



BACKGROUND

Several comments have been received on the General Plan Update related to the draft policy language. Some comments argue that the language is overly permissive, while others argue that it is too restrictive. DPLU specifically reviewed all draft policies to determine if mandatory or more permissive language is appropriate. DPLU believes that the policies are appropriate as drafted.

SUGGESTIONS OF OVERLY PERMISSIVE LANGUAGE

Some comments suggest that draft policies, which are also mitigation measures, inappropriately use qualifying terms such as “encourage,” and “should” rather than enforceable or mandatory language. Commenters included the California Attorney General, California Native Plant Society, and Endangered Habitats League.

DPLU does not agree that mandatory language is appropriate for all policies. General Plan policies are a statement of legislative policy and do not need to be written as mandatory in order to be enforceable. They often guide more detailed enforcement tools such as ordinances and codes. DPLU has specifically reviewed all draft policies to determine if mandatory or more permissive language is appropriate. Examples of some draft policies specifically mentioned by commenters and DPLU’s response are provided below:

LU-5.4 Planning Support. Undertake planning efforts that promote infill and redevelopment of uses that accommodate walking and biking within communities.

In this policy, the County has committed to undertaking certain planning efforts. The County does not agree that mandating infill or redevelopment is an appropriate policy for the unincorporated area as it may result in premature development ahead of market demand. It also poses logistical and legal questions on how a government requires a property owner to build on one's land.

LU-6.3 Conservation-Oriented Project Design. Support conservation-oriented project design when appropriate and consistent with the applicable Community Plan. This can be achieved with mechanisms such as, but not limited to, Specific Plans, lot area averaging, and reductions in lot size with corresponding requirements for

preserved open space (Planned Residential Developments). Projects that rely on lot size reductions should incorporate specific design techniques, perimeter lot sizes, or buffers, to achieve compatibility with community character.

This policy is implemented with the Conservation Subdivision Program which is in draft form and is being processed concurrent with the General Plan Update. The CSP is enforceable through the Subdivision Ordinance and Zoning Ordinance. The County did not find it appropriate to mandate conservation-oriented project design in general. Instead, the program facilitates it through flexibility in design regulations and strengthening of resource protection.

COS-4.2 Drought-Efficient Landscaping. Require efficient irrigation systems and in new development encourage the use of native plant species and non-invasive drought tolerant/low water use plants in landscaping.

The County does not agree that an outright prohibition on non-native ornamentals or water intensive vegetation such as lawns is appropriate or necessary. The draft policy is in alignment with the State’s model landscape ordinance. The County has developed a comprehensive program to require water efficient landscapes and encourage the use of native plants that are fire and water-wise. The County adopted its updated Landscape Water Conservation Ordinance on December 9, 2009, ahead of the State deadline and well ahead of most other jurisdictions in the State.

COS-5.4 Invasive Species. Encourage the removal of invasive species to restore natural drainage systems, habitats, and natural hydrologic regimes of watercourses.

The County does not believe that it is appropriate or that a sufficient nexus exists to require property owners to restore or enhance habitats or waterways on their property unless the damage resulted from a specific codes violation. More commonly, habitats were degraded from historic uses of the land, introduction of invasive species elsewhere in the watershed, or from secondary effects from nearby development.

COS-6.4 Conservation Easements. Support the acquisition or voluntary dedication of agriculture conservation easements and programs that preserve agricultural lands.

FACT SHEET

PERMISSIVE VERSES RESTRICTIVE POLICY LANGUAGE

GENERAL PLAN UPDATE INFORMATION

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The County does not agree that mandating acquisition of land is a prudent action without a comprehensive program, appropriate nexus, and funding source. The County has contracted with American Farmland Trust to develop a Purchase of Agricultural Conservation Easements program for the County. This work is anticipated to be completed by the end of 2010. Once the feasibility and logistics of a program have been evaluated, this policy may be revised to reflect the course of action decided by the County. Until then, the County believe that this policy is appropriate as written.

COS-6.5 Best Management Practices. Encourage best management practices in agriculture and animal operations to protect watersheds, reduce GHG emissions, conserve energy and water, and utilize alternative energy sources, including wind and solar power.

Most agriculture and animal operations are existing and do not require use permits by the County. Therefore, the County does not agree that mandating the practices listed in this policy is appropriate for the County.

COS-14.7 Alternative Energy Sources for Development Projects. Encourage development projects that use energy recovery, photovoltaic, and wind energy .

Not all development projects lend themselves to alternative energy sources making mandating such practices infeasible. Additionally, use of such practices may not always be cost effective and could significantly affect markets and business operations.

COS-15.4 Title 24 Energy Standards. Require development to minimize energy impacts from new buildings in accordance with or exceeding Title 24 energy standards.

No “qualifying terms” are evident in this policy.

COS-16.4 Alternative Fuel Sources. Explore the potential of developing alternative fuel stations at maintenance yards and other County facilities for the municipal fleet and general public.

The County does not agree that committing to development of alternative fuel stations is appropriate without proper study and planning.

Undertaking such an endeavor may require significant expenditures. To commit to such a project at the General Plan level may result in limited funding available for other GHG reduction measures, some of which may be more effective.

SUGGESTIONS OF OVERLY RESTRICTIVE LANGUAGE

Some comments suggest that draft policies are overly restrictive because they use words like “require”, “avoid”, and “prohibit”. The comments assert that these terms are the equivalent to using the word “shall” as opposed to the word “should” which would provide the County greater flexibility with implementing the General Plan. Commenters included the San Diego Association of Realtors, East San Diego County Association of Realtors, Rancho Santa Fe Association, and Valley Center Town Council.

DPLU does not agree that the draft policies are overly restrictive and do not contain flexibility. The State Guidelines for General Plans states, “A policy is a specific statement that guides decision-making. It indicates a commitment of the local legislative body to a particular course of action.” The County has avoided the use of “should” because it desires a General Plan that is clear on its intent and avoids debate during application. This approach has also been supported by a number of stakeholders and commenters on the General Plan Update who have indicated that they desire clear and firm commitments to certain policies and actions.

Similar to the concerns of permissive language, DPLU reviewed all draft policies to determine if mandatory or more permissive language is appropriate. Few commenters cited specific policies of concern for mandatory language. Therefore, select examples were selected with a brief evaluation. In many cases, the policy is supporting existing practices and will not change the process.

LU-1.3 Initiation of Plan Amendments. Require approval from the Board of Supervisors to initiate General Plan Amendments for private projects outside of a comprehensive General Plan Update.

DPLU believes that a specific commitment to a decision making body is necessary in this policy.

LU-1.4 Leapfrog Development. Prohibit leapfrog development which is inconsistent with the

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Community Development Model and Community Plans.

This policy clearly states that the County will not approve leapfrog development and that conformance with its overall development model is paramount. Given that the Community Development Model is a fundamental building block for the General Plan Update, DPLU believes the policy is appropriate.

LU-6.1 Environmental Sustainability. Require the protection of intact or sensitive natural resources in support of the long-term sustainability of the natural environment.

This policy is a statement of current practice as implemented by the County's Resource Protection Ordinance and compliance with the California Environmental Quality Act.

LU-6.9 Protection from Hazards. Require that development be located and designed to protect property and residents from the risks of natural and man-induced hazards.

This policy is a statement of current practice as implemented by the Building Code and compliance with the California Environmental Quality Act.

LU-8.1 Density Relationship to Groundwater Sustainability. Require land use densities in groundwater dependent areas to be consistent with the long-term sustainability of groundwater supplies, except in the Borrego Valley.

This policy is a statement of current practice as implemented by the Groundwater Ordinance and compliance with the California Environmental Quality Act.

LU-9.10 Internal Village Connectivity. Require that new development in Village areas are integrated with existing neighborhoods by providing connected and continuous street, pathway, and recreational open space networks, including pedestrian and bike paths.

This policy is generally a statement of current practice as implemented by the County's road standards, and bike and trails master plans.

LU-11.2 Compatibility with Community Character. Require that commercial, office, and

industrial development be located, scaled, and designed to be compatible with the unique character of the community.

This policy is generally statement of current practice as implemented by the County's site plan/permit process and compliance with the California Environmental Quality Act.

LU-11.11 Industrial Compatibility with Adjoining Uses. Require industrial land uses with outdoor activities or storage to provide a buffer from adjacent incompatible land uses.

This policy is generally statement of current practice as implemented by the County's site plan process/permit and compliance with the California Environmental Quality Act.

LU-13.2 Commitment of Water Supply. Require new development to identify adequate water resources, in accordance with State law, to support the development prior to approval.

This policy is statement of current practice as implemented by the County's Board Policy and compliance with the California Environmental Quality Act.

CONCLUSION

DPLU has received comments from both sides on this issue throughout the drafting of the policies. Numerous policies have gone through multiple iterations of rewrites, many at the direction of the advisory groups or as requested by stakeholders. The wording of every policy has been given special consideration by DPLU to ensure that the policy is clear, enforceable, and not overly onerous. DPLU will continue to evaluate specific issues as they are communicated. At this time, DPLU believe that the policies are appropriate as written.