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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CALAVERAS

CALAVERAS PLANNING COALITION,

Petitioner and Plaintiff,

v.

CALAVERAS COUNTY BOARD OF SUPERVISORS, COUNTY OF CALAVERAS, and DOES 1-20,

Defendants and Respondents,

AND DOES 21-40,

Real Parties in Interest.

CASE NO.

PETITION FOR WRIT OF MANDATE; COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF PURSUANT TO. GENERAL PLAN LAW, THE CALIFORNIA PUBLIC RECORDS ACT, AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
(Government Code, secs. 65300, et seq.)
(Government Code, secs. 6250, et seq.)
(Pub. Resources Code 21000, et seq.)

Assigned for all purposes to:
Hon.

Petition Filed:	December 9, 2019
Served:	December 9, 2019
Hearing Date:	TBD
Time:	TBD

INTRODUCTION

1. Petitioner Calaveras Planning Coalition ("CPC") challenges Respondents County of Calaveras' and Calaveras County Board of Supervisors' ("BOS") November 12, 2019, approval of the General Plan Update ("GPU"), because it violates land use law. (Government Code, sec. 65300, et. seq.) The text of the GPU's Resource Production, Conservation & Open Space, and Safety elements are lacking components specifically required by the law, including objectives for the long-term protection of agricultural lands and objectives to protect communities from the unreasonable risk of flooding. Also, the GPU is not comprehensive in its treatment of open space conservation for public safety and wildlife habitat. As a result, the implementation of the GPU will pose unnecessary risks to life and property due to wildfire by allowing residential, commercial, and industrial development by right and by ministerial approval on even the most isolated, dry, steep, and windswept slopes. Such by right and ministerial approvals under the GPU will also put special status species at unnecessary risk of habitat loss, whereby the county could face the prospect of a premature injunction of local economic activity by the federal government [M1]to protect those species. In addition, such injunction would impact families that depend upon a healthy local economy to survive.

2. The GPU also indefinitely defers definitive planning decisions regarding key general plan issues including level of service requirements for emergency response providers; level of service requirements for water and sewer; emergency service impact fees; transportation impact fees and benefit basin fees; bypass roads; open space zoning; and wildlife corridors. The deferral of planning decisions is indefinite despite the fact that the County spent an additional 11 years working on the GPU after the aforementioned issues were identified as key in 2008. As a result, the County has avoided its responsibility to address legitimate state interests in the GPU and has denied our local communities, economy, and environment the benefits to be derived from sound and lawful planning.

3. In addition, the GPU is not comprehensive in its treatment of community plans, having failed to include the 2013 Copperopolis Community Plan and having unnecessarily rescinded without replacement the essential texts of community plans for Ebbetts Pass, Arnold, Avery/Hathaway Pines, Murphys/Douglas Flat, and Valley Springs. This not only betrays the trust of hundreds of local residents who worked to draft those plans, but it also leaves these communities without the means to address long standing and ongoing community specific land use challenges. In some instances where a community plan was included in the GPU, the

County's changes to the plan drafted by residents have resulted in conflicts between the policies of the plan and the land use designation maps for those communities. This interjects additional and unnecessary uncertainty into the development marketplace, increasing risks and raising costs.

4. Furthermore, the Petitioner challenges the Respondents' certification of the program environmental impact report ("EIR") for the GPU, pursuant to the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq*. Some mitigation measures required to be mandatory are phrased as optional while others are improperly deferred. As a result, many of the GPU's two dozen significant impacts associated with wildfire risk, traffic congestion, noise, air pollution, conversion of agricultural lands, destruction of cultural and historical resources, and degradation of fish and wildlife habitat will be more severe, when they can and should have been further reduced. The PEIR is also inadequate as an informational document under CEQA, because still other mitigation measures and alternatives have been completely rejected with little or no analysis. In addition, mitigation measures were rejected by the Respondents using legally inadequate findings. As a result, the Respondents' approval is uninformed and not supported by the analyses and findings of fact that are required under CEQA. CEQA requires valid analyses and findings to demonstrate to the public that the government did everything feasible to protect environmental health and safety. **All** of these potential violations were pointed out in comments on the draft program EIR ("DEIR") made by individuals, organizations, and experts from government agencies and repeated through written and verbal pleas to the Planning Commission and to the Board of Supervisors. Nevertheless, the Respondents still perpetrated the violations and failed to adequately respond to the comments on the DEIR as required by law.

5. The Petitioner, CALAVERAS PLANNING COALITION, requests that this Court set aside Respondent CALAVERAS COUNTY BOARD OF SUPERVISORS' November 12, 2019, approval of the General Plan Update, the Findings of Fact, the Statement of Overriding Considerations, and certification of the PEIR due to violations of CEQA and land use law and require Respondents to comply with these laws prior to making any subsequent approval of the General Plan Update.

6. Finally, the Petitioner seeks the Respondents' release of the 2011 Mintier "Draft" General Plan under the California Public Records Act and the California Constitution. (Gov. Code, sec. 6250 et seq.; Cal. Const., art I, sec. 3, subd. (b)(1).) By improperly withholding this document which was executed under a public contract exceeding $900,000 and prepared after three rounds of public meetings across the county which were attended by over a thousand participants over

the course of four years, the Respondents are impeding the public's review of its business and suppressing informed public debate relating to the health, safety, and welfare of the people of Calaveras County for decades to come.

PARTIES

7. Petitioner, CALAVERAS PLANNING COALITION, is a project of the Community Action Project, which is an unincorporated association fiscally sponsored by Ebbetts Pass Forest Watch, a 501-c-3 non-profit corporation. The CPC is a group of community organizations and individuals, friends and neighbors, who want a healthy and sustainable future for Calaveras County. They believe that meaningful public participation is critical to a successful planning process. United behind eleven land use and development principles, they seek to balance the conservation of local agricultural, natural, and historic resources with the need to provide jobs, housing, safety, and services.

8. The members of CPC and their families live in the Sierra Nevada foothills of Calaveras County. Because they care about their neighbors, CPC members want to maintain the quality of their unique communities and to pass that on to newcomers and future generations. Because they have a strong sense of place, CPC members want to preserve the capability of open space lands to produce food, fiber, minerals, water, habitat, and the scenic beauty that both blesses their lives and provides local jobs. They want to preserve that productivity for newcomers and future generations. Because they feel honored to live in the State of California, CPC members accept the responsibility to enforce the land use, environmental, and public information requirements conferred by the Constitution and the laws of the State of California for the benefit of CPC members, the people of Calaveras County, and for future generations. The CPC includes members who reside in Calaveras County, particularly in or around the communities of Arnold, Murphys, Hathaway Pines, Copperopolis, and Valley Springs; and in the Butte Fire burn scar.

9. Respondent, CALAVERAS COUNTY BOARD OF SUPERVISORS (hereinafter, "the Board") is the governing body of respondent, COUNTY OF CALAVERAS ("County"), a political subdivision created under the laws of the State of California to provide municipal governance over private lands north of Tuolumne County, south of Amador County, east of San Joaquin County, and west of Alpine County. (Gov. Code, sec. 23105.) The Board is responsible for adopting and implementing a legally adequate general plan, for complying with CEQA, and for maintaining and providing access to public records.

10. The petitioner is unaware of the true names and capacities of respondents DOES 1 through 20 and sues such Respondents herein by fictitious names. The petitioner is informed and believes and based on such information and belief alleges that the fictitiously named respondents are also responsible for the hereinafter-described threatened injuries to the petitioner and other members of the public. When the true identities and capacities of these respondents have been determined the petitioner will, with the leave of the court if necessary, amend this petition to insert such identities and capacities.

11. The petitioner is unaware of the true names and capacities of real parties in interest DOES 21 through 40 and sues such real parties in interest herein by fictitious names. The petitioner is informed and believes and based on such information and belief alleges that the fictitiously named real parties in interest are also responsible for the hereinafter-described threatened injuries to the petitioner and other members of the public. When the true identities and capacities of these real parties in interest have been determined the petitioner will, with the leave of the court if necessary, amend this petition to insert such identities and capacities.

JURISDICTION AND VENUE

12. A petitions for writ of mandamus is an acceptable means of seeking judicial review of government decisions under CEQA, land use law, and the Public Records Act. (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 348;, Government Code, secs. 6258, 65301.5, Public Resources Code, secs. 21168, 21168.5.) This court has jurisdiction over this action in mandamus pursuant to California Code of Civil Procedure, Sections 1085, et seq., and 1094.5, that require that a County's action be set aside if the County has prejudicially abused its discretion. A complaint for injunctive and declaratory relief is also appropriate. This court has authority to grant declaratory and injunctive relief pursuant to California Code of Civil Procedure, Sections 525 and 1060; Government Code Section 6258, and Public Resources Code, Section 21168.9. This action is timely having been filed within 30 days of the County's November 12, 2019 CEQA notice of determination, within 90 days of the County's November 12, 2019 adoption of the GPU, and within 3 years of the Petitioner's multiple request for the 2011 Mintier General Plan made between July 4, 2017 and August 20, 2019. (Public Resources Code, sec. 21167, subd. (c); Government Code, secs. 65009, subd. (c)(1)(A); and Code of Civil Procedure, sec. 338.) This court is the proper venue pursuant to California Code of Civil Procedure, Sections 395 and 393,

that identify the defendant/respondents' location as the appropriate venue for both civil actions in general and civil actions against public officials.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. The petitioner has met the requirement that it exhaust administrative remedies prior to filing this action. (Public Resources Code, sec. 21177.)

14. In the16 months that preceded the Board's approval of the GPU, CPC members and their attorney repeatedly submitted arguments and evidence to the Planning Department, the Planning Commission, and the Board of Supervisors encouraging the County to correct the legal flaws in the GPU and its EIR. These were sufficient to exhaust administrative remedies for causes of action one and three. The CPC also made both written and verbal requests for the 2011 Mintier General Plan of the Planning Commission and the Board of Supervisors. These were sufficient to exhaust administrative remedies for cause of action 2. Further details are provided below.

15. About a week before the Board of Supervisors approved the GPU on November 12, 2019, the County released draft findings of fact. On November 10, 2019, the CPC sent the Board of Supervisors comments encouraging the Board of Supervisors to fix the flaws in the finding. On November 8, 2019, the CPC sent in comments encouraging the Board of Supervisors to fix the alternatives treatment in the DEIR. On November 7, 2019, the CPC sent in comments encouraging the Board of Supervisors to fix flawed mitigation measures in the EIR, and to correct the flawed responses to comments on the DEIR. These comments reinforced prior efforts to exhaust the administrative remedies for cause of action three.

16. On July 16, 2019, the CPC sent a written request to the current Board of Supervisors to waive previously claimed privileges and release the 2011 Mintier General Plan. This was followed up by a verbal request on August 20, 2019. These actions are sufficient to meet the exhaustion requirement of the Public Records Act for cause of action two. This was the third Board of Supervisors to fail to honor the CPC's request for the document. The previous two Boards of Supervisors, elected in 2014 and 2016, were also asked to provide the document, but refused to do so. The Petitioner waited to be denied three times before troubling this court to provide judicial relief.

17. Prior to and during the July 30 and 31, 2019, Board of Supervisors public hearing on the GPU, the CPC sent the Board of Supervisors a series of memos encouraging the Board of Supervisors to correct flaws in the GPU and its EIR. Copies of these memos were sent to the

Planning Department and the Deputy County Counsel in charge of land use. These contribute to meeting the exhaustion requirements for causes of action one and three.

18. On June 27, 2019, the Planning Commission rejected general plan amendments requested by the CPC, and recommended that the Board of Supervisors adopt the GPU. The CPC requested an appeal hearing before the Board of Supervisors to address the CPC requests that were not included in the GPU recommended by the Planning Commission. (Government Coe, sec. 65354.5.) This request for a hearing was denied. This exhausted any requirement that may be related to cause of action one to seek an appeal of the Planning Commission's GPU recommendations.

19. Prior to and during the Planning Commission's May and June 2019 hearings on the GPU, the CPC sent the commission a series of comments encouraging the commission to correct flaws in the GPU and its EIR and to inquire regarding the release of the 2011 Mintier General Plan. Copies of these comments were sent to the Board of Supervisors, to the Planning Department, and to the attorney from the County Counsel's Office responsible for land use. These contribute to meeting exhaustion requirements for causes of action one, two, and three.

20. Prior to the Planning Commission hearing, on January 14 and 15 of 2019, the CPC requested that the Board of Supervisors hold one more public workshop to discuss the complex issues regarding [M2]the GPU. The Board declined to do so, deferring any discussion to the later public hearing. In January, March, and April of 2019, the CPC sent three memos supported by evidence encouraging the Board to fix flaws in the Introduction and Land Use Element of the GPU, the flaws in the GPU EIR, and the flaws in the Community Planning Element. Copies of these memos and evidence were sent to the Planning Department and the Planning Commission. These contribute to meeting exhaustion requirements for causes of action one and three.

21. On August 13, 2018, the CPC sent in comments on the GPU DEIR, identifying parts of the document that needed to be revised to comply with CEQA. Similar comments were sent in by Department of Conservation, Department of Fish and Wildlife, the Center for Biological Diversity, and the Central Sierra Environmental Resource Center. The CPC facilitator included in the comments a hand written cover letter encouraging the Planning Director to call if he was interested in working together "to preserve housing value and freedom of movement, to protect the peace and safety of communities, to defend our forests, range and recreational lands, and to restore economic opportunity." He did not call. Such comments were sufficient to exhaust remedies for cause of action 3.

22. Since the beginning of the GPU process in 2006, the CPC enthusiastically participated in the General Plan Update, submitting many comments to encourage the County to comply with CEQA and land use law and to release the 2011 Mintier General Plan. The Planning Commission was reacquainted with many of these documents in an email on January 24, 2019.

23. CPC members participated actively and diligently from the beginning of the process in January of 2006 through its completion in November of 2019 by providing testimony in formal public hearings as well as copious written comments regarding the GPU and its EIR. The truncated Board review of the GPU on July 30 and 31 of 2019 did not include discussion of CPC concerns regarding the legal adequacy of the GPU and the EIR and the harm that would result from these violations. Ultimately the Board ignored the CPC concerns and approved the GPU a manner contrary to the law, placing general plan "progress" ahead of legal compliance. Only after doing everything it could to try to get the Board of Supervisors to complete a valid General Plan Update and EIR did the CPC trouble the court for judicial relief.

STANDING: BENEFICIAL INTEREST & PUBLIC INTEREST

24. A petitioner must have a private or public beneficial interest at stake in order to have standing. (Code of Civil Procedure, sec. 1086; People ex rel Younger v. County of El Dorado (1971) 5 Cal.3d 480, 491; Citizens for Sensible Development of Bishop Area v. County of Inyo (4th Dist. 1985) 172 Cal.App.3d 151, 158.) The petitioner has private interests at stake, and the petitioner shares in the public interests that are at stake. These public interests include fire safety, agricultural land conservation, wildlife habitat protection, environmental impact reduction, and access to public records.

25. CPC members and the public rely upon Calaveras County to conserve rangelands for [M4]agricultural production, for jobs, for habitat protection, for fire safety, for scenic beauty, for quality and quantity, and to continue the rich cultural legacy of working the land. CPC members and the public have already seen thousands of acres of rangeland go out of production since the turn of the 21st century. CPC members and the public saw tens of thousands of acres of private land burn in the Butte Fire in 2015. Because the GPU does not include the required objectives for the long-term conservation of rangelands, the approval of the GPU threatens both private and public interests in agricultural production, jobs, habitat protection, fire safety, scenic beauty, water quality and quantity, and the future of working the land.

26. CPC members and the public rely on the County to comply with CEQA to evaluate and adopt feasible measures and alternatives proposed by agency experts and the public to reduce environmental impacts. The County instead approved a GPU with significant and unavoidable impacts to private and public interests. These impacts include traffic congestion, air pollution, conversion of agricultural lands, destruction of historic resources, and the degradation of fish and wildlife habitat. The County refused to evaluate any policy alternative that might reduce or eliminate those impacts including alternatives proposed by the CPC. The County rejected as infeasible, without meaningful analysis or supportive substantial evidence, the mitigation measures proposed by agencies and the public including those proposed by the CPC. The County rescinded without replacement community plans for Ebbetts Pass, Arnold, Avery/Hathaway Pines, Murphys/Douglas Flat, and Valley Springs that included measures that would have reduced the local impacts of the GPU. CPC members who live in some of those communities were particularly harmed, as they worked especially hard to keep those community plans in place.

27. CPC members, the press, and the public rely on the County to maintain and to provide public records so that the people can remain informed about the people's business. It is in the interest of all adult citizens to be informed about government actions so that we can effectively exercise our Constitutional right to seek the redress of grievances and to vote as our informed conscience dictates. The County has refused to release the 2011 Mintier General Plan and, thereby, continues to prevent people from including its wisdom in the general plan. This also prevents people from determining for themselves if the Supervisors made a mistake by rejecting the 2011 plan, sight unseen. Two such Supervisors currently serve on the Board. By not releasing the plan, the County withholds from the electorate information relevant to their choice among candidates for Supervisor[M5]. CPC members are particularly harmed because they very hard over approximately four years participating in the development of the 2011 Mintier General Plan.

28. Approval of the GPU and the FEIR will cause irreparable harm to CPC and public interests by failing to conserve agricultural lands as required by the Government Code, and by causing significant impacts to the human environment that should have been reduced or avoided pursuant to CEQA. The County's wrongful failure to release the 2011 Mintier General Plan irreparably harms the ability of citizens to effectively exercise their Constitutional right to seek the redress of grievances and to vote their preference.

29. The California Environmental Quality Act is designed to help local governments identify and mitigate the potentially significant impacts of their actions for the benefit of their people. Land use law is designed to conserve agricultural lands to promote the agricultural production, fire safety, habitat protection, water resources, and scenic beauty that people enjoy. The Public Records Act is designed to allow members of the public to learn about the public's business.

30. Thus, as described above, CPC members have particular beneficial interests at stake in the County's compliance with land use law, CEQA, and the Public Records Act. The public also has beneficial interests at stake. The CPC humbly accepts the serious responsibility to defend these important public interests. The Petitioner's interests in this matter fall squarely within the zone of interests protected by land use law, CEQA, the Public Records Act, and the California Constitution. The petitioner is precisely the class of party that this body of law was designed to protect.

IRREPARABLE HARM

31. The Respondents' actions will result in irreparable harm to the petitioner and the public at large. First, the Respondents' failure to release the 2011 Mintier General Plan will cause irreparable harm by impeding citizens in the exercise their Constitutional right to seek the redress of grievances related to the general plan and to make an informed vote for Supervisor. Second, the Respondents' GPU will cause irreparable harm by failing to properly conserve rangeland and, thereby, recklessly contribute to the irreparable loss of agricultural production, sensitive species habitat, scenic beauty, water quality and quantity, and the very lives of people stuck in wildfires. Third, the Respondents, through a flawed FEIR and findings, will cause unnecessary and irreparable harm through significant impacts including traffic congestion, air pollution, conversion of agricultural lands, destruction of historic resources, and the degradation of fish and wildlife habitat, by implementing the GPU without the feasible measures to protect resources. Finally, by rescinding community plans without replacement and, thereby, eliminating existing mitigation measures that would have reduced the local impacts of the GPU, the Respondents have irreparably harmed the members of the Petitioner and the public who reside in and around those communities and have caused good people to question their faith in the integrity of their local government.

ATTORNEYS' FEES

32. In pursuing this action that involves the enforcement of important rights affecting the public interest, the Petitioner will confer a substantial benefit on the citizens of Calaveras County and, therefore, will be entitled to an award of reasonable attorneys' fees pursuant to California law including but not limited to Code of Civil Procedure, Section 1021.5 and Government Code Section 6259, subd. (d).

FACTUAL BACKGROUND

DESCRIPTION OF THE ENVIRONMENTAL SETTING

33. The area in controversy is Calaveras County. It begins in the east at the crest of the Sierra Nevada Mountains between the steep canyons of the Mokelumne River on the north and the Stanislaus River on the south. Much of the land in the higher elevation is administered by the Stanislaus National Forest and is used for timber harvesting, mining, grazing, and recreation. Since the 1990's, timber harvest and other activities have been modified to protect habitat for additional sensitive species, to maintain viable species populations, and to keep these sensitive species off the endangered species list. Timber harvests on these lands have been the subject of collaborative efforts to reduce fire danger, improve forest health, protect sensitive species habitat, and produce wood products. Selected segments of the Mokelumne River totaling about 37 miles from Salt Springs to Pardee Reservoir have been designated Wild and Scenic by the State of California and are being managed to maintain the outstanding and remarkable historic and recreational resources of the river corridor. In the region that includes Calaveras County, the state of California expects climate change to result in much less precipitation, reduced habitat for many wildlife species, and increased risk of loss from wildfires.

34. Adjacent to and interspersed with these public lands, are private timber lands where harvesting is regulated by the California Board of Forestry in accord with state law. The environmental impacts of this private logging on wildlife habitat and watershed health and its long-term sustainability have been the subject of contested ligation and administrative advocacy. Along the Highway 26 and Highway 4 corridors much private timber land is immediately adjacent to existing community centers. As climate changes [M6]affect the productivity of these timberlands, development for other uses becomes more likely.

35. The county is bisected by Highway 49 from north to south and lies between the Mokelumne River and the Stanislaus River. Calaveras is part of the historic Mother Lode and the high Sierra. Communities have developed in the oak woodlands and savannahs of the foothills and in the mixed conifer forests of the mountains. Some of the forested communities east of Highway 49 are considered "disadvantaged" and "legacy communities" where old economic mainstays like timber mills and mines have faded. The GPU lists Mokelumne Hill, Mountain Ranch, Railroad Flat, San Andreas, Valecito, and West Point as such legacy communities. A couple of these communities are not served by public sewers. Other communities like Arnold and Murphys are more prosperous tourist and retirement communities. In some community centers served by public sewers, the systems have reached their capacity. Steep and isolated canyons along with high fuel loads in this area result in a very high fire risk. Some communities are still recovering from the 2015 Butte Fire that caused two fatalities and burned over 70,000 acres and 475 residences.

36. West of Highway 49 to the San Joaquin County border, the County is dominated by gently sloping and flat oak woodlands and rangeland where the risk of rapidly moving windswept fires is still high. In addition to livestock, rangelands produce a wealth of ecosystem services including carbon sequestration; water filtration, retention and aquifer recharge; fire fuel reduction from grazing; habitat for bees; plant diversity; and open space, view sheds and recreation. In spite of its many practical and cultural benefits, rangeland has been going out of production at an alarming rate since the turn of the 21st century. Lands designated and zoned for agriculture are also allowed by right to engage in a number of commercial, manufacturing, and recreational uses regardless of how dry, how isolated, and how windswept they are, which can pose public safety risks and create the potential for resource conflicts. Also in the county's western rolling foothills are the communities of Copperopolis and Valley Springs, both of which are close enough to jobs centers in San Joaquin County to attract commuters, which has made them among the most populated communities in the county.

PROJECT DESCRIPTION

37. The project in question is the update of the Calaveras County General Plan with the exception of the Housing Element which was updated separately. Every city and every county in California is required to have a publicly available general plan that covers seven topics: land use,

circulation, housing, conservation, open space, safety and noise. As allowed by the Government Code, the GPU combines some elements and adds other elements.

38. In addition to maps and other diagrams, a general plan includes goals, policies, objectives, standards, and implementation measures. A general plan is supposed to be a problem solving document that assesses future needs and identifies methods to meet those needs.

39. The GPU includes a set of land use designations that identify the types of uses allowed on residential, commercial, industrial, and resource production lands. The GPU includes a land use map that applies these designations to every parcel of private land in the county. The Housing Element seeks to provide the opportunity for the production of a broad spectrum of housing types for individuals and families with a broad spectrum of incomes. The Circulation Element maps the transportation network needed to serve some growth in communities, and the Public Facilities and Services Element includes policies that might help meet needs of communities for water, sewer, and public services.

40. A general plan is supposed to do more than just provide for development in community centers. A general plan is not complete without also conserving natural, historic, and cultural resources; providing open space for wildlife habitat and agricultural activities; providing for peace and quiet; and meeting public safety needs. Thus, in an attempt to meet these requirements, the Calaveras GPU includes a Conservation and Open Space Element, a Resource Production Element, a Noise Element, and a Safety Element. .

41. What makes the GPU controversial is not so much what is in the plan but what is missing from the plan after 13 years of work. Missing from the GPU are the Water Element, the Energy Element, and the Economic Development Element previously drafted but excluded by the Board of Supervisors. Missing from the GPU are the ***existing*** community plans for Ebbetts Pass, Arnold, Avery/Hathaway Pines, Murphys, and Valley Springs that have addressed ongoing local land use concerns for decades. Missing from the GPU are the ***new*** community plans drafted for Copperopolis and Valley Springs to address these unique and growing communities. Missing from the GPU are objectives, standards, and implementation time frames to provide guidance and accountability for general plan implementation. Missing from the GPU administrative record is the 2011 Mintier General Plan which was the product of the first four years of work on the general plan update. Missing from the GPU are measures proposed by agency experts and the public to reduce the impacts of implementing the GPU as such proposed measures have in similar places throughout the State of California.

42. The GPU began in 2006 with an evaluation of the 1996 General Plan by Mintier and Associates consulting firm. That evaluation identified substandard provisions throughout the 1996 General Plan. From 2007 through 2011, Mintier and Associates (later known as Mintier-Harnish) assisted the County with the GPU process. With the first Administrative Draft General Plan 80% complete, the Mintier-Harnish contract was allowed to expire. Mintier was paid $909,236. Planning Director Willis then engaged Raney Planning & Management to draft the background settings section for the EIR for $50,000. The county eventually contracted with Raney in November 2012 to write a new Administrative Draft General Plan and the EIR for $299,960. Amy Augustine & Associates was later hired in May 2013 to write most of the general plan elements while Raney was to focus on the EIR. With a contract extension in 2014, Augustine's total compensation was $113,630.

43. A 2014 draft general plan was circulated for public comment. The Board of Supervisors sent the draft plan to the Planning Commission in 2015, where much of the expert advice that went into the plan was edited out by the Commission. The Board of Supervisors designated the Planning Commission's version as the "project description" in 2016 and began the EIR process. In 2018, the DEIR was circulated for public review. In May and June of 2019, the Planning Commission again edited additional expert advice out of the GPU. The Board reviewed that plan on July 30 and 31, 2019, and adopted that plan with only minor modifications on November 12, 2019.

DESCRIPTION OF PROJECT IMPACTS

44. In accord with the California Environmental Quality Act, the state and local governments are required to adopt feasible measures to reduce the otherwise significant impacts of their discretionary decisions. These measures are to be enforceable commitments that will be capable of reducing impacts in a timely fashion. Throughout the GPU process**, the** CPC provided examples of mitigation measures routinely applied in other places to reduce the impacts of development allowed by general plans. The CPC repeatedly pointed out the need for the measures to include language that would commit the County to implement the measures in a timely fashion.

45. However, the County refused to adopt these mitigation measures, and, as a result, the DEIR identified 25 significant and "unavoidable" impacts that would result from implementing the general plan. These impacts include loss of life and property to wildfire, traffic congestion,

noise, air pollution, conversion of agricultural lands, destruction of cultural and historical resources, and the degradation of fish and wildlife habitat. While the list of significant impacts got shorter in the Final EIR, it still included traffic congestion, air pollution, conversion of agricultural lands, loss of visual character, destruction of historic resources; and the degradation of fish and wildlife habitat, including oak woodlands

APPROVAL PROCESS

A. General Plan Update Chronological Factual Background

46. January 2006. Interim Planning Director Robert Selman held a study session for the Board of Supervisors (BOS). He identified updating the 1996 General Plan as the number one priority for the Planning Department. The BOS was uncertain about the necessary scope of the update and how the county would tackle the issue of sprawling development and infrastructure costs. The groups that would later become the Calaveras Planning Coalition (CPC) supported a comprehensive update of the general plan using rural smart growth principals to reduce sprawl. Ultimately, the County BOS hired Mintier and Associates to evaluate the 1996 Calaveras County General Plan and identify needed updates.

47. October 2006. The County released the final version of the Calaveras County General Plan Evaluation on October 12. It is a 69-page report noting the need for a comprehensive update of the general plan to meet state standards. Previously, the County released a redacted version of the draft general plan evaluation after a detailed written Public Records Act request from the CPC. On October 16, the BOS agreed to develop community plans for each of the communities in District 2 on the same track as the community plans for Valley Springs and Copperopolis. (Ultimately, the General Plan Update (GPU) would not include community plans for Valley Springs and Copperopolis.)

48. December 2006. Mintier and Associates submitted a work plan for completing the General Plan Update in two years at a total cost of $1.35 million including $1 million for consultants, $200,000 for County staff, and $150,000 for work on the circulation element. In April 2007, the BOS held a workshop to review the Mintier and Associates work plan. The Board ultimately hired Mintier and Associates as the general plan consultant. (Ultimately, the GPU would take 13 years and was done by other consultants.)

49. June 2007. Over 500 people, including CAP and CPC members, actively participated in the first round of Community Workshops on the General Plan held by the County and moderated by Mintier and Associates. The CPC presented two volumes of input on to aid the County and its consultants in developing a background report. The comments and documents submitted provided background information on the preservation of open space and oak woodlands. (Ultimately the County would reject standards for Natural Resource Land mitigation and oak woodland mitigation.)

50. August 2007. The Board of Supervisors agreed 1) to have the Planning Department provide limited technical assistance to communities developing community plans, 2) to include in the GPU community plans completed prior to the initiation of the General Plan EIR, and 3) to provide further assistance for community planning if the county received grant funding. The CPC facilitator led a group of more than 20 speakers who spoke in favor of concurrently updating the Community Plans during the General Plan Update. The Calaveras Council of Governments would later receive a $204,648 grant from Caltrans and provide $51,162 in matching funds to update the Valley Springs Community Plan in partnership with the County and two non-profit organizations. (Ultimately, the County would rescind, without replacement, community plans for Ebbetts Pass, Arnold, Avery-Hathaway Pines, Murphys, and Valley Springs.)

51. October 2007. At a Board of Supervisors workshop on the General Plan vision, the Planning Department and two supervisors expressed direct support for the Awahnee Principles, which promote the prevention of sprawl through community-centered development, preservation of open space, developments supplied by surface water, growth balanced with infrastructure capacity, mixed use development, greenbelt and wildlife corridors, and other smart growth principles. All supervisors agreed denser development was needed to protect water rights and maximize infrastructure. The Calaveras Enterprise newspaper headline read, “A New Vision for Calaveras: No More Sprawl.” At visioning meetings throughout the county in December 2007, planning staff and consultants provided copies of the Ahwahnee Principles to the attendees.

52. March 2008. The County solicited public comments on its draft baseline report to identify existing conditions in the County. The CPC submitted an approximately 100-page document (including attachments) of comments on the General Plan Draft Baseline Report to help correct errors and add documentation not included in the report. (Ultimately, the County would relegate maps and data that were required to be in the GPU to a document similar to the Baseline Report.) In July of 2008, Stephane Moreno’s tenure as the Development Director ended. John Taylor was

hired as the interim director for a year during the search for a "permanent" director. (There would be three additional planning directors hired and one additional interim director that served twice before the GPU would actually be completed.)

53. August 2008. The Board of Supervisors approved the public development of a Water Element for the General Plan Update. This began a seven-month stakeholder process that led to the completion of the Water Element. Both CPC staff and members were active in this process, which was led and funded (with $150,000) by the Calaveras County Water District and aided by the participation of outside consultants and County staff. After two rounds of public workshops, the general plan consultants released a summary report that reflected public input: the Issues & Opportunities Report. The report identified a list of key issues that needed to be addressed in the GPU. (Planning for many of these issues would be deferred indefinitely.) The report included the Draft Vision and Guiding principles for use and inclusion in the GPU. The Board of Supervisors accepted the report.

54. February 2009. CAP staff and CPC members testified before the Board of Supervisors in support of the Draft Agriculture Element as presented by the Agricultural Coalition. CPC staff also sent in a letter of support for the draft Water Element, expressing hope that it would be improved by future staff, consultants, the public, and environmental review. The BOS directed County staff to use the draft Agriculture, Forestry, and Minerals elements as the basis for an element in the GPU. In July of 2009, after Agricultural Coalition members worked with County staff to refine the draft element, the BOS again directed County staff to use it as a basis for an element in the General Plan Update.

55. February 2010. The new Planning Director, George White, and the new General Plan Coordinator, Brenda Gillarde, met with the CPC, and we gave them a briefing on what had transpired regarding the General Plan Update since 2006. In March of 2010, the County and its consultants Mintier and Associates moderated the 2-hour GPU Alternatives Workshops. Over 200 people participated in five locations throughout the county. Many CPC participants attended the workshops and supported reasonably paced and community-centered growth, referred to as Alternative B. Over half the tables at the workshops supported this alternative. The CPC also submitted written comments on the alternatives.

56. In April of 2010, a unanimous vote of the BOS supported a general plan preferred alternative which would reduce Residential-Agriculture lands (5 acres per parcel maximum

density) by over 130,000 acres, and increase Agricultural Lands (40-80 acres per parcel maximum density) by over 160,000 acres.

57. On June 1, 2010, the Calaveras County Board of Supervisors agreed to include the Valley Springs Community Plan map developed through more than a year of public stakeholder meetings as an alternative for analysis in the EIR for the General Plan Update. A competing community plan map developed by a committee appointed by Supervisor Toffaneli was to be used in the project description for analysis in the EIR. However, neither map was considered in the General Plan Update EIR.

58. In January of 2011, Planning Director George White resigned and General Plan Coordinator Brenda Gillarde went on leave. In November of 2011, the CPC met with the next Planning Director, Rebecca Willis, to give her a history of the previous 5-years of the General Plan Update process. Though the general plan update text was nearly complete, Director Willis was not satisfied with the product and expressed her concern that many of the provisions of the Mintier General Plan would be met with "opposition and criticism," including the mandatory language. The contract with Mintier-Harnish was allowed to quietly expire without extension.

59. On November 22, 2011, CPC staff and volunteers testified at the Board of Supervisors in support of the Planning Department's recommendations to draft a general plan map that reduced the build-out capacity of the General Plan and integrated the community plan maps, promoted clustering of the residual development capacity on agricultural lands, and embraced citizen input. The Board of Supervisors approved all of these recommendations.

60. In December 2011, the Board of Supervisors held a General Plan Study session to consider the fate of two of the draft "optional" elements. At that time, the BOS retained the water element. While they decided not to include an Economic Development Element, they indicated that some parts of it may be added to the other remaining elements. (Eventually, the Water Element would be excluded from the GPU as well.)

61. In February of 2012, the Board of Supervisors held a Study Session on Draft 1 of the General Plan Update land use maps. CPC staff and members testified and sent in written comments on the map. They also spoke in opposition to a proposal that would include an anti-planning "Agenda 21" resolution in the GPU. Our comments included a sample of what the CPC felt was a more balanced and accurate statement for the general plan text regarding real estate property rights, the public interest, and government authority. (The protection of property rights

and economic development would ultimately be used as an excuse for rejecting impact mitigation measures in 2019).

62. In April of 2012, the CPC and its member group, MyValleySprings.com, sent in parcel specific comments on the Draft 1 General Plan Map. These comments expressed concerns regarding fragmentation of natural resource lands and the need to reduce the impacts of future development on riparian corridors. (The mitigation standards for these two issues would be rejected in 2019). They also identified other low impact development principles that would need to be included in the general plan text.

63. On May 24, 2012 CPC facilitator Tom Infusino spoke at the Planning Commission meeting in support of including the Paloma and the Mountain Ranch Community Plans in the Calaveras County GPU. These local plans had previously been hashed out by the local residents at well-attended public meetings and were approved by near unanimous agreement of the residents. The Planning Commission supported these community plan maps and the planning process that created them.

64. On November 13, 2012, the Board of Supervisors, on the advice of Director Willis, hired new consultants, Raney Planning and Management, to finish the General Plan Update even though the Supervisors had not read the text of the plan prepared by Mintier-Harnish that was "80% complete." (The public has consistently been denied access to the Mintier-Harnish Plan as well.) The County's contract with the new consultant included a scope of work that precluded the consultant from using the word "shall" in General Plan goals and policies. (This aversion to commitment would taint the validity of the mitigation measures in the GPU EIR.) In May 2013, Amy Augustine was hired to write most of the GPU elements. The "optional" Water Element was dropped from the GPU, which would result in planning for key water and wastewater infrastructure issues being deferred indefinitely. It would take another seven years after hiring Raney for the GPU to be adopted.

65. Despite these disappointments, the CPC continued to encourage and support the County in its GPU efforts. On December 10, 2012, CPC staff assisted CPC member group, Citizens for San Andreas, during its meeting to discuss the San Andreas Community land use map with the Planning Department. The Planning Director and the General Plan Coordinator identified steps toward adoption of the San Andreas Community Plan and the San Andreas Mobility Plan.

66. On December 13, 2012, CPC staff, member groups, and volunteers sent in letters to the Planning Commission regarding the Sawmill Project and spoke at the Planning Commission

hearing that had been continued from September. After a hearing that lasted over four hours, the Commission voted 3 to 2 to send the project to the Board of Supervisors with a recommendation for denial without prejudice as suggested by the Planning Director. Work processing this complicated specific plan diverted staff time from the General Plan Update.

67. In March of 2013, the CPC completed and handed in 36 pages of comments on the draft environmental setting sections of the GPU EIR along with a disk of additional background materials. In those comments the CPC advised the County to correct the environmental setting sections for aesthetics and agriculture, because those sections left out important facts, conditions, and trends known to the County. However, the County did not make these changes and repeated the same omissions in the Draft Environmental Impact Report (DEIR) in 2018.

68. On March 19, 2013, the CPC testified at the BOS hearing regarding the Draft 2 Land Use Designation Maps. The CPC appreciated the staff review of comments on the Draft 1 map, acknowledged inclusion of community plan maps, supported community-centered development, supported reducing the impacts of development on Resource Production lands, and explained the need to substantiate buildout estimates with evidence in the record.

69. On April 12, 2013, the CPC sent the Planning Department a letter asking that the General Plan Update text be drafted before scoping and before the EIR was prepared. Scoping determines the scope, focus, and content of an EIR, and, according to CEQA Guidelines Section 15083 "has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR." At the Board of Supervisors meeting on May 14, 2013, the CPC provided testimony regarding the need to produce a Public Review Draft General Plan Update text prior to scoping and completing an EIR. The BOS gave direction to the Planning Department to do so. Supervisor Callaway publicly thanked the CPC for the timely advice on this issue

70. On June 27, 2013, the CPC sent a letter to the Planning Department on the General Plan Update growth projections and their implications. The letter outlined the need for infrastructure capable of serving the growth projections and the challenges of financing that infrastructure. (The adopted GPU indefinitely defers planning to finance infrastructure.)

71. By the August 16, 2013, deadline, the CPC sent in our General Plan Update topics and text suggestions in response to the County's July invitation to do so. First, we summarized the topics that had been identified over the prior 7 years of the General Plan Update process. These included topics we raised in our previous comments as well as topics raised by people in public

workshops and memorialized in the 2008 Issues and Opportunities Report. Next we noted the need to include county-wide mitigation programs for development impacts. The fourth section of our comments made recommendations for properly incorporating the text of the community plans. As suggested by the County, our final section identified selected policies from draft optional elements for inclusion in the mandatory elements of the General Plan Update text.

72. In the autumn of 2013, after orchestrating changes in the GPU process that resulted in a text rewrite, non-committal policies, the elimination of optional, yet vitally important, elements, and years of delay, Rebecca Willis resigned as Planning Director. Former Planning Director and former Chief Administrative Officer Brent Harrington was hired for the interim year during the search for a permanent Planning Director, primarily to keep the general plan update moving forward.

73. In January of 2014, the CPC presented the STARS (State Approval Requirements) Project to the BOS. This project would establish clear mitigation standards for the County to use when reviewing applications for development projects. It would also help development applicants avoid significant impacts and reduce community objections. At no time during the GPU process did the Board publicly consider this concept.

74. Brent Harrington, interim Planning Director, gave his final report to the Board of Supervisors. He recommended that the Board drop the Community Plans from the General Plan Update and add updated community plans as amendments to the General Plan at some point in the future. The new Planning Director, Peter Maurer, attended this Board of Supervisors' meeting. In March of 2014, the CPC met with Peter Maurer to brief him on the history of the General Plan Update.

75. In December of 2014, the County released the Public Review Draft General Plan for public review and comment. This document was prepared by Amy Augustine and edited by the Planning Department staff. The majority of the public comments were short communications from land owners concerned about the land use designation the County proposed for their property on the land use designation map. In contrast, the CPC sent in over 100 pages of comments and dozens of attachments relating to the text of the GPU.

76. On June 30, 2015, the Board of Supervisors held a workshop to give the Planning Director instructions on how to move forward with the General Plan Update in the light of major public comments. The BOS indicated that it would not include a Water Element in the General Plan Update and that it would only include Community Plans from San Andreas and District 2 in the

General Plan Update. (The GPU adopted in 2019 would follow this direction.) The plans from Valley Springs, Copperopolis, and the Highway 4 corridor would not be included. The Supervisors directed the Planning Commission to review public comments on the 2014 Draft General Plan with planning staff and the general plan consultant and to make changes as needed.

77. Over the course of several meetings in the summer and fall of 2015, the Planning Commission did not actually address public comments on the 2014 Draft General Plan, but instead began re-writing the General Plan as Commissioners saw fit. The Commission rewrote the Vision and Principles, removing language that in its opinion advanced the public interest while adversely affecting property rights. The Commission also refused to include the detail in the general plan called for in the state's General Plan Guidelines and removed open space protections from the Land Use Element and the Resource Production Element. Commissioners sought to create a general plan that does the least required by state law. In doing so, the Planning Commission minimized and often ignored the County's obligation to promote the health, safety, and wellbeing of its citizens. It ignored the County's responsibilities to commit to implement programs to mitigate the environmental impacts of the general plan. All of these changes to the GPU were done by the Planning Commission before the Draft EIR was prepared for the plan. Contrary to the intent of CEQA, none of the environmental impact analyses that are supposed to be considered by the Planning Commission when making GPU changes were available to inform the Commissioners or illuminate the public debate.

78. In November of 2015, the CPC submitted a 17-page Public Records Act request with 31 attachments for the Mintier-Harnish (formerly Mintier & Associates) "draft" General Plan. The CPC hoped to see if any of the ideas therein should be considered for inclusion in the General Plan Project Description or if the Mintier General Plan should be considered as an alternative to the General Plan Project Description in the Draft Environmental Impact Report. Ultimately the County would deny this request for the Mintier General Plan and all other requests. (For the facts relating to this cause of action see below, Public Record Act Request Chronological Factual Background.)

79. In July of 2016, the Planning Commission included in the Draft General Plan only a few token policies from the existing and proposed community plans. This was in contrast to the existing community plans that addressed unique local concerns in more detail.

80. In August and September of 2016, the Planning Commission reviewed site specific land use designation requests to change the draft general plan's land use designation map. These

changes would have allowed the conversion of thousands of acres of natural resource and working lands to residential and commercial uses. Many of these lands are in areas not served by public water and without regional road funding mechanisms. These requests would have exacerbated the excess capacity for development during the life of the proposed general plan. Ultimately, approximately 13,000 acres of the approximately 18,000 acres of requests were denied.

81. In October of 2016, the Board of Supervisors designated the draft General Plan edited by the Planning Commission as the project description for purposes of the environmental impact report. The CPC submitted our written concerns regarding the draft general plan to the Board of Supervisors. Our letter listed the need to include community plans for Copperopolis and Valley Springs, the need to fill the fiscal holes in the plan, the need for an open space action plan, the need for more clarity in the plan language, and the need to add more measures to reduce the harm from new development under the plan.

82. In January of 2017, the County issued a notice that it would be completing an environmental impact report for the General Plan Update. In February, CAP/CPC volunteers and staff wrote, edited, printed, and delivered an 80-page general plan scoping document to the Calaveras County Planning Department. The document included a 20-page guide to CEQA compliance along with specific direction for the analysis of impacts to agricultural lands, land use planning, greenhouse gas emissions, circulation, recreation, noise, and growth inducement. The comments also included 15 folders of documents demonstrating how other counties have evaluated and mitigated impacts to agricultural lands, air quality, biological resources, child care, open space, fire safety, climate change, economic development, historic resources, and watersheds.

83. On June 22, 2018, the County released a Draft Environmental Impact Report for the GPU. There was a comment period for the public and government agencies to respond to the draft EIR. In July, the Planning Department also held a public meeting to take verbal comments on the draft EIR. In August of 2018, the CPC sent in comments on the GPU draft EIR, identifying parts of the document that needed to be revised to comply with CEQA. Similar comments on the DEIR were sent in by the Department of Conservation, the Department of Fish and Wildlife, the Center for Biological Diversity, and the Central Sierra Environmental Resource Center (CSERC). Over 400 pages of comments were submitted.

84. On January 14 and 15 of 2019, the CPC requested that the Board of Supervisors hold one more public workshop to discuss the complex issues regarding the GPU and its EIR. [M7] The declined to do so, deferring any discussion to the later GPU public hearing. In January, March, and April of 2019, the CPC sent three memos supported by evidence that encouraged the Board to fix flaws in the Introduction and Land Use Element of the GPU, flaws in the GPU EIR, and flaws in the Community Planning Element. Copies of these memos and the supporting evidence were sent to the Planning Department and the Planning Commission

85. In March of 2019, the County issued a Draft Final EIR with responses to comments on the DEIR and revisions to the text of the DEIR. Prior to and during the May and June Planning Commission hearings on the GPU, the CPC sent the Commission a series of comments encouraging the Commission to correct flaws in the GPU and its EIR. The CPC also asked about the release of the 2011 Mintier General Plan. Copies of these comments were sent to the Board of Supervisors, the Planning Department, and the attorney from the County Counsel's office responsible for land use.

86. Across eight dates in May and June of 2019, the Planning Commission conducted a public hearing on the GPU and the DEIR. The Planning Commission addressed only a few selected flaws identified in the EIR by public and agency comments. At no time did the Planning Commission consider the list of flawed responses that the CPC submitted. Primarily, the Planning Commission made changes to the text of the GPU based upon concerns raised by the Commissioners themselves. The hearing was public in the sense that the public was allowed to watch, not in the sense that public concerns raised in testimony were regularly and uniformly addressed by the Commission.

87. While the map of the 2016 Draft General Plan Update was not changed much by the Planning Commission in 2019, there were substantial changes made to the text. In 2015 and 2016, the prior Board of Supervisors directed the Planning Department to eliminate the existing plans for Valley Springs, Arnold, Murphys, and Avery/Hathaway Pines. None of the Supervisors who voted for those directions are currently on the Board of Supervisors. While some current Planning Commissioners expressed their frustration with so many community plans being eliminated from the Community Planning Element, they ignored suggestions to make recommendations contrary to the earlier Board's directions. The Commission also refused to include the draft plans for Valley Springs (2017) and Copperopolis (2013).

88. Commissioner Kelly Wooster promoted many changes to the Resource Production Element and the Conservation and Open Space Element. Specific streamside setbacks for developments were removed in favor of those recommended by a project applicant's biologist. Pending development of a County mitigation plan, the detailed and comprehensive Oak Woodland Implementation Policy in the draft plan was deleted in favor of a measure that defers to the minimum required state mitigation. Farmland conversion mitigation will be delayed pending the receipt of Department of Conservation mapping data, and there are no specified mitigation measures or ratios. Despite the fact that the Agricultural Coalition provided mitigation guidelines to the County in 2011, mitigation for the conversion of Resource Production land has been deferred until the development of new guidelines, and the plan fails to include specified mitigation for use in the interim. In addition, a number of general plan policies and implementation measures were explicitly limited in their application to discretionary projects subject to CEQA review. Therefore, projects currently allowed by ministerial approvals or by right will not be conditioned to assist the County in reducing adverse impacts on oak woodlands, biological resources, riparian corridors, air pollution, and odors.

89. Priorities for the long list of deferred implementation measures in the general plan remain unspecified. Instead, the plan calls for the Board of Supervisors annually to select implementation priorities for the coming year based upon the recommendations of the Planning Director. This is critical as many of the implementation measures in the General Plan Update are simply a promise to do more planning and program development at an unspecified time in the future. The biggest of these efforts will be reviewing, updating, and adding over 40 County ordinances to deal with issues like light and glare, landscaping, zoning for historic centers, agritourism expansion, noise, state fire safety regulation conformance, grading, and determining when connection to a public sewer system is mandatory.

90. In addition, there are over 80 other implementation measures, while not necessarily associated with ordinance changes, remain without a specified priority or deadline. However, when asked to identify the costs and personnel requirements for each of these tasks after plan adoption, Planning Director Maurer indicated he was not sure that he could do it. As a result, only after the Board of Supervisors has made its annual selection of tasks for implementation will the relevant staff and funding requirements be identified. The overall magnitude of staff and funding requirements for the entire GPU remain unpredicted.

91. Although the Calaveras Planning Coalition submitted extensive written comments and had many people speak on each day of the hearing in May/June 2019, the Commission refused most of the general plan improvements offered by the CPC. Furthermore, the Commission refused to address CPC concerns regarding the inadequacy of the Final Environmental Impact Report (FEIR). Despite approximately 30 minutes of public testimony asking for the Commission to take 21 specific actions to correct the County's responses to comments on the DEIR, the Commission was silent on the subject. Despite a CPC memo and testimony explaining flaws in the FEIR impact analyses, flaws in the mitigation measures, and flaws in the alternatives analysis, the Commission was silent on those subjects as well. By unanimous vote, on June 27, 2019, the Planning Commission forwarded their edited GPU to the Board of Supervisors with a recommendation for adoption.

92. In June of 2019, the CPC requested an appeal hearing before the Board of Supervisors to address the CPC requests that were not included in the GPU recommended by the Planning Commission. This request for a hearing was denied.

93. Prior to and during the July 30 and 31 Board of Supervisors public hearing on the GPU, the CPC sent the Board of Supervisors a series of memos encouraging the Board of Supervisors to correct flaws in the GPU and its EIR. Copies of these memos were sent to the Planning Department and the Deputy County Counsel in charge of land use.

94. On July 30 and 31, 2019, the Board of Supervisors held a public hearing to address the GPU and its EIR. Unfortunately, the General Plan adoption hearing was characterized by a lack of responsiveness to both public and Supervisor concerns. Individual comments were limited to three minutes on each element, which forced speakers to condense and, consequently, minimize multiple complex land use and public policy issues. Tom Infusino, Facilitator of the Calaveras Planning Coalition (CPC), expressed his exasperation with the two days of special meetings. "They were paced and conducted more like a calf-roping than a public hearing," he said.

95. During discussion of the Resource Production Element, Infusino implored the supervisors to correct the damage done by the Planning Commission to the measures to mitigate impacts to agricultural land, streamside zones, oak woodlands, and sensitive species habitat. He warned that letting some development projects destroy habitat without mitigation, when combined with the effects of climate change, would result in rapidly pushing local sensitive species populations to the brink of extirpation. This could result in a federal injunction on development. This would prevent other development project proponents from exercising their property rights. He

exclaimed, "If you don't restore the mitigation proposed by your experts, you won't be protecting the environment or property rights."

96. The hearing concluded Wednesday July 31, 2019, with a discussion of the Community Plans that were being eliminated by the Board. Members of the CPC read long lists of names of people from multiple communities who signed petitions asking for the retention of the community plans. CPC members held up pictures of some of those people that were captioned with requests like "Plan for Arnold," "Plan for Murphys," and "Plan for Copper." Muriel Zeller of the CPC reminded supervisors that in 2007, the public was told "to go forth and plan, and we did." Colleen Platt of MyValleySprings.com said communities had trusted that their community plans would be included in the General Plan Update. She said the Board had betrayed that trust. She encouraged the Board, "To find the backbone and will… to include all Community Plans in the General Plan."

97. Neither the Planning Commission during its May and June, 2019, GPU hearing nor the Board of Supervisors during its July 30-31, 2019, GPU hearing addressed the CPC's concerns regarding inadequate responses to comments on the GPU DEIR.

98. On July 31, 2019, the Calaveras County Board of Supervisors unanimously directed staff to prepare the paperwork needed for the Board to adopt the updated General Plan. The Board's direction concluded a two-day review of the General Plan's ten elements. The GPU would rescind the existing community plans for Arnold, Avery/Hathaway Pines, Murphys/Douglas Flat, and Valley Springs.

99. In the week prior to meeting, the County posted the Board of Supervisors' November 12, 2019, Agenda Packet. Subsequent to the agenda posting, the CPC sent the County a series of memos identifying flaws in the responses to comments on the EIR, flaws in the treatment of mitigation measures, flaws in the treatment of alternatives, and flaws in the findings of fact. In addition, the CPC submitted a set of newspaper articles chronicling the GPU process from 2010 to 2018. The CPC also submitted for the record its correspondence regarding ongoing GPU concerns with the Board of Forestry and Fire Protection, the Department of Conservation, and the California Department of Fish and Wildlife. Furthermore, the CPC sent in a series of photos depicting fire hazards along local roadways. None of this information was sufficiently moving to the Board of Supervisors to trigger any further changes to the GPU. The GPU, the FEIR, the Findings of Fact, and the one-page Mitigation and Monitoring Plan were unanimously adopted by

the Board of Supervisors on November 12, 2019, seven years after the Board started the GPU process over with new consultants and 13 years after the GPU began.

B. Public Record Act Request Chronological Factual Background

100. Beginning in 2006 and continuing through 2011, Calaveras County employed Mintier-Harnish Planning Consultants (known as Mintier & Associates at the time of their hiring) to assist in preparing a general plan update. This involved many community meetings to identify county assets and deficiencies, to identify general plan issues and opportunities, to write a draft vision statement, and to identify a draft land use map. All of these work products became public documents. The last work product that Mintier-Harnish prepared was the text of the General Plan Update.

101. Around or at the end of 2011, the Mintier-Harnish contract with the County was allowed to expire after then Planning Director Rebecca Willis expressed a desire to go in a different direction.

102. On November 13, 2012, the Board of Supervisors, on the advice of Director Willis, hired new consultants, Raney Planning and Management, to finish the General Plan Update, even though the Supervisors had not read the text of the plan prepared by Mintier-Harnish.

103. On behalf of the Calaveras Planning Coalition, on three occasions Tom Infusino informally encouraged the County to release the Mintier General Plan to the public. The CPC hoped that the professional suggestions in the plan, made after years of public workshops, could prove useful as the general plan update moved forward. Also, the CPC was curious about the quality of the final work product secured after over six years and over $900,000 in public spending. On June 17, 2014, he made a verbal request for the document from Planning Director Maurer while meeting with him to discuss the Economic Development Element. Mr. Maurer said he would think about it. On August 14, 2014, in the absence of an affirmative response from the Planning Director, Mr. Infusino made a verbal request for the document from the Planning Commission. They did not provide the document. On October 18, 2014, he made a verbal request for the document from the Board of Supervisors. The Board of Supervisors did not follow up on that request.

104. On November 24, 2015, having had no success with informal requests, Mr. Infusino presented a formal written request to Planning Director Maurer, the custodian of Planning Department records, for the Mintier General Plan pursuant to the California Public Records Act.

The formal request was 17 pages long and included an additional 31supporting attachments. The request explains why the document must be disclosed. The document would have been useful in making suggestions to improve the 2014 Draft General Plan text under public review at that time. The request became the topic of local press coverage. On December 4, 2015, a letter to Mr. Infusino from County Counsel's Office denied the Public Record Act Request on behalf of the Planning Director. On December 8, 2015, Mr. Infusino encouraged the Board of Supervisors to exercise its discretion to release the Mintier General Plan. The Board did not act on this request.

105. On December 18, 2015, in accord with the Calaveras County Code, Mr. Infusino submitted a formal request to appeal to the Planning Commission the decision of the Planning Director to deny the public record request. Again this was the topic of press coverage.

106. On December 21, 2015, Director Maurer sent a letter indicating that the denial of the Public Records Act request that was addressed to him was not made by "Planning Department staff" and was therefore not appealable to the Planning Commission. Thus he decided to avoid Planning Commission review of his own decision. On December 30, 2015, Mr. Infusino asked County Counsel's office if it agreed with and could explain Director Maurer's letter of December 21.

107. On January 5, 2016, concerned that Director Maurer's decision regarding the lack of Planning Commission appellate jurisdiction to review his prior decisions was tainted by self-interest and that the time for appealing it would soon lapse, Mr. Infusino sent a letter to the Chair of the Planning Commission seeking: 1) a hearing on the Planning Director's decision regarding the appellate jurisdiction of the Planning Commission, 2) a hearing on the Planning Director's denial of the Public Records Act request, and 3) any other method of getting these items on the Planning Commission agenda for review.

108. Later on January 5, 2016, Ms. Julie Moss-Lewis of County Counsel's Office provided Mr. Infusino a letter indicating that neither the Planning Commission nor the Board of Supervisors had jurisdiction to hear an appeal of the denied Public Records Act request. On January 25, 2015, Mr. Infusino contacted County Counsel Megan Stedtfeld regarding the need for a due process hearing regarding the denial of the Public Records Act request. There was no response. The denial of the public record request from the CPC and a similar request from the Calaveras Enterprise was reported in the press.

109. On March 25, 2015, the CPC made comments on the Draft General Plan Update text that had been circulated by the Planning Department. In those comments the CPC called for a return to a transparent general plan update process. "We strongly encourage the County to find a way to include the community plan information more fully in the general plan update, to restore the Vision Statement and Guiding Principles, and to release the Mintier and Associates draft general plan to those who want to see it. It may have pearls of wisdom that we should include in the General Plan Update."

110. On February 16, 2017 the CPC made scoping comments in advance of the preparation of the draft environmental impact report for the General Plan Update. "Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR." (CEQA Guidelines, sec. 15083, subd. (a).)
In those scoping comments the CPC again warned the County not to continue to withhold the Minter General Plan and to evaluate the plan in the DEIR as an alternative.

111. On July 4, 2017, the CPC sent a letter to the Planning Commission and to the Board of Supervisors explaining the recent ruling of the California Supreme Court on the importance of looking at alternatives to land use projects with significant environmental impacts. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918.) The CPC wrote, "it was a disastrous and indefensible step backward for past Boards of Supervisors to refuse to let the public even look at the Mintier General Plan alternative. We urge you to reconsider this mistake before it is too late for you to rectify it." On August 13, 2018, the CPC commented on the Draft EIR for the General Plan Update. That DEIR did not consider the Mintier General Plan as one of the alternatives. Our comments on the DEIR asked the County to evaluate the Mintier General Plan as an alternative in the Final EIR.

112. In January of 2019, three different Supervisors took office. In April of 2019, the County responded to comments made on the DEIR. The County rejected the CPC's request to consider the Mintier General Plan as an alternative in the EIR. At the Planning Commission hearing in May of 2019, the CPC inquired whether, since the DEIR now referenced the Mintier General Plan, would the County be including it in the administrative record. County staff responded in the negative. On July 16, 2019 the CPC asked the new Board of Supervisors to waive any alleged privileges and to release the Mintier General Plan. On August 20, a CPC member requested that the Board put the matter on an agenda so it could waive the privileges and release the Mintier General Plan. The Board did not do so. In part out of concern for judicial efficiency,

the CPC did not rush to involve the court in this matter, but it instead waited until three different Boards of Supervisors refused to release the Mintier General Plan before seeking judicial relief.

C. Chronology of facts listing instances the County ignored multiple efforts to help it produce a valid General Plan Update Draft EIR in compliance with CEQA

113. Prior to preparing the DEIR, the County was urged (in some instances repeatedly) not to make the very CEQA mistakes it did make in the DEIR. Ignoring efforts to help the County comply with CEQA suggests that the many errors in the DEIR are not inadvertent mistakes by staff, but are more likely intentional violations by the County, which is determined to violate a law with which it does not agree.

114. For example, on September 14, 2010 letter, the CPC sent a letter to Planning Department Staff member Dave Pastizzo, urging the County to properly quantify impacts and provided good and bad examples from other EIRs. The CPC reiterated this requirement and reference the 2010 letter in its February 16, 2017 scoping comments. Nevertheless, in 2018 the DEIR failed to properly quantify impacts in the sections evaluating air pollutants[M8], greenhouse gases, and energy. This suggests that the County's actions are intentional.

115. For a second example, on March 12, 2013, the CPC commented on draft environmental setting sections to be used later in the General Plan Update DEIR. In those comments the CPC advised the County to correct the environmental setting sections for aesthetics and agriculture, which left out important facts, conditions, and trends known to the County. However, the County did not make these changes and repeated the same omissions in the DEIR. (See CPC GP DEIR Comments, pp. 4.1-3 to 4.1-7, 4.2-2 to 4.2-3.) Because the County and its consultants made no effort to correct the omissions and misleading information that were previously identified, their actions are most likely intentional.

116. For a third example, on July 22, 2015, the CPC explained in an email to the Planning Commission that it had to make a commitment to implement policies in the General Plan if it wanted to count them as mitigation measures. That email was copied to the Planning Director and to County Counsel. Nevertheless, the Planning Director's Draft EIR tried to claim that such noncommittal language in the plan and similar noncommittal provisions under consideration will qualify as mitigation measures.

117. For a fourth example, on February 16, 2017, the CPC provided "scoping comments" prior to the County's drafting of the EIR. "Prior to completing the draft EIR, the Lead agency

may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many problems that would arise in more serious forms later." "Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR. " (CEQA Guidelines, Section 15083.) In these scoping comments the CPC laid out a set of instructions for the County to follow to comply with CEQA in the General Plan Update DEIR.

118. In these 2017 scoping comments the CPC also explained to the County that the DEIR summary must include "the areas of controversy, and the issues to be resolved." (CEQA Guidelines, sec.15123; CPC Scoping Comment, p. 1-5.) The CPC explained that the DEIR would be flawed if it did not "provide a sufficient project description to provide proper quantitative analyses of impacts." (CPC Scoping Comment, p. 1-5.) The CPC noted that the environmental setting section needed to present the current situation on the ground using data from a variety of sources. (CPC Scoping Comment, pp. 1-6 to 1-8.) The CPC explained the importance of following the logical steps in impact analyses without jumping to conclusions. (CPC Scoping Comment, pp. 1-8 to 1-10.) The CPC noted the importance of considering a broad range of alternatives including the Mintier General Plan and a version of the general plan that includes the Valley Springs Community Plan. (CPC Scoping Comment, pp. 1-14 to 1-18; pp. 2.3-10 to 2.3-12.) The CPC again explained the importance of adopting feasible and mandatory mitigation measures to reduce potentially significant impacts and to commit "to specific performance criteria" when deferring mitigation program design. (CPC Scoping Comment, pp. 1-10 to 1-13.)

119. The scoping comments also proposed mitigation measures for agricultural, greenhouse gas, land use, recreation, traffic, and growth inducing impacts. (CPC Scoping Comment, pp.2.1-11 to 2.1-15, 2.2-3 to 2.2-4, 2.3-9, 2.5-2, 2.6-4 to 2.6-7, 2.7-5.) The scoping comments included attachments with samples of mitigation measures regarding air quality, biological resources, child care, open space, fire safety, greenhouse gas emissions, economic development, historic preservation, and water impacts. (CPC Scoping Comment, pp. 3-1 to 3-4; CPC Scoping Comment Attachments.) Nevertheless, the Draft General Plan Draft EIR released by the County in 2018 failed to comply with these requirements for the executive summary, the project description, the existing setting, the impact analyses, the alternatives, and

the mitigation measures. Nor did the DEIR discuss the mitigation measures proposed in the scoping comments.

120. For a fifth example, in a July 4, 2017 email, the CPC explained to both the Planning Commission and the Board of Supervisors the importance of the California Supreme Court's 2017 decision in the Banning Ranch Conservancy case. The CPC advised the County to consider the Mintier General Plan as an alternative in the general plan DEIR. The County did not do so. (CPC GP DEIR Comments, p. 6-1 to 6-3.)

121. In summary, despite all the efforts from 2010 to 2017 to help the County to comply with CEQA, in 2018, the County released a Draft General Plan Draft EIR that made the very mistakes the County was warned not to make. The flaws in the executive summary, the project description, the existing setting, the impact analyses, the alternatives, and the mitigation measures **all** could have been avoided if the County simply followed the guidance provided before, during and after the scoping process.

122. For a sixth example, in part in response to comments on the DEIR, County's staff and consultants recommended that the County rephrase some of the mitigation measures and add new feasible mitigation measures. These included measures to reduce impacts from new development to on resource production lands, riparian corridors, and oak woodlands. (Maurer, Planning Commission Staff Report, May 22, 2019, Attachment 1.) Instead of relying on the advice of its own experts, in June of 2019, the Planning Commission modified the measures to reduce their scope and delay their applicability. Upon being apprised of the grave risks to local wildlife and the local economy, the Board of Supervisors refused to discuss or address this issue during its July 2019 GPU hearing. These multiple examples of the County repeatedly refusing to comply with CEQA suggest that the many errors are not inadvertent mistakes. Instead, these are more likely to be intentional violations by a County bent on violating a law with which it does not agree.

D. Chronology of facts listing instances County Officials actively discouraged including mandatory policies in the General Plan Update

123. The law requires that mitigation measures be mandatory and enforceable. When a mitigation measure takes the form of a program to be adopted in the future, there must be a commitment on the part of the lead agency to implement the program to achieve specified

standards. The intent to avoid making such policy commitments in the Calaveras County General Plan Update has been voiced in many ways by many public officials during the General Plan Update process.

124. For example, during or before October 2011, then Planning Director Rebecca Willis expressed her concern that many of the provisions of the Mintier General Plan would be met with "opposition and criticism," including the mandatory language. (Harnish memo to Willis, 10-11-11, p. 3.)

125. For a second example, in 2012, the County entered into a contract with a new general plan consultant to complete a general plan and EIR. It is a well-established fact that a general plan with significant environmental impacts is required to adopt feasible and mandatory mitigation measures. Usually, these are included as policies in the plan itself. (CEQA Guidelines, 15126.4, subd. (a)(2).) Nevertheless, the County's contract with the new consultant, approved by the Board of Supervisors on November 13, 2012, included a scope of work that precluded the consultant from using the word "shall" in General Plan goals and policies.

> "Raney will incorporate the County's comments on the previous Administrative Draft General Plan, including the global approach to the wording of the goals and policies to eliminate the word shall." (November 13, 2012, BOS Agenda Submittal Item 17, General Plan Reney Contract, p. 21.)

This strongly suggests that the failure to commit to mitigation measures in the General Plan and its EIR is not accidental on the part of the County. In fact, the County was so determined to avoid any such commitment that it **specifically** precluded the general plan consultant's use of the word "shall" in the plan[M9] as part of its **legally binding** contract with the County. (General Plan Reney Contract, pp. 5, 21.) Ultimately the County would imply the word shall back into its policies, though the mandatory nature was frequently undermined by other words, or the lack of a specified time for performance. . (GPU Introduction, page INT-7.)

126. For a third example, on February 2, 2015, Planning Commissioner Kelly Wooster submitted written comments on the County's Draft General Plan. Those comments reflect a consistent disagreement with mandatory mitigation measures included in the plan to deal with the impacts of hillside development, water supply, visual screening, traffic congestion, open space conversion, soil erosion, streamside development, greenhouse gas emissions, scenic resources, biological resources, and cultural resources. He was also concerned that the County might be found in violation of its plan in the future if it does not meet the obligations of its mandatory policies. (Wooster Comments on 2014 Draft GP, pp. 2, 10, 11, 12.)

127. For a fourth example, on June 30, 2015, the Board of Supervisors held a general plan workshop. At that workshop, County Counsel advised the Board not to specify deadlines for the completion of tasks in the General Plan for they could be held legally accountable for not meeting those deadlines. (On July 22, 2015, the CPC sent an email to the Planning Commission encouraging it to make specific commitments to mitigation measures in the GPU.)

128. For a fifth example, in July of 2015, the Planning Commission decided to scrap the provisions of the General Plan Vision Statement drafted in 2008. The 2008 statement had been completed at the recommendation of the Grand Jury after three rounds of public workshops on the General Plan held throughout the County. The Commission decided instead to draft their own vison statement that included a guiding principle to avoid specificity in the general plan. (See September 22, 2016, Planning Commission Recommended Draft General Plan, Introduction, p. 1.)

129. For a sixth example, in December of 2015, when the amended vision statement went to the Board of Supervisors for approval then Supervisor Steve Kearny expressed his support for vague and flexible general plan provisions.

130. For a seventh example, during the Planning Commission review of the plan in 2019, Commissioner Wooster repeatedly resisted including any provision in the GPU that would have the effect of committing the Board of Supervisors to a particular action or of limiting the discretion of the Board for fear that they would be held accountable for failing to meet their commitments. Rather than applying prescriptive or performance standards to development applications, Commissioner Wooster wanted the Board of Supervisors to have broad discretion to approve or disapprove a project on a case by case basis, to the extent possible. It is the very nature of CEQA and general plan law for a county to identify its commitments and to identify the standards it will use in exercising its discretion. These are essential parts of the planning process that allow the rest of the government, and the people in the private and non-profit sectors, to collaborate with the Board of Supervisors to achieve the goals of a general plan.

LEGAL FRAMEWORKS

GENERAL PLAN LAW

A) Requirements

131. Many of the requirements of general plan law are summarized in court opinions. As the California Supreme Court explained last year in *City* of *Morgan Hill v. Bushey*:

> Although zoning and general plans implicate local concerns and are often addressed by local governments, these arrangements also raise issues of "statewide concern." (*DeVita, supra,* 9 Cal.4th at p. 784.) So the Legislature has the constitutional power to enact laws limiting local government power over land use. (See *DeVita,* at pp. 772-773, 776, 784; see also *Lesher, supra,* 52 Cal.3d at p. 544; *Committee of Seven Thousand, supra,* 45 Cal.3d at pp. 510-512.) The Planning and Zoning Law of the State of California (§ 65000 et seq.) is an example: It requires every county and city in California to adopt a general plan. (*Lesher,* at p. 535.) A general plan sets a county's or city's development policies and objectives, and must contain a "land use element" that "designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, ... public buildings and grounds, solid and liquid waste disposal facilities, greenways, ... and other categories of public and private uses of land." (§ 65302, subd. (a).)

(*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1079.)

132. As the California Supreme Court explained in 2016:

> To ensure that localities pursue "an effective planning process" (§ 65030.1), each city and county must "adopt **a comprehensive**, long-term general plan" for its own "physical development" as well as "any land outside its boundaries which in the planning agency's judgment bears relation to its planning." (§ 65300.) When adopting general plans, localities must **"confront, evaluate and resolve competing environmental, social and economic interests."** (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571, 276 Cal.Rptr. 410, 801 P.2d 1161 (*Goleta Valley*).) Because of its broad scope, long-range perspective, and primacy over subsidiary land use decisions, the "general plan has been aptly described as the 'constitution for all future developments' within the city or county." (*Id*. at p. 570, 276 Cal.Rptr. 410, 801 P.2d 1161.) Accordingly, "[t]he process of drawing up and adopting these revisions often becomes, essentially, a 'constitutional convention,' at which many different citizens and interest groups debate the community's future." (Fulton & Shigley, Guide to California Planning (4th ed. 2012) p. 118.) "During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the planning agency deems appropriate." (§ 65351.) A legislative body must refer its proposal to a number of listed public entities before adopting or amending a general plan. (§ 65352.) Planning commissions must hold at least one public hearing and make a written recommendation to the legislative body; legislators must hold at least one public hearing before acting on the

> recommendation. (§§ 65353-65356; see § 65354.5 [a planning agency authorized to approve or amend a general plan must "establish procedures for any interested party to file a written request for a hearing by the legislative body" and must provide public notice of any hearings].)"

(*Orange Citizens for Parks and Recreation v. Superior Court* (2016) s Cal.5th 141, 152-153, [emphasis added].)

133. In that case, the California Supreme Court went on to explain:

> A general plan may be issued in "any format," including "a single document" or "a group of documents relating to subjects or geographic segments of the planning area" (§ 65301, subds. (a), (b)), so long as it "comprise[s] an integrated**, internally consistent** and compatible statement of policies for the adopting agency" (§ 65300.5). It also must include development policies, "**diagrams and text setting forth objectives, principles, standards,** and plan proposals," and seven predefined elements—land use, circulation, conservation, housing, noise, safety, and open space. (§§ 65302, subds. (a)-(g), 65303.)

(*Orange Citizens for Parks and Recreation v. Superior Court* (2016) s Cal.5th 141, 153, [emphasis added].)

134. The court continued:

> Until 1971, the general plan was " 'just an "interesting study," ' " which did not bind local land use decisions. (*deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1211, 217 Cal.Rptr. 790 (*deBottari*).) But now " '[t]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.' " (*Goleta Valley, supra,* 52 Cal.3d at p. 570, 276 Cal.Rptr. 410, 801 P.2d 1161, quoting *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806, 184 Cal.Rptr. 371; see §§ 65359 [requiring that specific plans be consistent with the general plan], 66473.5 [same with respect to tentative maps and parcel maps], 65860 [same with respect to zoning ordinances], 65867.5, subd. (b) [same with respect to development agreements].) "A zoning ordinance that conflicts with a general plan is invalid at the time it is passed." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 544, 277 Cal.Rptr. 1, 802 P.2d 317 (Lesher).) In addition, the general plan must be internally consistent. "**Internal consistency requires that diagrams in the land use, circulation, open space, and natural resource elements reflect the written policies and programs of those elements.**" (Barclay & Gray, California Land Use & Planning Law (35th ed. 2016) p. 23.) In other words**, "the requirement of consistency ... infuse[s] the concept of planned growth with the force of law."** (*deBottari, supra,* 171 Cal.App.3d at p. 1213, 217 Cal.Rptr. 790.) " 'An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.' " (Governor's Office of Planning & Research, General Plan Guidelines (2003) p. 164.)

(*Orange Citizens for Parks and Recreation v. Superior Court* (2016) s Cal.5th 141, 153, [emphasis added].)

135. The court finally concluded its summary of general plan law:

> The Government Code guarantees the public a role in adopting and amending a ***239** general plan. (§ 65300 et seq.) "The process ... is structured to transcend the provincial. Public participation and hearings are required at every stage, in order to obtain an array of viewpoints." (*Goleta Valley, supra*, 52 Cal.3d at p. 571, 276 Cal.Rptr. 410, 801 P.2d 1161.) The Governor's Office of Planning and Research encourages local governments to structure their procedures to facilitate public involvement and suggests making planning materials available in different languages, conducting advertising and outreach to different segments of the community, holding events in familiar and welcoming spaces, and **providing "access to information about the issues that are being addressed by the process**." (Governor's Office of Planning & Research, General Plan Guidelines, *supra*, at p. 144; see *id.* at pp. 144-148.) At a more basic level, **meaningful public participation in the planning process requires that the public have access to the general plan.** Since 1984, the Government Code has mandated that "[c]opies of the documents adopting or amending the general plan, including the diagrams and text," be made available to the public "one working day following the date of adoption" or "two working days after receipt of a request for a copy." (§ 65357, subd. (b)(1), (2).)

(*Orange Citizens for Parks and Recreation v. Superior Court* (2016) 2 Cal. 5th 141, 154.)

136. As explained by the court, a general plan is supposed to be **comprehensive**, in that it addresses development and conservation issues to the full degree that they are present in the jurisdiction. (Government Code, sec. 65301, subd. (c).) A General Plan may include area plans to meet the specific needs of an area.

137. A general plan is intended to be "**an integrated, internally consistent and compatible statement of policies**." (Government Code, sec. 65300.5, [emphasis added].) As explained on page 13 of the 2003 General Plan Guidelines, internal consistency means that "Each element's data, analyses, goals, policies, and implementation programs must be consistent with and complement one another." While consistency among elements means that, "All elements of a general plan, whether mandatory or optional, must be consistent with one another." (See *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90.)

138. Many general plan elements are required to include specific and up to date information helpful to the public and private sector in making development decisions. For example, the circulation element must identify, not only the location of roads, but also the location of other

public utilities, as these are also essential for future development. (Government Code, sec. 65302, subd. (b).) The conservation element "shall identify" rivers, creeks, streams, and riparian habitats. (Government Code, sec. 65302. subd. (d)(3).)

139. The open-space element must include an action plan "consisting of specific programs which the legislative body intends to pursue in implementing its open-space plan." (Government Code, sec. 65564.) "If there is an agricultural land element, it must **identify priority lands for conservation**, establish policies and **objectives** to support the long-term protection of agricultural land, and establish implementation measures to achieve the policies and objectives. (Government Code, sec. 65565, subds. (a)(1)(K), (a)(2), (a)(3), [emphasis added].)

140. The safety element addresses **"the protection of the community from any unreasonable risks associated with … wildland and urban fires."** "It shall also address evacuation routes, military installations, peak load water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards." (Gov. Code, secs. 65302, subd. (g)(1), [emphasis added].) It must include a set of goals policies **and objectives** for the protection of the community from the unreasonable risk of fire. It must include implementation measures to avoid or minimize "wildfire hazards associated with new land uses" These measures must locate new essential public facilities outside of high risk fire areas, or identify measures to minimize fire damage to those facilities. These measures must design adequate infrastructure to provide safe access for emergency vehicles. (Gov. Code, secs. 65302, subd. (g)(3), [emphasis added].)

141, The safety element also shall identify information on flood hazards including, flood hazard zones, Federal Emergency Management Agency (FEMA) maps, information from the Army Corps of Engineers, dam failure inundation maps, Department of Water Resources (DWR) floodplain maps, levee protection zones, **historical data on flooding**, and planned development in flood zones. It must develop a "set of comprehensive goals policies **and objectives**" to protect communities from the unreasonable risk of flooding. (Government Code, sec. 65302, subd. (g)(2), [emphasis added].)

B) Standards for review

1) A general plans actual compliance with each substantive provision of the Government Code is judged de novo as a matter of law.

142. Calaveras County has made its own contributions to the understanding of general plan law. As the Court of Appeal explained in 1985:

> In reviewing the plan before use, we have in mind that the adoption of a general plan is a legislative act; the **wisdom or merits** of a plan are not proper subjects of judicial scrutiny. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 118, 109 Cal.Rptr. 799, 514 P.2d 111.)
>
> Nonetheless, before 1982, California courts had recognized that general plans were not immune from review by courts. The courts noted the Legislature had enacted statutes that imposed **mandatory duties on local agencies** in connection with their adoption of general plans, and, if a local agency violated such a statute, the courts acted to remedy the violation of state law. Thus, in *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 176 Cal.Rptr. 620, the court said: "Section 65302 enumerates the nine elements which a plan 'shall include,' and describes the contents of each. The word 'shall' is to be construed as mandatory in this context. (Gov.Code, §§ 5, 14.) The County must accordingly 'have a general plan that encompasses all of the requirements of state law.' (*Save El Toro Assn. v. Days* (1977) 74 Cal.App.3d 64, 72 [141 Cal.Rptr. 282].) If the plan adopted for it does not reflect substantial compliance with those requirements, the Board and other responsible agencies of the County have failed in the 'performance of an act which the law specially enjoins.' [¶] '**Substantial compliance**, as the phrase is used in the decisions, **means *actual* compliance in respect to the substance essential to every reasonable objective of the statute**,' as distinguished from 'mere technical imperfections of form.'

(*Concerned Citizens of Calaveras County v Board of Supervisors* (1985) 166 Cal.App.3d 90, 95-96, [emphasis added].)

143. The court in that case continued:

> In 1982, the Legislature expressly authorized judicial review of general plans by adding article 14 (commencing with § 65750) to chapter 3 of division 1 of title 7 of the Government Code (hereafter article 14).[2] (Stats.1982, ch. 27, § 2, pp. 47–51.) Article 14 generally sets forth procedures for bringing actions to challenge a general plan, provides for certain limitations on remedies (not here pertinent), and places certain duties on cities and counties whose plans are found not to comply substantially with law. (*Ibid.*) Immediately relevant here is section 65751: "**Any action to challenge a general plan or any element thereof on the grounds that such plan or element does not substantially comply with the requirements of Article 5 (commencing with § 65300) shall be brought pursuant to section 1085 of the Code of Civil Procedure**."

(*Concerned Citizens of Calaveras County v Board of Supervisors* (1985) 166 Cal.App.3d 90, 96, [emphasis added].)

144. That court concluded:

> "We draw certain conclusions from the Legislature's enactment of article 14. The first is that **the Legislature unmistakably intends that general plans continue to be subject to judicial review for substantial compliance with state statutes**. The second is that, by requiring actions to be brought under section 1085 of the Code of Civil Procedure (§ 65751), the Legislature intended no change in the standard of review of general plans by the courts. Thus, before 1982, it was recognized that an action to challenge adoption of a general plan was properly brought under Code of Civil Procedure section 1085. (*Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875, 884, 170 Cal.Rptr. 342; *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 798, 161 Cal.Rptr. 260.) As this court recently acknowledged, the appropriate standard of review is whether the local adopting agency has acted arbitrarily, capriciously, or without evidentiary basis. (*Environmental Council v. Board of Supervisors* (1982) 135 Cal.App.3d 428, 439–440, 185 Cal.Rptr. 363.) Because **the question of substantial compliance is one of law**, this court need not give deference to the conclusion of the trial court. (*Twain Harte Homeowners Assn. v. County of Tuolumne*, supra, 138 Cal.App.3d at p. 674, 188 Cal.Rptr. 233.)"

(*Concerned Citizens of Calaveras County v Board of Supervisors* (1985) 166 Cal.App.3d 90, 96.)

…..145. The court in *Garat v. City of Riverside* came to same conclusions in 1991:

> General plan adequacy is reviewable under traditional mandate principles. (§ 65751.) On appeal, we conduct an independent review of the plan's adequacy; **the question of whether there has been substantial compliance with the laws related to general plans is one of law,** and therefore the conclusion of the trial court is not entitled to any deference. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 742, 270 Cal.Rptr. 650.)

(*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 292.)

146. In 2004, the court in *Federation Hillside and Canyon Association* echoed the standard that substantial compliance means actual compliance.

> A general plan is legally adequate if it substantially complies with the requirements of Government Code sections 65300 to 65307. (Gov.Code, § 65751.) " '**Substantial compliance . means actual compliance** in respect to the substance essential to every reasonable objective of the statute,' as distinguished from 'mere technical imperfections of form.' [Citations.]" (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 348, 176 Cal.Rptr. 620.) **A petitioner may challenge a general plan on the ground that it does not substantially comply with these statutory requirements** by way of petition for writ of mandate under Code of Civil Procedure section 1085. (Gov.Code, § 65751.)

(*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, [emphasis added].)

2) A general plan is internally inconsistent when one part of an element contradicts another part of the same element.

147. As noted above,

> [T]the general plan must be internally consistent. "Internal consistency requires that diagrams in the land use, circulation, open space, and natural resource elements reflect the written policies and programs of those elements. (Barclay & Gray, California Land Use & Planning Law (35th ed. 2016) p. 23.)

(*Orange Citizens for Parks and Recreation v. Superior Court* (2016) 2 Cal. 5th 141, 153.)

148. That court later noted that a general plan needs consistency and clarity to function:

> A general plan and its specific plans have been described as a "yardstick"; one should be able to "take an individual parcel and check it against the plan and then know which uses would be permissible." (Barclay & Gray, Curtin's California Land Use & Planning Law, *supra*, at p. 31.) "[P]ersons who seek to develop their land are entitled to know what the applicable law is at the time they apply for a building permit. City officials must be able to act pursuant to the law, and courts must be able to ascertain a law's validity and to enforce it." (*Lesher*, *supra*, 52 Cal.3d at p. 544, 277 Cal.Rptr. 1, 802 P.2d 317.)

(*Orange Citizens for Parks and Recreation v. Superior Court* (2016) 2 Cal. 5th 141, 159.)

149. Calaveras County made its own contribution to this case law:

> "Section 65300.5 provides that "In construing the provisions of [article 5, on the scope of general plans], the Legislature intends that the general plan and elements and parts thereof comprise **an integrated, internally consistent and compatible statement of policies** for the adopting agency." This statute has been uniformly construed as promulgating a judicially reviewable requirement "that the elements of the general plan comprise an integrated internally consistent and compatible statement of policies." (*Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704, 179 Cal.Rptr. 261; see *Environmental Council v. Board of Supervisors*, supra, 135 Cal.App.3d at pp. 439–440, 185 Cal.Rptr. 363; *Karlson v. City of Camarillo*, supra, 100 Cal.App.3d at pp. 800–804, 161 Cal.Rptr. 260; *Save El Toro Assn. v. Days* (1977) 74 Cal.App.3d 64, 72, 141 Cal.Rptr. 282.)

(*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 96-97, [emphasis added].)

150. The court continued by noting that consistency must be interpreted in light of the purposes of a general plan:

> The requirements of internal integration and consistency in section 65300.5 must be read in light of the recognized purposes of a general plan. In *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176 at page 1183, 203 Cal.Rptr. 401, we recently described those purposes as follows: "The general plan is atop the hierarchy of local government law regulating land use. It has been aptly analogized to 'a constitution for all future developments.' (See *O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774, 42 Cal.Rptr. 283.) The Legislature has endorsed this view in finding that **'decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan, and should proceed within the framework of officially approved statewide goals and policies** directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors.' (§ 65030.1.)"

(*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97, [emphasis added].)

151. That court concluded:

> "If a general plan is to fulfill its function as a "constitution" guiding "an effective planning process," a general plan must be reasonably consistent and integrated on its face. A document that, on its face, displays substantial contradictions and inconsistencies cannot serve as an effective plan because those subject to the plan cannot tell what it says should happen or not happen. **When a court rules a facially inconsistent plan unlawful and requires a local agency to adopt a consistent plan, the court is not evaluating the merits of the plan; rather, the court is simply directing the local agency to state with reasonable clarity what its plan is.**

(*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97, [emphasis added].)

152. This type of **internal** consistency in general plan legislation must be distinguished from a finding that a particular **development proposal** is consistent with a general plan, for the standards applied by the court are different. As explained by the California Supreme Court in *Orange County Citizens for Parks and Recreation*:

> A city's determination that a development approval is consistent with its general plan has been described by some courts as "adjudicatory" (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 678, 125 Cal.Rptr.2d 745) and by others as "quasi-legislative" (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782, 32 Cal.Rptr.3d 177). Where a consistency determination involves the application of a general plan's established land use designation to a particular development, it is fundamentally adjudicatory. In such circumstances, a consistency determination is entitled to deference as an extension of a planning agency's " 'unique competence to interpret [its] policies when applying them in

> its adjudicatory capacity.' " (*San Franciscans Upholding the Downtown Plan*, at p. 678, 125 Cal.Rptr.2d 745.) Reviewing courts must defer to a procedurally proper consistency finding unless no reasonable person could have reached the same conclusion.

(*Orange Citizens for Parks and Recreation v. Superior Court* (2016) 2 Cal. 5th 141,155.)

C) Zoning law, General Plan Law, and CEQA are integrated to facilitate both orderly development and environmental protection.

153. California's planning, development, and environmental protections laws are intended to form an integrated system to so that both man and nature can exist in productive harmony. (See Pub. Resources Code, sec. 21001, subd. (e); *Banning Ranch Conservancy v. City of Newport Beach,* (2017) 2 Cal.5th 918.) Land use planning is a multi-stage process. At the top of this pyramid is the General Plan. The purpose of a general plan is to facilitate orderly development. Virtually all subordinate discretionary land use approvals must be consistent with a valid general plan. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184.) The general plan includes text and a map identifying the general land use designation for each parcel of land in the County (residential, commercial, agriculture, industrial, forestry, etc.). These land use designations indicate the potential for development of the property at some time **during the life of the general plan.** Often this level of development is only possible when other future events coincide such as the securing of water rights, the completion of infrastructure, the acquisition of government grants, etc. At least, the plan provides policies that address housing, circulation, resource conservation, open space preservation, safety, and noise. It may contain other optional elements. (Gov. Code, secs. 65300, et seq.) A general plan may include special policies for a selected part of the County in an **area plan or community plan**, to address unique local needs. When a general plan addresses these issues, it may mitigate the impacts of new development, and thereby facilitate subsequent project approvals.

154. Below the general plan on the hierarchy is a specific plan. This is a plan for new development of **a limited part of the county**, like Saddle Creek. (Gov. Code, secs. 65450. et seq.) It includes a plan to finance the extension of infrastructure to the area. These specific plans are often built-out in phases over time.

155. Below the General Plan and the Specific Plan is zoning. (Gov. Code, secs. 65800, et seq.) "In contrast to the long-term outlook of the general plan, zoning classifies the specific, immediate uses of land." (Governor's Office of Planning and Research, 2017 General Plan Guidelines, p.

235.) Zoning identifies what the property can be used for **today**. Zoning can be controversial in part because of this immediacy. This isn't about some possible land use that might happen after a number of conditions precedent, this is something that can happen **right away**. The **categories** on the zoning map must be consistent with the **land use designations** on the general plan map. Thus, it would usually not be correct to rezone a parcel in a residential general plan designation into an industrial zoning category. Once a parcel is identified on a valid general plan, and is given consistent zoning, a project proponent can develop a number of uses **by right**. Other uses compatible with the zoning must be subject to discretionary approval by the County, and may trigger environmental review.

156. Below zoning in the pyramid are the **discretionary project approvals**, such as subdivision tentative maps, parcel maps, and use permits (Gov. Code, sec. 66473, et seq.). By applying these integrated laws, a county can plan for needed infrastructure, provide for necessary market-rate development, support below market-rate affordable housing, protect consumers and the public from unsafe buildings, and avoid unnecessary harm to the environment.

CALIFORNIA PUBLIC RECORDS ACT

157. The California Public Records Act is nicely summarized in case law.

158. The California Supreme Court explained the reasoning behind the Public Records act a couple of years ago:

> Enacted in 1968, CPRA declares that **"access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state**." (§ 6250.) In 2004, voters made this principle part of our Constitution. A provision added by Proposition 59 states: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, ... the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, § 3,subd. (b)(1).) Public access laws serve a crucial function. **"Openness in government is essential to the functioning of a democracy.** 'Implicit in the democratic process is the notion that **government should be accountable for its actions**. In order to verify accountability, individuals must have access to government files. Such access permits **checks against the arbitrary exercise of official power** and secrecy in the political process.' " (*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 328-329, 64 Cal.Rptr.3d 693, 165 P.3d 488 (*International Federation*).)

(*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 615, [emphasis added].)

159. The court continued by summarizing the basic rules of the Public Records Act:

> "CPRA establishes a basic rule requiring disclosure of public records upon request. (§ 6253.) In general, it creates "a presumptive right of access to any record *created or maintained* by a public agency that relates in any way to the business of the public agency." (*Sander v. State Bar of California* (2013) 58 Cal.4th 300, 323, 165 Cal.Rptr.3d 250, 314 P.3d 488, italics added.) Every such record "must be disclosed unless a statutory exception is shown." (*Ibid*.) Section 6254 sets out a variety of exemptions, "many of which are designed to protect individual privacy." (*International Federation, supra*, 42 Cal.4th at p. 329, 64 Cal.Rptr.3d 693, 165 P.3d 488.) The Act also includes a catchall provision exempting disclosure if "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure." (§ 6255, subd. (a).)"

(*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616.)

160. The court defined the term public record:

> We begin with the term "public record," which CPRA defines to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (§ 6252, subd. (e); hereafter "public records" definition.) Under this definition, a public record has four aspects. It is (1) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, *or* (4) owned, used, or retained by any state or local agency

(City of San Jose v. Superior Court (2017) 2 Cal.5th 608, 617.)

161**.** The court then explained that public records include those in the constructive possession of a government entity:

> Appellate courts have generally concluded records related to public business are subject to disclosure if they are **in an agency's actual *or constructive* possession**. (See, e.g., *Board of Pilot Comrs. for the Bays of San Francisco, San Pablo and Suisun v. Superior Court* (2013) 218 Cal.App.4th 577, 598, 160 Cal.Rptr.3d 285; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710, 140 Cal.Rptr.3d 622 (*Consolidated Irrigation*).) **"[A]n agency has constructive possession of records if it has the right to control the records**, either directly or through another person." (*Consolidated Irrigation*, at p. 710, 140 Cal.Rptr.3d 622.)

(*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 623.)

162. In *Humane Society of the United State*, the Third District Court of Appeal explained the public interest balancing test:

> **Where the public interest in disclosure of the records is not outweighed by the public interest in nondisclosure, courts will direct the government to disclose the requested information**. (See *CBS, supra*, 42 Cal.3d at pp. 656–657, 230 Cal.Rptr. 362, 725 P.2d 470] [names, home addresses and applications of persons who obtained concealed weapons permits must be disclosed]; *New York Times Co. v. Superior Court* (1990) 218

> Cal.App.3d 1579, 1585–1586, 268 Cal.Rptr. 21 [disclosure of names and addresses of excessive water users ordered]....) [¶] Conversely, courts have upheld the government's refusal to release public records when the public interest in nondisclosure clearly outweighed the public interest in disclosure. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, at pp. 1345–1346, 283 Cal.Rptr. 893, 813 P.2d 240 [governor's appointment schedules and calendars properly withheld to protect public interest in decisionmaking process and governor's security]; *Wilsonv. Superior Court* (1996) 51 Cal.App.4th 1136, at p. 1141, 59 Cal.Rptr.2d 537 [no disclosure of applications for appointment to county board of supervisors due to chilling effect on applications and negative impact on decisionmaking process].)" (*City of San Jose, supra,* 74 Cal.App.4th at pp.1018–1019, 88 Cal.Rptr.2d 552.)

(*Humane Society of the United States v. Superior Court* (2013) 214 Cal.App.4th 1233, 1255, [emphasis added].)

163. The court also noted that the burden of proof that the exception to disclosure applies falls on the government entity seeking to withhold the public record:

> **The burden of proof** as to the application of an exemption **is on the proponent of nondisclosure**, who must demonstrate "that on the facts of the particular case the public interest served by not disclosing the record *clearly outweighs* the public interest served by disclosure of the record." (§ 6255, italics added.) In other words, the proponent of nondisclosure must establish a "clear overbalance" on the side of nondisclosure. (*Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1071, 44 Cal.Rptr.3d 663, 136 P.3d 194; *City of San Jose, supra,* 74 Cal.App.4th at pp. 1018–1019, 88 Cal.Rptr.2d 552.)

(*Humane Society of U.S. v. Superior Court (2013)* 214 Cal.App.4th 1233, 1255 [emphasis added].)

164**.** The court went on to explain how to weigh the public interest:

> "Openness in government is essential to the functioning of a democracy." (*International Federation, supra,* 42 Cal.4th at p. 328, 64 Cal.Rptr.3d 693, 165 P.3d 488.) Accordingly, **the CPRA provides a presumption of openness**—"[t]he records at issue are presumptively open because they contain 'information relating to the conduct of the public's business.' " (*Id.* at pp. 336–337, 64 Cal.Rptr.3d 693, 165 P.3d 488.) This court has previously discussed how to weigh that general public interest in the balance. " 'If the records sought pertain to the conduct of the people's business there *is* a public interest in disclosure. **The *weight* of that interest is proportionate to the gravity of the governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate.**' (*Citizens for a Better Environment v. Department of Food & Agriculture* (1985) 171 Cal.App.3d 704, 715, 217 Cal.Rptr. 504 (*Citizens for a Better Environment),* italics added.) The existence and weight of this public interest are conclusions derived from the nature of the information." (*Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 616, 65 Cal.Rptr.2d 738 (*Connell*); accord, *County of Santa Clara, supra,* 170 Cal.App.4th at p. 1324, 89 Cal.Rptr.3d 374.)

(*Humane Society of the United States v. Superior Court* (2013) 214 Cal.App.4th 1233, 1267-1268, [emphasis added].)

165. Finally, the court explained the responsibility of the government to provide public records after redacting privileged parts:

> Section 6253, subdivision (a), provides, "... **Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law**." As a general principle, " 'where nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required to serve the objective of the [CPRA] to make public records available for public inspection and copying unless a particular statute makes them exempt.' The burden of segregating exempt from nonexempt materials, however, remains one of the considerations which the court can take into account in determining whether the public interest favors disclosure under section 6255." (*ACLU, supra,* 32 Cal.3d at p. 453, fn. 13, 186 Cal.Rptr. 235, 651 P.2d 822.)

(*Humane Society of United .States. v. Superior Court (2013)* 214 Cal.App.4th 1233, 1274, [emphasis added].)

166. Government Code. Section 6259, subdivision (b), explains the procedures for concluding a public records act case:

> **If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public.** If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(Government Code, sec.6259, subd. (b), [emphasis added].)

CALIFORNIA ENVIRONMENTAL QUALITY ACT

167. This case is brought in part pursuant to the California Environmental Quality Act ("CEQA").

1) CEQA protects both the environment and informed self-government.

168. Like the California Public Records Act passed shortly before it, CEQA has a strong public disclosure component. As the Third District Court of Appeal explained:

> "[t]he purpose of CEQA is to protect and maintain California's environmental quality. With certain exceptions, CEQA requires public agencies to prepare an EIR for any project

they intend to carry out or approve whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental effect . . . ." (*Communities for a Better Environment, supra,* 103 Cal.App.4th at pp. 106-107, fns. omitted.) The California Supreme Court has "repeatedly recognized that the EIR is the 'heart of CEQA.' [Citations.] **'Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made**. Thus, the EIR 'protects not only the environment but also informed self-government.' (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, original italics.)"

(*Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1169. [emphasis added])

2) An EIR is prepared after an Initial Study concludes that a discretionary project may have significant impacts on the environment.

169. CEQA defines a "significant effect" as a "substantial, or potentially substantial, adverse change." (Pub. Res. Code, § 21068.) This means that an activity has a significant effect if it "has the potential to degrade the quality of the environment." (S*ee also* 14 Cal. Code Reg. § 15382; *Azusa Land Reclamation Company, Inc. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 1192.) The CEQA Guidelines require a mandatory finding of significance for a project with "possible environmental effects which are individually limited but cumulatively considerable." "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (14 Cal. Code Reg. § 15065(c); *Communities For a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 114; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App.3d 692, 720-721. 42.) CEQA applies to discretionary activities undertaken by a public agency. Pub. Res. Code § 21080. CEQA requires environmental review when a project has the potential for significant impacts. (Pub. Res. Code § 21151; 14 Cal. Code Reg. § 15061. *See Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal. 4th 105, 119 ["[T]he Legislature intended CEQA to apply to discretionary projects, even when the agency's discretion to fully comply with CEQA is constrained by the substantive laws governing its actions"]; *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal. App.3d 259, 267.) The County is subject to CEQA as a local agency

with permit authority over development activities. (Pub. Res. Code § 21151.)

170. The term "CEQA Guidelines" is really a misnomer, for they are formally adopted state regulations. (14 Cal.Code Reg., sec. 15000, ff.) As a result, the Courts give great weight to the CEQA Guidelines, except when a provision is clearly unauthorized by the CEQA statute, or is clearly an erroneous interpretation of the CEQA statute. (*Concerned McCloud Citizens v. McCloud Community Services District* (App. 3 Dist. 2007) 147 Cal.App.4th 181.)

171. As part of CEQA review, the agency undertakes an "Initial Study" of the project. (14 Cal. Code Reg. § 15063.) If such Study demonstrates that the project will not have a significant effect on the environment, the agency makes a "negative declaration" to that effect. (Pub. Res. Code § 21080(c.).) If the "Initial Study" determines that the project may have a significant effect on the environment, an Environmental Impact Report ("EIR") is required. (Pub. Res. Code § 21151. *Santa Monica Chamber of Commerce , supra,* 101 Cal. App. 4th at 792.)

172. CEQA's fundamental policy is that all public agencies "shall regulate such activities so that major consideration is given to preventing environmental damage." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390; Pub. Res. Code § 21000(g.).) The "primary means" by which the legislative goals of CEQA are achieved is the preparation of an EIR. (*Laurel Heights*, *supra,* 47 Cal.3d at 392; Pub. Res. Code §§21080(d), 21100, 21151; 14 Cal. Code Reg. §15080.) The EIR has been described as "an environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Laurel Heights*, *supra,* 47 Cal.3d at 392; *County of Inyo v. Yorty* (1973) 32 Cal. App.3d 795, 810.) An EIR is intended to serve as "an environmental full disclosure statement." (*Rural Land Owners Assn. v. City Council of Lodi* (1983) 143 Cal. App.3d 1013, 1020.)

3) The Final EIR evaluates impacts, considers project alternatives, proposes mitigation measures, and responds to comments on the Draft EIR.

173. A notice of preparation announces that an EIR will be prepared. (CEQA Guidelines, sec. 15082.) By participating in "scoping," expert agencies and the public can provide early input regarding their suggestions for impact analyses, mitigation measures, and alternatives. (CEQA Guidelines, sec. 15083.) Next, the lead agency prepares a Draft EIR (DEIR), often with the assistance of consultants. Among other things, the DEIR contains a description of the

environmental setting, an analysis of potentially significant impacts, mitigation measures for significant impacts, an evaluation of alternatives, and an assessment of cumulative impacts. (CEQA Guidelines, secs. 15125 to 15130.)

174. The agency circulates the DEIR for additional input from outside agency expert and public comments. (CEQA Guidelines, sec. 15087.) The final EIR contains the agency's responses to these comments. These agency must respond to each "substantial" environmental comment. The response must be in writing, and at the same level of detail as the comment. When rejecting a proposal in a comment, the agency must explain why based upon substantial evidence. (CEQA Guidelines, sec. 15088.) This iterative process of comment and response provides the agency with the opportunity to correct analytical flaws and to reduce the impacts of projects, so that the EIR can meet the legal standard of "a good faith effort at full disclosure." (CEQA Guidelines, sec. 15151.)

175. CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (CEQA Guidelines § 15002(a)(1).) In addition, an EIR must identify mitigation measures and alternatives to the project which may reduce or avoid the project's significant adverse impacts, thus accomplishing CEQA's basic statutory goals. (*See Laurel Heights, supra*, 47 Cal.3d at 400-403; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; Pub. Res. Code §§ 21002.1, 21100.)

4) Mitigation measure proposals need to be evaluated in a Program EIR.

176. A program EIR is completed for a large scale planning approval like a general plan. (CEQA Guidelines, sec. 15168) Site specific analysis is often not available at the time a program EIR is completed. However, this does not prevent adequate identification of significant effects of the largescale planning approval at hand. (14 Cal. Code Reg. § 15152(c.).) This does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. 14 Cal. Code Reg. § 15152(b).

177. When approving projects that are general in nature (e.g. general plan amendment), agencies must develop and approve whatever general mitigation measures are feasible. (*Citizens for Quality Growth v. City of Mount Shasta* (3 Dist. 1988) 198 Cal.App.3d 433, 442.) The mitigation measures must be incorporated into the plan. (*Sierra Club v. City of San Diego* (2014) 231 Cal.App.4th 1152, 1173.) When a program EIR identifies significant impacts on drainage,

water supply, traffic, wastewater management, and/or fire protection, certification without adoption of the feasible mitigation measures is an abuse of discretion under CEQA. (*City of Marina v. Board of Trustees* (2006) 39 Cal.4th 341.)

5) Adopted mitigation measures must be a mandatory commitment of the agency.

178. CEQA requires that mitigation measures be enforceable commitments to reduce or avoid significant environmental impacts. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445; CEQA Guidelines, sec. 15126.4, subd. (a)(2).) "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1261.)

179. When an agency adopts a plan that includes planned future development, it must actually mitigate the impacts that can be anticipated at that time, regardless of future tiers of review. (*Koster v. County of San Joaquin* (1996) 47 Cal. App. 4th 29, 39-40.) It is not adequate mitigation to simply promise to meet some goal in the future, without any criteria for how this will occur. (*See e.g., [Vineyard Citizens]; Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1118 ["[W]e conclude that here the County has not committed itself to a specific performance standard. Instead, the County has committed itself to a specific mitigation goal."].); *King County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728 [It is a fatal flaw to rely on a "mitigation agreement" when the EIR presented no evidence that it was feasible].).
An agency must commit to implement a mitigation measure using mandatory language. Otherwise, it does not qualify as a mitigation measure. (CEQA Guidelines, sec. 15126.4, subd. (a)(2); *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal. App.4th 173, 199.)

6) Under specified limited circumstances an exception allows mitigation measures to be deferred.

180. There is an exception to the requirement to adopt specific mitigation measures at the time of project approval. In some instances, it will not be possible to select the specific mitigation measures from a suite of potentially feasible measures until a later phase of project development.

This often the case when the EIR is for a general plan or specific plan, and there are insufficient details available on the construction projects that will follow.

181. This exception is limited, and burdened by many requirements, because, as the court explained:

> Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental {Slip Opn. Page 23} assessment. (See, e.g., *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359 , 1396 (*Gentry*) [conditioning a permit on "recommendations of a report that had yet to be performed" constituted improper deferral of mitigation]; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [deferral is impermissible when the agency "simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report"]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777 , 794 ["mitigation measure [that] does no more than require a report be prepared and followed, . . . without setting any standards" found improper deferral]; *Sundstrom* , *supra* , 202 Cal.App.3d at p. 306 [future study of hydrology and sewer disposal problems held impermissible]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597 , 1605, fn. 4 [city is prohibited from relying on "post approval mitigation measures adopted during the subsequent design review process"].)

(*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-93.)

182. Thus, before deferral is permitted, the agency must demonstrate that there is an actual **need** to defer specifying the mitigation measure. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670-671 [Mitigation deferral is improper unless there is a reason for the deferral].) Deferral may be permissible if the agency displays a **commitment** to mitigating the impacts, lists a **menu** of feasible mitigation measures, and identifies **performance criteria** that the measures must satisfy. (*Sacramento Old City Association v. City Council of Sacramento* (3d Dist. 1991) 229 Cal.App.3d 1011, 1028-1029.) An agency may not defer adopting specific mitigation measures by adopting merely a “mitigation goal” without specific performance criteria and a menu of feasible mitigation measures. Similarly, merely committing to study an impact or the feasibility of its mitigation in the future is not sufficient. (See *Gray v.*

County of Madera (2008) 167 Cal.App.4th 1099, 1118-1119; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 197-199 [A promise to prepare a fair share plan in the future, without any commitment to mitigate the impact is an inadequate mitigation measure under CEQA.) Mitigation measures are improperly deferred when there is no commitment to a specific performance criteria, and the mitigation is not **in place at the time of project implementation**. (*Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413, 443 [Lead agency cannot defer mitigation without committing to meet performance standards]; *POET v. California Air Resources Board* (2013) 218 Cal.App.4th 681.)

7) To inform decisionmakers and the public, an EIR must evaluate a reasonable range of potentially feasible alternatives to the project that have the potential to reduce impacts

183. An alternatives analysis is supposed to look at a broad range of alternatives to reduce project impacts and to inform decision makers and the public. This is especially true when it is in a Program EIR like the one in question. (CEQA Guidelines, secs. 15126.6, 15168.) "[T]he discussion of alternatives shall focus on alternatives to the project or the location which are capable of avoiding or substantially lessening any significant effects of the project, even if those alternatives impede to some degree the attainment of project objectives, or would be more costly." (CEQA Guidelines, sec. 15126.6, subd. (b)(1).) There needs to be sufficient information about the alternative to allow the deccisionmakers to make a rational choice. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437 [A decision to approve an alternative analysis based upon the "barest of facts" and "vague and unsupported" conclusions" precluded informed decisionmaking and public participation and was therefore an abuse of discretion.].)

184. An EIR should "identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination." (CEQA Guidelines, sec. 15126.6, subd. (c); *Save Round Valley Alliance l County of Inyo* (2007) 157 Cal.App.4th 1437 [A lead agency must explain why a suggested alternative is rejected as either unable to be accomplished, not satisfying the goals of the project, or not advantages to the environment.]; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 205-206 [In rejecting an alternative an agency must disclose the analytic route it traveled from substantial evidence to action].)

185.These analyses of feasible mitigation measures and of a reasonable range of alternatives are crucial to CEQA's substantive mandate that significant environmental damage be substantially lessened or avoided where feasible. (Pub. Res. Code §§ 21002, 21081, 21100; CEQA Guidelines, 14 Cal. Code Reg. §15002(a)(2) and (3). *Laurel Heights*, *supra*, 47 Cal.3d at 392, 404-405.) Ultimately, CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); CEQA Guidelines, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).)

8) Written responses to comments Responses to comments must meet standards.

186. CEQA has clear requirements for responding to comments on a DEIR. (CEQA Guidelines, sec. 15088.) "The lead agency shall respond to comments raising significant environmental issues received…" "The written response **shall describe the disposition of significant environmental issues raised."** "[W]hen the lead agency's position is at variance with recommendations and objections raised in the comments" the response "must be addressed in detail **giving reasons why specific comments and suggestions were not accepted.** (*Ibid*. [emphasis added]; see also *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918.) When provided with examples of mitigation measures implemented elsewhere, an agency must either implement them or explain why not. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1173.) "**There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice."** The level of detail contained in the response, however, may correspond to the level of detail provided in the comment. "The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR." (CEQA Guidelines, sec. 15088.)

187. From its earliest days to the present, over four decades of CEQA case law has noted the importance placed on adequate responses to comments. Where comments cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. "*There must be good faith, reasoned analysis in response*." (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.)

…..188. CDF's response to a comment regarding the efficacy of a mitigation measure was inadequate where it contained no analysis of the issues, contained no specific information justifying the rejection of the concern, and referenced a report that was unavailable.

(*Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604.) "In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. (*San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 596 [122 Cal.Rptr. 100]*; Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist*., supra, 24 Cal.App.4th at pp. 841-842.) While the response need not be exhaustive, it should evince good faith and a reasoned analysis. (*San Francisco Ecology Center*, supra, 48 Cal.App.3d at p. 596; Guidelines, § 15088, subd. (b).)" *(Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.)

189. Ignoring non-duplicative public comments is prejudicial error. *(Environmental Protection and Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.App.4th 459.) An inadequate response to even one substantive comment can be enough to justify a writ of mandate remanding the decision to the lead agency. (*Gallegos v. California State Board of Forestry* (1978) 76 Cal.App.3d 945, 952-955.)

9) Project approvals may include a findings of fact rejecting infeasible mitigation measures and alternatives, and a statement of overriding considerations.

190. To reject as infeasible a measure to mitigate a significant impact, a lead agency must have a valid finding that the proposed mitigation measure is infeasible. The agency must show that there is some economic, environmental, legal, social, or technological barrier that makes implementing these measures impossible. (CEQA Guidelines, sec. 15364.) It is an abuse of discretion to reject alternatives or mitigation measures that would reduce adverse impacts without supporting substantial evidence. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1175-1176.)

191. To reject additional mitigation measures, a lead agency may claim that the other mitigation measures adopted will be sufficient to reduce the impact to a level of insignificance. However, a lead agency must have substantial evidence that mitigation is feasible and will be effective. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116-1118.) "A clearly inadequate study is entitled to no judicial deference." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 422 &409 fn. 12.)

192. If choosing among multiple measures that will be more than sufficient to reduce an impact to a level of insignificance, then an agency can exercise its preference in choosing which measures to adopt.

193. Finally, where an agency finds that significant adverse effects remain, even after the implementation of all feasible mitigation measures, the agency must balance the economic benefits of the project against its environmental harm to determine if the project should proceed. (14 Cal. Code Reg. § 898.1(g); Pub. Res. Code § 21081(d), 14 Cal. Code Reg. § 15093.) This "statement of overriding considerations," as the last step in the analysis, provides critical information to the public to fulfill the law's public disclosure requirement - that the EIR function as "a document of accountability" and "informed self-government." (*Sierra Club v. State Board of Forestry, supra*, 7 Cal.4th at 1229 [The board retains the power to approve a plan that has significant adverse effects upon the environment, so long as it justifies its action in light of "specific economic, social, or other conditions.") Thus, "The EIR process protects not only the environment but also informed self-government." (*Laurel Heights, supra*, 47 Cal.3d at 392.)

10) Two standards of review apply in CEQA cases.

194. Pursuant to Public Resources Code §21168, a writ of mandate may issue where the agency has committed a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law ***OR*** if the agency's decision is not supported by substantial evidence.

195. Therefore, as the California Supreme Court has explained, there are two standards that apply to the review of CEQA decision.

> While judicial review of CEQA decisions extends only to whether there was a prejudicial abuse of discretion, "an agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: while **we determine de novo whether the agency has employed the correct procedures**, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564), we accord **greater deference to the agency's substantive factual conclusions**."

(*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at p. 435; See also *Mount Shasta Bioregional Ecology Center* (2012) 210 Cal.App.4th 181, 194-196.)

196. When an agency fails to include information in an EIR, it has made a procedural mistake, and the issue is decided de novo as a matter of law. Such allegations in this case include illegal reliance on optional measures as mitigation, illegal deferral of mitigation, failure to evaluate mitigation measures in the body of the EIR, failure to adopt an adequate mitigation monitoring plan, failure to describe feasible alternatives, failure to evaluate a reasonable range of alternatives, and inadequate responses to comments on the DEIR. .

197. When an agency fails to make an adequate finding of fact, the issue is decided using the substantial evidence test. Such allegations in this case include inadequate findings rejecting mitigation measures.

11) Both an informationally inadequate EIR and inadequate findings may be prejudicial.

198. To justify a writ of mandate, an error in complying with CEQA must be prejudicial rather than harmless.

199. If the alleged violation is that the agency failed to proceed in accordance with the law by producing an EIR that is informationally inadequate, then prejudice exists when the public or decisionmakers have been deprived of substantial relevant information about the project's likely significant effects. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal4th 439.) However, if an information error made is irrelevant to the analysis, or does not result in an inaccurate assessment of potential impacts, then the error is not prejudicial.

200. If an agency fails to reveal the logical route taken from substantial evidence in the record to the agency's ultimate decision and action, then prejudice exists when the decision or action threatens harm to the natural or human environment, or the decision or action vitiates the validity or integrity of the approval.

201. The guiding principle in the review of projects under CEQA is that CEQA must be interpreted so as to afford the fullest possible protection to the environment. (*Laurel Heights, supra,* 47 Cal.3d at 390; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.) EIRs demonstrate to an apprehensive citizenry that the agency has analyzed and considered the ecological implications of its action. (*Sierra Club, supra; No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86; *EPIC v. Johnson, supra,* 170 Cal. App.3d at 609-11.)

FACTS AND ALLEGATIONS

FIRST CAUSE OF ACTION: VIOLATION OF LAND USE LAW (Government Code, secs. 65300, et seq.)

202. The Petitioner re-alleges the facts set forth in paragraphs 1 - 201 of this petition.

A) THE GENERAL PLAN UPDATE FAILS TO INCLUDE PARTS AND INFORMATION REQUIRED BY THE GOVERNMENT CODE. (Government Code, secs. 65300.5, 65301, 65302, 65565,)

203. A general plan is not in conformity with the law unless it is in substantial compliance with the requirements of the Government Code. To be in substantial compliance, it must be in actual compliance in respect to the substance essential to every reasonable objective of the statute, as distinguished from technical or form imperfections. (*Federation of Hillside and Canyon Assn. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180.)

1) THE GENERAL PLAN RESOURCE PRODUCTION ELEMENT FAILS TO INCLUDE PARTS AND INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 65565.

201. If there is an agricultural land component in the general plan, it must identify "All parcels subject to a conservation easement", "The total acreage of agricultural land that is located within two miles of land zoned for housing, including rural residential uses, business, or industry in the land use element," "priority lands for conservation," and "**objectives** … to support the long-term protection of agricultural land". (Government Code, sec. 65565, subds. (a)(1)(B), (a)(1)(G), (a)(1)(K), (a)(2), (a)(3), [emphasis added].) "An objective is a **specified** end, condition, or state that is an intermediate step toward attaining a goal. It should be achievable and, when possible, **measurable** and **time-specific**." (OPR, General Plan Guidelines 2017, p. 392, [emphasis added].) A proper inventory of open space lands is an essential component of a complete general plan. (*Save El Toro Association v. Days* (1977) 74 Cal.App.3d 64.)

202. These requirements are an essential part of achieving the reasonable objective of general plan law. The law seeks to preserve open space land, "not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the

production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources. Toward that end, since 1970 the law has demanded that, "cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans." (Government Code, sec. 65561.) Open space land "is a limited and valuable resource that must be conserved whenever possible." (Government Code, sec. 65562.)

203. The General Plan Update includes an agricultural land component in its Resource Production Element. The Resource Production Element does not identify all parcels subject to conservation easements, despite the efforts of CPC members to provide some of this information. The Resource Production Element does not identify the total acreage of agricultural land within two miles of land zoned for housing, business, or industry in the land use element, despite the fact that the County has a map that depicts this. The Resource Production Element does not establish objectives for the long-term protection of agricultural land. Therefore, the Respondent's General Plan Update is not in compliance with Government Code, Section 65565.

204. On May 29, 2013, CPC member Muriel Zeller asked the County to include a map of existing conservation easements in the General Plan Update. Such a map was generated by the County in 2015. On January 12, 2016, CPC member Muriel Zeller emailed Planning Director Maurer to encourage him to make some corrections to the map. In a memo on March 20, 2019, the CPC recommended that this sort of material be included in the General Plan Update as required. That memo went to the Planning Commission, and to the Board of Supervisors, and to their advisors in the Planning Department and in the Office of County Counsel. The Planning Commission did not follow that recommendation to correct the error during its general plan hearings from May through June of 2019. In a memo on July 29, 2019, the CPC again recommended that the Board of Supervisors include this information in the General Plan Update. The CPC even provided copies of available County maps that could be used to bridge some of the information gaps. During their hearings on July 30 and 31, of 2019, the Board of Supervisors saw fit to neither discuss this issue, nor to include this information in the General Plan Update. Therefore, the CPC exhausted its administrative remedies on this issue.

…..205. This violation goes to the essential substance of the purpose of general plan law, and is highly prejudicial. This is because it interferes with both the state's and the petitioner's desires to locally achieve a major state purpose of California general plan law: to conserve open space whenever possible. (Government Code, sec. 65562.) Agricultural lands produce many consumer

products, historical connections, cultural and ecosystem benefits valued by the Petitioner. The productivity of these lands is often a function of their proximity to one another. When grouped together agricultural lands can avoid conflicts with residential or industrial land uses. When linked together, rangelands can provide habitat blocks and migration corridors for wildlife species. Maps identifying **existing** long-term conservation easements are needed to help to identify the proverbial missing pieces of the puzzle: the additional nearby lands suitable for long-term conservation to strengthen the network of agricultural lands. Also, maps of agricultural lands within two miles of existing development help to identify key conservation parcels that may be under great pressure to develop. This in turn helps to identify priorities for securing long-term conservation easements. The lack of these accurate maps makes setting conservation priorities difficult, and the lack of priorities makes the acquisition of the most productive long-term easements difficult. The lack of these accurate maps in the General Plan interferes with the County's ability to achieve the reasonable legislative objectives of making definite plans at the earliest possible date to conserve open space and to "take positive action to carry out such plans." (Government Code, sec. 65561.) Thus the violation goes to the essential substance of preserving open space, and is highly prejudicial to the interests of the Petitioner.

2) THE GENERAL PLAN SAFETY ELEMENT FAILS TO INCLUDE PARTS AND INFORMANTION THAT ARE REQUIRED BY GOVERNMENT CODE SECTION 65302.

206. The safety element must develop a "set of comprehensive goals policies and **objectives**" to protect communities from the unreasonable risk of flooding. (Government Code, sec. 65302, subd. (g)(2)(B), [emphasis added]).) The safety element must also include a "set of goals policies and **objectives**… for the protection of the community from the unreasonable risk of wildlife fire " (Gov. Code, sec. 65302, subd. (g)(3(B), [emphasis added].) An objective is a **specified** end, condition, or state that is an intermediate step toward attaining a goal. It should be achievable and, when possible, **measurable** and **time-specific**." (OPR, General Plan Guidelines 2017, p. 392, [emphasis added].)

206. The GPU contains goals and policies but no **objectives** to protect communities from the unreasonable risk of flooding, and the unreasonable risk of wildfire.

…..207. Early in the General Plan Update process, on June 1, 2007, the CPC brought the issues of flood control and fire safety to the County's attention by providing background information to the

Community Development Director Stephanie Moreno. The CPC repeatedly requested that the County include objectives in its General Plan Update. For example, on March 20, 2015, in the CPC's comments on the 2014 Draft General Plan, the cover letter states, "It is also disappointing that there are few measureable objectives that provide targets for achievement in the near-term and long-term." That was followed by a specific critique of the fire safety section of the Draft General Plan. For a second example, on February 17, 2017, the CPC sent in scoping comments in anticipation of the GPU EIR. The cover letter indicated that attached to the comments were the OPR General Plan Guidelines. The letter encouraged the County to follow the general plan structure, "complete with quantified objectives." Also included as an attachment was the states guide *Fire Hazard Planning*. In a memo on July 29, 2019, the CPC recommended that the Board of Supervisors specifically include flood control objectives in the General Plan Update. During their hearings on July 30 and 31, of 2019, the Board of Supervisors did discuss flooding and fire safety, but did not include objectives in the GPU. On November 8, 2019, the CPC sent the Supervisors a copy of a letter to the Board of Forestry and Fire Protection, detailing CPC's ongoing concerns about fire safety. On November 9 and 10 of 2019, the CPC sent the Board of Supervisors numerous photographs of the deficient and unsafe fire access roads in the County. Therefore, the CPC exhausted its administrative remedies on this issue.

…..208. The violation is both substantive and prejudicial, because it interferes with both the essential objective of the general plan law, and with the Petitioner's desire, to locally achieve the state's purpose of protecting our families, friends, and neighbors from the unreasonable risks of flooding and wildfires. The violation allows the County to further delay identifying the immediate flood control and fire safety actions needed. The lack of specified intermediate steps delays action on the highest priority flood control and fire safety tasks by simply not identifying them. The lack of achievable, measurable and time-specific objectives leaves the general plan update's flood control and fire safety treatment without the clarity of action and accountability needed. Thus, this violation is both substantive and highly prejudicial.

3) MAPS AND DATA REQUIED TO BE IN THE GENERAL PLAN UPDATE ARE INSTEAD RELEGATED TO A SEPARATE BACKGROUND DOCUMENT.

209. Many general plan elements are required to include specific and up to date information and diagrams helpful to both the public and private sector in making development decisions.

(a) REQUIRED CIRULATION ELEMENT COMPONENTS ARE RELEGATED TO THE BACKGROUND REPORT.

210. The circulation element is a mandatory element that must identify, not only the location of roads, but also the location of other public utilities, as these are also essential for future development. These include maps of water and wastewater service boundaries, and electrical transmission lines. (Government Code, sec. 65302, subd. (b).) A circulation element must also include the water and wastewater facility needs of disadvantaged legacy communities. (Government Code, sec. 65302.10.) The circulation element can be amended no more than 4 times per year. (Government Code, sec. 65358, subd. (b).) Such an amendment involves a process of consultations, public input and a hearing of the Board of Supervisors. (Government Code, secs. 65351-65356.) The Public Facilities Element of the General Plan Update indicates that it is supposed to meet the requirements of the circulation element to provide the general location of local public utilities, including those needed by disadvantaged communities. Such dividing or combining of required elements is allowed. (Government Code, sec. 65301, subd. (a).)

211: The *Technical Background Report* (TBR) is **not** part of the General Plan, and by its own terms can be amended at any time without public input**,** despite past difficulties with the accuracy of information in the *Draft Baseline Report* (2008) and the *Draft Background Report* (2014). In addition, according to the Planning Director's testimony at the Planning Commission the document merely reflects conditions in snapshot in time, and will not be maintained in an updated state.

212. The county incorrectly relegated to the TBR the following map and data required by the Government Code to be in the General Plan Update:

-water service boundaries,

-wastewater service boundaries,

-electrical transmission lines,

-water facility needs of disadvantaged communities,

-wastewater facility needs of disadvantaged communities.

(b) REQUIRED OPEN SPACE ELEMENT COMPONENTS ARE RELEGATED TO THE BACKGROUND REPORT.

213. The Resource Production Element of the GPU is its agricultural land component. If there is an agricultural land component in the general plan, it must identify "All parcels subject to a contract executed pursuant to the Williamson Act". The Williamson Act provides reduced property taxes so long as property owners agree to conservation easements for agricultural or natural lands.

214. Instead of including the information in the General Plan Update, the County relegated to the *Technical Background Report* information on the lands subject to Williamson Act contracts.

(c) REQUIRED SAFETY ELEMENT COMPONENTS ARE RELGATED TO THE BACKGROUND REPORT.

215. Among the requirements of the Government Code, the safety element shall provide historical flood data on repetitive loss properties, and -flood hazard zone maps showing the location of essential public facilities, existing structures, roads, and utilities. (Government Code, sec. 65302, subd. (g).)

216. The *Technical Background Report*, is **not** part of the General Plan, and by its own terms can be amended at any time without public input. According to the Planning Director's testimony at the Planning Commission the document is a one-time snapshot of data that will not be maintained in an updated state: The following maps and data required by the Government Code to be in the Safety Element of the General Plan Update are instead improperly relegated to the Background Report:

-historical flood data on repetitive loss properties,

-flood hazard zone maps showing the location of essential public facilities, existing structures, roads, and utilities.

217. On March 20, 2019, the CPC sent the Planning Commission and the Board of Supervisors a memo on the flaws in the GPU Introduction and the Land Use Element. On pages 5 and 6 of that memo the CPC explained how, "The General Plan Background Report misplaces and mistreats information that must be in the general plan elements." On July 29, 2019, the CPC sent a memo the Board of Supervisors a listing items to fix in the GPU. Pages 2 to 4 of that memo listed the data and maps missing from the Resource Production Element, the Safety Element, and the Public Facilities Element, and relegated to the *Technical Background Report.* Neither the Planning Commission nor the Board of Supervisors chose to make those corrections. Thus, the CPC has exhausted its administrative remedies regarding this issue.

218. The above violations are prejudicial to the state and to the Petitioner because they undermine (1) undermine the role of the state and the public in the review of general plan amendments, (2) they cut of legal recourse to correct errors in general plan amendments, (3) they allow the County to exclude required factors from affecting future land use decisions, and (4) they undermine the enforcement of land use laws designed to protect the public's health, safety, and environment.

219. First, the violations alleged above are highly prejudicial to the Petitioner, as they exclude the essential role of public and outside agency review from the general plan amendment process. Many general plan elements are required to include specific and up to date information helpful to the public and private sector in making development decisions. However, the General Plan Update relegates much of this required information to the *Technical Background Report*, (AKA "General Plan Background Report") which by its own terms is "separate from the General Plan." The GPU explains that as information becomes outdated, since it is not included in the body of the general plan, it can be updated "without the necessity of undergoing a general plan amendment process." (GPU Introduction, p. INT-7.) Of course, it is that very general plan amendment process that provides for the public and agency scrutiny and correction of mistakes in background information. (Government Code, secs. 65302, subd (g)(5); 65302.5, 65351-65352.5.) Such mistakes were found by the public and public agencies in the 2008 Baseline Report, and the 2014 Background Report. Eliminating public and agency review from the general plan update process risks perpetuating errors that could harm public health, public safety, the environment, and the productivity of Resource Production lands.

…..220. Second, the violations alleged above are highly prejudicial to the Petitioner, because they cut of legal recourse to correct future errors in the GPU. If required maps and data are allowed to exist outside the plan, then there is no legal recourse for correcting them if they become outdated or erroneously changed by the County. For example, the County included the transportation plan maps from the 1985 General Plan in the 1996 General Plan, and did not updated it for another decade, despite the fact that subsequent Regional Transportation Plans included more current maps. (Mintier & Associates, *Calaveras County General Plan Evaluation*, 10/12/06, pp. 31-32.) If this were to happen again, and the court has allowed these maps to exist outside the plan, there would be no legal recourse for updating them.

221. Third, the above violations are highly prejudicial to the state and to the Petitioner, because they allow the County to exclude from future development decisions key information that

would otherwise affect the decisions. The General Plan Update states that the information in the *General Plan Background Report* "may inform but does not affect implementation of the general plan." (GPU Introduction, p. INT-7.) The reason that the information is required to be in the general plan element is so that it **WILL** affect implementation of the general plan. The reason for including in a general plan information on agricultural land conservation easements, on water and wastewater utilities, and on the location of flood hazards relative to essential public services, is precisely so that the information WILL be considered when private and public land use decisions are made by investors, Planning Commissioners, and County Supervisors. For example, when individual landowner requests for land use designations were reviewed in by the Planning Commission, a frequent and relevant questions from the Commissioners was is the property served by the Calaveras County Water District (CCWD)? Maps and information are required in a general plan so that the County must consider them, and so the information will affect future land use decisions. If all the County needs to do to avoid key general plan requirements in future land use decision is to instead put the map or information in something called a background report, then a County could avoid all sorts of general plan consistency requirements, including the most basic requirement that development projects be consistent with the land use designation map. Allowing future development decisions to be made based upon the whim of local officials, without the factual considerations legally required to protect the public's health, safety, and the environment is highly prejudicial to the state and to the Petitioner.

222. Fourth, these violations are highly prejudicial to the state and to the Petitioner, as they undermine the enforcement of land use laws designed to protect public health, public safety, the environment, and the productivity of resource production lands. A key aspect of general plan law is that discretionary development project must be consistent with the general plan. (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988.) If critical information about conservation lands, infrastructure needs, and flood control are allowed to be relegated to a "background report," then the County could approved discretionary development projects in conflict with planning requirements designed to protect public health, public safety and the environment. There would be no legal recourse under land use law to seek judicial review of these projects, because there is no law requiring discretionary projects to be consistent with something called a "background report." There would be no way to hold the Board of Supervisors accountable for their abuse of discretion in approving such a development project. Vesting such land use power without accountability is contrary to the modern principles of

California land use law, and contrary to our nation's foundational principle of checks and balances. The County's scheme would have this Court abdicate its legal oversite power.

B) THE GENERAL PLAN UPDATE DOES NOT COMPREHENSIVELY ADDRESS CRITICAL ISSUES. (Government Code, sec. 65301, subd. (c).)

223. The Petitioner re-alleges the facts set forth in paragraphs 1 - 222 of this petition.

224. A general plan is supposed to be comprehensive, in that it addresses development and conservation issues to the full degree that they are present in the jurisdiction. (Government Code, sec. 65301, subd. (c).)

1) THE 13-YEAR GENERAL PLAN UPDATE FAILED TO COMPLETE THE PLANNING PROCES FOR DOZENS OF CRITICAL ISSUES THE COUNTY IDENTIFIED, AND INDEFINITELY POSTPONES COMPLIANCE WITH GENERAL PLAN LAW.

225. To ensure that localities pursue "an effective planning process" (§ 65030.1), each city and county must "adopt a comprehensive, long-term general plan" for its own "physical development." (Government Code, sec. 65300.) When adopting a general plans, a locality must "**confront, evaluate and resolve** competing environmental, social and economic interests." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571, 276, [emphasis added].) A general plan is supposed to be comprehensive, in that it addresses development and conservation issues to the full degree that they are present in the jurisdiction. (Government Code, sec. 65301, subd. (c).) A general plan also must include development policies, "diagrams and text setting forth objectives, principles, standards, and plan proposals," and seven predefined elements—land use, circulation, conservation, housing, noise, safety, and open space. (Government Code, secs. 65302, subds. (a)-(g), 65303.) The General Plan Guidelines explain that, "The initial stages of outreach allow stakeholders to identify community strengths, assets, priorities for future development, and areas for improvement and, thus, to start the process of formulating a vision for the future." (OPR, 2017 General Plan Guidelines, p. 28.)

226. As the court stated in *Concerned Citizens of Calaveras County:*

> If the plan adopted does not reflect **substantial compliance** with those requirements, the Board and other responsible agencies of the County have failed in the "performance of an act with the law specially enjoins." "Substantial compliance, as the phrase is used in the decisions, means **actual compliance** in respect to the substance essential to every reasonable objective of the statute," as distinguished from "mere technical imperfections of form."

(*Concerned Citizens of Calaveras County v Board of Supervisors* (1985) 166 Cal.App.3d 90, 95-96, [emphasis added].)

227. During the preliminary stages of the GPU, the County properly identified key issues that needed to be confronted and resolved in the GUP process. The 2006 evaluation of the 1996 General Plan identified many serious flaws in the 1996 General Plan that needed to be corrected in the GPU. One major problem was that the implementation programs did not have "clear measureable outcomes and timelines." One problem with the Land Use Element is that it did not meet the requirements for consistency with the airport land use plan. A problem with the Circulation Element is its inconsistency with the Regional Transportation Plan. A problem with the Safety Element was the lack of evacuation routes, minimum road widths, and peak water lode requirements. (Mintier and Associates, *Calaveras County General Plan Evaluation*, 10/12/06.)

228. The 2008 Issues and Opportunities Report listed additional issues that needed to be addressed in the GPU. These issues were identified by local residents at workshops throughout the County, confirmed by the County's expert planning consultant, and accepted by the Board of Supervisors. Page 7 of the report noted the need to preserve open space with conservation easements, the need to protect wildlife corridors and the need to protect oak woodlands. Pages 9 to 11 of the report indicate the need to preserve community identity, and to provide for local control of design review, and to preserve agricultural lands. Page 18 of the report indicated that infrastructure fees were inadequate, and sewer capacity was inadequate in some areas. The report noted the need for new development to mitigate its impacts, to connect to sewer systems, and to be approved only after infrastructure and impact fees are in place. Page 19 of the report noted the need to require water conservation and recycling. Page 21 of the report notes the need to provide for transit, community by-pass roads, and pedestrian facilities. Page 22 of the report acknowledges that the County lacks funding for necessary transportation improvements. Page 24 lists the need to address truck traffic, to restructure traffic impact fee programs, to fund bike and pedestrian improvement projects, and to make more effective economic development of the airport. Page 25 notes the need to improve emergency response times, to employ additional fire

fighters and law enforcement officers, and to provide for emergency evacuation routes. Page 27 of the report indicated that the GPU would address fire and flood safety to protect County residents. Page 28 of the report indicated the need to increase revenues for law enforcement and emergency service facilities and personnel, and to develop necessary standards to decrease risks from wildfire fires and floods. Thus, if the County completed a general plan that addressed those issues, and included diagrams, goals, policies, objectives, standards, and programs, it would have been in compliance with the law.

a) <u>The GPU does not address the following development and conservation issues to the degree that they are present in Calaveras County.</u>

229. However, rather than completing a General Plan Update that addressed these issues, after a 13 year planning process, the Supervisors refused. After authorizing CCWD to lead a collaborative stakeholder process, with expert advisers, the Supervisors refused to adopt the Draft Water Element. After hiring consultants to complete the draft Energy Element, the Board of Supervisors refused to adopt it. After preparing new community plans for Copperopolis and Valley Springs, the Supervisors refused to adopt them. After the Planning Department worked with the Agricultural Coalition to refine standards to mitigate the loss of Agricultural land, the Planning Commission eliminated them from the GPU. After experts identified feasible measures to mitigate the loss of oak woodlands, the Planning Commission eliminated them from the GPU.

230. Unfortunately, rather than confronting and resolving the critical planning issues it identified early in the GPU process, the GPU instead simply restates the needs and defers dealing with them until an unspecified time in the future.

231. For example, look how the GPU addresses the problems identified in the 2006 evaluation of the 1996 General Plan. The implementation programs in the GPU still do not have "clear measureable outcomes and timelines." There is still no current analysis of the consistency of the Land Use Element with the Airport Land Use Compatibility Plan, and the analysis is deferred in implementation LU-3A to an unspecified time in the future, if it becomes a BOS priority. (Response to CPC Comments on the DEIR, Number 11-102.) When asked to fix a list of inconsistencies between the Circulation Element and the RPT, the County refused to address the inconsistencies. (Response to CPC Comments on the DEIR, Number 11-157.) The identification

of designated evacuation routes has been deferred by implementation measure S-1C to an unspecified time in the future, if it becomes a BOS priority.

232. The GPU's handling of the Issues and Opportunities Report topics reflect a similar pattern of restating the problem and deferring decisions on key matters to unspecified times in the future, if they become a BOS implementation priority. Addressing wildlife corridors and oak woodland mitigation is deferred by implementation measures COS-4E and 4D. Community design standards are deferred in implementation measure LU-4A to an unspecified time in the future, for unspecified communities. Agricultural land conservation is deferred under implementation measure RP-1F. The issues of infrastructure fees being too low and transportation improvement funds being insufficient are deferred in implementation measures C-1C, C-2D, and C-2E. The issue of water conservation is deferred by implementation measure PF-2H. The issue of truck traffic and noise is deferred by implementation measure N-1C. The issue of emergency response times is deferred by implementation measures S-1B, PF-1A, PF-1B, and PF 4A. The issue of identifying evacuation routes is deferred by implementation measure S-1C. The issue of the need for law enforcement officers is deferred by implementation measure PF-4A. The issue of funding emergency services is deferred by implementation measure PF-4C.

233. As a result of the pervasive indefinite deferral of decisions about the key issues that needed to be addressed in the General Plan Update, the GPU is not complete. If a BOS were allowed to simply perpetually defer confronting and resolving the most important planning issues in the county, then the requirement for adoption of a general plan would be meaningless. Obviously, that was not the intention of the legislature when it passed land use law.

234. Throughout the GPU process the CPC encouraged the County to address these issues. The CPC participated in the stakeholder group that drafted the Water Element. The CPC sent in a letter of support for the Agriculture and Forestry Element that included mitigation standards for the loss of Resource Production lands. On August 13, 2013, the CPC reminded the County of the issues that had been identified in the GPU process, and sent in suggestions for including key provisions of the ousted Water, Energy, and Economic Development elements in the mandatory elements of the GPU. In scoping comments on February 16, 2017, the CPC sent in samples of agriculture sections from the general plans of 11 other jurisdictions to help the County address its agriculture issues. The need to specify timeframes for implementing measures to reduce impacts was a consistent theme in the CPC comments on the DEIR. On November 7, 2019, the Petitioner

sent a memo to the Board of Supervisors, the Planning Director, and to a representative of County Counsel's Office, encouraging the County to correct this flaw in the GPU. The Board did not. Thus, the Petitioner exhausted its administrative remedies.

235. This violation is both substantive and prejudicial to the Petitioner. It is substantive because it has direct bearing on the central requirement of general plan law: that a County have a general plan. The County took 13-years to complete a plan originally expected to be completed in 2 years, and that was 80% complete in four years. The dominant content of that plan is not time specific objectives or immediately applicable standards, but over 120 implementation measures, the completion of which is deferred to an unspecified time in the future. If a County can indefinitely postpone planning, then the requirement for a comprehensive general plan is meaningless.

236. This violation is prejudicial to the Petitioner, and others in the public, who worked so hard to help the county actually **complete** a valid general plan. But more than that, this violation is highly prejudicial to all who will suffer the harm associated with the County's failure to timely plan to address key issues. Homes and families will be at risk if the Board delays getting the sheriff and the fire departments the resources they need to keep people safe. If the Board delays, thousands of acres of ranches and timberlands threatened with going out of production due to drought and wildfire may not get the assistance they need to adapt to changing conditions. If the Board delays, new businesses and developments will not have clear standards to meet for projects approval.

237. This violation is prejudicial to the Petitioner because it removes judicial oversite from local land use decisions. If the GPU is found lawful, since the GPU includes no time-specific objectives, and the vast majority of implementation measures have no timelines, the County cannot be held legally accountable under land use law for failing to complete any of these implementation measures during the two decade plan horizon. Thus, privately motivated economic development could continue under the Land Use Element, the Housing Element, and the existing zoning code, in the absence of the public interest motivated efforts that should come from the Resource Production Element, the Conservation and Open Space Element, and the Safety Element. If a different Board of Supervisors is elected, the public interest components of the GPU could be implemented, while the implementation measures needed for economic development get deferred. Again, vesting such broad land use power without accountability is

contrary to the modern principles of California land use law, and contrary to our nation's foundational principle of checks and balances. The County's scheme would have this Court abdicate its legal oversite power.

2) By removing some community plans without replacement, the General Plan Update does not comprehensively address the need for community plans.

238. A General Plan may include area plans to meet the specific needs of an area. (Government Code, sec. 65302.4.) For example, Calaveras County includes many diverse unincorporated communities. These communities have different populations from around 100 in Wallace to around 4,000 in Arnold and Rancho Calaveras. They have different elevations, climates, and natural landscapes; from the hot oak savanna around Valley Springs to the snowy conifer-covered slopes around Arnold. Some areas have public water supplies and public wastewater treatment, while others rely on wells and septic systems. Some local economies draw their strength primarily from working the land, while others prosper primarily by serving visitors. Thus, it is not surprising that these diverse communities would have special needs, which have been accommodated in community plans for decades. The County included updating these community plans in its 2007 work plan for the GPU

237. However, twelve years later in 2019, the GPU still does not comprehensively address this need for community plans. In fact, the GPU took a huge step backwards. It wipes out **every** policy from the **existing** community plans along the Highway 4 Corridor: Ebbetts Pass, Arnold, Murphys/Douglas Flat, and Avery/Hathaway Pines. (Community Planning Element, p. CP-1. ["With adoption of this plan, those community plans will be rescinded."]) These policies have been serving these communities well for decades. These community-specific policies address unique local needs, and many are not replicated in the GPU.

238. Also, the GPU leaves two of the more populous and growing communities in Calaveras County (Copperopolis and Valley Springs) without community plans, despite the years of effort and expense to complete these plans under County supervision.

..239. The Copperopolis Community Plan began with a community survey in 1992, followed by a vision statement in 2001, and a 54-page draft community plan in 2005. This effort culminated in the Community Advisory Committee working with the Planning Director and a County Supervisor to develop a shortened, 3-page community plan in 2013.

240. The Valley Springs Community Plan effort began in 2007. It continued through 2010 with the production of a draft plan. A competing plan was also developed in 2010. The two plans were blended and presented to the County Planning Department and the Supervisor representing the area in 2016, in time for inclusion in the environmental impact report. In January 2017, the Planning Director submitted to the Planning Commission a pared down version of the blended plan (four and a half pages of text) suitable for inclusion in the Community Planning Element. The matter was pulled from the agenda of the Planning Commission, and remained stalled for the next two years and ten months through the GPU approval in November of 2019. That GPU approval then rescinded the existing Valley Springs Community Plan. During that period 34-month period, many of the Planning Commission cancelled many of its twice-monthly meetings for lack of agenda items.

241. Despite the lack of policies to address development issues in these two communities, the 2019 GPU Land Use Designation Map still directs large amounts of future development in and around these two communities. Many issues, including the presence of two water utilities, the intersection of two highways, and flooding concerns, complicate future development in Valley Springs. Future development in Copperopolis is complicated by Lake Tulloch overcrowding, the traffic constraints of the bridge, the lack of an updated basin plan to cover needed road construction, and the huge excess of land targeted for development relative to future demand. The Planning Department has recognized the need to update the Valley Springs community plan since 1983. The need for a community plan in Copperopolis was noted in 1992.

242. The County has claimed that these plans could not be completed during the County's marathon 13-year general plan update process, but will be completed at an indefinite time in the future. The Copperopolis Plan is complete, and has been since 2013. The Valley Springs Blended Plan is complete, and has been so since 2016. A fully staff-vetted Valley Springs Community Plan has been available since 2017.

…..243. If needed and completed plans cannot be adopted now, what good is the County's unenforceable promise of future adoption? To deny these communities the policies they need to address their unique needs in the face of new development is to fail to comprehensively address the need for community plans.

244. The CPC has repeatedly asked the County to include updated community plans in the GPU. The CPC supported updating the Valley Springs Community plan in *Input for the General Plan Background Report*, submitted to the County on June 1, 2007. The CPC encouraged the

County to include community plans the GPU in Section 4 of its *Comments on General Plan Update Request for Input*, submitted to the County on August 16, 2013. The CPC again asked the County to include community plans on pages LUC-21 to LUC-22 of its comments on the 2014 Draft General Plan submitted to the County on March 20, 2015. The CPC again supported including the Valley Springs Community Plans in the GPU on pages 2.3-10 through 2.3-12 of its scoping comments submitted to the County on February 16, 2017. The CPC also asked for community plans to be included in the GPU in comments on the GPU DEIR in 2018. On July 24, 2019, the CPC submitted to the Board of Supervisors videos explaining the need the GPU to include community plans in Arnold, Murphys, Avery/Hathaway Pines, and Valley Springs. On July 29, 2019, the Petitioner sent a memo to the Board of Supervisors, the Planning Director, and to a representative of County Counsel's Office, stating in bold print that, "**By removing some community plans without replacement, the General Plan Update does not comprehensively address the need for community plans.**" During the Board of Supervisors hearing on July 31, 2019, the CPC read the names of people who requested that their community plans be included in the GPU, and held up photos of some of these people. Thus, the CPC has exhausted its remedies regarding this issue.

245. This violation is substantive. The community plans included policies relating to the mandatory elements in the general plan. Without these policies to address local issues, the GPU is not complete for these communities.

246. This violation of the comprehensiveness requirement is prejudicial to the Petitioner that worked so hard to get the County to comply with this requirement. More than that, this violation highly prejudicial to the people who live in or around the affected communities, including the members of the Petitioner who live in and around Arnold, Hathaway Pines, Murphys, and Valley Springs. The result is an unbalanced plan that places the Land Use Element above the other elements designed to address the needs of such development. The Land Use Designation Map of the Land Use Element was updated for these communities to accommodate community-centered development under the GPU. However, the community specific policies that would have addressed the challenges posed by that development were neither updated nor included in the GPU.

3) The General Plan Update does not comprehensively address the need for fire safety.

247. Substantively, the Government Code requires that a general plan include "a safety element for the protection of the community from any unreasonable risks associated with … wildland and urban fires." "It shall also address evacuation routes, military installations, peak load water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards." (Gov. Code, secs. 65302, subd. (g)(1).) It must include a set of goals policies and objectives for the protection of the community from the unreasonable risk of fire. It must include implementation measures to avoid or minimize "wildfire hazards associated with new land uses" These measures must locate new essential public facilities outside of high risk fire areas, or identify measures to minimize fire damage to those facilities. These measures must design adequate infrastructure to provide safe access for emergency vehicles. (Gov. Code, secs. 65302, subd. (g)(3).) Procedurally, to assist in this effort, a County is required to submit a draft safety element to the Board of Forestry for review. If a County does not accept the recommendations of the Board of Forestry, it must explain why in writing. (Gov. Code, sec. 65302.5, subd. (b)(3) & (b)(4).)

a) The GPU has grave fire safety implications.

248. Many aspects of the General Plan Update pose a serious fire safety threat. One threat is the extension of groundwater-dependent and intensive commercial and industrial development into forestlands and rangelands isolated from fire protection services. This increases the risk of ignitions in steep places with dry fuels and winds, without piped fire-flows, accessed by minimal rural roads, with lengthy response times for firefighters. Under these conditions, a wildfire could easily get out of control. As can be seen from the land use designation table, commercial recreation (including destination resorts) and industrial facilities will be allowed in areas without public water. (See Land Use Element, Table LU-1.) Those designations could expand beyond the lands on the current land use designation map through future general plan amendments, as there are no fire safety limitations to prevent such amendments. (See Land Use Element, LUD Map, page LU11.)

249. A second threat is the expansion of "Agritourism." Many of these groundwater-dependent commercial uses will happen on isolated forests and ranchlands designated for Resource

Production. Many of these uses are by right or ministerial permits, and therefore will not have fire hazard impacts reduced by CEQA review and mitigation measures. (See County Code, Permitted Uses include Agritourism, Agritourism Performance Standards; Agritourism, defined, and Resource Production Element, RP-1A.) These land use designations dominate the county's high and very high wildfire risk areas. (See Land Use Element LUD Map, page LU11; *Technical Background Report*, Wildfire Risk Map.) Many of these lands are far from fire stations, where limited fire crews cover extensive mountainous districts, where response times are long. (See Fire Stations Map; Fire District Maps.) The safety element could have limited such development to areas meeting specified fire safety criteria, or to areas designated as fire safe on an overlay map. It does not. The conservation element could have identified priority agricultural lands for conservation to promote fire safety. It does not.

250. When a wildfire gets out of control in these sorts of areas, it can instantly wipe out families, homes, businesses, and the essential assets in major agricultural and forest operations that took generations to accrue. The 2015 Butte fire in Calaveras County is had some of those devastating characteristics.

251. A third threat is the cumulative impacts of the aforementioned land uses in the context of a changing climate. The state climate change adaptation strategy identifies the need for local governments in the region to plan to avoid the increased fire risk from climate change. As the region gets less rain, water will become scarcer, landscapes drier, and fire risk will increase. As forests type convert from conifers to oak woodlands, commercial forest lands are likely to be converted more developed uses. In Calaveras County, this is especially likely along the Highway 4 corridor where Timber Production Zone (TPZ) land is immediately adjacent to existing communities in the very high fire risk zone. (See 2015 Open Space Map.) The Resource Production Element calls for the County to amend its code to allow for the immediate rezone of lands that owners seek to remove from the TPZ. (Resource Production Element, Measure RP-3A.) Of course, these fire safety challenges are in addition to the ordinary challenges associated with retaining volunteer firefighting crews, maintaining reliable equipment, and keeping up with the demand for services in a County with no development impact mitigation fees for emergency services, etc.

252. Given these fire safety threats, and in the wake of the 2015 Butte Fire, one would think

that the GPU would ensure prompt implementation of all the instructions in the BOF 2015 Safety Element review to protect the county residents, homes, and businesses. The bad news is that:
(1) the GPU Implementation Measures do not commit the County to do anything to improve fire safety **by any particular time**,
(2) there are no specified fires safety **requirements** on new development projects,
(3) there is no recognition that some areas are too dry, windy, steep, fuel laden, and poorly accessible that they are inherently **unsafe for new developments** (residential, special event, tourist lodgings, manufacturing, etc.) that will concentrate people in those areas,
(d) there remains **no coordinated post-fire recovery plan** for the people, plants, and animals in the 2015 Butte Fire burn scar.

This demonstrates the failure of the safety element to comprehensively address the fire safety challenges of the area.

b. The GPU's Safety Element has four major flaws that will undermine achievement of the reasonable fire safety objectives of state general plan law, as those objectives are identified in the BOF's 2015 safety element review.

(i) Many of the Implementation Measures do not commit the County to do anything to improve fire safety by any particular time.

253. Many of the requests of the 2015 BOF review of the Safety Element were superficially incorporated into policies and implementation measures. However, the Safety Element deferred adoption of the fires safety implementation measures to an unspecified time in the future. The Safety Element includes no deadlines or priorities for implementing the following fire safety measures: S-3A to update the County Code to improve fire safety, S-3B to review fire district standards, S-3C to create a fire safety standards reference, S-3H to assist with fire district impact fee adoption, S-3I to formulate county standards and ordinances for fire safety, S-3J to amend the County Code to address post-fire rehabilitation, S-3K to create post-fire recovery plans, S-3N

to evaluate the fire safety of the existing affordable housing stock, S-3O updating community plans to include wildfire safety, S-3Q securing funding for dead tree removal, and S-3U adopting an ordinance allowing the installation of temporary communication facilities during emergencies. This is critical weakness, as the GPU includes over 120 deferred ordinances and programs without priorities or implementation deadlines. The only hope of getting fire safety reforms implemented is for people to convince the Supervisors that it is a priority during the Board's annual selection of general plan measures to implement. (Land Use Element, Tentative Annual Work Plan Measure LU-1.A.)

(ii) Fires safety requirements for new development projects remain optional.

254. While new discretionary developments will get reviewed for fire safety as requested by the BOF, the County's application of fire safety measures to these projects remains optional. Implementation measure S-3S indicates that fuel reduction plans for new developments "should" consider fuel reduction in common areas, "should" address recording fuel management easements, and "should" encourage projects to become Firewise Communities. Thus, all these 4 fire safety efforts remain optional. Similarly, while measure S-3W calls for CalFire and fire districts to review proposed new developments, it only requires the County to "consider" the recommendations in those reviews. Again, the fire safety efforts for new developments remain optional. Furthermore, these optional provisions apply only to discretionary development. As noted above, because the GPU both continues and expands the use of by-right and ministerial development approvals, such development will be subject to neither the fire safety reviews, nor the optional application of fire safety measures.

255. The Community Wildfire Protection Plan provides guidance not only for meeting building requirements, but also for maintaining fire safe landscapes and communities. (See pp. 34-84 of the CWPP.) Clearly the County knows how to construct and maintain safer communities. However, unless optional Safety Element implementation measures become required, contractors will continue to build less fire safe neighborhoods, in less fire safe

communities. If we are going to meet the obligations of the Government Code to keep local employees and residents safe from the unreasonable risk of loss of life and property to wildfire, , this has got to change.

(iii) There is no recognition that some areas are so dry, windy, steep, fuel laden, and poorly accessible that they are inherently unsafe for new developments that will concentrate people in those areas.

256. The overarching land use policy in the GPU is that **every legal lot** in the natural resource, residential, or mixed-use designations is suitable for residential development, no matter how dry, windy, steep, fuel laden, and poorly accessible. (Land Use Element, Table LU-1.)
In addition, the GPU applies land use designation, policies, and implementation measures for residential, commercial, and industrial development across the entire land use map of the County, regardless of the unsafe fire conditions on the landscape. (Land Use Element, LUD Map, page LU11; Wildfire Risk Map.) This ignores the requirements of the safety element to reduce the unreasonable risk of fire.

257. This error is compounded, as future zoning is required to be consistent with these land use designations, again regardless of the unsafe fire conditions on the landscape. Development proposals can be approved and built if they are consistent with these inherently unsafe general plan land use designations and zoning categories. If we are going to keep local residents and employees safe, this has got to change.

258. It is true that there is a class of people in Calaveras County who have the money and ability to live and work where ever they wish. They can choose to avoid fire risks. However, most of the people in Calaveras County have to take the jobs they can get, and live in the homes they can afford, where ever those may be. Where these parents live, their young children live with them. It is for the health and safety of these people that the County must establish a foundation of fire safe building and zoning codes, upon which all legitimate development is based. This is more than a matter of public safety, it is a matter of human decency. These people depend on the County to protect them from unnecessary incineration, in accord with land use law.

(iv) There remains no coordinated post-fire recovery plan for the people, plants, and animals in the 2015 Butte Fire burn scar.

259. Section 8 of the BOF review calls for burn area recovery plans, the use of state-of-the-art fire safe building techniques in redevelopment, and the restoration of wildlife habitat.
Over four years have passed since the Butte Fire burned through Calaveras County. A lot has been done. Emergency erosion control, hazardous material clean-up, and hazard tree removal have been done. PG&E has paid settlement funds, and road reconstruction efforts are under way. A new CWPP is in place identifying fire safety projects for future funding. However, these efforts continue to be independent, un-coordinated, and haphazard. There remains no post-fire recovery plan for the people, plants, and animals that reside in the burn scar. Opportunities are being missed to underground utilities, to build more fire safe buildings, to restore critical habitat, and to reconfigure transportation dead-ends and bottlenecks.

260. Today, over four years later, many families that remain in the burn scar are still living in substandard conditions as they wait to rebuild their homes. Meanwhile, the brush returns among the down logs and limbs across the dry and unshaded landscape. Residents live in fear that the next wildfire will come soon.

261. The failure to comprehensively address fire safety concerns is a substantive violation of the fire safety requirements of general plan law. Also this violation is highly prejudicial to the members of the Petitioner, and to the vast majority of residents in Calaveras County, because the live at risk in the High and Very High Fire Hazard Zones of Calaveras County.

4) By not reducing the adverse impacts of by-right and ministerial approvals, the General Plan Update does not comprehensively address the need for agricultural land conservation, and for special status species protection; thereby putting economic development and the broad exercise of personal property rights at risk.

262**.** The reasonable objectives of general plan law include the conservation of forests, soils, agricultural lands, rivers and other waters, fisheries and wildlife. (Gov. Code, sec. 65302, subds.

(d)(1), (e); 65561.) The 1996 General Plan included maps and policies to address wildlife habitat during discretionary actions such as zoning, and when new subdivisions are proposed.

263. Special status species in Calaveras County use habitat in the forested and rangelands. Habitat along lakes and streams, called riparian habitat, is also essential to many special status species.

264. At the time of the 2010 inventory, there were about 77,000 acres of private forest land and 188,000 acres of rangelands that provide wildlife habitat. A review of the stream maps shows that these streams flow though the existing parcels of these private lands. Many land uses disruptive to wildlife habitat are allowed by right on these lands without a permit, while others are allowed with a ministerial permit. Thus, a comprehensive approach to the protection of fish and wildlife habitat would address reducing the impacts from discretionary **and** non-discretionary development on both existing and new parcels, especially those in the forests and rangelands.

265. The General Plan is at the top of the hierarchy of planning documents. All other discretionary land use approvals must be consistent with the general plan. The zoning map and zoning code must be consistent with the general plan. New subdivisions must be consistent with both zoning and the general plan. New use permits must be consistent with the subdivision, the zoning, and the general plan. Thus, discretionary development approvals are subject to the program-level mitigation measures required in the General Plan. Also, discretionary approvals are subject to any additional mitigation requirements put in place after project-level CEQA review.

266. On the other hand, the by-right and ministerial approval of building permits and administrative use permits do not require consistency with the General Plan. In addition, these development approvals are not subject to CEQA review to mitigate impacts. These approvals are only subject to objective standards placed in the County Code.

267. Nevertheless, the adverse impacts of these by-right and ministerial approvals can be reduced. This can be done by including in the general plan a directive to include in the county code objective standards to reduce impacts. This could include prescriptive standards (e.g. On parcels where the size of the building and other setbacks allow, development shall be set back at least 50 feet from the edge of a stream) or performance standards (e.g. On parcels where the size

of the building and other setbacks allow, grading and development shall retain at least 75% of the riparian vegetation on site).

268. However, most of the key GPU efforts to reduce habitat impacts only apply to discretionary land uses. (See COS 4H, COS-4I, COS-4K, COS-4l, COS-4M, COS-4O, COS- 4P.) Although this issue was raised with the Board of Supervisors during the GPU hearing on July 31, 2019, they refused to discuss or take action on the issue. By limiting the scope of habitat protection to only discretionary development, the General Plan fails to **comprehensively** address the habitat protection needs associated with new development under the GPU.

269. The violation is both substantive and prejudicial, because it interferes with both the essential objective of the general plan law, and with the Petitioner's desire, to locally achieve the state's purpose of protecting wildlife habitat. The state has warned that the cumulative impacts of development and climate change will result in wildlife habitat losses. For game species, habitat protection ensures the ongoing tradition of hunting and fishing will remain a viable part of the local culture, and an ongoing mainstay of the local economy. For special status species, habitat protection helps prevent or delay the time when habitat destruction will trigger development moratoria under the federal Endangered Species Act. By limiting necessary habitat protection to discretionary approvals, the County is failing to comprehensively address the local issues of wildlife habitat protection. Thus, this violation is both substantive and highly prejudicial.

C) THE GENERAL PLAN UPDATE IS NOT INTERNALLY CONSISTENT. (Government Code, sec. 65300.5.)

270. A general plan is intended to be "an integrated, internally consistent and compatible statement of policies." (Government Code, sec. 65300.5.) A general plan is internally inconsistent when one part of an element contradicts part of the same element. (*South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604.)

1) The D2 Community Plan text is not consistent with the maps.

271. The Community Planning Element claims that its policies only apply in the community core, but the policies themselves suggest that they apply outside the core. This contradiction makes it unclear what land use activities will be is allowed outside community cores. This

problem was pointed out by CPC member Colleen Platt during the County's 2019 review of the GPU by the County.

2) The General Plan Introduction's community development guiding principal is not consistent with the contents of the Community Planning Element.

272. The Community Development guiding principle is that "Community Plans, as developed by the local residents, will help preserve the character of historic communities and foster economic growth, the delivery of services, and provision of infrastructure." (GPU Introduction, Page-INT 1.) However, the Community Plan Element does not include the Community Plans "as developed by the local residents", but instead includes only a handful of token policies from some of the plans. In addition, many of the policies that are not included from the Community Plans are policies related to "economic growth, the delivery of services, and provision of infrastructure." Finally, there are no provisions from any of the existing and proposed plans along the entire Highway 4 corridor from Ebbetts Pass, Arnold, Murphys, and Avery/Hathaway Pines down to Copperopolis. There are no provisions from the Valley Springs Community Plan. Thus, the plans in these areas will NOT "preserve the character of historic communities," nor foster "economic growth, the delivery of services, and provision of infrastructure." Thus problem was also pointed out by a CPC member during the County's 2019 review of the GPU.

273. Both of these inconsistencies are substantive and prejudicial. The first is substantive and prejudicial because it directly affects the ability of a person to know what will be allowed on his or her land outside the community core. The second inconsistency is substantive and prejudicial because the failure to include so many of the community plans in the Community Planning Element, contrary to the direction of the Community Development Guiding Principle, directly harms the people who live in those communities.

SECOND CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA PUBLIC RECORDS ACT AND THE CALIFORNIA CONSTITUTION. (Government Code, secs. 6250, et seq.; California Constitution, article I, section 3, subdivision (b)(1.)

274. The Petitioner re-alleges the facts set forth in paragraphs 1 -273 of this petition.

A) The California Constitution and the Public Records Act are to be interpreted broadly to provide public access to information about the people's business.

275. The California Supreme Court has nicely summarized the public's right to access records:

> The public records act requires local governments to disclose record to the public. The PRA and the California Constitution provide the public with a right of access to government information. As this court has explained: "**Openness in government is essential to the functioning of a democracy**. 'Implicit in the democratic process is the notion that **government should be accountable for its actions**. In order to verify accountability, individuals must have access to government files. Such access permits **checks against the arbitrary exercise of official power** and secrecy in the political process.' [Citation.]" (International Federation of Professional & Technical Engineers, Local 21, AFL–CIO v. Superior Court (2007) 42 Cal.4th 319, 328–329 (Local 21).) In adopting the PRA, the Legislature declared that "access to information concerning the conduct of the people's business is **a fundamental and necessary right** of every person in this state." (§ 6250.) "As the result of an initiative adopted by the voters in 2004, this principle is now enshrined in the state Constitution. " (Local 21, at p. 329.) The California Constitution, article I, section 3, subdivision (b)(1) provides: "The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

(*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, [emphasis added].)

B) Exceptions to the Public Records Act are to be interpreted narrowly based upon the facts of each case, so that the purpose of the act, to provide the public with information about the business of government, is best served.

276. -Records may be withheld from the public only when allowed by the terms of the California Public Records Act. Two such exceptions to disclosure are draft documents not ordinarily retained in the ordinary course of business, and documents that would disclose the thought processes of the executive branch. These two exceptions only apply if the government interest in withholding the document clearly overbalances the public interest in disclosure of the

document. (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282; *Humane Society of U.S. v. Superior Court (2013)* 214 Cal.App.4th 1233.)

277. The California Supreme Court has also recognized that exceptions to the disclosure of records should be narrowly construed. It quoted the California Constitution noting:

> [A]rticle I, section 3, subdivision (b)(2), of the California Constitution: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

(*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157..)

278. -If parts of the document can be withheld, while other parts of the document are not exempt from disclosure, the government must disclose the reasonably segregable portions of the document to the public. In making its assessment of the document, the court can review the record in question in camera, to determine if any or all of it must be disclosed. (*Humane Society of U.S. v. Superior Court (2013)* 214 Cal.App.4th 1233.)

C) The 2011 Mintier General Plan is a public record controlled by the County. .

279**.** As the Court noted in *City of San Jose*:

> Appellate courts have generally concluded records related to public business are subject to disclosure if they are in an agency's actual *or constructive* possession. (See, e.g., *Board of Pilot Comrs. for the Bays of San Francisco, San Pablo and Suisun v. Superior Court* (2013) 218 Cal.App.4th 577, 598, 160 Cal.Rptr.3d 285; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710, 140 Cal.Rptr.3d 622 (*Consolidated Irrigation*).) "[A]n agency has constructive possession of records if it has the right to control the records, either directly or through another person." (*Consolidated Irrigation*, at p. 710, 140 Cal.Rptr.3d 622.)

280. While the County has asserted that it only has annotated copies of the 2011 Mintier General Plan in its possession, Mintier and Associates has indicated that it has a copy of the 2011 Mintier General Plan in its unannotated form. Both the County and Mintier and Associates have asserted that the County retains control over the release of the 2011 Mintier General Plan. The County's control of the document makes it a public record for purposes of the Public Records Act. .

D) The County has illegally refused to release the 2011 Mintier General Plan, because the exceptions to disclosure the County claims do not apply.

1) The Mintier "Draft" General Plan is a final document.

281. The County has argued that the Mintier General Plan is a preliminary draft document, not ordinarily retained by the county, and therefore can be withheld from disclosure under the Public Records Act, if the public interest in withholding the document clearly outweighs the public interest in disclosing the document. (Gov. Code, sec. 6254, subd. (a). However, in the most relevant senses, the Mintier General Plan is not a preliminary draft document.

282. First and most importantly, the Mintier General Plan is the final document that was produced pursuant to an over $900,000 public contract with the County. It is the product delivered by the contractor and received by the County that justifies the expenditure of public funds. The public has an interest in seeing what the public bought, even though the Board of Supervisors rejected the plan sight unseen, and perhaps especially because the Board of Supervisors rejected the plan sight unseen. Accepting the County's argument, that virtually any document not finalized by the government can be withheld from public scrutiny, would allow the government to hide its most expensive and embarrassing mistakes from public review, thereby thwarting the California Constitution's guarantee that, "The people have the right of access to information concerning the conduct of the people's business."

283. Second, the fact that the document was not adopted by the Board of Supervisors only means that it is not the County's legally binding land use "constitution". Failure to adopt such a plan does not negate the fact that it is the final product that was delivered by the contractor and received by the county as justification for spending over $900,000.

284. Third, since the Mintier General Plan was rejected, and a new consultant was hired to draft a different General Plan, the Mintier General Plan is not really a draft of anything, in that it will never be the basis for the final plan adopted by the Board of Supervisors. Webster's defines the word "draft" as… "a preliminary sketch, outline, or version (the author's first -) (a – treaty)." The Mintier General Plan is not connected to the new General Plan Update that was drafted by a different consultant. The author of the 2011 Mintier General Plan is not the author of the subsequently contracted for General Plan Update. The 2011 Mintier General Plan is neither the GPU author's preliminary draft, nor a first draft that will be followed by another version. The 2011 Mintier General Plan is its author's FINAL version.

285. Finally, even if one considers the Mintier General Plan a draft document, it is far from a "preliminary draft." According to its authors, at the time is was presented to the County in February 2011, "[T]he General Plan Update process was more than 80% complete" and was on track to be completed "within a year or less." (Mintier and Harnish, Letter to Board of Supervisors, December 11, 2012, p. 1.) In all these critical respects, the Mintier General Plan is not the sort of "preliminary draft" that can be withheld from public disclosure.

2) The deliberative process privilege does not apply to shield the Mintier General Plan from public review.

286. County Counsel has argued that the deliberative process privilege applies to the Mintier General Plan.

> "Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (Regents of University of California v. Superior Court (1999) 20 Cal.4th 509, 540, 85 Cal.Rptr.2d 257, 976 P.2d 808.) The privilege rests on the policy of protecting the " 'decision making processes of government agencies [.]' " (Id. at p. 541, 85 Cal.Rptr.2d 257, 976 P.2d 808.) "The key question in every case is 'whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.' [Citation.]" (Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1342, 283 Cal.Rptr. 893, 813 P.2d 240.)

(As Quoted in *San Joaquin Local Agency Formation Commission v. Superior Court* (App. 3 Dist. 2008) 162 Cal.App.4th 159.)

287. Actually, the deliberative process privilege is not absolute, but rather is qualified and narrowly interpreted. "Not every disclosure which hampers the deliberative process implicates the deliberative process privilege. Only if the public interest in nondisclosure clearly outweighs the public interest in disclosure does the deliberative process privilege spring into existence."

(*California First Amendment Coalition v. Superior Court* (App. 3 Dist. 1998) 67 Cal.App.4th 159, 172.) The burden rests on the County to establish the conditions that justify nondisclosure.

288. The County's instinctive invocation of the deliberative process privilege is misplaced in this instance. First, the 2011 Mintier General Plan was never the subject of deliberation by the Board of Supervisors. The Board met and voted on hiring a new general plan consultant. (BOS Agenda & Minutes 11/23/12.) The actual text of the 2011 Mintier General Plan was not reviewed by the Board of Supervisors as part of that decision. The decision was made based upon the public staff report and recommendations of Planning Director Willis. (Staff Report, 11/13/12.)

289. Second, the contents of the 2011 Mintier General Plan are not the type of private advice that is protected under the deliberative process privilege to promote frank advice to public officials. The contents of the 2011 Mintier General Plan are public policy pronouncements. The Mintier General Plan is not providing advice to the Supervisors. It is providing a technical planning product in response to a contract with the County. It is not private advice to the Supervisors to do or to refrain from any particular action. The 2011 Mintier General Plan is not a document advising the Board to fire or to retain its authors as consultants. It simply does not include the kind of advice from county staff or questions from County Supervisors that are protected under the deliberative process privilege.

290. Third, the County's decisionmaking process regarding the dismissal of Mintier-Harnish was far from a private consultation with County staff that now deserves the protection of the deliberative process privilege. County staff criticism of the Mintier General Plan was very public and very candid, as was the reply from Mintier-Harnish. (See Video of BOS meeting, 11-13-12; Mintier and Harnish, Letter to Board of Supervisors, December 11, 2012.) The four-year planning process facilitated by Mintier-Harnish was also very public. It seems inequitable to allow the County to arbitrarily go from paying a consultant over $900,000 dollars, engaging the public in a four year planning process, to then to publicly besmirching the professional reputation of that consultant, disregarding the work product, publicly hiring another consultant for close to $300,000, and then at the last minute hiding behind the deliberative process privilege to prevent the public from reviewing the fruits of their labor and their tax dollars.

291. The only portion of the Mintier General Plan that <u>may</u> reflect a deliberative process are the "tags" that Mintier added to the end of some policies in the Natural Resources Element to indicate their source. If the source listed on some of those tags are the names of planning commissioners or supervisors who will later vote on the general plan, or county staff giving the

decisionmakers advice, then the names on those tags can be redacted prior to the release of the Mintier General Plan. On the other hand, if the tags merely identify the origin of a policy as another city or county's general plan, then they do not reveal a deliberative process.

3) The public interest in withholding the Mintier General Plan does not clearly outweigh the public interest in its disclosure.

292. Even if the Mintier General Plan is ruled a draft document, or found to reflect a deliberative process, the Public Records Act does not universally exempt such documents from public review. Instead, the exemption for such documents is much narrower. (Gov. Code, Section 6254 (a) & 6255.) In addition, exemptions from disclosure are to be narrowly construed, and the burden of proof to justify non-disclosure rests with the County. (*City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411; *Sacramento County Employees' Retirement System v. Superior Court* (App. 3 Dist. 2011) 195 Cal.App.4th 440.)

293. For example, draft documents that are normally retained, or have been retained, in the ordinary course of business are subject to public review. (Gov. Code, sec. 6254, subd. (a).) "[I]f preliminary materials are not customarily discarded or have not in fact been discarded as is customary they must be disclosed." (*Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704, 714.) Mintier Harnish has indicated that it retains a copy of the Mintier General Plan, and will release it pursuant to a direction by the County, or if required to in connection with litigation. (Mintier email, 12/23/14.) Since the Mintier General Plan is the type of report ordinarily retained by the County, and versions of it are currently in both the County's actual and constructive possession, the report is not exempt from disclosure.

294. In addition, draft reports are only exempt from disclosure if the public agency can show that the public interest in nondisclosure clearly outweighs the public interest in disclosure. In determining the public interest, "the weight of that interest is proportionate to the gravity of the governmental task sought to be illuminated and the directness with which the disclosure will serve to illuminate." (*Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704.) In the case of the Mintier General Plan, the gravity of the governmental task is substantial, and the weight of the public interest is overwhelming.

a) The County's "constitution" for future development will broadly and directly affect people's lives for decades.

295. The general plan has been called the constitution for all future developments. It is the fundamental document that empowers a Board of Supervisors to make land use decisions. It has a long-term perspective of twenty years. It includes land use maps and policy pronouncements on a variety of topics that affect people's lives every day. It identifies the potential future locations of homes and businesses. It identifies acceptable levels of traffic congestion and noise that people may have to endure. It determines the efforts that the County will take, or not take, to conserve its water supply, to protect water quality, to preserve wildlife habitat, and to maintain the viability of farms, ranches, and forestlands. It identifies efforts the County will take, or not take, to protect residents from crime, from floods and from wildfires. It identifies, or not, efforts the County will take develop park and recreation facilities.

296. Thus, the governmental task at issue has gravity, because it is the County's update of its constitution for all future development, and it will thoroughly affect every resident's health, safety, and wellbeing every day, for decades. The disclosure of the Mintier General Plan will directly illuminate this process, by presenting professionally produced policy options, custom crafted for Calaveras County to use. This importance was heightened during the July and November hearings of the Board of Supervisors, when they encouraged people to continue to propose improvements to the General Plan. .

b) The public has a major interest in the financial dealings of County government.

297. In the Public Records Act, the Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code, sec. 6250.)

298. The Mintier General Plan cost Calaveras County over $900,000. The next consultant was hired for nearly $300,000. Yet another general plan consultant was hired for another $50,000. Her contract was later extended for another $63,000. While $1.3 million may not sound like a lot of money in the context of national, state, and large metropolitan government budgets, it is a lot of money to Calaveras County. That is more than the annual budget for the entire Planning Department. (County of Calaveras, 2014-2015 Final Budget, pp. 109-110.).

299. The taxpayers have an interest in reviewing the document on which the County spent over $900,000, and that the County Board of Supervisors rejected sight unseen. Taxpayers

deserve to judge for themselves whether or not the money was wasted on a bad consultant, and whether or not the subsequent expenditures on new consultants were justified.

c) The public has an interest in reviewing the government's awarding of contracts.

300. The California Supreme Court has held that the public has a valid and weighty interest in scrutinizing government dealings with contractors. (*Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal4th 1065.)

301. There have been three separate general plan contractors hired by the County. We know who the contractors are. We know how much they are being paid. We have the work product of the current general plan contractor. We do not have the work product of the prior contractor. As Planning consultants are frequently hired to produce plans and environmental documents for the County, the public has an interest in reviewing their work so they can intelligently advise the County with regard to whom to hire. Such public scrutiny of such contracting issues is recognized as a valid public interest for Public Record Act purposes.

d) The Public has an interest in reading the Mintier General Plan that it worked so hard to produce.

302. The public has an interest in seeing the Mintier General Plan because it was produced after hundreds of people spent hours in public workshops, at public hearings, and making written comments. The Mintier General Plan was not produced by a consultant in a vacuum. It was the product of a work plan that included extensive public participation. (*General Plan Update Work Program*, 12-1-06) The first round of workshops were held in 7 locations. Over 500 people participated in identifying the County's top assets and top problems. The second round of workshops were held in 6 locations. About 300 people helped to identify a vision for the county, noted specific improvements they would like to see, and selected useful guiding principles. (*Issues and Opportunities Report*, June 2008. p. 5.) The third round of workshops were held in 7 locations, and lasted over two hours each. 216 people participated by identifying their preferred general plan alternative and suggested changes. (*Alternative Workshops Results*, pp. 1-2.) In addition, there were Board of Supervisor hearings (and some jointly with the Planning Commission) on many dates. Dozens of people attended, and many spoke at those meetings. The

Mintier General Plan was the culmination of these efforts. The people who invested all those hours in the process deserve to see the fruits of their labors.

e) The public has an interest in trying to get any nuggets of wisdom from the Mintier General Plan into the County's general plan.

303. The public has an interest in getting the best possible general plan. The plan will determine how the county administers land use, circulation, housing, open space, resource production, resource conservation, noise, public safety, and public facilities for the next two decades. (Gov. Code, Sec. 65302.)

304. Prior to preparing the 2011 Mintier General Plan, Mintier and Associates evaluated the 1996 Calaveras County General Plan in detail, and identified aspects that needed to be upgraded. (*Calaveras General Plan Evaluation*, 10-12-06.) As the Petitioner asserted above in Cause of Action 1, the 2019 GPU has not adequately addressed some of these flaws in the 1996 General Plan.

305. Mintier and Associates used its expert professional judgment to custom craft a general plan for Calaveras County to correct the flaws outlined in its evaluation of the 1996 Calaveras County General Plan. Thus, the Mintier General Plan may include policies that were overlooked in the 2019 GPU. It may include a measure to reduce environmental impacts of the GPU. It may even be sufficiently less impacting that it could have served as an alternative for evaluation in the environmental impact report on the general plan. The reduction of significant impacts and the analysis alternatives is required by CEQA. (CEQA Guidelines, secs. 15126.4 & 15126.6.) If only one overlooked policy is salvaged, or one lost mitigation measure is found, it would be worth allowing the public to review the Mintier General Plan. At the July and November 2019 GPU hearings, members of the Board repeatedly referred to future opportunities for the public to suggest to improvements to the plan through future amendments. The release of the Mintier General Plan, with all of its suggested improvements, is a critical step for a meaningful public process to improve the GPU.

306. Allowing such an exercise to verify that the 2019 GPU did not miss any key suggestions from the Mintier General Plan, and to re-include in the GPU any inadvertently excluded provisions, would reconnect the first part of the General Plan Update process with its Mintier and Associates guided public participation, to the second part of the General Plan Update process.

Such continuity is needed for the general plan update public participation process to regain its integrity. (*OPR General Plan Guidelines*, pp. 142-148.)

f) The County was required to disclose in good faith any feasible mitigation measures and alternatives it has produced during the CEQA review of the General Plan Update.

307. The California Environmental Quality Act (CEQA) requires the County to develop and adopt feasible mitigation measures to reduce potentially significant impacts of the General Plan Update. Failure to adopt feasible mitigation measures is a violation of CEQA. These mitigation measures must be disclosed in the EIR for the General Plan Update. Failure to disclose mitigation measures in an EIR is a violation of CEQA. (CEQA Guidelines, sec. 15126.4)

308. Similarly, CEQA requires that the County develop and analyze a broad spectrum of alternatives to the project that can reduce its impacts, while still meeting most of its objectives. While there is no set number of alternatives that must be evaluated, the alternatives must be chosen to inform decisionmakers and the public. (CEQA Guidelines, sec. 15126.6.)

309. The County spent five years, hundreds of volunteer hours, and over $900,000 developing the 2011 Mintier General Plan. If the Mintier General Plan would reduce otherwise significant impacts of the of the county general plan, then the County was required to consider analyzing the Mintier General Plan as an alternative in the DEIR. If there is even one objective or policy or implementation or standard in the Mintier General Plan that would reduce a significant impact of the GPU, then the County was required to consider that provision as a mitigation measure in the DEIR. To ensure the County complied with CEQA in completing the environmental review for the GPU, the Mintier General Plan must be reviewed.

310. There are many ways that agencies have failed to meet their obligations under CEQA to address alternatives and mitigation measures. Some agencies have done a poor job of identifying mitigation measures and alternatives. Once identifying them, some agencies have refused to evaluate them in an EIR. Other agencies have improperly failed to adopt mitigation measures. However, it would be an unprecedented violation of CEQA for a County to spend so much time and so much money developing an alternative and mitigation measures, and then to refuse to disclose them in good faith as part of the CEQA process.

311. The two pillars of CEQA are the protection of the environment and the disclosure of useful information to do so. "[T]he 'foremost principle' in interpreting CEQA is that the

Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110; citing *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 390.) For an EIR to be adequate it must reflect "a good faith effort at full disclosure." (CEQA Guidelines, sec. 15151.) Like the Public Records Act, CEQA is has a public disclosure function. The County's repeated refusal to disclose the content of the Mintier General Plan totally undermine those both pillars of CEQA. It is completely antithetical to the foundational principals of CEQA.

g) The Mintier General Plan must be publicly available as part of the record of proceedings for the General Plan Update and its CEQA review.

312. The General Plan Update process includes preparation of an environmental impact report in conformity with the California Environmental Quality Act (CEQA). The administrative record for a project prepared under CEQA includes documents like the 2011 Mintier General Plan. (Public Resources Code, sec. 21167.6, subds. (e), 2, 3, 7, and 10.) The County's CEQA Findings of Fact concede that the record must be available for public inspection. (CEQA Guidelines, sec. 15094, subd. (b)(9).)

313. The County's CEQA Findings of Fact for the GPU concede that an administrative record includes documents reviewed by staff, for the purpose of advising the Supervisors. The Mintier General Plan was reviewed by staff for the purpose of advising the Supervisors regarding the General Plan Update in 2012. . Thus, it must be part of the GPU administrative record.

314. The County's CEQA Findings of Fact also conceded that the CEQA administrative record includes any document referenced in the EIR. The Mintier General Plan is referenced in Final EIR. (FEIR, pp. 2-202. 2-274.) Thus the Mintier General Plan must be part of the CEQA administrative record, and subject to public inspection. .

315. In *County of Orange*, the court noted that CEQA, "[C]ontemplates that the administrative record will include pretty much everything that ever came near a proposed development *or* to the agency's compliance with CEQA in responding to that development." (*County of Orange v. The Superior Court of Orange County* (2003) 113 Cal.App.4th 1, 8.)

316. The court went on to explain the importance of including draft documents in the administrative record. The court reasoned that the CEQA process, "[C]ontemplates revisions, to a greater or lesser degree, in any 'project.' That is, indeed, one of the major objectives of the CEQA process -- to foster better (more environmentally sensitive) projects through revisions which are precipitated by the preparation of EIR's. As *County of Inyo v. City of Los Angeles* (1984) 160 Cal.App.3d 1178, 1185 has stated, CEQA is an 'interactive process of assessment of environmental impacts and *responsive project modification* which must be genuine.' (Emphasis added.) It is thus the very nature of CEQA that 'projects' will be 'modified' to protect the environment, and it is the logic of section 21167.6 that there be a record of such modifications, not just those documents relating only to the finished product." (*County of Orange v. The Superior Court of Orange County* (2003) 113 Cal.App.4th 1, 10.)

317. Thus, even if the County were able to withhold the Mintier General Plan from the public under the Public Records Act in the past, the document must become publicly available now that the General Plan EIR is certified and the general plan is adopted. Since the document cannot be kept secret, the government's interest in withholding it now is even less weighty.

318. By way of contrast, the public interest in disclosing the document now is weighty. Disclosed now, the document can influence the future amendment of the GPU, and potentially improve the County's future. Disclosed now, the document will provide for more informed public policy debate.

h) The public has an interest in confirming the wisdom of the Board of Supervisors when they changed general plan consultants.

319. On November 13, 2012, the Board of Supervisors passed a motion to hire a new general plan consultant. Two of the Supervisors who voted (differently) on that motion are again on the Board of Supervisors in 2019. Only by reviewing the Mintier General Plan can members of the public decide for themselves the wisdom of their Supervisors' choices.

320. One must ask oneself, in a democratic republic, is it legitimate under the Public Records Act for incumbents to quash public debate simply by withholding a government document that raises questions about their thriftiness and effectiveness? We think not. We agree with the California Supreme Court that the Public Records Act exists to check "the arbitrary exercise of official power and secrecy in the political process." (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157.)

321. As a Patrick Henry observed, "The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them." In a democratic republic, we are not required to merely accept the dictates of technocrats or government officials at face value. We actually get to review the facts, make our own conclusions, and vote according to our informed convictions.

322. As Thomas Jefferson rhymed, "If you expect a nation to be ignorant and free, you expect what never was and can never be." The totalitarian governments of the former Soviet Union, Red China, and Nazi Germany are prime examples of this adage. They destroyed books and record in a vain attempt to restrict the fundamental freedom of thought. By contrast, in American government; information educates, minds evaluate, and all the people can participate. Our freedom of information, our freedom of thought, our rights to respond by speaking out and by voting, are among the noblest ways that our American system of government distinguishes itself from the totalitarian regimes. By releasing the 2011 Mintier General Plan, the Court will uphold these foundational principle of our democratic republic.

i) A publicly disclosed Mintier General Plan could be used as substantial evidence to support the County's claims regarding in its FEIR, and in its Findings.

324. In response to comments on the DEIR, the Final EIR claims that the Mintier General Plan could not be evaluated as a policy alternative in the EIR. (FEIR, p. 2-274.) The County claims in its Findings of Fact, that there are no additional feasible mitigation measures for the many significant and unavoidable impacts of the 2019 General Plan Update. CEQA requires that such responses and findings be supported by substantial evidence in the record. If released to the public, the Mintier General Plan could be used as substantial evidence to support these claims, if they are accurate. Thus, the public interest in disclosing the Mintier General Plan is overwhelming.

4) The public interest in withholding the document is minor.

a) Confusion is unlikely, and will not affect public participation in the GPU.

325. At one point, the Planning Director indicated that he did not want the 2011 Mintier General Plan released because releasing it when the 2014 Public Review Draft General Plan was out for public review would confuse people. They might not know to which general plan they should address their review and comment efforts. This would interfere with the General Plan Update process.

326. Releasing the Mintier General Plan to the CPC at this time is not likely to cause public confusion. First, the 2019 GPU has been adopted, and the comment periods closed. There is no longer any chance that people will be confused about which draft to direct their review and comment efforts.

327. Second, the request is to release the document to the CPC, not to circulate the Mintier General Plan for public comment. The CPC has participated in the General Plan Update since the beginning. That participation has included: participating in the aforementioned general plan workshops, submitting two volumes of input for the background report, working with stakeholder efforts to prepare the draft Water Element, commenting on the draft land use maps, responding to the requests for policy suggestions from the County in 2013, and submitting comments on the 2014 Public Review Draft General Plan. The CPC submitted scoping comments and DEIR comments, and testified at the 2019 GPU hearings of the Planning Commission and the Board of Supervisors. The CPC has been involved in the General Plan Update longer than the County's Planning Director, longer than County Counsel, and longer than the current general plan consultant. These experiences have helped CPC members develop a detailed understanding of the General Plan Update. The CPC understands the difference between the 2011 Mintier General Plan and the 2019 GPU. The release of the Mintier General Plan will not confuse the CPC.

328. While it is true that once released, any member of the public can ask for and receive a copy of the 2011 Mintier General Plan, it does not follow that such a requester will be confused upon receipt of the plan. It is more likely that a person knowledgeable enough to request a copy of a document will also know why they want to look at it; and will do so. Since the 2019 GPU is now complete, there is no longer any chance that the confusion of such a requester would interfere with the County's completion General Plan Update process.

b) No deliberative processes will be divulged.

329. As noted above, the Mintier General Plan does not include the sort of confidential advice to decisionmakers that is protected by the deliberative process privilege. Thus, its release will not injure the Supervisor's deliberative process.

c) Withholding the document does not ensure that we will be "moving forward."

330. One Supervisor objected to the release of the Mintier General Plan because he considered it moving backwards in the General Plan Update process, and he wanted to move forward. The Planning Director also said that he did not want to release the Mintier General Plan because it would cause people to again raise policy issues that he felt were dismissed with the hiring of a new consultant. He felt that continuing to debate those issues would be a step backward.

331. To be determine if you are moving forward toward a goal, you need both an initial reference point and a goal. Some people differ on their General Plan Update goal. Originally the County's primary goal was a legally valid general plan, so the County sought to ensure legal compliance by following established legal precedents and the General Plan Guidelines. Later, the Planning Commission sought to do the minimum legally adequate general plan, while promoting flexibility and private property rights to the greatest extent possible. The CPC has consistently sought a legally valid general plan that fairly balances competing local and regional interests, while making full use of state, federal, and private programs to enhance the health, safety, wellbeing, and environment of the people of Calaveras County.

332. Regardless of your General Plan Update goal, you cannot tell if you are making progress toward it unless you can compare where you are now, to where you were. The Mintier General Plan defines where we were in February 2011. The 2019 GPU is another reference point. Does the County's 2019 GPU constitute moving forward? Without the 2011 Mintier General Plan to compare it to, no one can say.

333. The release of the 2011 Mintier General Plan would allow all to judge, using their own criteria, whether the County made progress on the General Plan Update between 2011 and 2019. Some may feel that moving farther away from the policy proposals in the 2011 Mintier General Plan is progress. Some may feel it is regressing farther away from the goal of a legally valid general plan that promotes a balance of competing local and regional interests. Until we can

compare the 2011 Mintier General Plan to the 2019 general plan, there is no way for anybody to tell which direction the General Plan Update is going, relative to where we were in 2011. Thus, the desire to evaluate the progress on the General Plan Update weighs in favor of releasing the Mintier General Plan.

334. Finally, we have to ask ourselves whether the County articulates a legitimate rationale for nondisclosures, when it seeks to squelch informed public debate about a local government decision that will dramatically effect, for the next two decades, countywide land use, resource conservation, open space, public facilities, water supply, energy conservation, public safety, and economic development. Regardless of who the general plan consultant is, these general plan issues will continue to be the subject of public debate.

335. In the past, County staff members expressed concern about the controversial nature of the policy recommendations in the Mintier General Plan. Nevertheless, these policy recommendations remain those of respected planning professionals who spent four years and over $900,000 first overseeing three rounds of public workshops where these issues were debated, and later writing up policies to address these issues. Does the fact that a public document may stimulate informed public debate on critical policy issues justify government nondisclosure? Does the fact that people may question why, after spending over $900,000 of taxpayer money on a plan, the County BOS rejected it, sight unseen, justify not even giving the public a chance to read the plan? We think not. If simply claiming that a document will create a public policy controversy is enough to justify the government withholding it from the public, then that exception would swallow the rule that dwells at the heart of the Public Records Act: that government should be accountable for its actions. Instead, we agree with the Supreme Court of the State of California, that openness in government is essential to the functioning of a democracy. (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157.)

d) The release of other portions of the Mintier General Plan have caused no problems.

336. Sections of the Mintier General Plan have been release to the public without causing any of the problems that would justify nondisclosure.

337. The draft Water Element and the draft Agriculture Element were first produced by stakeholder groups. At one point, the County accepted the Agriculture Element and forwarded it

to the Planning Staff for use in the General Plan. (*BOS Minutes*, 2-10-09) The Economic Development Element was drafted by consultants other than Mintier-Harnish. It was also released by the Planning Department. (*Economic Development Element*, 12-13-11.) The Energy element was also prepared by a different consultant, and was released by the Planning Department. (*Energy Element*.) The Introduction of the Mintier Harnish General Plan was released to the public. In May of 2019, the Planning Commission even include two pages of that Mintier-Harnsih Introduction into the GPU Introduction.

338. These general plan components and documents were made available to the public, and there has been no resulting threat to public health, safety, and wellbeing. There has been no outbreak of criminal activity associated with the release of this material. There has been no violent over-through of the local government as a result of these releases. There has been no violation of people's rights to privacy associated with these releases.

339. Just as all of the previous general plan releases have posed no risks, the release of the 2011 Mintier General Plan poses none of the risks that would justify nondisclosure by the County. The disclosure of the remainder of the 2011 Mintier General Plan does not risk exposing the type of personal or embarrassing information, or trade secrets, that are usually exempt from public disclosure. Nor does it contain the kind of information that would expose the County to a risk of terrorist attack, and would thus be exempt from disclosure. Essentially, there is no legitimate public interest in restricting disclosure of the 2011 Mintier General Plan.

340. Since the public interest in keeping the report confidential does not clearly outweigh the public interest in disclosure, the County must disclose the Mintier General Plan.

e) The Mintier General Plan is akin to the publicly available General Plans adopted by every City and County in California.

341. In its ruling that a County GIS database was a public record, the California Supreme Court noted that 47 of the 58 California Counties provide access to GIS databases as public records. (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157.) Similarly, all of California's cities and counties, including Calaveras County, provide access to their general plans as public records. There is nothing inherent about the information in a general plan that would justify its nondisclosure.

342. By law, every City and County in California must adopt a general plan. (Government Code, sec. 65300.) The law requiring such master plans was passed in 1937, and codified into the

Government Code in 1951. The requirement for the land use and circulation elements was passed in 1955. The requirement for a housing element was passed in 1967. The requirements for the conservation and open-space elements was passed in 1970. The requirements for the safety element were passed in 1975. (*OPR General Plan Guidelines*, 1990.)

343. There are over 480 incorporated cities in California and 58 counties. (Department of Finance, *list of cities and counties*, 2015.) The California Supreme Court has stated that a general plan is "the constitution for all future developments within the city or county." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 531. 570.) These general plans are reviewed and referenced by public and private planners, local citizens, and local governments regularly as they prepare, review, and approve specific plans, subdivisions, and use permits. (Government Code, secs. 65451, 66473.1- 66,474; *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176.)

344. It is illogical for Calaveras County to suggest that there is any harm to releasing to the public the type of document that is both totally public and critically useful in every city and every county in California; and has been for decades.

f) Any opinions and recommendations may be severed.

345. The courts have agreed that, when the issue is the release of a draft document, a government agency may redact, "A statement of opinion concerning whether county conduct, policy, or practice conforms to the law", or whether the County should "take some other action in view of the conduct, policy, or practice." (*Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704, 717.) For example, there would be no need to disclose the identities of the commenters through "source tags at the end of the policies" as noted in the Harnish memoranda. Although the CPC would prefer that the County waive this privilege, and produce the entire document, the County is free to redact such information from the 2011 Mintier General Plan before producing a copy for the CPC. Such redaction was done when the County released the Draft General Plan Evaluation report in 2006.

THIRD CAUSE OF ACTION: VIOLATION OF CEQA (Public Resources Code, secs. 21000, et seq.)

346. The Petitioner re-alleges the facts set forth in paragraphs 1 - 345 of this petition.

A) THE RESPONDENTS' TREATMENT OF MITIGATION MEASURES VIOLATES CEQA IN MANY WAYS.

347**.** CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Resources Code, secs. 21002, 21081, subd. (a); Cal. Code Regs., tit. 14, secs. 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).)

348. A mitigation measure is something that avoids an impact, minimizes an impact, reduces the impact over time, restores the impacted environment, or compensates for an impact by providing substitute resources or environments. (Cal. Code Regs., tit. 14, sec. 15370.)

349. When approving projects that are general in nature (e.g. general plan amendment), agencies must develop and approve whatever general mitigation measures are feasible, and cannot merely defer the obligation to develop mitigation measures until a specific project is proposed. (*Citizens for Quality Growth v. City of Mount Shasta* (App. 3 Dist. 1988) 198 Cal.App.3d 433, 442.) A program EIR is supposed to, "Allow a Lead Agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (Cal. Code Regs., tit. 14, sec. 15168.) The California Supreme Court has ruled that, if an agency adopts a program level EIR, then certification of the EIR without the adoption of feasible mitigation measures is an abuse of discretion under CEQA. (*City of Marina v. Board of Trustees* (2006) 39 Cal.4th 341 [No mitigation adopted for significant off-site impacts on drainage, water supply, traffic, wastewater management, and fire protection.].)

1) THE COUNTY IMPROPERLY DEFERS IMPACT MITIGATION WITHOUT STATING A REASON DEFERRAL IS NECESSARY, MAKING AN ENFORCEABLE COMMITMENT, SPECIFYING A MENU OF FEASIBLE MEASURES, SETTING A MITIGATION STANDARD TO ACHIEVE, AND

IDENTIFYING A TIME OR CONDITION WHEN THE MITIGATION WILL BE COMPLETED BEFORE IMPACTS WILL OCCUR.

A) An agency adopting a project and certifying a Program EIR must adopt general mitigation measures to reduce significant impacts.

350. When approving projects that are general in nature (e.g. general plan amendment), agencies must develop and approve whatever general mitigation measures are feasible. (*Citizens for Quality Growth v. City of Mount Shasta* (3 Dist. 1988) 198 Cal.App.3d 433, 442.) The mitigation measures must be incorporated into the plan. (*Sierra Club v. City of San Diego* (2014) 231 Cal.App.4th 1152, 1173.) When a program EIR identifies significant impacts on drainage, water supply, traffic, wastewater management, and/or fire protection, certification without adoption of the feasible mitigation measures is an abuse of discretion under CEQA. (*City of Marina v. Board of Trustees* (2006) 39 Cal.4th 341.)

B) Each adopted mitigation measure must be a mandatory commitment of the agency.

351. CEQA requires that mitigation measures be enforceable commitments to reduce or avoid significant environmental impacts. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445; CEQA Guidelines, sec. 15126.4, subd. (a)(2).) "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Federal Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1261.)

352. When an agency adopts a plan that includes planned future development, it must actually mitigate the impacts that can be anticipated at that time, regardless of future tiers of review. (*Koster v. County of San Joaquin, supra*, 47 Cal. App. 4th at 39-40.) It is not adequate mitigation to simply promise to meet some goal in the future, without any criteria for how this will occur. (*Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1118 ["[W]e conclude that here the County has not committed itself to a specific performance standard. Instead, the County has committed itself to a specific mitigation goal."].) An agency must commit to implement a mitigation measure using mandatory language. Otherwise, it does not qualify as a mitigation

measure. (CEQA Guidelines, sec. 15126.4, subd. (a)(2); *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal. App.4th 173, 199.)

353. As one court explained:

> Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental {Slip Opn. Page 23} assessment. (See, e.g., *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359 , 1396 (*Gentry*) [conditioning a permit on "recommendations of a report that had yet to be performed" constituted improper deferral of mitigation]; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [deferral is impermissible when the agency "simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report"]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777 , 794 ["mitigation measure [that] does no more than require a report be prepared and followed, . . . without setting any standards" found improper deferral]; *Sundstrom , supra* , 202 Cal.App.3d at p. 306 [future study of hydrology and sewer disposal problems held impermissible]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597 , 1605, fn. 4 [city is prohibited from relying on "post approval mitigation measures adopted during the subsequent design review process"].)

(*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-93.)

C) Under specified limited circumstances an exception allows mitigation measures to be deferred.

354. Generally, an agency cannot rely on mitigating a significant impact by developing a mitigation plan *after* project approval. "The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." (*Oro Fino Gold Mining Corporation v. County of El Dorado* (3d Dist. 1990) 225 Cal.App.3d 872, 884-885.)

355. However, deferral may be permissible if the agency states a valid reason why deferral is necessary, displays a commitment to mitigating the impacts, lists a menu of feasible mitigation measures, and identifies performance criteria that the measures must satisfy. (*Sacramento Old City Association v. City Council of Sacramento* (3d Dist. 1991) 229 Cal.App.3d 1011, 1028-1029.) An agency may not defer adopting specific mitigation measures by adopting merely a "mitigation goal" without specific performance criteria and a menu of feasible mitigation measures. Similarly, merely committing to study an impact or the feasibility of its mitigation in the future is not sufficient. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118-

1119.) Mitigation measures are improperly deferred when there is no commitment to a specific performance criteria, and the mitigation is not in place at the time of project implementation. (*POET v. California Air Resources Board* (2013) 218 Cal.App.4th 681.)

D) Some adopted "mitigation measures" do not meet the requirement that there is a reason to defer mitigation.

356. RP-1F, developing the mitigation for conversion of Resource Production land, was already completed. The issue was already thoroughly studied for ten years and addressed by local stakeholders, local experts, County planning staff and consultants, and mitigation recommended by the State Department of Conservation. Nothing more needs to be done that was not done during the 13-year GPU process. There is no justification for deferring the adoption of a mitigation measure.

357. COS-8A calls for *identifying* Native American cultural resource sensitive areas. This preliminary planning task should have been done during the GPU EIR process. Consultation with Native American tribes is a mandatory part of the GPU process. The cultural sites have not moved, and will not be any easier to locate in the future. There was no need to defer this mitigation measure to an unspecified time in the future.

358. COS-4N, mitigation to protect riparian corridors was already completed. It was developed by County staff and expert consultants for inclusion directly into the GPU for immediate implementation. It was supported by commenters at the Planning Commission hearing in May and June of 2019. There is no justification for deferring the development of this mitigation.

359. PF-2J is about protecting groundwater recharge areas. However, the time to identify and protect these areas is during the GPU EIR, so that these areas are not designated for intensive development. Deferring that analysis does not facilitate mitigation, it undercuts options for protecting these areas.

360. COS 5l calls for *investigating* the potential uses of woody biomass. This preliminary planning task should have been done during the GPU. There is no reason stated for delaying the investigation to some indefinite time in the future. There is nothing inherent in any of these mitigation efforts that necessitates their deferral.

E) One "deferred mitigation measures" was tried before and failed.

361. Completing and applying deferred general plan mitigation measures will only begin when they are selected as priorities by the Board of Supervisors on an annual basis. There are 43 zoning ordinance updates, and 81 other items that are deferred specific actions to implement the GPU, that have no due dates or implementation timelines. Because all of these measures are conditioned on future selection by the BOS for before their development can even begin, there is no enforceable commitment to adopt any of them.

362. One of the mitigation measures has been tried before and failed to result in implementation by the County. PF-4C calls for funding for law enforcement. The Sherriff completed a nexus study for impact fees in 2008 under the prior general plan, but the BOS refused to adopt the mitigation fee. It is not a good faith effort at disclosure for the County to refrain from disclosing this failing in the EIR. . It is disingenuous for the County to claim it is "deferring" this measures, if it is actually just continuing to evade its adoption.

F) Some deferred "mitigation measures" in the General Plan Update might not meet the standard for timely implementation.

363. It is not unusual for a General Plan to defer *some* impact mitigation until an updated zoning ordinance is approved. Thus it is not unusual that three mitigation measures call for the approval of code amendments or standards: LU-4A Community Design Standards, RP-4A Amend County Code (Mineral Resources), and COS-5E Alternative Energy. However, the GPU calls for 43 different ordinance updates, and does not give those that mitigate impact any priority, timelines, due dates. Without due dates, implementation timelines, or priorities pursuant to CEQA, the zoning ordinance changes need only be made within a reasonable time after GPU approval. Each of the 43 different ordinance updates will only begin when the Board of Supervisors makes them a priority during one of its annual implementation priority setting meetings.

364. It is important to note that the project review staff of the Planning Department will be busy attending to its own additional duties under the GPU. Over two dozen of the GPU implementation measures require specific studies to be completed by development project applicants. Those studies are to be reviewed by County project review staff. The result will be crafting project-specific mitigation measures. Thus, it is unlikely that project review staff will have spare time to help with implementing the rest of the general plan.

365. It took years to adopt just the one ordinance regarding commercial cannabis cultivation. It is unlikely that the 43 different zoning updates will be completed in the 20-year horizon of the General Plan Update. It is even less likely that those zoning updates relied upon as mitigation measures will be implemented in time to avoid the impacts of developments approved under the GPU.

2) THE COUNTY RESCINDED COMMUNITY PLAN POLICIES THAT HAVE MITIGATED IMPACTS IN COMMUNITIES FOR DECADES WITHOUT MAKING FINDINGS BASED UPON SUBSTANTIAL EVIDENCE IN THE RECORD THAT THE POLICIES ARE NOW INFEASIBLE.

366. The courts have explained the reason that mitigation measures must be enforceable, and must be monitored to ensure that they are implemented. "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded. (See § 21002.1, subd. (b).)" (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260 - 1261.) CEQA requires that mitigation measures actually be implemented, not merely adopted and then neglected or disregarded. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173.) However, "Mitigation measures adopted when a project is approved may be changed or deleted if the agency states a legitimate reason for making the changes and the reason is supported by substantial evidence. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359.)" (From *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1403.)

367. The 1996 General Plan includes the special plan for Rancho Calaveras, and the community plans for Valley Springs, San Andreas, Mokelumne Hill, Mountain Ranch, Murphys/Douglas Flat, Avery/Hathaway Pines, Arnold, and Ebbetts Pass. At the beginning of the General Plan Update process, it was envisioned that the General Plan Update would include the Community Plans. (Mintier & Associates, *General Plan Update Work Program*, December 2006, p. 5)

368. During the General Plan Update, efforts were made to update the community plans for Valley Springs, San Andreas, Mokelumne Hill, and Mountain Ranch. In addition, community plans were drafted for Copperopolis, Railroad Flat/Glencoe, West Point, Paloma, and Sheep

Ranch. These efforts included numerous public meetings to come to agreement on the terms of these plans.

369. The Copperopolis Community Plan, in process since 1992, was edited down to three pages in. 2013. After two competing plans were completed for Valley Springs in 2010 (the COG facilitated Plan and the "Citizen Committee" Plan), the combined Valley Springs Community Plan, which is a hybrid of the two plans, was presented to the Planning Department and the Valley Springs Supervisor in in 2016. In January 2017, the Planning Director submitted to the Planning Commission a pared down version of the blended plan (four and a half pages of text) suitable for inclusion in the Community Planning Element, but it has yet to be adopted.

370. In June of 2015, the Supervisors directed the Planning Department to include in the General Plan Update the Community Plans from Rancho Calaveras, San Andreas, and District 2. The County Planning Department has only included selected text and selected policies from these community plans in the General Plan Update.

372. Since that time, the County completed a Draft Environmental Impact Report (DEIR) for the General Plan Update. That DEIR identifies many impacts as significant and unavoidable. However, a closer look at the community plans indicates that these plans have many policies that qualify as mitigation measures under CEQA.

373. To reject as infeasible a measure to mitigate a significant impact, a lead agency must have a valid finding that the proposed mitigation measure is infeasible. (*Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230.) "Mitigation measures adopted when a project is approved may be changed or deleted if the agency states a legitimate reason for making the changes and the reason is supported by substantial evidence. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359.)" (From *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1403). Thus, whether removing existing mitigations measures from an existing general plan, or rejecting new mitigation measures proposed for the general plan update, the County must demonstrate, based upon substantial evidence in the record, that these measures are infeasible. The County must show that there is some technical, legal, or fiscal barrier that makes implementing these measures impossible. (CEQA Guidelines, sec. 15091.) With regard to those policies in the existing community plans, that have been reducing impacts in communities for decades, the County has failed to make a valid finding that somehow, all of a sudden, these policies have become infeasible.

374. The provisions of four community plans (Arnold, Murphys & Douglas Flat, Avery-Hathaway Pines, and Valley Springs) qualify as CEQA mitigation measures. (CPC, *March 20 memo on Community Plans as Mitigation*, pp. 3-17) The Board of Supervisors refused to include these community plan provisions in the General Plan Update, but failed to make specific findings of fact explaining why each was infeasible, or why the General Plan Update provided superior impact mitigation.

375. The District 2 draft community plans produced by the people included additional mitigation measures, but they were not included in the GPU. The Board of Supervisors failed to make specific findings of fact explaining why each was infeasible, or why the General Plan Update provided superior impact mitigation.

3) THE COUNTY' REJECTED MITIGATION MEASURES SUGGESTIONS WITHOUT MAKING WELL-REASONED WRITTEN FINDINGS BASED UPON SUBSTANTIAL EVIDENCE REFERENCED IN THE RECORD THAT THE SUGGESTED MITIGATION MEASURES ARE INFEASIBLE.

A) CEQA findings of fact must trace the logical route from the agency's ultimate conclusion to the substantial evidence in the record.

376. CEQA Guidelines Section 15091 requires that an agency make specific findings of fact. Those findings must be supported by substantial evidence in the record, and they must bridge the analytical gap between the evidence in the record and the ultimate conclusion of the agency. (Cal. Code Regs., tit 14, sec. 15091; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376 [Substantial evidence supported the findings that the project's impacts would be less than significant]; *Save Round Valley Alliance* (2007) 157 Cal.App.4th 1437 [CEQA findings must disclose the analytical route traveled from evidence to action.])

377. CEQA requires that findings be made for each significant effect identified in the EIR: (1) mitigation has been adopted, (2) the agency lacks jurisdiction to make the changes but others should, and/or (3) specific economic, social, technological, or other considerations make mitigation or alternatives infeasible. (*Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011; See also *County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141 Cal.App.4th 86; *Citizens for Quality Growth v. City of Mt. Shasta*

(App. 3 Dist. 1988) 198 Cal.App.3d 433 [City violated CEQA when it failed to make findings adopting or rejecting proposed mitigation measures]; *Environmental Council of Sacramento v. Sacramento County* (App. 3 Dist. 1982) 135 Cal.App.3d 428 [The County erred in failing to make findings of mitigation before it amended the general plan].)

378. Agencies cannot approve a project as proposed if feasible mitigation measures are available that can substantially lessen the significant environmental effects. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 104, 134; *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233; *Citizens for Quality Growth v. City of Mount Shasta* (App. 3rd Dist. 1988) 198 Cal.App.3d 433, 440-441.) The CEQA process is an "interactive process of assessment of environmental impacts and responsive project modification which must be genuine. (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 10) Local governments, state agencies, community organizations, and individuals play a vital role in the CEQA process when they identify feasible measures to mitigate the significant impacts of the proposed project. (*Sutter Sensible Planning, Inc. v. Board of Supervisors* (App. 3rd Dist. 1981) 122 Cal.App.3rd 813, 820 [comments are an integral part of an EIR]; Cal. Code Regs., tit. 14, secs. 15086 & 15087.)

379. Even when specific mitigation measures may need to wait until the specific development is proposed, general mitigation measures may be adopted with the adoption of a general plan. (*Citizens for Quality Growth v. City of Mount Shasta* (App. 3rd Dist. 1988) 198 Cal.App.3d 433, 442.) A Program EIR such as the one at issue is supposed to focus on programwide mitigation. (CEQA Guidelines, sec. 15168.)

380. However, an agency can approve a project that has residual significant impacts if it makes findings that further mitigation measures are not feasible, and that the projects other benefits outweigh its harm to the environment. (Public Resources Code, Sec. 21002, 21081; Cal. Code Regs., tit. 14, secs. 15091 to 15092.) To be valid, findings rejecting mitigation measures as infeasible must be based upon substantial evidence. That evidence must be specific and concrete, such as the presentation of comparative data and analysis. (*Citizens of Goleta Valley v. Board of Supervisors* (App. 2 Dist. 1988) 197 Cal.App.3d 1167, 1180-1183.) "Argument, speculation, unsubstantiated opinion, or narrative evidence which is clearly erroneous or inaccurate … does not constitute substantial evidence." (Cal. Code Regs., tit. 14, sec. 15384.) The findings must "bridge the analytical gap between the raw evidence and the ultimate decision," and reveal the "analytic route the agency traveled from evidence to action." (*Topanga Association for a Scenic*

Community v. County of Los Angeles (1974) 11 Cal.3d 506, 514-516.) Conclusory statements rejecting mitigation measures are inadequate. (*Village Laguna of Laguna Beach v. Board of Supervisors* (App. 4th Dist. 1982) 134 Cal.App.3rd 1022, 1035-1035.)

381. To reject additional mitigation measures, a lead agency's findings may claim that the mitigation measures adopted will be sufficient to reduce the impact to a level of insignificance. However, a lead agency must have substantial evidence that mitigation is feasible and will be effective. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116-1118.) "A clearly inadequate study is entitled to no judicial deference." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 422 &409 fn. 12.)

382. To reject as infeasible measures to mitigate a significant impact, a lead agency must have a valid finding that *each* of the proposed mitigation measure is infeasible. The agency must show that there is some economic, environmental, legal, social, or technological barrier that makes implementing each of these measures impossible. (CEQA Guidelines, sec. 150364.) It is an abuse of discretion to reject alternatives or mitigation measures that would reduce adverse impacts without supporting substantial evidence. (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1175-1176.)

B) The need for additional flexibility for economic development and the protection of property rights is an unsupported rationale for rejecting mitigation measures, as it presents a false choice, and it undermines the basic intent of CEQA.

383. The County's major premise justifying the rejection of mitigation measures is:

> One of the primary objectives of the General Plan is to provide the flexibility desired and necessary to meet the needs of the County, while protecting property rights and promoting economic prosperity. Many of the mitigation measures suggested during the comment period would prevent the County from achieving these project objectives and are therefore infeasible mitigation measures." (Board Packet, p. 141, see also for example pp. 150, 152, .154, 156, 159, 161, 163, 166.)

By definition, mitigation measures are mandatory and enforceable. If allowed to stand, the logic of the findings would give any agency a free pass to avoid complying with all the mitigation requirements of CEQA, and completely undermine the intent of CEQA to avoid unnecessary

harm to the environment, by relying on an oversimplified generalization. The finding is not based upon reason and evidence, but upon unsupported presumptions and false choices.

1) The level of flexibility intended by the legislature is already inherent in the planning process.

384. The claim in the findings that the desire for flexibility wipes out mitigation responsibilities, is consistent with the philosophy of some members of the public who argued that the General Plan Update must be "flexible," and who opposed commitments to impact mitigation. They view some mitigation measures as unsuitable government intrusion into private property rights. The reluctance on the part of some public officials and their constituents to mitigate environmental impacts is the very reason that the law **requires** that these mitigation measures be mandatory and enforceable.

385. On the surface, the desire to be flexible and to leave one's options open is understandable. Under certain circumstances such flexibility is beneficial. That is why applicants for zone changes have the option to seek variances when the strict application of the ordinance would be unfair under the circumstances. That is why **many** general plan policies can be optional. That is why program-level mitigation may be deemed infeasible under the circumstances when applied to a specific project. That is why a general plan may be amended up to four times per year to allow mitigation measures an opportunity to evolve. All of these reasonable provisions for flexibility are already in existing planning law and CEQA.

386. No law says that every policy in the general plan has to be mandatory. Plenty of policies in the general plan can be and are optional. A zoning ordinance that implements mandatory program level mitigation programs can include circumstances when variances are allowed. This **appropriate** level of flexibility is already **inherent** in planning law. What is not allowed is **refusing** to adopt the feasible mitigation programs in the first place, and refusing to apply them in most instances. We know that people will pursue residential and economic development in the next generation under the General Plan Update based upon their own financial self-interest. What CEQA ensures is that this development will be balanced by a parallel commitment on the part of local governments to protect health, safety, and natural resources in the public interest.

2) The findings do not point to substantial evidence in the record demonstrating which if any proposed mitigation measures would harm property rights and economic development.

387. The findings seek to dispense with mitigation measures to keep a flexible general plan. Some see the apparent lack of regulation as a way to promote property rights and economic development. They *believe* that plan flexibility gives the Planning Commission and the Board of Supervisors greater power to approve a broader spectrum of private development projects regardless of the harm to the larger community. Some *believe* that state law requirements for specificity and impact mitigation are unconstitutional interferences with their property rights. Others would rather have the Board approve the projects (lawful or not) and force the violated members of the public to seek legal recourse. These arguments, speculations, and unsubstantiated opinions do not constitute substantial evidence.

388. The desire to protect property rights and to dispense with **unnecessary** regulation is understandable. However, the problem with trying to deregulate the development project review process at the **county** level is that many of the development requirements are actually imposed by **state** law. For example, a specific plan includes "Standards and criteria" as well as "implementation measures, including regulations" to address natural resource conservation and the financing of public infrastructure. (Government Code, sec. 65451.) A large subdivision must be designed for passive heating or cooling, must provide for a sufficient water supply, must avoid substantial environmental damage, must not cause serious public health problems, must not result in violations of regional water quality control board requirements, and must meet fire safety standards including those for emergency ingress and egress. (See Section VI, B, 7, Government Code, secs. 66473.1 – 66474.6.) Thus, while the County has the **power** to ignore these reasonable requirements when approving development projects, those approvals can be set aside by the courts, for the County has no legal **authority** to make such approvals. Given these circumstances, those seeking to deregulate the County's development review process should instead seek reforms at the State Legislature where the development requirement laws can actually be changed.

389. Attempting to continue on the path of legal violations in the hope of promoting freedom and economic development will not stimulate investments in the local economy. It will only lead to further economic stagnation and litigation in this county, while people with capital to invest go

to other counties where their investments will be less risky. Trying to develop in the absence of clear standards and safe regulatory harbors will not make people free to do what they want with their land. It will make them slaves to the whims of the Board of Supervisors and to litigious development opponents. Because virtually all the County's discretionary decisions regarding public and private development projects must be consistent with a valid general plan, a substandard general plan and a substandard environmental impact report cripple the valid exercise of property rights to develop real estate.

390. The CPC's members would prefer that the County comply with planning and environmental laws that have been on the books for decades and found constitutional. They would like the County to finally establish development standards and programs that mitigate impacts so that there is no **need** for repetitious and divisive debates about the same issues for each project that comes along. They would prefer that the Board of Supervisors make legally valid project approvals to protect the interests of both project applicants and existing residents.

3) Mitigation measures can actually protect the exercise of property rights.

391. A perhaps counter-intuitive effect of mitigation measures is that some measures actually support more people exercising their property rights. They do this by cutting the impact pie into smaller pieces, so that **more** development can occur before so many impacts accumulate as to reach thresholds that might stop development. For example, if there are ten developments awaiting approval, and the first five developers wastefully use up all of the available sewer capacity, then the last five developments have to wait, and wait, and wait, for a new sewer expansion. On the other hand, if the wastewater impacts are cut in half for each development, then all ten could proceed. In this way, the best mitigation measures prevent unnecessary development impediments.

392. Also, some mitigation measures serve a regulatory function to avoid producers from externalizing costs and harming people and the environment. Development projects that unnecessarily foul the air, make noise, or destroy scenic vistas avoid imposing these costs on their consumers, and instead foist these costs on other people and the environment. Thus, in an un-regulated market, they will succeed over their competition, and an inefficient excess of harm will result. Mitigation measures regulate these activities to avoid this excessive harm. In this way,

some good mitigation measures help to cure a resource allocation flaw in the market. In the past these flaws have caused great harm, including harm to the rights of neighboring property owners.

393. Finally, some mitigation measures support property **values** by keeping communities and homes more desirable. For example, the scenic open space in conserved forests and agricultural lands gives neighboring properties value. Mitigation programs that compensate people for providing public benefits cure a flaw in the free market that would otherwise under-produce these public goods. So, if one really cares about property rights and property value, it makes sense to adopt such additional mitigation measures.

394. However, the findings of fact simply paint all rejected mitigation measures with the same brush (i.e. harmful to property rights and economic development), without considering each measure on its own merits. Such a finding, based upon unsubstantiated opinion rather than substantial evidence, lacks validity.

4) Additional GPU impact mitigation might not prevent economic prosperity, but could expedite project review and finance the infrastructure needed for economic development.

395. By mitigating the significant environmental impacts of development at the general plan level, the County would facilitate prompt and lawful future approvals of specific plans, subdivisions, and use permits. This is because the impact mitigation issues raised in the general plan can and do come up with regard to the discretionary approval of specific plans, subdivisions, and use permits. Filling the gaps in the County Code with standards to mitigate development impacts both facilitates project approvals, and protects health, safety, welfare, and the environment. By the way, this is no accident. California planning and environmental law is integrated to achieve this result. To efficiently comply with the law, a county that adopts mitigation programs in its general plan, refines them (if needed) in its zoning ordinance, applies them to development proposals, and implements them in the field.

396. There will be adverse fiscal impacts on the County without the proper and timely employment of impact mitigation fee programs under CEQA. Failure to promptly establish and collect the maximum "fair-share" impact mitigation fees across the spectrum of significant impacts places an unfair burden on **existing** taxpayers and ratepayers to provide new and/or improved infrastructure in the **future**. These developer impact fees are not an undue burden on

economic development. They are simply charges for the costs of providing the public goods (roads, water, sewer, etc.) necessary to support new development.

397. If these costs are not paid by developers and new residents through impact fees, the costs are passed on to existing residents in one of two ways. One way is that the level of infrastructure and services declines, e.g., roads get crowded, water supplies get rationed more severely, electricity browns out more often, etc. A second way the costs are passed on is through higher rates and taxes to pay for infrastructure expansions. As some would say, there is no "free lunch." Also, as economists would say, we cannot afford "free riders," those who will use the infrastructure without paying for their share of it.

398. The findings contend that mitigation regulations and impact fees will impede economic development. However, the findings point to no evidence that there is a direct correlation between the shortness of a county code and the economic prosperity of the county. Some counties with huge economies have very long county codes filled with regulations. Regulation has not choked prosperity in these areas. Counties with short county codes and fewer regulations can be ranked very low on the scale of economic prosperity. Lack of regulation has not spurred these local economies to success.

399. Nor do the findings point to substantial evidence in the record that a detailed general plan or high development fees has stopped economic development in the region. In fact, the evidence in the record demonstrates that economic development can thrive where there is a detailed general plan and high impact mitigation fees. The record does include evidence that, in 2004, El Dorado County approved a valid and detailed general plan with a commitment for traffic impact mitigation fees. In 2006, El Dorado determined that it needed to generate over $500 million from developers to build the roads needed to serve new development. (TIM Fee Report 2006, p. 20.) That put traffic impact fees in some parts of the County at over $13,000 per house. (Final TIM Fee EIR, p. 19.) Nevertheless, from 2000 to 2009, El Dorado County produced over 15,000 units of housing and 5 million square feet of non-residential/ job generating land uses. (El Dorado Hills Workshop, pp. 12-13.)

400. Calaveras County has tried the flexible/vague regulation approach for decades. The result is a County with home values $150,000 below the statewide average. (Census Bureau Quick Facts, p. 2.) It is time for the County to try to specify development standards to provide

investors with financial security and existing residents with impact mitigation equity. It is time for the County to try to fully fund the infrastructure needed for economic development.

401. With regard to the efficacy of this approach in streamlining development review, the County did not have to take the CPC's word for it. All they had to do is look at the recommendation of one of the County's outside legal counsels on land use and CEQA. The County frequently contracts with Remy, Moose and Manley for its CEQA legal work. (See Remy Moose and Manley Contract.) Senior Partner, James Moose includes this approach as among the options for completing a general plan in compliance with CEQA. While his guide provides other general plan approval options as well, it does includes an entire section entitled, "The Adoption of Stringent General Plan Language Does Provide Some Future Advantages: It Can Help to Streamline Future, Project-Specific Environmental Review." (CPC DEIR Comment Attachments, Agriculture, General Plan Updates and Amendments, p. 13-15..)

402. CEQA has been in existence for over 45 years. Over that time, cities and counties throughout California have implemented the law. Over that time, California has grown from just under 20 million to just under 40 million of people. California has moved up from the ninth largest economy in the world in 1991 to the fifth largest economy in the world today. (See Economic Data 1991 & 2018.) All the while, other California cities and counties have managed to mitigate the significant impacts of development whenever feasible. In this way, CEQA has achieved the Legislature's policy hope that "man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations." (Public Resources Code, sec. 21001, subd. (e).)

403. The time is long overdue for Calaveras County to embrace the opportunity to implement this law in a way that promotes both economic development and environmental protection. Because of its broad scope, its long-term application, and its many potentially significant impacts, there is no more important decision of the Board of Supervisors upon which to properly apply CEQA than the General Plan Update.

5) CEQA and planning law put the human environment above ideological disputes.

404. By passing CEQA and planning law, the Legislature ensured that planning for the protection of the human environment would not be sacrificed on the altar of ideological

differences. All government agencies, regardless of the ideology of their governing bodies, must do all that is feasible to protect the human and natural environment when taking discretionary actions. Why? Because regardless of whether we prefer regulation or incentives, we all need to wake up in the morning and breathe clean air, turn on the lights, flush the toilet, drink clean water, eat food reared on agricultural lands, use roads get to work or to school, recreate to keep our bodies strong, return to a safe home constructed from timber and minerals, and use the peace and quiet of the night to enrich our minds, to say our prayers, and to get a good night's sleep.

C) Many mitigation findings are based on the incorrect presumption that the adopted mitigation measures will be timely implemented by the County to avoid harm from development under the GPU.

405. The adoption of many claimed mitigation measures are actually deferred indefinitely, and may never be implemented. (See for example RP-4A County Code-Minerals, PF-2J Groundwater Recharge, LU-5A Telecommunications Ordinance, COS-7I Parks Funding, RP-1F Resource Production Land Conversion, RP-1A Code Amendment-Resource Production Lands, COS-5G Emission Reduction, COS-5E Alternative Fuels Ordinance.)

406. Throughout the GPU process, the CPC has repeatedly asked the County to set timeframes for completing implementation measures, and to give priority to implementation measures the County claims will mitigate impacts. We also asked for measureable objectives in the GPU that would specify interim expected achievements (e.g. funds to be secured by a specified time, acres of habitat to be protected by a specified time) so that there was some commitment to implementing mitigation measures. The County has repeatedly refused. Instead, these measures will only be implemented **if and when** they are chosen during the Board of Supervisor's annual selection process, **and** necessary **staff** and **funding** for the work is secured. (GPU, Implementation Measure LU-1A, Annual Work Plan.) . Under these circumstances, impacting developments can be approved indefinitely, and the mitigation programs may never be implemented. As we know from the previous Housing Elements, insufficient funds and staff have been the excuse for numerous implementation failures. Given past implementation failures, and the refusal of the County to set timeframes for implementation, the findings cannot rely on the unsupported presumption that adopted mitigation measures will be timely implemented.

D) Many findings are based on the incorrect presumption that regulating currently defined discretionary development, and not regulating currently defined ministerial or by right development, will be sufficient.

407 Upon adoption of the GPU, many of the mitigating implementation measures will only apply to developments that are currently defined as discretionary and subject to CEQA review. (See for example COS-5K Odors, COS-5F Air Pollution, COS-4H Biological Resources, COS-4I Biological Communities, COS-4P Bats, COS-4I Riparian Habitat, COS-4K Invasive Species, COS-4N Riparian Corridors, COS-4D Oak Woodlands, COS-4M Wildlife Corridors.)

408. Discretionary projects subject to CEQA are only a small proportion of the new development that happens in the County. Because the County has tens of thousands of exiting vacant parcels where residential development is allowed by right, none of these implementation measures will mitigate the impacts that will result from such development under the GPU. Similarly, because the current Agricultural Zoning and the Agricultural Tourism Zoning allow many impacting projects by right or ministerial approval, none of these implementation measures will mitigate the impacts from such development under the GPU.

409. The CPC asked the County to re-consider the list of projects that are not discretionary, or to adopt objective standards for the application to all project approvals. For example, a simple building setback from streams that applies to both discretionary and ministerial projects can protect riparian habitat that is critical for some special status species. Keeping these species off the endangered list, and avoiding development injunctions that could follow, are important to both the economy and to the exercise of property rights. The Planning Department staff and consultants recommended the adoption of such standards as mitigation measures. The Planning Commission and the Board of Supervisors rejected the setbacks, but provided no valid justification. The County imposes residential building setbacks from roads for safety and noise, and even imposes setbacks from floodplains for safety, but the County refused to provide setbacks from streams to avoid wasting habitat for sensitive species; the loss of which could cripple the local and regional economy. Such findings are arbitrary because they do not reveal a **logical** route from the evidence in the record to the County's ultimate action.

E) Many findings that impacts are significant and unavoidable are incorrect because they improperly reject additional feasible mitigation measures.

1) The findings globally reject numerous potentially feasible mitigation measures without individual logical analyses based upon facts in the record.

410. The findings for many classes of impacts globally reject numerous potentially feasible mitigation measures without individual logical analyses based upon facts in the record. The findings simply refer back to the EIR. (See for example findings for Aesthetics, Agriculture Forest & Mineral, Air Quality, Biological Resources.)

411. The only consideration given proposed mitigation measures was in boilerplate responses to comments on the DEIR that did not address the comments in a commensurate level of detail, and did not correctly justify the rejection of the measures. (See Infusino, *Inadequate Responses to Comments on GPU DEIR*, 11/7/19.)

412. Contrary to the implications in the findings, many of the suggestions were proper plan-level mitigation measures. Many of the mitigation measures suggestions were drawn from general plan elements specifically drafted for Calaveras County with the help of County staff. (For example the draft Water Element, the draft Energy Element). Many measures were from community plans that are currently in the exiting 1996 General Plan. Many mitigation suggestions were drawn from general plans in other counties. Many mitigation proposals were timely made by agencies and the public during scoping and in comments on the DEIR.

413. The findings reject many of these measures with the general claim that are insufficiently flexible. The certainty in these proposed mitigation measures was needed to comply with CEQA. As noted above, the claim that **additional** flexibility is needed to protect property rights and for economic prosperity is not supported by evidence in the record.

414. This CEQA violation is highly prejudicial, as agencies and citizens went to the efforts to provide feasible mitigation measures, only to have them summarily rejected by the County. The County's disregard for the iterative improvement of projects expected of CEQA's public comment process, increases the potential for significant an unnecessary harm from the GPU. This CEQA violation is highly prejudicial, since it denies citizens of California the benefits of the foremost principle of CEQA: "the fullest possible protection of the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v.*

California Resources Agency (3rd Dist. 2002) 103 Cal.App.4th 98, 110, citing *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 390.)

2) The Board did not review suggested mitigation measures.

415. The findings repeat a statement to the effect that, "The Board has reviewed all additional suggested mitigation measures and finds the suggestions infeasible." (Board Packet, pp. 149, see also for example pp. 151, 153, 155, 158, 161, 162, 166.) This is not true.

416. In January of 2019, the CPC begged the Board of Supervisors to hold GPU workshops, in part to review GPU impacts and proposed mitigation measure options made in comments on the GPU DEIR. The Board refused. Later that month the CPC submitted written and verbal testimony encouraging the Board to fix the flaws in the GPU DEIR, including the impact mitigation flaws. The Board again refused. The CPC presented mitigation options to the Planning Commission in May and June of 2019 and asked the Commission to consider them. The Planning Commission did not. In June of 2019, we asked to appeal the rejection of our General Plan mitigation suggestions to the Board of Supervisors. The opportunity for an appeal hearing was denied. We sent our mitigation suggestions to the Board so they could discuss them during their July 2019 GPU hearing. With the exception of the traffic impact mitigation, the Board did not. Findings must be based upon facts in the record. The facts do not support this aspect of the finding.

417. In 2015-2016, the County Planning Commission and the Board of Supervisors made wholesale changes to the GPU, that were adverse to the environment, all without the benefit of an EIR and the comments of reviewers. When an EIR and public and agency suggestions for reducing impacts was finally available in 2019, those suggestions for reducing impacts were not given consideration by the Planning Commission and the Board of Supervisors. By not giving the mitigation measures proposed by the public, organizations, and agency experts a proper review, the County has failed to consider the ecological implications of its actions, and shirked its duty to avoid unnecessary harm to the built and natural environments.

418. This inaccuracy in the findings is highly prejudicial and misleading to the public. The inaccuracy does not reflect a good faith effort at full disclosure. (CEQA Guidelines, sec. 15151.) One of the key policies in CEQA is that the EIR is to demonstrate to an apprehensive citizenry

that the agency has, **in fact,** analyzed and considered the ecological implications of its actions. (CEQA Guidelines, sec. 15003.) While the events do not make such a demonstration, the findings seek to remedy that with a falsehood. In this instance, two wrongs don't make a right.

4) THE COUNTY REFUSED TO COMPLETE AND ADOPT A MITIGAITON MONITORING PLAN.

419. Mitigation monitoring is required to ensure that mitigation measure are not merely adopted on paper and never implemented. At the time of project approval, the lead agency adopts a mitigation **monitoring** and reporting plan to guide this ongoing process. Later, during implementation of the project, agency reports confirms the implementation of mitigation measures, and may report on the effectiveness of the mitigation. In the case of a General Plan, these reports may take the form of the annual reports made to the Office of Planning and Research (OPR) and to Housing and Community Development (HCD).

A) The 1-page mitigation monitoring plan is incorrect and insufficient.

420. The Mitigation Monitoring and Reporting Program (MMRP) claims that it needs no detail because the mitigation measures in the GPU are "self-mitigating goals, policies, and implementation measures" and that adoption of the plan "would result in implementation of all mitigation measures included in this Final EIR" so that "further monitoring or reporting would not be necessary." (Board Packet, p. 204. See also pp. 137-138.) This is not entirely correct. The MMRP explains how it will **report** but not how it will **monitor**.

B) The immediately employed mitigation measures, which can be routinely implemented by planning staff, in the ordinary course of project review, should be easy to implement.

421. It is true that **some** of the GPU mitigation measures are part of the over two dozen implementation measures that will be immediately employed by planning staff during their review of new discretionary project applications. (For example see IM COS-5I Air Quality, IM COS-5J Asbestos, IM COS-5K Odors, PF-4d Emergency Communications, RP-1E Farmland, COS-5H Air Quality Guidelines, COS-5F Air Pollution, COS-4H Biological Resources, COS-4I Biological Communities, COS-4P Bats, COS-4I Riparian Habitat, COS-4K Invasive Species, COS-4N Riparian Corridors, COS-4D Oak Woodlands, COS 4L Wetlands, COS-4M Wildlife

Corridors, COS-4O Road Crossings.) It should be a simple matter to for project-specific staff reports to reflect these analyses, and for the Planning Department to report this implementation of the GPU to OPR in the April 1 annual report.

C) There is no guarantee that any of the deferred mitigation measures will ever be implemented.

422. Other mitigation measures are part of the over 80 specific deferred actions, and the over 40 deferred zoning ordinances. (For example see RP 4A Code Amendment – Minerals, LU-5A Telecommunications Ordinance, COS-71 Park Funding, RP-1F Resource Production Land Conversion, COS-5G Emission Reduction, COS-5E Alternative Fuels Ordinance.) These measures will only be implemented if and when they are chosen during the Board of Supervisor's annual selection process, and necessary funding for the work is secured. (GPU, Implementation Measure LU-1A, Annual Work Plan.) . There is nothing "self-mitigating" about these measures. There is no assurance that any of these measures will ever be implemented. For example, we have seen many implementation measures promised in past Housing Elements that have not been implemented. Nevertheless, it is true that, in its annual report to OPR, the County could identify which of these mitigation programs have and have not been implemented.

D) The MMRP does not explain if and how mitigation effectiveness will be monitored.

423. However, it is not clear from the 1-page mitigation **monitoring** and reporting plan if the County intends to follow up on development projects, to see if the mitigation measures are employed and are actually successful in reducing impacts. If the County intends to do such monitoring, the MMRP does not explain how the County intends to do that for each measure. For example, while the annual report might reflect that the County required 6 projects in the year to do acoustical analyses and to apply noise impacts mitigation measures, the MMRP does not indicate if and how the County intends to determine if those measures were implemented at the project site, and if they were effective in reducing noise.

424. The improper drafting, evaluation, rejection, and monitoring of mitigation measures is highly prejudicial to the Petitioner. Only with proper drafting, evaluation, selection, and implementation of mitigation measures will the public health, safety, and the environment be properly protected. Only with diligent monitoring will the people be assured that the County is

implementing successful efforts to reduce the impacts of development under the GPU. Only with such diligent monitoring will decisionmakers have the information they need to know if the measures they are imposing are working. Only with valid mitigation measures will the intent of CEQA to avoid unnecessary environmental harm be fulfilled.

B) THE COUNTY'S TREATMENT OF ALTERNATIVES VIOLATED CEQA.

425. An alternatives analysis is supposed to look at a broad range of alternatives to reduce plan impacts and to inform decision makers and the public. This is especially true when it is in a Program EIR like the one in question. (CEQA Guidelines, secs. 15126.6, 15168.) "[T]he discussion of alternatives shall focus on alternatives to the project or the location which are capable of avoiding or substantially lessening any significant effects of the project**, even if those alternatives impede to some degree the attainment of project objectives**, or would be more costly." (CEQA Guidelines, sec. 15126.6, subd. (b)(1), emphasis added.) There needs to be **sufficient information** about the alternative to allow the decisionmakers to make a rational choice. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, emphasis added [A decision to approve an alternative analysis based upon the "barest of facts" and "vague and unsupported" conclusions" precluded informed decisionmaking and public participation and was therefore an abuse of discretion.]

426 Under CEQA, the range of alternatives that an EIR must study in detail is defined in relation to the adverse environmental impacts *of the proposed project*. An EIR must include a description of feasible project alternatives that would substantially lessen the project's significant environmental effects. (Pub. Resources Code, § 21061; Cal. Code Regs., tit. 14, § 15126.6, subds. (d), (f).) The project's environmental effects, in turn, are determined by comparison with the existing "baseline physical conditions." (Cal. Code Regs., tit. 14, § 15125, subd. (a); see *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.)

427. "The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decisionmaking." (CEQA Guidelines, sec. 15126.6 subd. (f), emphasis added.) An EIR need not consider every conceivable alternative to a project or alternatives that are infeasible. (*Ibid*.; see also *Goleta, supra,* at p. 574.) [2] "In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of 'feasibility.' " (*Goleta, supra,* 52 Cal.3d at p.

565.) CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1; see also Cal. Code Regs., tit. 14, § 15364.)

428. "There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (Cal. Code Regs., tit. 14, § 15126.6, subd. (a).) The rule of reason "requires the EIR to set forth only those alternatives necessary to permit a reasoned **choice**" and to "examine in detail only the ones that the lead agency determines could feasibly attain **most** of the basic objectives of the project." (*Id*., § 15126.6, subd. (f), [emphasis added].) An EIR does not have to consider alternatives "whose effect cannot be reasonably ascertained and whose implementation is remote and speculative." (*Id*., § 15126.6, subd. (f)(3).)

429. CEQA requires a "quantitative, comparative analysis" of the relative environmental impacts and feasibility of project alternatives. An inadequate discussion of alternatives in an EIR is an abuse of discretion. (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692, 730-737, [emphasis added].) An EIR must explain in detail why various alternatives are deemed infeasible. This discussion of alternatives must be "meaningful" and must "contain analysis sufficient to allow informed decision making." "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 403-404; See also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344 [EIR ruled inadequate for lacking a quantitative discussion of increased ambient nighttime noise levels].)

430. "The issue of feasibility arises at two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency's later consideration of whether to approve the project. [Citation.] But 'differing factors come into play at each stage.' [Citation.] For the first phase--inclusion in the EIR--the standard is whether the alternative is *potentially* feasible. [Citations.] By contrast, at the second phase--the final decision on project approval--the decisionmaking body evaluates whether the alternatives are *actually* feasible. [Citation.] At that juncture, the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*Mount Shasta Bioregional Ecology Center*, quoting *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)

431. An EIR should “identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying

the lead agency's determination." (CEQA Guidelines, sec. 15126.6, subd. (c); *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437 [A lead agency must explain why a suggested alternative is rejected as either unable to be accomplished, not satisfying the goals of the project, or not advantages to the environment.]; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 205-206 [In rejecting an alternative an agency must disclose the analytic route it traveled from substantial evidence to action].) The explanation for rejecting alternatives must be reasoned and based upon evidence in the record. (*Preservation Action Council v. City of San Jose (*2006) 141 Cal.App.4th 1336 [Insufficient evidence to support the finding that the alternative not included in the EIR was infeasible]; *Uphold our Heritage v. Town of Woodside* (2007) 54 Cal.Rptr.3d 366 [The record did not support the City's finding that alternatives were infeasible].)

1) THE COUNTY FAILED TO ANALYZE ANY POLICY-BASED ACTION ALTERNATIVES.

432. Throughout the General Plan Update there have been alternatives proposed for consideration. During the 2010 Alternatives Workshops held throughout the County, four alternatives were discussed. The Board of Supervisors also decided to evaluate two alternatives for community plan maps for Valley Springs in the GPU EIR. When providing input during preparation of the GPU in 2013, the CPC asked for a plan that would include more of the new and existing community plans and more policies from the optional water, economic, and energy elements. During scoping prior to preparation of the EIR in February of 2017, the CPC proposed a Success Through Accountability alternative that would reflect commitments to timely implementation and monitoring, and a Community Planning Element alternative that included additional community plans with implementation measures for their policies. In July of 2017, the CPC encourage the County to evaluate 2011 Mintier General Plan as an alternative. Each of these alternatives had the potential to better reduce one or more of the significant impacts of the GPU. However, the comparative merits of THESE ALTERNAIVES ARE NOT ANALYZED IN THE EIR. In fact **NO POLICY ALTERNATIVES ARE EVALUATED IN THE EIR**. Instead the EIR includes only land use map-based conceptual alternatives that are not even mapped to allow for meaningful comparative analysis.

2) THE EIR UNREASONABLY REJECTED POLICY ALTERNATIVES WITHOUT A BASIS IN SUBSTANTIAL EVIDENCE IN THE RECORD

433. The EIR's response to comments indicated that it was infeasible to consider any policy alternatives in the EIR. (See Response 11-169 to 11-173.) This is ridiculous. There is no CEQA exception to avoid evaluating policy alternatives in an EIR. Even the General Plan Guidelines, that have an entire chapter dedicated to CEQA compliance, explain that:

> "The EIR for a general plan must describe a reasonable range of alternatives and analyze each of their effects (CEQA Guidelines § 15126.6). Each of the alternatives should avoid or lessen one or more of the significant effects identified as resulting from the proposed general plan. **A reasonable range of alternatives would typically include** different levels of density and compactness, different locations and types of uses for future development, and **different general plan policies."** (OPR, 2017 General Plan Guidelines, Chapter 10, p. 271, emphasis added.)

435. The EIR's conclusory response to comment 11-40 indicates that the 2011 Mintier General Plan was an unsuitable alternative because it "was not viable as a guiding policy document for development within the County," was "deficient," and was "not consistent with policy direction provided by the County Board of Supervisors." However, there were no examples of these problems provided, and the County refused to include the 2011 Mintier General Plan in the record to support its claims.

3) THE ANALYSIS OF ALTERNATIVES IN THE EIR IS INFORMATIONALLY INADEQUATE, BECAUSE THE EIR PROVIDED NEITHER SUFFICIENT DETAIL NOR A MEANINGFUL EVALUATION.

436. The alternative land use maps are **described** in the GPU EIR, but they are neither in the EIR nor in the record. These maps are "conceptual". There was no way to see where the **actual** boundaries of the communities changed. There was no way to see where the land use designations would be changed. As a result, there was no way to determine where and how much impacts would be decreased, if at all. The comparison of alternatives was a purely theoretical exercise, not a meaningful evaluation of the comparative merits of three land use maps from which the decisionmakers or the public could choose.

437. Even if the details were provided, the analysis would not have been meaningful, for the alternatives would not have informed the public or the decisionmakers. Nobody in the public was debating the merits of the alternatives evaluated. No decisionmaker had proposed the alternative map concepts. Except for a few landowners near Copperopolis who made comments at the Planning Commission and BOS hearing in 2019, the debates over the land use maps were over by the time the EIR was prepared.

438. The debates that continued revolved around how best to reduce the impacts of the land use map. Should the county promote more job-generating economic development that might reduce commuting impacts? Should the County regulate independent property owners, or search for incentives to motivate willing property owners to reduce development impacts? Were prescriptive standards or performance standards needed to inform those seeking project approvals; or should a majority of the BOS have complete and ongoing discretion to approve applications on a project by project basis, regardless of the effects on communities, even those communities that did not elect them? Were timelines needed for implementation programs, or should the BOS have complete and ongoing discretion when and if to implement programs to reduce impacts? Were community plans needed to ensure the BOS addressed local needs, or should a majority of the BOS have complete and ongoing discretion to alter the fate of communities, even those communities that did not elect them? Should the focus of the policies be on those few developments that are coming, or be expanded to consider the health and safety of the many people who already reside in the county? While these policy considerations were reflected in proposed alternatives, the GPU EIR did not evaluate any of those policy alternatives. As a result, the analysis of alternatives not only violates CEQA, but also does a great disservice to the many people with diverse opinions who actively participated in the GPU process. The flawed alternatives analysis failed to fairly assess the comparative merits of people's assertions, and failed to present their local government representatives with the most important thing that it must: **a choice.**

4) THE COUNTY'S REFUSAL TO EVALUATE POLICY ALTERNATIVES, WITHOUT A VALID REASON BASED UPON SUBSTNATIAL EVIDENCE IN THE RECORD, IS HIGHLY PREJUDICIAL.

439. It is highly prejudicial for the county to unreasonably refuse to properly evaluate alternatives. An agency is supposed to carefully consider alternatives to reduce the environmental impacts of the GPU. Instead, the County rejected them without justification. The rejections do not provide the roads to the facts in the record that supports the rejections. Thus, there is no way for the public (or the court) to check if the rejection is factually based, save an impractical search through the entire administrative record haystack for supportive needles of evidence, the County may or may not have relied upon. CEQA requires such a road map to ensure that an agency has not irrationally jumped to a conclusion. Providing such a road map helps potential litigants, pressed for time under a 30-day statute of limitations, to determine if agency choices are rationally supported by evidence in the record, and are not vulnerable to legal challenge. Providing a road map to the facts shows that stubborn issues were not swept under the rug, and that the public and the environment are being protected. The County's failure to provide road maps to the facts withholds this critical information from the public and decisionmakers, and needlessly risks harm to the natural and human environments.

C) THE FINAL EIR FAILED TO LAWFULLY RESPOND TO PUBLIC COMMENTS, RESULTING IN A NUMBER OF ADDITIONAL CEQA VIOLATIONS.

440. CEQA has clear requirements for responding to comments on a DEIR. Section 15088 of the CEQA Guidelines explain how to respond to comments on an EIR:

> § 15088. Evaluation of and Response to Comments.
>
> (a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and **shall prepare a written response**. The lead agency shall respond to comments raising significant environmental issues received during the noticed comment period and any extensions and may respond to late comments.
>
> (b) The lead agency shall provide a written proposed response**,** either in a printed copy or in an electronic format, to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.
>
> (c) The written response **shall describe the disposition of significant environmental issues raised** (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail **giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.**

> The level of detail contained in the response, however, may correspond to the level of detail provided in the comment (i.e., responses to general comments may be general). A general response may be appropriate when a comment does not contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment.
>
> (d) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:
> (1) Revise the text in the body of the EIR, or
> (2) Include marginal notes showing that the information is revised in the response to comments. (Emphasis added)

441. From its earliest days to the present, over four decades of CEQA case law has noted the importance placed on adequate responses to comments. Where comments cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. "*There must be good faith, reasoned analysis in response*." (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.)

….442. CDF's response to a comment regarding the efficacy of a mitigation measure was inadequate where it contained no analysis of the issues, contained no specific information justifying the rejection of the concern, and referenced a report that was unavailable. (*Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604.) "In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. (*San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 596 [122 Cal.Rptr. 100*]; Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist*., supra, 24 Cal.App.4th at pp. 841-842.) While the response need not be exhaustive, it should evince good faith and a reasoned analysis. (*San Francisco Ecology Center*, supra, 48 Cal.App.3d at p. 596; Guidelines, § 15088, subd. (b).)" *(Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.)

443. Ignoring non-duplicative public comments is prejudicial error. *(Environmental Protection and Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.App.4th 459.) An inadequate response to even one substantive comment can be enough to justify a writ of mandate remanding the decision to the lead agency. (*Gallegos v. California State Board of Forestry* (1978) 76 Cal.App.3d 945, 952-955.)

443. The requirements can be summarized as follows. First, there must be **a response** to the comment. Second, the response must be **in writing in the EIR**. Third, the response must describe the disposition of the issue raised. Fourth, a detailed comment must have a response at the same level of detail. Fifth, the response must include reasons when suggestions in the comments were not accepted. Sixth, there must be **good faith, reasoned analysis** in response. Conclusory statements unsupported by factual information will not suffice**.** Below we identify a partial list of the responses that do not meet CEQA standards.

1) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 7-2 AND 7-5 BY THE AGRICULTURAL COALITION RESULTING IN THE IMPERMISSIBLE DEFERRAL OF MITIGATION FOR IMPACTS RESULTING FROM THE CONVERSION OF AGRICULTURAL LANDS TO OTHER DEVELOPED USES.

444. Comments 7-2 and 7-5 encouraged the County to adopt the mitigation measure proposed by the Agricultural Coalition, and developed in consultation with County staff, for the conversion of agricultural land to other uses through implementation of the General Plan Update. That mitigation measure would have included in the general plan a 2:1 mitigation ratio for the conversion of resource production lands.

445. In response to the comment, County staff recommended that a 1:1 mitigation ratio be applied to agricultural land (not including rangelands) pending development of a permanent standard in the future. Later, the Planning Commission and the Board of Supervisors removed the interim mitigation ratio, and deferred development of mitigation standards for both resource production lands and agricultural land to an undetermined time in the future.

446. As noted above, the response must include reasons why the suggestions in the comments were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice**.**

447. The response does not explain why any interim mitigation standard cannot be included in the General Plan. Also, the response does not explain why there needs to be another planning process, at an unspecified time in the future, to address an issue already thoroughly studied and addressed by local stakeholders, local experts, County planning staff and consultants, and recommended by the State Department of Conservation. Nothing more needs to be done that was

not done during the 13-year GPU process. There is no justification for deferring the adoption of a mitigation measure, and accepting significant impacts. .

448. In addition, there does not appear to be any evidence that a 2:1 mitigation ratio for the conversion of resource production land "could place an undue burden on new development and unnecessarily limit new development within the County." Indeed, the use of the word "could" is speculative, not evidentiary, and as the draft General Plan makes clear, limiting new development is indeed necessary. There is a huge excess of development capacity on non-ag lands. What logic says that restricting development on agricultural will chill the market for development? Whatever it is, it is not explained in the response to comments.

449. As the EIR tells us, the Land Use Element and the Resource Production Element of the Draft General Plan include 24 goals, policies, and implementation measures related to protection of agricultural, forest, and mineral resources (DEIR, pp. 4.2-18 through 4.2-21). There is a long and storied history of ranching, mining, and logging in Calaveras County. Calaveras is a right-to-farm county. "Overall, agricultural production in the county rose 15% to 29 million dollars, with cattle and timber, our two largest commodities leading the way. (2017 Crop Report)." Rural residential development does not pay for itself. Resource production does. If Calaveras County is in fact going to take its 24 goals, policies, and implementation measures designed to protect resource production land seriously, then the mitigation ratio should definitely be 2:1 for conversion of resource production land.

2) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENT 11-18 ON THE PROJECT DESCRIPTION, RESULTING IN THE IMPERMISSLBLE REJECTION OF MITIGATION MEASURES THAT ARE SPECIFIC AND MANDATORY.

450. Response 11-18, regarding the Project Description is inadequate. It states that the County does not want "inflexible time frames" or too much specificity, and instead wants flexible policies. However, this logic cannot be used as justification for rejecting general plan policies that mitigate impacts.

451. By definition, mitigation must be mandatory. The intent of CEQA is to be action forcing. It requires agencies to make commitments to adopt specific feasible mitigation measures. The County cannot avoid the responsibility to adopt proper mitigation measures and implementation

timeframes simply by making the project description inconsistent with the concept of specific and mandatory mitigation. "[T]he 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110; citing *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 390.) If the County's manipulation of its project description to avoid impact mitigation were allowed, then CEQA would not protect the environment at all. Thus, Response 11-18 is not a good faith, reasoned analysis as required.

3) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-25, 11-36, 11-37, 11-41, AND 11-42 REGARDING AESTHETICS, RESULTING IN THE FAILURE TO ADOPT PROPER MITIGATION MEAUSURES.

452. Response 11-35 is not a good faith, reasoned response explaining in detail the reason that suggestions were not accepted. Response 11-35 does not explain why, after a 13-year planning process, the development standards and hillside guidelines must be deferred to an unidentified time in the future, without the required menu of feasible measures, objective standards of achievement, and commitment to adopt the program before impacts arise.

453. Also, the response mainly addresses impacts to existing designated Scenic Highways. Eligible state scenic highways, which the DEIR acknowledges is the entirety of Hwy 49 and other areas of Hwy. 4, are only addressed by Policy LU 4.1. Unfortunately, Policy LU 4.1 (as discussed in Comment 11-36) is implemented by 3 measures that are unenforceable, and therefore not adequate means of mitigating impacts along scenic highways.

454. Response 11-36 is unacceptable, as is Master Response #1. The three Implementation Measures or Policy LU 4.1 are deferred until an unspecified time in the future, without deferral justification and safeguards, and so are not mitigation measures.

455. Response 11-37 is not a good faith, reasoned analysis in response to the comment for proper mitigation measures. There is still no effective program to actually conserve and retain scenic resources. There is no Implementation Measure to "encourage their (resources) retention and expansion". The only IM is IM LU-5D regarding Special Events permit streamlining. This does nothing to retain scenic resources. .

456. Response 11-41 is inadequate because it does not provide a sound justification for deferring the implementation program, without the required menu of feasible measures, objective standards of achievement, and commitment to adopt the program before impacts arise. There is no strengthening of implementation programs to mitigate impacts of new light and glare, or new impacts to nighttime views. Without timelines, deferred IM's are not enforceable mitigation. There is little motivation to adopt a controversial dark skies ordinance. Nothing has happened to pass such an ordinance for the last ten years at the Planning Commission, why should the future be any different without a means of enforcement? "Because an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 420 [253 Cal.Rptr. 426.]). In short, IM LU-4B "Adopt a dark sky ordinance" has no time frames for County implementation, thus is ineffective and unenforceable.

457. Response 11-42 is inadequate because it is not a good faith reasoned response. Master Responses #1, #2, and #3 reject timelines, specific standards and objectives for Implementation Measures, making them unenforceable. This response defers development impact mitigation indefinitely. Mitigation measures incorporated as Implementation Measures only work if there is a "when" or "before x happens" included.

458. CEQA requires that mitigation measures be enforceable commitments to reduce or avoid significant environmental impacts. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445; CEQA Guidelines, sec. 15126.4, subd. (a)(2).) An agency must commit to implement a mitigation measure using mandatory language. Otherwise, it does not qualify as a mitigation measure. (CEQA Guidelines, sec. 15126.4, subd. (a)(2); *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal. App.4th 173, 199.) “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federal Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1261.) The County cannot avoid the responsibility to adopt proper mitigation measures and implementation timeframes simply by making the project description and plan objectives inconsistent with the concept of specific and mandatory mitigation. "[T]he 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as

to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110; citing *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 390.) If the County's manipulation of its project description and plan objectives to avoid impact mitigation were allowed, then CEQA would not protect the environment at all.

4) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-109, 11-131, 11-142, 11-143, 11-144, AND IMPROPERLY APPLIED MASTER RESPONSES 1 THROUGH 4 REGARDING LAND USE, RESULTING IN THE FAILURE TO PROPERLY DRAFT, PROPERLY ADOPT, AND PROPERLY REJECT, MITIGATION MEASURES.

459. Response 11-109 is completely inadequate because it does not respond to the point of the comment. The point of the comment is that DEIR Land Use Chapter 4.9 does not reference or list any Implementation Measures for Land Use and Planning goals and policies. There are no specific IMs to detail how each goal and policy would be carried out, so there is no analysis of IMs or evidence that impacts of development would be mitigated. Without IMs being referenced and analyzed, there is no disclosed basis for the EIR to conclude "less than significant impact", or "Mitigation Measures - None required."

460. Response 11-131 is an inadequate boilerplate response, "See Master Response #4," that does not respond in good faith, with detail and supporting evidence, to explain why the suggestion in the comment was not accepted. The comment provided a detailed and reasonable suggestion for a mitigation to lessen potentially significant negative environmental impacts of development to existing communities whose community plans would be rescinded or abandoned in the draft General Plan. The suggested measure would help implement Land Use Goals and Policies for these communities. The Comment requested inclusion of existing plan documents as "Placeholders until those community plans can be revised and adopted." This was done when Mariposa County adopted its general plan update. The Response did not even acknowledge this suggestion. The County didn't say why it disagreed with it and did not explain why the mitigation was not feasible.

461. Responses 11-142, 11-143, and 11-144 are dismissive boilerplate Master Responses. They did not explain in good faith how IMs that are optional and/or deferred without the required menu of feasible measures, objective standards of achievement, and commitment to adopt the program before impacts arise qualify as CEQA mitigation measures. Instead, the response tries to lump discrete comments together and use a "one-size-fits-all" response that lacks the necessary detail to address the discrete comments.

462. As a general rule, an agency cannot rely on mitigating a significant impact by developing a mitigation plan *after* project approval. "The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." (*Oro Fino Gold Mining Corporation v. County of El Dorado* (3d Dist. 1990) 225 Cal.App.3d 872, 884-885.)

463. The exception to the general rule is that deferral may be permissible under limited circumstances. First, the agency must provide a reason why the deferral is required. (San Joaquin Raptor Center v. County of Merced (207) 149 Cal.App.4th 645, 670-671.) Next, the agency must display a commitment to mitigating the impacts, list a menu of feasible mitigation measures, and identify performance criteria that the measures must satisfy. (*Sacramento Old City Association v. City Council of Sacramento* (3d Dist. 1991) 229 Cal.App.3d 1011, 1028-1029.) An agency may not defer adopting specific mitigation measures by adopting merely a "mitigation goal" without specific performance criteria and a menu of feasible mitigation measures. Similarly, merely committing to study an impact or the feasibility of its mitigation in the future is not sufficient. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118-1119.) Mitigation measures are improperly deferred when there is no commitment to a specific performance criteria, and the mitigation is not in place at the time of project implementation. (*POET v. California Air Resources Board* (2013) 218 Cal.App.4th 681.)

464. The response ignored the list of Land Use Element IMs provided in the comment that are not commitments to mitigation. It dismissed all comments about lack of timelines, objectives, and commitment, optional wording, and deferred mitigation, by referring to boilerplate Master Responses 1, 2, and 3. These responses seem to reject all need for commitment or timelines/ objectives, or specificity. The Land Use Element implementation programs listed can be postponed indefinitely; there is no commitment. Such implementation programs do not qualify as enforceable CEQA mitigation when they include optional/vague wording, no commitment, and lack timeframes for completion.

5) THE COUNTY FAILED TO LAWFULLY RESPOND TO PUBLIC COMMENTS REGARDING ALTERNATIVES.

a) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENT 11-40 ON AESTHETICS BY REFERENCING EVIDENCE OUTSIDE THE RECORD TO SUPPORT ITS CLAIM THAT THE MINTIER DRAFT GENERAL PLAN WAS NOT A VIABLE ALTERNATIVE.

465. Response 11-40 is inadequate, because the County's rejection of the request in the comment is not supported by substantial evidence in the record. The County has not provided documentation to substantiate the claim that the 2011 draft Mintier General Plan "was not viable as a guiding policy document for development within the County" ..."deficient", and "not consistent with policy direction provided by the County Board of Supervisors." The County cannot make such allegations in the EIR regarding the Mintier Plan, and then at the same time refuse to include the plan in the administrative record for the EIR. (Planning Commission General Plan Hearing, May 22, 2019.)

466. Furthermore, the statement is far too conclusory and not sufficiently explanatory. With which policy directions from which Board of Supervisors was the Mintier General Plan inconsistent? The response does not say. The publicly released products produced by Mintier and Associates were consistent with policy direction the BOS gave the consultants from 2007 until they were let go in 2011. Planning staff, general plan consultants, and county supervisors have all come and gone in the past 13 years of the General Plan Update. Politics and policy directions have changed, and then changed again. The BOS has never even seen the Mintier General Plan. County Planning Director Willis, who decided the draft was not acceptable in 2012, is long gone from the County. The Board of Supervisors changed after the 2012 election, and changed again after the elections in 2014, 2016, and 2018. Without providing the Mintier General Plan, there is not substantial evidence that the Mintier General Plan and policies are not consistent with County policy direction.

b) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-169 TO 11-173 ON ALTERNATIVES, RESULTING IN THE FAILURE TO EVALUATE VIABLE POLICY ALTERNATIVES TO REDUCE IMPACTS, AND FAILURE TO SUFFICIENTLY DESCRIBE THE MAP-BASED ALTERNTIVES IN THE EIR

467. An EIR must evaluate a range of reasonable alternatives to the project capable of eliminating any significant adverse environmental effects of the project, or reducing them to a level of insignificance, even though the alternatives may **somewhat impede** attainment of project objectives, or may be more costly. (Pub. Resources Code, sec. 21002; Cal. Code Regs., tit. 14, sec. 15126, subd. (d) [emphasis added]; *Citizens for Quality Growth v. City of Mount Shasta* (3d Dist. 1988) 198 Cal.App.3d 433, 443-445.)

468. Under CEQA, the range of alternatives that an EIR must study in detail is defined in relation to the adverse environmental impacts *of the proposed project*. An EIR must include a description of feasible project alternatives that would substantially lessen the project's significant environmental effects. (Pub. Resources Code, § 21061; Cal. Code Regs., tit. 14, § 15126.6, subds. (d), (f).) The project's environmental effects, in turn, are determined by comparison with the existing "baseline physical conditions." (Cal. Code Regs., tit. 14, § 15125, subd. (a); see *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.) (*In re Bay-Delta* (2008) 43 Cal.4th 1143, 1167.)

469. "The range of feasible alternatives shall be selected and discussed in a manner to foster **meaningful** public participation and **informed** decisionmaking." (CEQA Guidelines, sec. 15126.6 subd. (f), emphasis added.) An EIR need not consider every conceivable alternative to a project or alternatives that are infeasible. (*Ibid*.; see also *Goleta, supra,* at p. 574.) [2] "In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of 'feasibility.' " (*Goleta, supra,* 52 Cal.3d at p. 565.) CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1; see also Cal. Code Regs., tit. 14, § 15364.)

…..470. "The issue of feasibility arises at two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency's later consideration of whether to approve the project. [Citation.] But 'differing factors come into play at each stage.' [Citation.] For the first phase--inclusion in the EIR--the standard is whether the alternative is *potentially* feasible. [Citations.] By contrast, at the second phase--the final decision on project approval--the decisionmaking body evaluates whether the alternatives are *actually* feasible. [Citation.] At that juncture, the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*Mount Shasta Bioregional Ecology Center*, quoting *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)

471. An appellate court reviews for substantial evidence the conclusion certain alternatives do not merit extended discussion in the EIR. (*Preservation Action Council v. City of San Jose (*2006) 141 Cal.App.4th 1336 [Insufficient evidence to support the finding that the alternative not included in the EIR was infeasible]; *Uphold our Heritage v. Town of Woodside* (2007) 54 Cal.Rptr.3d 366 [The record did not support the City's finding that alternatives were infeasible].)

472. Comments 11-169 to 11-173 explain why the EIR should have evaluated one or more additional alternatives. The response to these comments are not in good faith as they do not reference evidence in the record to justify excluding additional alternatives from the record.

6) THE COUNTY FAILED TO LAWFULLY RESPOND TO PUBLIC COMMENTS REGARDING IMPACT ANALYSES.

a) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-102, 11-103, 11-104, 11-107, 11-115, 11-116, 11-118, 11-119, AND 11-120 REGARDING LAND USE, RESULTING IN THE FAILURE TO INCLUDE NECESSARY IMPACT ANALYSES IN THE FINAL EIR.

573. Response 11-102 is inadequate because it does not respond in good faith to the comment. It does not answer the comment's request, and does not recognize the need to analyze the ALUCP (Airport Land Use Compatibility Plan) for land use conflicts or inconsistencies with the Draft General Plan and Land Use Map, and to list any conflicts in the EIR. This is a standard impact analysis recognized in initial studies, and carried out in EIRs. The response is not responsive.

574. Response 11-103 is inadequate as it does not respond in good faith to the request that the EIR evaluate conflicts between the zoning ordinance and the GPU in the EIR. Inconsistencies and conflicts in land use and planning between the GPU and the county's existing zoning are NOT acknowledged or analyzed in the DEIR. Again, this is a standard impact analysis recognized in initial studies, and carried out in EIRs. IM LU-2A, referenced in the response, is not in the DEIR (NO IM's are in the Land Use Chapter of the DEIR). There is no analysis of zoning consistency with the General Plan, or what land use conflicts will occur after adoption of the General Plan. IM LU-2A to update the Zoning Ordinance also has no timeframe for implementation.

575. It could take years to update Zoning. It took years to pass one ordinance regarding the commercial cultivation of cannabis. Not including the unknown zoning conflicts with the GPU, the General Plan Update identifies the need for 43 additional zoning ordinance reviews and updates. Thus, the analysis of conflicts between the GPU and zoning is needed if the EIR is to serve its informational function. The Board of Supervisors really needs to know how much rezoning it is getting itself into by adopting the General Plan Update.

576. Response 11-104 is inadequate because it does not answer the question of whether Specific Plans have been reviewed for conflicts and consistency with the draft general plan. This is a routine analysis identified in initial studies and completed in EIRs. The response just says Specific Plans are required to be consistent, and would be amended after adoption.

577. The response does not explain why this potential conflict with Specific Plans is NOT discussed under Impacts and Mitigations in the DEIR (as requested), or in the Land Use Element. There is NO Implementation Measure for analyzing Specific Plans for consistency and amending them in the draft general plan or DEIR. This information is needed in the EIR if it is to serve its informational function. The Board of Supervisors really needs to know if existing specific plans will need to be substantially amended after approval of the General Plan Update. Such changes could affect the neighborhoods and the fiscal soundness of a major development.

578. Response 11-107 is inadequate because it does not cure the failure of the EIR to review or analyze the impact of the rescision of existing adopted community plans' mandatory policies that are specifically designed to mitigate impacts of development for those unique communities. Existing adopted community plans, policies, and programs have not been analyzed in the DEIR. Once adopted, the draft General Plan will supercede the adopted community plans, and all mitigations and implementation unique to the community will be lost. Regardless of whether the County considers those community plan policies as newly proposed mitigation measures, or

exiting mitigation measures that must be eliminated, the County needs the analysis in the EIR or elsewhere in the record so that the County can make the proper CEQA findings. "We therefore hold that a governing body must state a legitimate reason for deleting an earlier adopted mitigation measure, and must support that statement of reason with substantial evidence. If no legitimate reason for the deletion has been stated, or if the evidence does not support the governing body's finding, the land use plan, as modified by the deletion or deletions, is invalid and cannot be enforced." (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342; 359.)

579. Response 11-115 is inadequate because it is not based upon specified evidence in the record, and does not cure the failure of the DEIR to analyze the potentially significant development impacts to existing established communities, due to loss of their existing specific policies and implementation measures in community plans. There are mitigation policies/programs in existing community plans that are NOT covered or duplicated in the Draft General Plan. (See Infusino, *Community plan policies can reduce the significant impacts of the General Plan Updat*e, 5/20/19.) This analysis is needed to properly inform decsionmakers of the impacts of their decision to rescind the community plans.

580. Response 11-116 is inadequate because it is not responsive to the comment regarding the inadequacy of DEIR's analysis of the physical impacts of development to:

1) established communities not included in the draft General Plan, and

2) all communities with existing mandatory policies and programs, that will now have those policies abandoned or replaced by "optional" general plan programs, and

3) communities with no community information included or analyzed in the DEIR.

581. Responses 11-118 and 119 are inadequate because they do not correct the DEIR to analyze the potential land use environmental impacts due to General Plan Update conflicts or inconsistencies with Title 17, the Airport Land Use Compatibility Plan, or with existing, adopted community plans.

582. Because response 11-120 is inadequate, the DEIR remains flawed. In Impacts & Mitigations 4.9-2, the DEIR does not acknowledge that the General Plan Update's land uses conflict and are inconsistent with Title 17 of the County Code of Ordinances, which is a land use and zoning regulation adopted for the purpose of avoiding or mitigating many significant environmental impacts of development, such as noise, lighting, traffic, incompatible uses, loss of open space and ag lands, and more. This is not a good faith effort at full disclosure.

b) THE COUNTY FAILED TO LAWFULLY RESPOND TO COMMENTS 11-148, 11-149, 11-154 THROUGH 11-157, AND 11-159 REGARDING CIRCULATION IMPACTS.

583. Response 11-148 fails to respond to the comment about capturing additional fair share funds from other road users.

584. Response 11-149 quotes CEQA Guidelines Section 15126.2 (a) stating, in essence, that the impact analysis need only address changes in existing physical condition, not existing deficiencies. This is only half true. CEQA first requires an accurate environmental setting. Among the other relevant aspects of the environmental setting, the agency must divulge harm to the environment caused by current and past mismanagement, and any efforts being made to remedy that harm that might affect the proposed project. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874.) The allowance of continued development in the face of unfunded transportation needs is the "past mismanagement" that is the cause of the existing deficiencies. If this is not remedied, it will cause the same impacts under the General Plan Update. The EIR fails as an informational document because it refuses to address this issue. The excuse for not discussing the issue is not based upon a good faith and reasoned consideration of the County's CEQA obligations.

585. Responses 11-154, 11-155, and 11-156 relate to the comment requesting a Congestion Management Program. The responses do not address the request in the comment, nor do they explain why the suggestion in the comment was not accepted. The response states, "Because the County has not adopted a congestion management plan, and is not currently required to adopt such a plan per State requirements, this EIR is not required to evaluate consistency with such a plan." It is true that the County has not exceeded 50,000 person threshold triggering the preparation of a Congestion. However, the request was not for an assessment of consistency with a plan that does not exist. The request was that the County begin a Congestion Management Program as mitigation now, because traffic congestion problems are apparent and the County population is already at 48,000 people.

586. Response 11-157 is to a comment that mentioned "conflicts between the RTP and the General Plan" and the CPC letter which highlighted the conflicts between the RTP and the GPU. The response stated that the CPC letter to CCOG does not reference "conflict", but "suggests that

the Calaveras Council of Governments consider entering into a Memorandum of Understanding with the County to create and maintain consistency between the two documents. The CPC letter actually does lists a number of conflicts between the RTP and the General Plan. Response 11-157 is factually incorrect, and is not a good faith effort in response to the comment.

587. Response 11-159 addresses a comment about using LOS subcategories rather than allowing roads to degrade by an entire LOS category (e.g. C to D). The response stated that "…, defining minimum roadway facility operations by peak hour vehicle trips, rather than LOS, is not feasible. While additional subcategories of a given LOS grade may be established using other factors such as average vehicle delay or volume to capacity (V/C) ratio, the County has elected not to consider such options." Since using subcategories would reduce the allowable impacts of the General Plan Update, it would mitigate impacts. The County knows of a way to reduce plan impacts, but does not evaluate it in the EIR, does not explain why it is infeasible, and does not adopt it as a mitigation measure. The response does not explain why the suggestion was not adopted.

PRAYER FOR RELIEF

The Petitioner is grateful for the "progress' reflected in the GPU. Nevertheless, the Petitioner is prejudicially harmed by the legally incomplete GPU and the legally substandard EIR. Because our dear friends, neighbors, and family members deserve to benefit from a future that includes lawfully planned economic development, lawfully prescribed resource conservation, and lawfully accessible public documents, the Petitioner respectfully prays that:

For Cause of Action 1 above:

This court declare that the GPU does not comply with the requirements of the Government Code.

This court issue a writ of mandate, or other appropriate writ, compelling Respondents to comply with the requirements of the Government Code in preparing corrections to the GPU.

For Cause of Action II above:

This court declare that the County's failure to release the 2011 Mintier General Plan does not comply with the California Public Records Act.

This court issue a writ of mandate, or other appropriate writ, compelling Respondents to release the 2011 Mintier General Plan to the Petitioner, as redacted if necessary.

For Cause of Action III above:

This court declare that the FEIR for the GPU is not in compliance with CEQA.

This court declare that the Board's CEQA findings for the GPU are legally inadequate.

This court void the Respondents' approval of the GPU, and related approvals of November 12 2019, and enjoin **as needed** actions from being taken based upon the authority of those approvals that may result in significant impacts that could be reduced by incorrectly rejected mitigation measures or alternatives. .

This court void the Respondents' certification of the GPU FEIR and the Notice of Determination regarding the GPU, and enjoin **as needed** actions from being taken based upon their authority that may result in significant impacts that could be reduced by incorrectly rejected mitigation measures or alternatives.

This court issue a writ of mandate, or other appropriate writ, compelling the Respondents to make logical findings supported by substantial evidence in the record as a whole prior to any subsequent approval of any general plan amendment.

This court issue a writ of mandate, or other appropriate writ, compelling Respondents to complete adequate CEQA documents prior to any subsequent approval of a general plan amendment.

In the interests of justice:

This Court award Petitioner reasonable attorney's fees and costs of this action.

This court award such other relief as may be just and proper.

Dated:_____

Respectfully submitted:

_____

Thomas P. Infusino,

Attorney for Petitioner