the geographic scope of the area affected by each cumulative effect. In most sections, the cumulative impacts of the [GPU] take into account growth projected by [it] for the Tulare area, in combination with impacts from projected growth in the areas bordering Tulare.

"However, the geographic area considered for each cumulative impact depends upon the impact that is being analyzed. For example, in assessing air quality impacts, all development within the air basin contributes to regional emissions of criteria pollutants, and basin-wide projections of emissions are the best tool for determining the cumulative effect."

This discussion is followed by a table in which a geographic area is listed for each type of impact. For instance, the area for analysis of cumulative impacts to air quality is the San Joaquin Valley Air Basin, while the area for cumulative impacts to agricultural and forest resources is the area bounded by the UDB plus Tulare County and the remainder of the Central Valley.

The cumulative impact discussions in the EIR's 15 sections on various types of impacts contain a modest quantity of explanation of the geographic boundaries chosen for each discussion. For example, the section on geology, soils, and mineral resources uses the UDB area plus the rest of Tulare County, but not the whole San Joaquin Valley or

Central Valley region, as the geographic boundaries for its cumulative impact discussion. The section explains that “risks to people and property from geotechnical hazards [such as earthquakes] are site-specific and increased risks within a specific area do not create a cumulative increase in risks across a region.” The section on air quality, which uses the San Joaquin Valley Air Basin as the geographical area for analysis of cumulative impacts, explains that achieving compliance with federal and state air quality standards depends on successful implementation of the attainment plans of the SJVAPCD, and assessment of cumulative impacts pursuant to SJVAPCD’s guidance involves a determination of whether an individual project’s emissions exceed thresholds of significance established by SJVAPCD. The section on noise uses the area inside the UDB alone as the geographic boundary for the cumulative impact analysis. It explains that “noise levels decrease relatively rapidly with distance,” and the city is surrounded by farmland and does not have urban neighbors, so cumulative noise impacts on areas beyond the city “occur only infrequently.” Further, although traffic noise is effected by cumulative growth in surrounding areas, the EIR’s analysis of traffic noise takes this fact into account by using projected future traffic volumes.

Manro’s argument is that this discussion fails to provide a “reasonable explanation” of the geographical boundaries employed. This argument reflects the language of the Guidelines: “Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.” (Guidelines, § 15130, subd. (b)(3).)

Manro also asserts the EIR includes insufficient discussion of the other projects taken into consideration in the analysis of cumulative impacts. The Guidelines state that an EIR’s discussion of a project’s cumulative impacts should include:

“(1) Either:

“(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

“(B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency.” (Guidelines, § 15130, subd. (b)(1).)

The EIR states that, in its discussion of each type of impact, it uses either the list approach, the summary approach, or a combination of the two:

“The CEQA Guidelines provide two approaches to analyzing cumulative impacts. The first is the ‘list approach,’ which requires a listing of past, present, and reasonably anticipated future projects producing related or cumulative impacts. The second is the summary approach wherein the relevant projections contained in an adopted General Plan or related planning document that is designed to evaluate regional or area-wide conditions are summarized. A reasonable combination of the two approaches may also be used. This EIR generally uses the plan [i.e., summary] approach to evaluate cumulative impacts, and uses a hybrid approach for Chapters 4.9 [hydrology and water quality] and 4.11 [noise].

“Cumulative impacts analyses that consider areas beyond Tulare’s City Limits and Sphere of Influence (SOI) take into account general plan information for both Tulare County and immediately adjacent communities in the vicinity.”

As Manro points out, however, the cumulative impact discussions in each section do not explicitly discuss the contents of other general plans and do not include lists of other projects. An example of the approach the EIR takes is found in the cumulative impacts discussion in the section on agriculture and forestry resources:

“The California Department of Finance Demographic Research Unit forecasts that Tulare County’s population will grow to 682,022 by 2035. According to the American Farmland Trust, if current land use trends

continue, by 2035 a little less than 1,600,000 acres of Central Valley farmland, including Tulare County, would be converted to urban uses and ranchette development and additional agricultural land could be compromised by potential conflicts with nearby urban uses.

“Development allowed by the [GPU] ... would contribute to these cumulative agricultural impacts. Although the [GPU] policies described earlier would reduce and partially offset Tulare’s contribution to these impacts, the overall cumulative agricultural impact would remain significant. Because the amount of growth foreseen in the region and the decisions of surrounding areas regarding conversion of agricultural land are outside the control of Tulare, the impact is *significant and unavoidable*.” (Fns. omitted.)

This analysis applies statistics about population growth and farmland conversion in the Central Valley to evaluate the cumulative impact of farmland conversion under the GPU. Given Tulare’s development goals and the expected development in surrounding areas, the EIR finds the cumulative impact significant and unavoidable.

Another example is the cumulative impacts discussion in the section on hazards and hazardous materials:

“Implementation of the [GPU] ... would allow additional development within the [UDB], which would increase the potential for exposure to hazards and hazardous materials. Development throughout the surrounding region is expected to induce similar exposure to hazardous materials and other hazards. For example, the Tulare County 2012 General Plan indicates areas in and around cities and hamlets throughout the County which are located within dam inundation zones and/or floodplains. Additionally, there are areas of urban expansion within airport zones near Visalia and Porterville. Also, there are areas within urban development boundaries in the northeast and eastern portions of Tulare County which are identified as having a high or very high fire threat. Some central and northeastern areas of Tulare County have very high susceptibility to landslides. Finally, there is a fault zone within the County which is considered capable of producing a 7.0 earthquake on the Richter Scale. Despite these potential hazards, the Tulare County General Plan EIR did not find significant impacts relating to hazards or hazardous materials, due to the mitigating effects of local, regional, and State policies. Further, the development in the [UDB area] would have a localized effect on the exposure of residents to these hazards. This type of exposure would not be compounded by additional exposure in other parts of the region, and would be minimized locally through

compliance with State and local regulations. Therefore, the [GPU's] ... contribution to cumulative impact[s] on hazards and hazardous materials would be *less than significant*." (Fns. omitted.)

This discussion assesses the project's cumulative impacts by combining findings in the county's general plan with the EIR's own findings and the fact that the impacts in question are localized in their effects.

We are compelled to acknowledge that the EIR's discussions of geographic boundaries are attenuated, and its use of the summary and list methods is not strictly or consistently compliant with the Guidelines. As we will explain, however, we do not believe these defects amount to prejudicial error.

In *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729 (*Al Larson Boat Shop*), the plaintiffs challenged an EIR certified by a city in support of an amendment to its port master plan. (*Id.* at pp. 736-737.) The trial court found the cumulative impacts section of the EIR to be inadequate. (*Id.* at p. 737.) Like the GPU, the port master plan was a local general plan, not a construction project for any individual site, so the EIR was a first-tier or program EIR, not a site-specific EIR. (*Id.* at pp. 741-742.) The EIR stated it was providing only a "general overview of cumulative impacts" and that cumulative impacts would be addressed in greater detail in site-specific EIR's to be prepared later, prior to approval of specific building projects. In the trial court's view, this approach was "inadequately concrete and quantitative." (*Id.* at p. 746.) The Court of Appeal disagreed, holding that deferral of more detailed analysis was legitimate. (*Id.* at p. 747.) The EIR could "reasonably leave many specifics to future EIR's." (*Id.* at pp. 746-747.) In support of this conclusion, the court quoted *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 625 (*Schaeffer Land Trust*), which held: "CEQA recognizes that environmental studies in connection with amendments to a general plan will be, on balance, general." The court further noted that Guidelines section 15146, subdivision (b), provides that "[a]n EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan

should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.” (*Al Larson Boat Shop, supra*, at p. 747.)

Schaeffer Land Trust, supra, 215 Cal.App.3d 612, found adequate an EIR for a general plan amendment even though its cumulative impacts section, among other asserted defects, did not comply with the rule in Guidelines section 15130, that cumulative impacts analyses must be supported by a list of other projects or a summary of projections from a planning document. (*Schaeffer Land Trust, supra*, at pp. 632-633.)

In light of these authorities, we conclude the city did not commit a prejudicial abuse of discretion in failing to provide cumulative impact analyses that were compliant with the Guidelines in all respects. We have held that a ““prejudicial abuse of discretion occurs if the failure to include relevant information [in the EIR] precludes informed decisionmaking and informed public participation ...”” (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1109 [quoting *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391].)

Having reviewed the EIR and Manro’s contentions, we are not persuaded the cumulative impacts analyses’ failure to comply strictly with the Guidelines’ provisions about geographic scope and specification of other projects precluded informed decisionmaking or participation. As in *Al Larson Boat Shop, supra*, 18 Cal.App.4th at page 749, it has not been shown that the omissions complained of “mis[led] the agency or the public, omitted or understated any problem, or was prejudicial in any way.”

D. Groundwater

Manro claims the EIR contains an inadequate discussion of the GPU’s impact on groundwater resources. We disagree.

The EIR addresses the GPU’s impact on groundwater usage in section 4.9, “Hydrology and Water Quality,” and section 4.15, “Utilities and Infrastructure.” It explains that the city’s water department supplies water to users (which do not include

any agricultural users) exclusively from groundwater wells. This water comes from the Kaweah Groundwater Subbasin, which is part of the San Joaquin Valley Groundwater Basin. The city expects the Kaweah Groundwater Subbasin to continue as its sole water source through 2035.

The EIR says the California Department of Water Resources (DWR) found the Kaweah Groundwater Subbasin to be in a state of critical overdraft in 1980. The finding is still in effect, though no additional analysis has been done by DWR in the meantime. By “critical overdraft,” DWR means a condition in which ““continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts.”” Overdraft in the region has caused land subsidence, resulting in damage to canals, pipelines, roads and other utilities, as well as loss of underground space to store groundwater.

The EIR reports that, according to a study, the combined “safe yield” for the city and the Tulare Irrigation District (TID) from the subbasin is between 126,000 and 141,000 acre feet per year. “[S]afe yield” means the amount of water than can be pumped without adverse effects. The safe yield for the city by itself is unknown.

According to the EIR, TID also pumps water from the Kaweah Groundwater Subbasin. TID is a public agency that supplies groundwater and surface water to farms for crop irrigation.⁵ TID also has an agreement with the city to supply surface water to the city’s recharge basins to recharge the groundwater in areas from which the city’s

⁵In his trial brief, Manro asserted that, in reality, TID does not pump groundwater or supply groundwater to farmers. Instead, farmers use their own wells to pump water from the subbasin to supplement surface water deliveries from TID. Manro cites a TID document (which is not in the administrative record) to support this account. Assuming Manro is correct, the analysis of the issue in this opinion would not be affected. For purposes of determining the effect on the subbasin, it does not matter whether farmers extract groundwater using their own wells or receive groundwater from TID.

wells draw. The EIR says the recharge program recharges 34 percent of the city's groundwater production annually.

To supplement the recharge program, the EIR says "additional supplies may need to be pursued at some point in the future." Potential sources include additional recharge, as well as "surface water diversions, water transfers, and use of recycled water."

The city's water department pumps groundwater from 27 wells. To increase capacity, the city's 2009 Water System Master Plan calls for construction of 13 additional wells in the short term and a total of 52 new wells by 2030. In 2010, the city supplied 17,461 acre feet of water to users.⁶ The EIR states the city expects in 2035 to be able to supply 42,964 acre feet, but this projection appears to be based on the expected capacity of the wells rather than the expected quantity of available water in the ground, since the EIR concedes the amount of water that can be withdrawn from the subbasin by the city without adverse effects is unknown.

Having provided a future supply figure based on pumping capacity (but not water availability), the EIR then presents demand calculations. Based on population projections, the EIR says demand from users served by the city's water department will increase by 9,534 to 16,268 acre feet per year, depending on the implementation of conservation measures.⁷

As the urban demand is increasing, however, the agricultural demand will be falling, because the increase in urban demand will happen as farmland is converted to

⁶In another place, the EIR gives a slightly different figure, 17,403 acre feet, for 2010 deliveries. The EIR cites the city's 2010 Urban Water Management Plan for both figures.

⁷These figures are inconsistent with another 2035 demand projection included in the EIR: 44,038 acre feet per year. The explanation for the discrepancy appears to be that the higher figure is based on the population projections in the city's 2010 Urban Water Management plan, which are far higher than the population projections adopted by the EIR.

urban use. The EIR states that agricultural land uses an average of 3.565 acre feet per year per acre, while developed urban land uses an average of only 0.659 acre feet per year per acre. If, as the GPU contemplates, 9,000 acres of farmland are developed by 2035, there would be a decrease in demand of 26,154 acre feet per year. The EIR applies this decrease to the projected rise in demand based on population figures of 9,534 to 16,268 acre feet per year, to obtain a projected net decrease of 9,886 to 16,620 acre feet per year. The city's water department would not benefit from this net decrease because the department does not serve agricultural users; but the Kaweah Groundwater Subbasin would benefit, because farmers receive water from that source. On this basis, the EIR concludes that expected development under the GPU would not have a significant impact on groundwater resources.

In describing TID, the EIR explains that it provides surface water to farms, not just groundwater, and appears at least implicitly to acknowledge that providing surface water is TID's primary function. The EIR's calculations for the change in water usage resulting from development of agricultural land, however, do not show how much of the water saved will be groundwater and how much will be surface water. The reduction in consumption of surface water will not, of course, result in any savings for the Kaweah Groundwater Subbasin. The calculations thus appear to be incomplete.

The GPU includes a number of policies designed to conserve water and protect the aquifer. These include protecting wetlands and other areas that serve as groundwater recharge areas; requiring water-conserving designs and equipment in new construction; encouraging water-conserving landscaping; requiring use of recycled water for irrigation of landscaping in new development where possible; maintaining a water rate structure that includes recovery of costs of conservation programs; and studying the potential for using surface water to protect the groundwater supply and the possibility of using reclaimed wastewater to offset demand for new water supplies. Another policy in the GPU mandates that, "[f]or all new development, prior to the approval of any subdivision

applications, the developers shall assure that there is sufficient available water supply to meet projected buildout.”

The EIR’s assessment of the impact on groundwater of development expected under the GPU may be summarized as follows: The city’s infrastructure is expected to be adequate to pump the necessary quantity of groundwater, but the quantity of groundwater that will be available to be pumped safely in the future is unknown, just as the quantity available now is unknown. The demand on the city’s water department for groundwater will increase as the population grows, but this will not cause an equivalent increase in the demand on the groundwater subbasin from which the water is taken. As development proceeds, farmland will be taken out of cultivation and replaced with developed land, resulting in a sharp decrease in water consumption per acre. Yet the size of the effect of this decrease on the water subbasin is not known because the EIR does not show how much of the water used on the farmland is groundwater rather than surface water. There are sufficient data, however, to show that the groundwater subbasin will break even with development even if the fraction of farm irrigation water coming from the ground is relatively small. If developed land uses an average of 0.659 acre feet of water per acre per year, and farmland uses an average of 3.565 acre feet per acre per year, then developed land using groundwater exclusively will use the same amount of groundwater as farmland using groundwater for 18.5 percent of its irrigation ($0.659 \div 3.565 = 0.185$). Finally, although the aquifer is in a long-term state of critical overdraft, there are several countervailing factors: The city has a groundwater recharge program, policies are included in the GPU to protect recharge areas and promote conservation, and the GPU bars development at the individual project level unless sufficient supply for each project is shown. The question is whether this information is sufficient to satisfy CEQA.

The California Supreme Court set forth principles for assessing the sufficiency of an EIR’s water-supply analysis in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard Area Citizens*). In that case,

the EIR evaluated a community plan for a 22,000-unit residential development project and a specific plan⁸ for a portion of the larger project. (*Id.* at p. 422.) Various difficulties were involved in predicting whether the groundwater and surface water sources counted on by the developers would actually be available when needed. (*Id.* at pp. 422-424, 427-428.) As framed by the court, the question presented was “how firmly future water supplies for a proposed project must be identified or, to put the question in reverse, what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR for a land use plan.” (*Id.* at p. 428.)

The court articulated four principles. First, “CEQA’s informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to ‘evaluate the pros and cons of supplying the amount of water that the [project] will need.’ [Citation.]” (*Vineyard Area Citizens, supra*, 40 Cal.4th at pp. 430-431.)

Second, for a large project that will be developed over a period of years, an EIR’s analysis “cannot be limited to the water supply for the first stage or the first few years.” (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 431.) “[T]he future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis” in lower-tier EIR’s. (*Ibid.*)

Third, the water sources the EIR identifies “must bear a likelihood of actually proving available” and cannot be speculative or unrealistic. Further, the EIR must

⁸“A specific plan ... is usually more detailed than a general plan, and covers specific parts of the community.” (*Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302, 1310.) Its purpose is to implement the provisions of a general plan. (Gov. Code, § 65450.) Unlike “general plan” and “specific plan,” “community plan” is not a statutorily defined term. In this instance, it was a document that set out “the ‘policy framework and conceptual development plan’ for the entire project” (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 422.)

analyze the circumstances affecting the likelihood of the water's availability. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 432.)

Fourth, “where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.” It is not enough for the land use plan simply to provide that development will not proceed if the water proves unavailable, although that can be a legitimate technique where the EIR analyzes various alternatives but acknowledges that uncertainty remains. (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 432.)

Applying these principles, our Supreme Court held that the EIR at issue adequately analyzed the near-term water supply for the portion of the project described in the specific plan. There was a source of groundwater to which that portion could reasonably expect to be connected and would be ready to be connected within 18 months. (*Vineyard Area Citizens, supra*, 40 Cal.4th at pp. 436-437.) For the longer-term prospect of providing water to the remainder of the project, however, the EIR failed to show “at least an approximate long-term sufficiency in total supply” given the probable competing demands from other projects. (*Id.* at p. 441.)

Particularly helpful to us in our case is the application of the *Vineyard Area Citizens* principles to an EIR about a general plan in *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059 (*Watsonville Pilots*). Like Tulare, the City of Watsonville prepared a general plan that contemplated the development of new housing on farmland in an area adjacent to the city limits and expected to be annexed in the future. (*Id.* at pp. 1066-1067.) The water situation had a number of features in common with Tulare's situation. The groundwater basin beneath the city was the source of supply identified in the EIR for the expected development. (*Id.* at pp. 1091-1092.) The basin had been in an overdraft condition for decades. The overdraft had caused damage to the

aquifer by allowing seawater intrusion near the ocean, though this intrusion had not reached the area of the city's wells. (*Id.* at p. 1091.) Calculations in the EIR showed that, because farmland uses substantially more water than developed land, and the new development would occupy converted farmland, the development's groundwater consumption would be offset and would not cause a significant increase in the overdraft. It also would not decrease the overdraft. (*Id.* at p. 1093.) The EIR also described a variety of conservation policies followed by the city that could lead to a modest reduction in groundwater usage. The basin would remain in a condition of overdraft, however. (*Id.* at pp. 1091-1092, 1094.)

The Court of Appeal held this discussion was adequate under *Vineyard Area Citizens*. The EIR identified an aquifer as a likely source of water for the expected quantity of development. It discussed uncertainties arising from the aquifer's overdraft condition. It presented substantial evidence in support of its finding that the effect of converting farmland to urban use would offset or nearly offset the new development's demand for water. (*Watsonville Pilots, supra*, 183 Cal.App.4th at pp. 1092-1094.) Neither this effect nor the city's conservation policies could resolve the preexisting overdraft problem, but the EIR "was not required to resolve the overdraft problem, a feat that was far beyond its scope." (*Id.* at p. 1094.)

Our case is quite similar. The EIR's discussion is sufficient from both the perspective of supply and that of demand. The supply analysis is sufficient even though the subbasin is overdrafted and the safe yield is unknown because the gist of the analysis is that the supply need only remain constant to satisfy the expected demand. Manro describes as speculative the EIR's reliance on the continued availability of groundwater at present levels, but there is no authority for the idea that such reliance must be justified by proof that the status quo will continue. As in *Watsonville Pilots*, showing the aquifer could continue its current performance despite its existing problems was beyond the scope of the EIR.

We do not mean to suggest that long-term reliance on a water supply known to be nearing depletion would be proper. This case might be different if the record contained substantial evidence that pumping from the subbasin cannot continue at the current rate until 2035. The EIR's information on overdraft and subsidence do not amount to substantial evidence of this, however. Despite the 35 years that passed from the critical-overdraft finding to the certification of the EIR, the city's water department has continued to supply all its users from the subbasin. It has recharge and conservation programs. We do not say, of course, that continued reliance on groundwater at historic levels *is* sustainable. Obviously, we do not know; and groundwater supply failures in Tulare County are hardly unknown. Nevertheless, we conclude we cannot, under the circumstances, reject the city's assumption that the status quo for supply will continue absent substantial evidence in the record to the contrary.

The EIR's discussion on the demand side—i.e., its prediction that the rate of groundwater consumption will not increase—is adequate as well. It would have been better if it had broken down the amounts of groundwater and surface water the farmland conversion will save per acre, since the portion of the savings that comes from surface water will not benefit the subbasin. But, because that portion could be quite large (more than 80 percent) without vitiating the EIR's finding that consumption probably will not increase, we conclude the finding is adequately supported.

Manro argues that the water savings from converting farmland to urban use is exaggerated by the EIR because the EIR fails to account for groundwater recharge resulting from surface water irrigation. In other words, when the land goes out of cultivation and stops being irrigated by surface water, that water will no longer percolate to the aquifer, but the EIR's calculations do not reflect this loss. Yet Manro points to no substantial evidence in the record supporting a fair argument that such a loss would be a significant impact of development under the GPU. It follows that he has not shown the EIR was required to analyze the point.

Manro also suggests that global warming will cause the groundwater supply to become inadequate. Again, he points to no substantial evidence in the record supporting a fair argument on this point.

Next, Manro contends the EIR's cumulative impact analysis for water supply should have considered the project's cumulative impact on the entire San Joaquin Valley Groundwater Basin, not just the Kaweah Groundwater Subbasin. Given the point of the EIR's analysis—that demand will not rise—it is difficult to see how it could make a difference whether the San Joaquin Valley Groundwater Basin or the Kaweah Groundwater Subbasin is used as a point of reference for cumulative impacts. Manro does not suggest, for instance, that focusing on the larger aquifer would have revealed facts about the probability of future supply failures that were omitted from the EIR.

Finally, Manro claims the EIR failed to conform to CEQA requirements because of the form of its conclusion about the environmental impacts from building the water supply infrastructure necessary for the development contemplated by the GPU. The EIR states:

“While the [GPU] ... contain[s] policies to ensure the adequate provision of water infrastructure, it is unknown at this time exactly where new water infrastructure will be placed. The specific environmental impact of constructing new or expanding existing water facilities to support buildout under the [GPU] ... cannot be determined until such time as these improvements are proposed. However, development and operation of new and expanded facilities may result in potentially significant impacts that are addressed by various plans, policies, and mitigation measures identified in other sections of this draft EIR. As specific projects, including water system improvements, are identified, additional project-specific environmental analysis would be completed pursuant to CEQA and appropriate mitigation measures would be required. To attempt to identify specific impacts at this stage would be speculative; therefore, the impact is *less than significant*.”

Manro correctly points out that the final sentence of this paragraph is a non sequitur: a *lack* of information about a potential impact cannot show that the impact

is insignificant. As Manro further points out, the Guidelines say how the EIR should have handled the problem: “If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.” (Guidelines, § 15145.)

This mistake does not amount to a prejudicial abuse of discretion. We do not think it ““preclude[d] informed decisionmaking and informed public participation”” (Gray v. County of Madera, supra, 167 Cal.App.4th at p. 1109.) Despite superficially having the form of a finding of no significant impact, the statements in the quoted paragraph say in substance that analysis of the specific impacts of new water supply infrastructure for as-yet unproposed individual projects in as-yet unknown locations is reserved for future, lower-tier EIR’s. “Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases.” (Vineyard Area Citizens, supra, 40 Cal.4th at p. 431.)

For the above reasons, we conclude that Manro has not demonstrated any prejudicial abuse of discretion in the EIR’s treatment of the GPU’s impact on water supply.

E. Farmland conversion offsets

Manro contends the city violated CEQA in the manner in which it adopted a plan to mitigate the loss of farmland under the GPU. We disagree.

The EIR finds the GPU would lead to the conversion of about 6,400 acres of “farmlands of concern under CEQA” to nonagricultural use.⁹ The EIR further finds that this impact would be significant and unavoidable and that no feasible mitigation measures are available. Despite the finding that no feasible mitigation measures are

⁹The Guidelines list several categories of farmland, the loss of which should be analyzed as a potentially significant environmental impact. (Guidelines, appen. G, part II, subd. (a).) These are the “farmlands of concern” referenced in the EIR.

available, however, the EIR also explains that the GPU includes a policy requiring the city to adopt a “mitigation program” to address farmland conversion. This program would, at the time of development of farmland in accordance with the GPU, mandate either the purchase of agricultural easements on equivalent land offsite or the payment of agricultural mitigation fees. The GPU provides that the program must do all the following:

- “◆ Require a 1:1 ratio of agricultural land preserved for every acre of land converted.
- “◆ Require land to be preserved be equivalent to the land converted, e.g. Prime Farmland, and further require that the land to be preserved has adequate existing water supply to support agricultural use, is designated and zoned for agriculture, is located outside of a city UDB, is located at least in part within 5 miles of Tulare’s UDB, and is not already ... in use as an agricultural easement.
- “◆ Require mitigation prior to or at time of impact.
- “◆ Allow mitigation to be provided either by purchase of agricultural easements or by payment of agricultural mitigation fees, but state that purchase of ... easements is the preferred form of mitigation. Both purchase of easements and payment of mitigation fees should cover not only the cost of an agricultural easement, but additional costs of transactional fees and administering, monitoring, and enforcing the easement.
- “◆ Require easements to be held by and/or mitigation fees to be transferred to a qualifying entity, such as a local land trust with demonstrated experience administering, monitoring, and enforcing agricultural easements.
- “◆ Require the qualifying entity to submit annual status and monitoring reports to the City and to Tulare County.
- “◆ Allow stacking of conservation and agricultural easements if habitat needs of species on conservation easement are compatible with agricultural activities/use on agricultural easement.

- “◆ Allow exemptions for conversion of land to agricultural tourism uses, agricultural processing uses, agricultural buffers, public facilities, and roadways....”

In accordance with CEQA, the city did approve, in a document separate from the EIR, a mitigation monitoring program to ensure the implementation of the mitigation measures adopted in the EIR. The agricultural easement scheme was not included in that document, however.

Manro argues that the city’s imposition of these requirements on development under the GPU is procedurally erroneous. Citing various provisions of CEQA and the Guidelines, he contends the EIR should have found the measures just described were in fact feasible mitigation measures, and the city should have included these measures in the mitigation monitoring program.

We agree the EIR might have been better in form if it had treated the GPU’s plan for requiring farmland conversion offsets as a feasible mitigation measure instead of finding that no feasible mitigation measures were available. By saying no feasible mitigation measures were available, the EIR appears to mean that, because farmland within the UDB would be converted even with the easement acquisition program, the impact of the GPU would remain significant despite that program. Yet the fact that the easement program did not render insignificant the GPU’s impact on agricultural resources does not mean it is infeasible or is not a mitigation measure. The city plainly found the easement program to be feasible, since it included it as policy of the GPU. And in describing the requirements for mitigation measures, the Guidelines state that an EIR must find that features “have been required in, or incorporated into, the project which avoid or substantially lessen” a significant environmental impact. (Guidelines, § 15091, subd. (a)(1).) The easement program is incorporated into the GPU and clearly is intended to lessen the impact of the loss of farmland substantially.

In substance, however, we see no real disadvantage in the way the GPU and the EIR treat the matter. The EIR finds that farmland conversion is a significant impact and

no feasible measures will render it insignificant. The city nevertheless mandated the easement program to lessen the impact of each future development project by preserving other farmland on an acre-for-acre basis. The terms of the process required for each such project are specific and detailed. For each future development project, the city further imposed on itself a mandate to enforce and monitor the easement program. Although the mitigation monitoring program adopted by the city did not include monitoring of compliance with the easement policy, the easement policy itself included provisions for monitoring and enforcement. In light of this, it is not even clear that the easement policy *was* omitted from the mitigation monitoring program, although it does not appear in the document bearing that title. In discussing mitigation monitoring plans, the Guidelines state that, in the case of a general plan, “[t]he monitoring plan may *consist of* policies included in plan-level documents.” (Guidelines, § 15097, subd. (b), italics added.) This would appear to indicate that, because the easement policy is part of the GPU and provided means for monitoring and enforcement, it is *itself* part of the city’s mitigation monitoring plan.

In sum, Manro has demonstrated no prejudicial abuse of discretion related to the city’s policy of requiring farmland preservation measures to offset the conversion of farmland by development expected under the GPU.

F. Project alternatives

Manro claims the EIR’s discussion of alternatives to the project was inadequate under CEQA. We disagree.

After briefly discussing four project alternatives found to be infeasible, the EIR presented a detailed discussion of three potentially feasible alternatives. These were the no-project alternative (which CEQA always requires to be discussed [Guidelines, § 15126.6, subd. (e)(1)]) plus two schemes, focused growth and lower intensity, under which the new general plan would call for the development of less land. In the no-project alternative, the existing 1993 general plan would remain in effect, future development

would be limited by that plan, and no changes in land use designations would be made. Under the focused growth approach, “the [amount of land included within the] UDB would be reduced from that of the proposed project, resulting in a change to the proposed land use designations along the borders of the city, but ... land uses within the interior of the city [would conform] to the same general standards as the proposed [project].” The lower-intensity alternative is similar to focused growth, except that the number of high-density and medium-density residential units would be reduced and a smaller increase in population would be accommodated.

In discussing the extent to which the three alternatives would satisfy the objectives of the GPU, the EIR found that all three alternatives would be inferior to the proposed project with respect to water supply. Because the alternatives would result in no conversion or reduced conversion of agricultural land to urban use, the alternatives would not result in a diminution of demand on converted properties comparable to the proposed project’s diminution. The no-project alternative and the lower-intensity approach would fail to satisfy other objectives as well. The no-project alternative would not meet any of the project objectives because those objectives were defined, in essence, as ways the city could improve upon the 1993 general plan. The lower-intensity alternative would fail to improve the mix of housing options and to promote the creation of transit-, pedestrian-, and bicycle-friendly areas.

Manro says the EIR’s project alternatives analysis is improper because it did not expressly find the alternatives to be infeasible. Section 21081, subdivision (a)(3), and Guidelines section 15091, subdivision (a)(3), state, in effect, that if a project has significant environmental impacts, but feasible mitigation measures or project alternatives exist that would substantially reduce those impacts, then either the mitigation measures must be adopted or an alternative must be chosen over the proposed project. In this instance, the EIR found there were no feasible mitigation measures for some significant impacts, so a feasible alternative would have to be adopted, if available. The

EIR does not state that the project alternatives are infeasible. Manro argues that, under these circumstances, the project could not be approved as proposed.

The difficulty on this point arises in part from the somewhat ambiguous, or at any rate confusing, nature of CEQA's language on the topic of feasible project alternatives. The statute and Guidelines state, on the one hand, that a "feasible" (or not "infeasible") alternative must be chosen over the proposed project if that is the only way to reduce substantially a significant environmental impact. (§§ 21002, 21081, subd. (a)(3); Guidelines, § 15091, subd. (a)(3).) On the other hand, an EIR is required to examine in detail only those alternatives that are "potentially feasible" in the first place; it need not consider "alternatives which are infeasible." (Guidelines, § 15126.6, subd. (a).) If the EIR's analysis should only include feasible alternatives, how could the result of the analysis ever be that the alternatives are not feasible? Yet that result clearly is meant to be one of the possible outcomes.

The answer, we believe, is as follows: A carefully worded EIR will begin by saying the alternatives considered in its detailed analysis are *potentially* feasible. Then, at the end of the analysis of each alternative, the EIR will conclude that the alternative is *actually* feasible or not feasible.

That is not what happened in this case. Instead, the EIR simply sets forth reasons why the alternatives would fail to achieve project objectives and leaves it at that. To say this was a prejudicial abuse of discretion in this instance, however, would be to elevate form over substance. The point of the EIR's discussion is that the alternatives would not achieve the city's goals in updating its general plan. This was, in essence, a way of finding that the alternatives were infeasible because of "[s]pecific economic, legal, social, technological, or other considerations" (Guidelines, § 15091, subd. (a)(3).) A clearer, more explicit statement of this would have been preferable, but its absence is not reason enough to reverse the city's approval of the project.

Manro next argues that, even if the failure to find the alternatives explicitly “infeasible” is not a prejudicial abuse of discretion, the EIR’s findings against the alternatives were not supported by sufficient evidence because they relied on the EIR’s water supply analysis, which, according to Manro, is invalid. For the reasons given above, however, we find the water supply analysis is adequate.

G. Ruling on motion to exclude evidence obtained in confidential mediation

Manro argues that when the trial court granted the city’s motion to exclude confidential matter disclosed in paragraph No. A9 of his trial brief, it should have separated the confidential matter in that paragraph from matter disclosed in the administrative record and should have limited its order so that it excluded only the former. Manro does not explain, however, which facts in that paragraph he considers admissible and which inadmissible or how the ruling prejudiced him. For this reason, his briefing is inadequate and the issue is forfeited. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.)

We would not find reversible error even if the issue were not forfeited. We have reviewed paragraph No. A9 of Manro’s trial brief and find that, whether considered in its entirety or only in part, it does not support a conclusion there was any prejudicial abuse of discretion.

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

Smith, J.

WE CONCUR:

Detjen, Acting P.J.

Peña, J.