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Dear Planning Commissioners,

We greatly appreciate the efforts of your staff in reviewing the general plan issues on the 7/23/15 agenda.  For the most part we can live with the recommendations of the staff report on Objectives and Implementation, and the staff report on the Noise Element.

1. **With regard to the location of the implementation programs, we can live with staff’s recommendation that the implementation measures be listed at the end of the elements, after the sections on goals and policies, as they are in the 2014 draft plan.**
2. **We request that each implementation program list the policies it is intended to implement**.

The staff report expresses a reluctance to provide an implementation measure for each policy.  The staff report indicates that some implementation programs address multiple policies.  (Staff Report – Objectives and Implementation Programs, p. 6.)  As a compromise, we encourage staff to list the policies that each program is designed to implement.  This does not require reorganizing the plan.  It just requires adding a line to the implementation program to identify which policies it implements.  In this  way the County can provide the cohesiveness, clarity, and ease of comprehension that people want in the plan, without making major modifications to the format of the plan.

1. **We can also support the Planning Commission adding “more specificity”  and “measurable outcomes” to implementation programs if appropriate.**
2. **Provide specificity for polices and/or implementation programs to be considered a mitigation measures.**

The staff report indicates a reluctance to comprehensively include measureable objectives, quantified standards,  implementation responsibilities, implementation time frames, and implementation funding details to the plan.   Supervisor Kearny also indicated on June 30 that he would like such detail to be selectively and judiciously applied.

We suggest that the Planning Commission provide specificity to those policies and implementation measures it wishes to qualify as mitigation measures.

We note that the general plan will be subject to CEQA review. (CEQA Guidelines, sec. 15378(a)(1).) That review will indicate potentially significant impacts associated with general plan implementation. (CEQA Guidelines, sec. 15126.2.)  In addition, that review will also identify which general plan provisions are expected to mitigate impacts on the environment. (CEQA Guidelines, sec. 15126.4)  The County is obligated to adopt feasible mitigation measures to reduce potentially significant impacts, until there are no more measures, or until the impact is reduced to a level of insignificance, whichever comes first.  (See CEQA Guidelines, secs. 15091 & 15092.)

For a general plan policy or implementation program to qualify as impact mitigation, it must reflect **commitmen**t by the county to implement it.  (CEQA Guidelines, sec. 15126 (a)(2).) A general plan provision that includes a measureable objective, that includes a quantified standard, specifies a responsible department, provides a timeframe for implementation, and notes available funding sources demonstrates commitment on the part of the County to implement it as a mitigation measure.  The same cannot be said for a policy or implementation program that lacks those components.

For a policy or implementation program to qualify as a mitigation measure, it must not be merely a vague goal, but reflect a feasible means of solving the problem.   (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118-1119, [An agency may not defer adopting specific mitigation measures by adopting merely a “mitigation goal” (e.g., replacement of water lost by project implementation) without a specific performance criteria and a menu of feasible mitigation measures.].)

Mitigation can take two forms.  It can be mitigation implemented as part of the project, or it can be mitigation that will be deferred and developed in the future.

For example, measureable objectives (e.g. "Units for … 10 low income households.”) and quantified standards (e.g. Noise Element Tables) depict clear mitigation levels that are part of the General Plan, and will be implemented immediately upon plan adoption.  In the context of the asphalt plant appeal hearings, the Planning Commissioners heard how useful such bright line tests can be in helping County staff to promptly evaluate and condition projects for approval (e.g. air pollution review of generators).

By way of contrast, policies and implementation measures to develop  programs in the future are considered deferred mitigation. The 2014 Draft General Plan includes deferred mitigation proposals related to design guidelines, mitigation guidelines for natural resource impacts, a habitat conservation plan, an oak woodland management program, climate change reduction measures, a parks and recreation plan, uniform defensible space standards, emergency evacuation route designation, and agricultural and forest land  conversion mitigation standards and setbacks.

To ensure that deferred mitigation will qualify as mitigation, it is best to meet three criteria.  First, provide a list of feasible mitigation measure from which to choose in the future.  Second, establish a mitigation standard that will be met.  Third, commit to adopting sufficient mitigation to meet the standards.  (*Sacramento Old City Association v. City Council of Sacramento* (3d Dist. 1991) 229 Cal.App.3d 1011, 1028‑1029.)  The County risks violating CEQA, and having its general plan adoption declared invalid,  if it varies from these three criteria

Thus, the Planning Commission has two choices.  The Planning Commission could wait until the Draft EIR is complete, and then choose which general plan policies and implementation provisions should be upgraded with the specificity needed to qualify as mitigation measures.  This will add more time later in the process.  Some Planning Commissioners here today may not be present at that time.

The other option is to take the time now to upgrade with specificity those policy and implementation provisions that that the current Planning Commission finds most suitable for impact mitigation.  (For example, the commissioners could add details to those mitigation measures that they find least harmful to private property rights.) This will reduce the need for additional time later in the general plan update process.  This will ensure that the preferences of the current Planning Commission have influenced the choice of the most suitable mitigation measures.

**Under no circumstances should the Planning Commissioners be led to believe that the County will achieve a valid general plan without making commitments to implement feasible measures to mitigate the impacts of the general plan update.**

We heard County Counsel warn the Planning Commissioners and the Supervisors on June 30 to avoid making specific time commitments regarding plan implementation, for the County could later be found to be in violation of its own plan.  To that we respond that the County can amend the general plan four times per year.  We expect that the County will promptly  extend implementation deadlines when necessary. However, that is no justification for starting without the deadlines necessary to prioritize tasks and focus efforts.  We heard from Supervisor Ponte and Commissioner McLaughlin on June 30 that prioritizing tasks and focusing efforts are important parts of a business plan, and should likewise be include in the General Plan Update.  We agree.

1. **We provide two examples of how to add specificity to demonstrate commitment to implement programs.**

Attached please find sample pages from two plans that demonstrate how to add specificity to demonstrate a commitment to implement programs. (See Attachments from San Joaquin County Draft Plan, and COG Draft Plan for Valley Springs.)

1. **We can support the changes proposed in the Noise Element to address public comments.**

We are glad to learn that the noise contours will be added to the noise ordinance in the near future.  (Noise Element Staff Report. P.1.)   Some of the bullet points on page 2 of the staff report on the Noise element are also constructive.  We thank staff for adding additional background information, for expanding the purpose of Goal NOI-1, and for adding Policy NOI 1.13 and Implementation Program NOI 1-E.  Below we address our other recommendations.

1. **Apply design features to reduce noise in residential subdivisions near major roadways**.

It is not clear from the Noise Element if any design features will be employed when noise sensitive land uses (e.g. major subdivisions) are proposed near major transportation noise sources (e.g. highways).  Other county’s do these analyses and incorporate noise mitigating landscaping, sound walls, and building materials into the design of the residential project.  If necessary. Please modify NOI 1.7 to state, “New development of noise sensitive land uses ***(including major residential subdivisions)*** adjacent to exiting ***transportation*** or stationary noise sources …”   If that language is insufficient, please consider another policy to cover this issue.

1. **State which County Department is responsible for implementing the programs following Planning Commission review and Board of Supervisor approval.**

The staff report properly indicates that most of the programs will be implemented by the County.  (Staff Report – Noise Element, p. 2). Most people understand that.  However, it is important to specify which County department or departments will be responsible for the implementing the program, and whether the Planning Commission and Board of Supervisors will be involved.  These Departments need to be on notice that they are responsible for getting the funding and the staff to implement the programs.  The public wants to know whether management standards will be first reviewed by the Planning Commission and approved by the Board of Supervisors.  Private and nonprofit sector partners need to know who they will be working with to implement programs.

For example, NOI 1-A is a County Code modification, so we know that that will get Board of Supervisor review and approval.  However, it is not clear if the uniform noise management standards (NOI 1-B) will be developed by the Planning Department or Environmental Health; and whether they will need Planning Commission review and Board of Supervisor approval.

1. **State that noise reduction techniques will be applied to expanded uses, and to modifications of public roadways.**

Page 2 of the staff report notes the difficulty of applying noise standards to existing uses, and notes that such standards can be applied as uses expand.  It also invited suggested language. We want the Noise Element to specifically say that it will seek to reduce noise from expanded uses.  Perhaps the last line of the introduction could state that the noise standards “are intended to apply to new ***and expanded*** projects and noise generators to reduce noise conflicts.”

Furthermore, the existing Noise Element only mitigates road noise when a road project is proposed to make more noise.  It does not address efforts to reduce existing noise levels on public roads as they are modified.  We note that sound attenuation can be accomplished as existing public roadways are modified (e.g. repaved, re-aligned, etc. ) even when they are not being expanded.  Sound attenuating paving, and additional sound buffers can be added to reduce the sound impacts to neighboring properties.  This may help to lower neighbors’  development costs associated with sound proofing, may expand the scope of their potential uses as noise is reduced, or merely may enhance the value of existing residential or other uses of the neighboring site.  **Please add a policy stating: “As public roadways are modified, include design modifications to reduce noise impacts when feasible.”**

1. **Make some provision to protect public parks from incompatible noise sources.**

The staff report does not recognize public parks as noise sensitive uses.  The concern here is that parks are often used as buffers between noise generators and residential uses.  The problem is that really excessive levels of industrial or transportation noise can interfere with the enjoyment of a park.  This can often be resolved by designing such parks to shelter picnic areas and the like from the neighboring noise source.  Please consider a policy stating, **“Design noise generating neighboring uses and noise buffering parks to provide sufficient noise attenuation to accommodate park uses.”**

                Thank you for your attention to these important issues.

                Sincerely,

                Tom Infusino, Facilitator

                Calaveras Planning Coalition