

To: Calaveras County Planning Commission and Board of Supervisors

From: Tom Infusino, Calaveras Planning Coalition

RE: Clarifying the Staff Report for the Planning Commission General Plan Hearings

Date: 5/20/19

I. Recommendations

A) Review the EIR and the General Plan Update to determine if they meet statutory standards and community expectations. If the Commission finds the EIR and/or the General Plan Update need improvements, we encourage the Commission to direct the Planning Department to make any such changes to the EIR the Commission deems necessary. After those improvements are made the Commission can make its recommendation to the Board of Supervisors.

B) If the EIR indicates that a project will have a significant impact, and there is one or more feasible mitigation measures that can reduce or eliminate that impact, then recommend to the Board of Supervisors that, prior to approving the project, they adopt mitigation measures until the impact is no longer significant, or they run out of feasible mitigation measures.

C) After the last hearing day in the week, please post on the Planning Department webpage the topic that will be discussed at the beginning of the next Planning Commission meeting.

II. Analysis

There is some confusing information in the staff report that warrants further explanation. I have submitted this memo for your consideration.

Pages 2-3: The discussion of alternatives in the staff report actually describes the problem with the alternatives analysis in the EIR. The map-based alternatives described in the EIR so

fundamentally did not meet the preliminary standard for presenting feasible alternatives, that the County could not even manage to complete a land use map for them, so that their impacts could be accurately assessed and compared to the proposed project.

Page 3: The report skims over the legal standards for EIR adequacy too simplistically. An EIR and the project approval findings that follow are judged by two different standards.

The CEQA findings of fact made at the time of project approval are judged using the substantial evidence test. That is explained on pages 4 and 5 of the staff report.

On the other hand, the adequacy of the bulk of the EIR is judged by the “failure to proceed in accordance with the law” standard, which is much less deferential to the agency. The court uses its independent judgement to determine if the lead agency followed proper CEQA procedures in preparing the EIR, put the necessary information into the EIR so that the decisionmakers could make an informed decision, and made a good faith effort at full disclosure of the potentially significant environmental impacts.

Page 3: The staff report is partially correct that, for the most part, the EIR does not dictate the final decision. However, with regard to the adoption of mitigation measures, the EIR does have a huge influence over the decision. If the EIR indicates that a project will have a significant impact, and there is one or more feasible mitigation measures that can reduce or eliminate that impact, then prior to approving the project, the County MUST adopt mitigation measures, until the impact is no longer significant. (CEQA Guidelines, 15091.) In this respect, the EIR does have a huge influence on the final decision.

Page 4: The staff report refers to the general plan as “self-mitigating”. It is true that the mitigation measures are contained in the general plan, rather than in a separate document as you

might see with a development project. However, this does not mean that the mitigation measures are automatically implemented. Diligent, often time-consuming, and sometimes expensive efforts will be needed to implement the policies and programs in the general plan mitigation measures. An effective mitigation monitoring and reporting plan will be essential.

Page 4: The report correctly indicates that the County cannot predict all the project-specific impact mitigation measures that may be needed for every future project. However, if we are to make CEQA compliance easier for applicants, when possible, we should develop mitigation standards for them to achieve, and menus of mitigation measures to help them achieve those standards. By providing these standards up front, applicants can design their projects to mitigate many impacts, and avoid unnecessary environmental review expenses.

Page 4: The report says that conflicts with the objectives of the plan **may** justify rejection of a mitigation measure. That may not be true if the objective is not sufficiently specific. For example, just because a mitigation measure requirement may discourage one specific development, does not make it infeasible as contrary to an objective promoting economic development in general. Similarly, an objective that is fundamentally contrary to the CEQA concept of mitigation cannot be used to reject mitigation. For example, one cannot reject a mitigation measure based upon an objective to avoid modifying development projects as proposed. Also, being philosophically opposed to environmental mitigation is not an excuse for universally rejecting any or all mitigation measures.

Page 4: The report recommends against EIR recirculation. However, it is too early to make that determination. The need for recirculation will depend upon what improvements to the EIR the Planning Commission needs before it feels comfortable recommending certification of the EIR to

the Board of Supervisors. If those additions trigger recirculation, then recirculation would be necessary.

Page 6: The hallmark of a disadvantaged community is that it suffers environmental degradation disproportionately to other communities. The communities that have major state highways (like 4 and 49) running through the center of town, like here in San Andreas, expose their business patrons, residents, clinic patients, and school children to toxic emissions from diesel vehicles. The General Plan should address this concern. It is yet another reason to promote truck route bypasses.

Page 6: The report indicates that it is not possible to predict at this time, which topics will be discussed on which hearing day. After the last hearing day in the week, please post on the Planning Department webpage the topic that will be discussed at the beginning of the next Planning Commission meeting. This will help people who did not participate the prior week to come prepared to participate in the following week.

Page 7: Staff recommends that the Commission recommend that the Board of Supervisors certify the EIR and approve the General Plan.

We encourage the Commission to review the EIR to determine if it is suitable for certification at this time. If the Commission finds the EIR needs improvements before it is suitable for certification, we encourage the Commission to direct the Planning Department to make any such changes to the EIR the Commission deems necessary.

Similarly, we encourage the Commission to review the General Plan to ensure that it meets statutory and community standards. If the Commission feels that the General Plan needs

improvements to meet statutory or community standards, we encourage the Commission to direct the Planning Department to make such changes.

In this fashion, the ultimate result will still be a recommendation from the Commission that the Board of Supervisors certify the EIR and adopt the plan.