

Thomas P. Infusino, Esq.
P.O. Box 792
Pine Grove, CA 95665
(290) 295-8866
tomi@volcano.net

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Board of Supervisors
County of Calaveras
Government Center
891 Mountain Ranch Road
San Andreas, CA 95249

RE: Calaveras Planning Coalition Supports Extending the Urgency Ordinance.

Dear Supervisors:

My name is Tom Infusino, and I am facilitator for the Calaveras Planning Coalition. As you know, the Coalition is composed of community groups, organizations, and individuals interested in growth and planning issues in Calaveras County. The Coalition is united in its belief in the need for a comprehensive update to the Calaveras County General Plan. Further, the Coalition believes that citizen participation is the key to a successful update of the General Plan, and necessary to the update of area specific plans throughout the County. Such updated plans are necessary precursors to the approval of development projects that will exacerbate problems created by the currently inadequate general plan.

The Coalition supports extending the Urgency Ordinance for a year, and supports adding further provisions to help the County process development proposals in a way that promotes the public interest and conforms to the guidance and requirements of state law. We urge the Supervisors not merely to adopt the proposed Development Department policies, but to include these policies in a one-year extension of the Urgency Ordinance.

I. The Facts Justify Extending the Urgency Ordinance.

A) The Original Reasons used to Justify the Existing Urgency Ordinance are Still Valid.

You may recall that back in December of 2006, I spoke in favor of the County's proposed Urgency Ordinance. At that time I noted a number of facts that supported the need for an urgency ordinance:

- 1) The current Land Use Element lacks the clear, consistent and comprehensive descriptions of land use designations necessary to guide future development;
- 2) There is no analysis of the development potential and holding capacity of the 1996 Future Land Use Plan Map;
- 3) Ten years of General Plan Amendments have left the County unsure of the cumulative adverse impacts of approved development on health, safety, and welfare;
- 4) The Transportation Plan Map in the 1996 General Plan is actually 20 years-old, and there is a lack of the coordination needed between the Land Use Element and the Circulation Element to ensure the safe and smooth flow of vehicles and goods, and the prompt response of emergency vehicles;
- 5) The Future Land Use Plan Map does not reflect the 40-acre minimum densities needed for the protection of wildlife habitat;
- 6) The noise contours in the Noise Element are outdated and not useful to protect noise sensitive land uses from disturbance;
- 7) The Safety Element lacks standards for structure clearance, minimum road width, evacuation routes, and peakload water supply needed for fire safety, as evidenced by water shortages in service areas in the summer of 2006;
- 8) The Flood Maps are out of date and not useful for planning future development to be safe from flooding, as revealed by unexpected flooding in 2006 in Valley Springs;
- 9) Community law enforcement is understaffed, and the jail is undersized, to serve the needs of dispersed new development;
- 10) Local districts are having difficulty expanding waste water treatment infrastructure to keep pace with the needs of new development.
- 11) One recent study indicates that the Wallace Community Service District has already committed to serve units of development beyond its current service capacity, creating an immediate threat to public health and welfare.

Also, when adopting the current Urgency Ordinance, the Board made specific findings of fact that justified the ordinance. These included:

- 1) That the Calaveras County General Plan was in need of an update.
- 2) That such a comprehensive review of policies governing development is appropriate prior to new development taking place.
- 3) That piecemeal review of development applications is contrary to the public welfare and threatens the viability and long-range success of the General Plan Update.
- 4) That continuing to accept applications for development entitlements while the County is updating the General Plan would preclude the County from applying updated land use policies to the proposed developments,

These facts continue to justify the extension of the Urgency Ordinance for another year.

B) The Number of Available Lots is not Constraining Development in Calaveras County.

Calaveras County currently has over 17,000 vacant legal parcels in a broad variety of land use designations. As indicated in County Counsel's Office staff report on the Urgency Ordinance issued last month, about 600 of these were developed in the year prior to the Urgency Ordinance. The report also noted that residential and commercial building on these lots has continued, despite the Urgency Ordinance's limitations on new development applications, and the downturn in the national housing market. Further, given the downturn in the national housing market as it adjusts to foreclosures and the credit crisis, the housing market in Calaveras is unlikely to use up the existing supply of approved lots for many years. Thus, any adverse effects on the housing market that might occur with the adoption of an urgency ordinance are muted by other market forces and the current ample supply of lots in Calaveras County.

C) The Attention of the Development Department Could Focus on Alleviating Real Barriers to Future Development.

Another reason you may want to extend the Urgency Ordinance is to allow the Development Department staff to focus its efforts on the General Plan Update, and other on pressing barriers to future residential, commercial, and economic development. The need for this is even more apparent today than it was a year ago.

- 1) Many have acknowledged the need to perfect area of origin water rights to serve future development in Calaveras County. Such rights cannot be lawfully secured

in the absence of an adopted General Plan Update that justifies the need for the water. (See Amador County v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 949-952.)

- 2) Communities are reaching the limits of their current wastewater treatment capacity, while their districts are still unprepared for needed expansions.
- 3) The new Regional Transportation Plan is not fully funded.
- 4) Lack luster code enforcement is an ongoing complaint at community meetings in Burson, Valley Springs and Copperopolis.
- 5) Funding for law enforcement capacity remains unresolved.
- 6) The County continues to fail to meet targets for workforce housing.

Having the Development Department staff focus on these priorities would be far more effective in promoting future development than would the use of limited staff time on the continued expansion of the already huge surplus of parcels available for development.

D) State Law Justifies Placing Additional Conditions on New Development Proposals.

In April of this year, the Coalition presented the Board with a proposal to limit the processing and approval of projects that had a nexus to flaws in the current General Plan, and that foreclosed future planning options in a specific community or in the County as a whole. We recommended that:

“A) Land use law allows the approval of only those projects that, by themselves or in combination with other pending projects, do not foreclose future general plan options. (Committee for Responsible Planning v. City of Indian Wells (1989) 209 Cal.App.3d 1005.) Similarly, the State discourages development approvals that may interfere with implementation of the future general plan, if later found to be inconsistent with it. (Government Code, Section 65360.) Thus, every effort should be made to avoid project that necessitate major alterations to existing communities such as re-aligning highways, moving streams, expanding community boundaries, adding excess waste water treatment capacity, extending infrastructure to open space areas, etc.. To help the County meet this obligation, the project proponent should provide such evidence and argument sufficient for the County to make a valid finding of fact, supported by substantial evidence in the record, that the project (by itself or in combination with others) by its size, location, or other characteristics, would not foreclose future general plan options in the County or in the immediate community.

“B) Land use law allows approvals of only those projects that are consistent with the existing general plan, and that do not have a nexus to the legally substandard aspects

of the general plan. (Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176; Garat v. City of Riverside (1991) 2 Cal.App.4th 259.) To facilitate such approvals, the County should provide a list of the general plan inadequacies identified in the Mintier Report. (See Exhibit 6, General Plan Deficiencies.) The Project proponent should provide such evidence and argument sufficient for the County to make a valid finding of fact, supported by substantial evidence in the record, that there is no nexus between the effects of the project and the flaws in the general plan.

“C) The State encourages local governments to ensure that project approvals will be consistent with the future general plan. (Government Code, Section 65361.) To help the County meet this goal, after the completion of the draft general plan update (and after the completion of the alternatives) the project proponent should provide such evidence and argument sufficient for the County to make a valid finding of fact, supported by substantial evidence in the record, that the project approval is consistent with the draft general plan update and its alternatives.”

We encourage the Board to adopt these as further provisions of the Urgency Ordinance, and/or as Planning Department policy.

E) The Board Should Consider Pragmatic Limitations on Interim Development Approvals to Reduce the Adverse Effects of the Flawed General Plan.

If the policies noted in the section above seem too open ended, consider more pragmatic limitations on project processing and project approvals to ease the adverse effects of processing and approving projects under the flawed general plan.

- 1) To avoid applicants getting a free pass on compliance with the new General Plan, require projects in all new development applications to conform to the policies and implementations of the General Plan in place at the time they are approved, and to any other development standards in place at the time they are approved.
- 2) For projects converting working landscape and open space designations to residential designations, require a finding of fact indicating that there is a shortage of land in that residential designation in the County.
- 3) Require additional road impact fees to reduce the funding gap identified in the Regional Transportation Plan.
- 4) Require minimum workforce housing provisions to ease the ineffectiveness of the current Housing Element to produce affordable housing.
- 5) Require additional fees to mitigate impacts on law enforcement and jail capacity.

6) Require funding for third-party monitoring and reporting of project conditions of approval and mitigation measures, and commit to conflict resolution procedures for resolving these disputes, to ease the problems posed by lack luster monitoring by the Building and Planning Departments, and poor code enforcement.

Continuing to approve development in the absence of such requirements merely exacerbates existing deficiencies. We must stop digging that hole deeper!

Thank you for your thoughtful consideration of these suggestions.

Sincerely,

Thomas P. Infusino