TO: Calaveras County Board of Supervisors

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RE: Introduction and Land Use Element Legal Flaws, Weaknesses, and Solutions

DATE: March 20, 2019

I. Background

This memo summarizes solutions to fix the Draft General Plan Introduction and Land Use Element to comply with planning law.

Below we break down the problems with the Draft General Plan into two categories, legal flaws and policy weaknesses. We do so because some may find it a useful way of prioritizing tasks. We at the CPC strongly feel that each of these problems deserves a solution, regardless of how they are categorized.

We recognize that reasonable minds may differ when placing a problem in these two categories. One person may interpret a problem as a mere policy weakness, while another may argue that it is a planning law violation. Rather than getting bogged down in that debate, we encourage you to instead focus on finding a solution you can live with to each problem. To help keep you thusly focused, below we provide one or more solutions to address each problem raised.

When viewing our proposed solutions, you may be surprised to find them, well, palatable. Many of these solutions are NOT phased as strongly as we would prefer. In the spirit of seeking consensus, we have tried to find a middle ground between the positions advocated during this General Plan Update process. We hope that the Board does the same.

Attached is a shorter summary listing each of the problems associated with the Introduction and Land Use Element, followed by their solution. We encourage Planning Commissioners and Supervisors to use this list as a guide in discussing these issues with staff, consultants, and the public.

II. The 2016 Draft General Plan Introduction.

A) Legal flaws and their correction.

1) The General Plan Purpose is too narrow.

Government Code, Section 65400 indicates that a general plan is to serve as "an effective guide for orderly growth and development, preservation and conservation of open space lands and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan."

However, the purpose of the 2016 Draft General Plan is only focused on "growth and development" and "economic conditions." The plan only "promotes economic prosperity", "protects property rights", enhances "productive resources", and enhances "innovative economic

pursuits." (I1 Introduction, p. INT-1) That only encompasses the elements that cover land use, circulation, housing, public facilities and services, and resource production. However, there is more to the general plan than that. The general plan also includes required elements covering conservation and open space, noise, and safety. (Government Code, sec. 65302.) A general plan is also an opportunity to coordinate local budget planning with state and federal government programs. (Government Code, sec. 65300.9.)

The solution is to use the words from the Government Code to finish the purpose statement in the general plan:

> "The Calaveras County General Plan is intended to serve as an effective guide for orderly growth and development, preservation and conservation of open space lands and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan."

2) The reasons for general plan adjustments are too narrow.

Government Code, Section 65358 allows the County to amend a general plan providing that the amendment is "in the public interest." The Introduction states that adjustments may be made to "accommodate changes in economic conditions, population growth, or demographics." (I1 Introduction, p. INT-1.) These are certainly circumstances when the plan could be amended to allow for additional needed development. However, this is only a very narrow spectrum of what is "in the public interest." For example, a general plan amendment might be needed to accommodate a Williamson Act contract for agricultural land conservation.

The solution is to change the sentence to: "Adjustments to the plan may be necessary to serve the public interest."

3) The general plan is too general, flexible, and unspecific to be practical.

The Introduction includes a guiding principle, "Where practical, the General plan will be as general as possible, rather than specific, favoring flexibility and adaptability." (I1 Introduction, p. INT-1.) CEQA requires that general plan mitigation measures be mandatory and enforceable. General Plan impact mitigation programs to be developed in the future must reflect the County's commitment to adopt them, and must specify the performance standards that will be applied. While impact mitigation would appear to be one of those instances in which it is not "practical" for the general plan to be flexible and not specific, the Planning Commission, the Planning Department and its consultants are not currently implementing the guideline in that fashion. Instead, they are keeping mitigation policies optional, and proposing future mitigation programs without performance standards. Because the staff is interpreting this guiding principle to justify not complying with CEQA, the guiding principle needs to be changed or reinterpreted.

The solution is to change to guideline to reflect the law. For example:

> "When a policy or program is intended to mitigate an impact of the General Plan, it will express a mandatory commitment on the part of the County to implement the policy or program, and will include a performance standard. Other general plan policies and programs may be phrased in more general rather than specific terms, to promote flexibility and adaptability."

4) The Community development guiding principles are not consistent with the Community Plan Element.

A general plan is intended to be "an integrated, internally consistent and compatible statement of policies." (Government Code, sec. 65300.5.) 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." 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 each plan. 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." (See A20 Avery-Hathaway Pines community plan analysis, A21 San Andreas community plan analysis, A22 VSCP White Paper.) Finally, there are no provisions from any of the existing and proposed plans along the entire Highway 4 corridor from 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."

The solution is to include the community plans in the General Plan Update.

5) The General Plan is not consistently based upon the DOF's population projections.

The Introduction states that the general plan is "based on the DOF's population projections" that an additional 5,413 residential units are needed by 2035 for an additional 8498 people. (I1 Introduction, p. INT-2.) In some respects this is true. In the DEIR, and in many general plan elements, the County is estimating infrastructure and service needs based upon the DOF population projections. Thus, the DEIR estimates trip generation from 6,374 new residential units through 2035, and 19,979 (3 times the DOF number) at build out. (DEIR, p. 4.13-15

However, the land use map accommodates 51,688 new units at full build out. Even assuming very conservative buildout densities, the Land Use Element estimates development of 23,000 units at buildout. Having some excess land use capacity (e.g. 20%) in a plan is understandable to allow for the market to function without the constant burden of general plan amendments. However, there is no economic justification for a land use map with the potential for four to ten times the capacity necessary to accommodate the DOF growth projection. (LU1 Land Use Element, p. LU3.) Thus, there is a huge inconsistency between the land use designation map,

and the DOF population projection used to identify infrastructure and service needs. (A2 Other DEIR Comments, p. 17.)

The Land Use Element assumes that many of the lands given residential designation will not develop due to other constraints. If that is the case, then the County should not deceive/mislead the marketplace by giving these lands residential designations. One of the pre-conditions of efficient resource allocation by a market system is perfect information.

In addition, there are no clear **rules** preventing these potentially unsuitable lands from developing under the general plan or the zoning code. For example, there are many exceptions to the transportation level of service limitations that could destroy any correlation between the land use and circulation elements. The County cannot rely on a mere **presumption** that the additional four times the DOF projected number of parcels simply will not develop, in order to achieve general plan internal consistency, and to reduce the potentially significant impacts of general plan implementation. The County needs substantial evidence that the population impacts will not be greater. Substantial evidence is "an assumption **predicated on facts**" or "an expert opinion **supported by facts**." Substantial evidence is not "unsubstantiated opinion or narrative" (CEQA Guidelines, sec. 15384.)

One solution is to not designate unsuitable lands for development. This has been politically difficult to do.

Another option is to remove the excess development density from the map each time a development is approved. For example, if 100 units of development are approved, then eliminate the other 300 units of excess units of density from the plan in the region. This will be politically difficult to implement.

Another solution is to warn people that parcels generally designated for development may, upon closer examination, be burdened by circumstances that make development infeasible by 32035 or beyond. Warn people clearly that not all lands designated for development may be suitable for **every** level of density or intensity allowed in a land use designation. Also, warn people that some lands designated for development may, upon closer examination, prove to lack the infrastructure and nearby services needed for efficient development. This should discourage some speculation, and give Supervisors additional justification for denying subdivisions where infrastructure is absent.

A fourth solution, which should be used in conjunction with the third solution, is to convert the unsubstantiated population expectation into an established threshold that, when reached, requires further environmental review of additional mitigation measures to address the increased impacts of new development under the General Plan Update. If the threshold is not breached by 2035, then there may be no need to update the General Plan land use map prior to that. If the threshold is breached prior to 2035, then the County can put in place new development requirements to reduce the impacts not evaluated in the DEIR.

Also, include in the General Plan some automatic mitigation measures policies that are triggered if the population threshold is reached, to ensure that unnecessary degradation does not occur

while the plan is being updated, and to provide an incentive for the County to update the plan in a timely fashion. This is consistent with the provision of the Introduction saying that, "The County intends to review these growth trends regularly and if significant changes occur adjust the plan accordingly." (I1 Introduction, p. INT-2.) One advantage of this approach is that it allows the County to adopt the general plan with many of the current analyses in the EIR, without having to go to the expense to revise every impact analysis.

6) The General Plan Background Report misplaces and mistreats information that must be in the general plan elements.

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).) The noise element shall identify noise from highways, major streets, railroads, airports, and industrial plants using noise contours. It shall use noise contours as a guide for establishing land uses to minimize the exposure of residents to excessive noise. It "shall include implementation measures and possible solutions that address existing and foreseeable noise problems." (Government Code, sec. 65301, subd. (f).) "An implementation measure is an action, procedure, program, or technique that carries out general plan policy." (A27 General Plan Guidelines 2017, p. 394.)

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).)

The safety element shall identify flood hazards, 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).)

However, the General Plan Update relegates much of this required information to the *General Plan Background Report*, which is "separate from the General Plan." The reason is that the information becomes outdated, and by not including it in the body of the general plan, it can be updated "without the necessity of undergoing a general plan amendment process." (I1 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.

Furthermore, General Plan Update states that the information in the *General Plan Background Report* "may inform but does not affect implementation of the general plan." (I1 Introduction, p. INT-7.) The reason that the required information is in the element is so that it WILL affect implementation of the general plan. The reason for including the location of roads, utilities and bodies of water; noise contours, priority lands for conservation, and flood hazard maps in a general plan is so that they 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, one of the first questions from the Commissioners was is the property served by CCWD? How close is the nearest CCWD water line?

There is no provision of General Plan law that allows the required information in an element to be relegated to a separate document that can be amended outside the regular general plan process, and that has no effect on general plan implementation. If the County would like this luxury, it needs to go to Sacramento and get the law changed.

One solution is to include the required background information in of each general plan element prior to the goals, policies, objectives, and implementation programs that address the information.

7) The County is allowing the continuation and expansion of legal non-conforming uses.

The Introduction says that, uses that were lawfully established, but that will no longer be consistent with the General Plan Update and revised County Code, "shall be allowed to continue such use under the non-conforming use provisions of Title 17 of the County Code." (I1 Introduction, p. INT-8.) Title 17 of the County Code allows such uses to continue so long as they are not interrupted. These uses can even be re-established after interruption with a use permit.

The Introduction also says that, "Expansion of legally existing nonconforming uses shall meet the development requirements of this general plan." (I1 Introduction, p. INT-8.)

When a previously allowed use does not conform to a new zone, the goal of planning law is to eliminate the non-conforming use. The County has failed to do this in the past. Sometimes, when the use is not posing any problems, this involves simply rezoning the site into a zone in which the use is allowed by right or with a use permit. On the other extreme, if the non-conforming use creates a public nuisance, then the use can be stopped by the County immediately. (*City of Bakersfield v. Miller* (1966) 64 Cal.2d 93.)

In between these two extremes, when the non-conforming use does not pose an acute nuisance, but does threaten the long-term health, safety, welfare, peace or morals of a community; or creates significant environmental impacts, a use can be given a set period of time in which to recover its investment prior to ceasing operations. This avoids the County having to condemn the

use and compensate the owner. (*National Adver. Co. v. County of Monterey* (1970) 1 Cal. 3d 875,880.)

Also, during such an amortization period, the operation IS NOT ALLOWED TO EXPAND. Expanding such a use is in direct contradiction to planning law. (*Hansen Bros. Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal. 4th 533.) The County's refusal to follow this aspect of planning law caused problems in Valley Springs when a closed quarry was allowed to re-open, and later that quarry wanted to add an asphalt plant.

The solution is to change the first sentence to read that the use, "shall be discontinued after a reasonable period allowing the owner an opportunity to receive the benefit of the owner's initial investment."

The solution is to change the second sentence to read, "Legally existing non-conforming uses will not be allowed to expand in size, or capacity, or production, or duration, or in undesirable impacts; or to add additional non-conforming uses."

The solution is to add two sentences:

> "When the legally existing non-conforming use is not posing any public nuisance or land use conflict, the site may be rezoned into a zone in which the use is allowed by right or with a use permit. If the legally existing non-conforming use creates a public nuisance, or is in violation of health and safety laws or regulations justifying a cessation of operations, then County will cease the operation as soon as possible."

B) Policy weaknesses in the Introduction, and their correction.

1) General plan adjustments are restricted to those consistent with the narrow vision and guiding principles.

As noted above, by law, general plan amendments are allowed when they serve the public interest. General Plan amendments are most frequently used by developers to convert agricultural lands to industrial or residential uses, or to convert residential lands to commercial uses. However, the Introduction limits the amendment of the general plan to only those consistent with its guiding principles, and their many undefined terms. Those principles could greatly restrict general plan amendments both for development and for conservation.

For one example, one guiding principle is that, where practical, the plan will be as general as possible, rather than specific. Does this preclude the county from adopting a specific plan for development? Another guiding principle is that the preservation of natural beauty must be consistent with the rights of the property owner. Does this mean that the County cannot require the preservation of scenic ridges in a project as a condition of a general plan amendment, if the property owner objects to it? Another guiding principle is that new development will pay the costs of providing adequate additional infrastructure including schools, police, and fire protection, without reducing the level of service in existing communities. The school fees are capped by law at a level too low to fully offset impacts, and there is no such impact fee

mechanism established for police and fire services. Does this mean that no general plan amendments will be allowed to approve new development until such fees have been adopted? Another guiding principle calls for the preservation of open space by maintaining productive resources." Would this preclude a general plan amendment needed for a wildlife conservation easement or a public park on land that is not otherwise involved in resource production (i.e. mining, agriculture, and forestry)?

The solution is to change the Guiding Principles to the ones in the 2008 Draft or to the ones proposed by the CPC in 2015. (I2 TI to PC re Vision Statement 7-8-15.)

2) The descriptions of the some elements are incorrect.

On page 6, the Introduction includes a table describing the General Plan Update's elements, and their relationship to other elements in the plan.

The Circulation Element description is incorrect in that it does not mention that it is supposed to deal with utilities as well as traffic. The description also does not explain that the Circulation Element is related to the Public Facilities and Services Element, which actually does look at utilities. The description is also misleading in that it states that the Land Use and Circulation elements are correlated because they use the same population projections and distributions. Actually, the Land Use Element map accommodates many times the population projection used to estimate the necessary road infrastructure. Also, there are huge exceptions to the level of service requirements, allowing the land use designations to overwhelm the transportation infrastructure.

The Public Facilities Element description does not mention that it is related to the Circulation Element, in that it fulfills some of the requirements of a circulation element regarding public utilities.

The Community Plan Element description is incorrect. It states that the Community Plans are intended to supplement the General Plan and have been found to be consistent with this plan. The Community Plans will have no effect on land use decisions upon adoption of the General Plan. The Community Plans are being removed from the General Plan by the proposed General Plan Update. All that remains of them are the selected policies from selected community plans that were retained in the Community Planning section of the proposed General Plan.

Overall, the table greatly oversimplifies the relationships among general plan elements. The actual relationships among elements is more accurately depicted by the table in the General Plan Guidelines. (A27 General Plan Guidelines 2017, p. 40-41.)

On solution is to correct the mistakes in the general plan so that the elements are correlated, and the community plans are included.

Another solution, which should be used in conjunction with the first solution, is to create a table like the one in the general plan guidelines, but customized for the Calaveras County General Plan Update.

Another solution is to eliminate this section of the Introduction, as it is not a required part of the General Plan. This is not ideal, as it leaves the general plan reader in the dark about the connections among the plan elements. This is especially necessary for this general plan update, in which the County combines some elements, and divides other elements. Without a guide, it will be difficult to determine where the County meets each of its general plan obligations. It will also be difficult for plan users to locate each of the general plan requirements to which their project must conform. It would be easy to inadvertently overlook a requirement buried in an unfamiliarly titled element.

3. The plan preparation discussion is misleading.

The Plan Preparation section describes the public participation in the planning process since 2007, and then concludes that "This input has directly shaped the General plan." (I1 Introduction, p. INT-6.) This is not the case.

The public participation in the planning process from 2007 through 2010 "directly shaped" the Mintier General Plan produced in 2011. That plan was to include the Community Plans, as does the 1996 General Plan. That plan was rejected by the Board and a new consultant was hired. A new draft plan was completed in 2014. According to David Sirias of County Counsel's Office, the Mintier Plan bears no resemblance to the plan developed by the new consultant and circulated for public comment in 2014. (B4 PRA Response from County 12-4-15, p. 3 ["the document you seek bore almost no resemblance to the draft circulated to the public."].) While Planning Director Maurer claims that the new plan is based on the Mintier Plan, the County refuses to release the Mintier Plan to prove this. Furthermore, the Mintier Plan is not listed among the other associated plans that were "used in preparing the General Plan." (I1 Introduction, p. INT-6) That 2014 plan was then further watered down by the Planning Commission from 2015-2016. That plan includes only selected token policies inspired by the community plans. None of this background is included in the Plan Preparation discussion.

One solution is to amend the plan preparation discussion to include the missing information.

A second solution is to simply remove that last misleading statement about how the public process "directly shaped" the general plan.

A third solution is to eliminate the plan preparation discussion because it is not a required section of the plan.

4) The County is compelling more zoning changes than are necessary.

The Introduction admits that "the County anticipates that there will be inconsistencies between the land use designations and existing zoning ... until such time as the County can update its zoning and related ordinances." (I1 Introduction, p. INT-8.) There is a lot more to that process than is revealed in that one sentence.

The County is required to maintain consistency between its general plan and its zoning.

Most people want to be able to continue their current uses of the land they own after the General Plan Update is approved. If they have horses now, they want to be able to have horses after the General Plan Update is approved. Most people do not want their taxes to increase unnecessarily after the General Plan Update is approved. Most people are happy with their zoning and land use designation as it is. People are justifiably threatened by efforts to change the land use designations and zoning on land that they own, when doing so would interfere with their **current** uses of the land and their **current** expenses.

A county that wants to reduce controversy minimizes unnecessary zoning changes. A county that wants to reduce sprawl may reduce development capacity in its open space lands, and thus upset those land owners. A county that wants to force development and tax increases on people makes premature increases in development potential, regardless of the public outcry. (The Board of Supervisors asked the Planning Director to map the areas where the zoning would have to change if the General Plan Update were approved, but he has conveniently forgotten that direction.)

a) Some zone changes pose no immediate threats to current land uses.

Fortunately, the General Plan Update will not make major changes to existing developed residential land use designations and zoning. That makes the general plan less scary for most people who own a home.

However, to curb sprawl development that it cannot serve, the County has been compelled to convert much of its undeveloped 5-acre minimum parcel lands to 40 acre minimum resource production lands, and 20-acre minimum working lands. Fortunately, rezoning for this will not increase land value, raise taxes, nor change its current uses.

b) The Historic Town Center designation could hurt existing businesses and promote the destruction of historic buildings.

However, because the Historic Center land use designation has set higher maximum intensities, this could force zoning changes, and potentially tax increases, on commercial developments that want neither of these outcomes. For example, a land use designation that was commercial and allowed for only 6 dwelling per acre and an FAR of 1 under the old plan may allow 12 dwelling units per acre and an FAR of 2 under the Historic Center designation of the new plan. If that land is zoned for the full maximum density allowed under the new plan, and if there is an event that triggers a tax reassessment of the property (e.g. sale, etc.), then the new taxes could be considerably increased, because the additional development potential of the **land** increases its value. This in turn could increase the cost of leasing the existing building. Before you know it, the grandma selling sewing notions, sheet music, or candy cannot afford the rent. However, nothing has made the existing **building** any more valuable to rent. Suddenly, the zone changes in the historic town centers are not the economic development boost they were advertised as.

Ironically, for the property owner to realize the benefit of the zoning he is being taxed on, he must demolish the historic building and build a new one.

On the other hand, until the new owner actually builds out the property in accord with the increased intensity, the County gets to collect ADDITIONAL TAX REVENUE EVERY YEAR FOR NO INCREASE IN SERVICES. To sweeten the deal, some counties put barriers to the commercial expansion in their general plan policies and zoning codes (e.g. level of service on the road, off street parking, historic building maintenance, etc.) so that the properties NEVER reach their development potential. This ill-gotten fiscal boost is why this re-zone/tax scam is so popular with cities and counties. This is also why it is easy for the County to agree to allow 6 times the needed development capacity on the land use designation map.

c) Changes from agricultural to residential designations could disrupt current agricultural uses.

Also, because the zoning code for residential areas does not allow for agricultural uses by right, newly designated residential lands, that may wish to stay in agriculture for years prior to development, may face expensive use permit barriers to continuing their operation. For example, if a cattle breeding, goat milking, or wool operation on the outskirts of a community center goes from agricultural to residential zoning, those operations would now need to seek a special use permit. That involves environmental review. That requires the discretionary approval of the Planning Commission, and if appealed the Board of Supervisors. If the applicant is not wealthy, or is unpopular with public officials, the special use permit might be impossible to get.

The solution is to put in strong policies allowing existing uses in the new zones, and preventing the County from unilaterally and prematurely rezoning lands for more intensive uses. In this way, zoning for consistency with the General Plan Update would have fewer unnecessary and undesirable changes.

This could include a policy with a long list of criteria that must be met prior to **any** rezone (e.g. available public water, public sewer, proximity to fire station, proximity to school, etc.)

This could include leaving in place the existing commercial zones, and the existing commercial zoning. People who want their property changed to denser zone would have to apply for a rezone on their own. Or, the County could give people who actually wish to take advantage of the increased density, regardless of the tax implications, to opt in to the new zoning all at once

This could include a policy allowing continued agricultural pursuits on certain sized parcels in residential zones, so that the undivided parcels retain their rights.

5) The County is giving away its discretion to deny certificates of compliance for historic parcels and remainders.

The Introduction says that any parcel or "unit of land" created under the Subdivision Map Act, or created prior to the Subdivision Map Act, shall not be deemed an illegal parcel, or denied a certificate of compliance, or required to merge with another parcel, or be denied a permit to build a residence unless it poses a hazard to public health or safety. (I1 Introduction, p. INT-8.)

What is the County talking about? It appears that the County is talking about two things: remainders and historic parcels.

The first is remainder parcels. These are comprised of the land "left over" after other lots are subdivided from it. These remainders are difficult to sell and to build on, as they cannot be security for a loan, and very few people can afford to purchase real estate or build with cash. Often the remainders are land locked, or of odd sizes or configurations, and so should not be developed in the zone. However, under the General Plan Update, it appears that one is guaranteed to be allowed to get a certificate of compliance to make a remainder (a "unit of land") into a valid subdivided parcel. This is at least unwise, as it will create the potential for a number of substandard parcels in the County. It may be illegal, if it is viewed by the court as a way to evade the requirements of the Subdivision Map Act. The act allows for streamlined parcel map procedures for minor subdivision of four lots and a remainder. The County's proposed policy would effectively turn those into 5-lot subdivisions, which are supposed to trigger the more intensive review of subdivision maps.

The second issue is historic parcels. Since California became a U.S. territory in 1846, people seeking to prosper in reclamation/flood control, farming, mining, railroads, and forestry have acquired land from the United States Government, through various pieces of authorizing legislation. These lots were often conveyed in 40 acre chunks. Many, such as homesteads, were conveyed in blocks of 160 contiguous acres. Others, such as railroad lands, were conveyed in 640-acre (1 square mile) chunks. This fragmented ownership of lands.

Some of those land owners were successful in their economic endeavors and others were not. Those who were less successful usually sold their land: often to those who were more successful. The large ranches that remain today, with one block of mostly unbroken land in one ownership, are often the result of initial homesteads of 160 acres back in the 1800s, followed by several later purchases of 40 acre lots from the federal government, and the purchase of other neighboring ranches. In this way, many of the fragmented ownerships were reconsolidated.

The tax assessor's parcel maps usually accurately reflect **parcels created by local governments** after the passage of the 1901 Subdivision Map Act. However, they usually **do not** reflect the **lots** that were originally conveyed by the federal government, or later re-conveyed by neighbors, or family members. The existence of these lots was concealed over time by deeds and easements that spelled out the conveyance, not by the boundaries of each of the individual federal lots, but by the boundaries of the reconsolidated groups of lots. (For example, instead of describing each of the 16 40-acre federal lots, the deed would just convey the 640-acre Section 12 of Township 14, in Range 28.)

Unfortunately, some very bad case law been manipulated to allow the modern purchasers of these historic ranches to turn back the clock 150 years and seek legal parcel status for one, or

every one, of the historic lots originally conveyed by the federal government. (I say very bad case law because it is ludicrous in the extreme to believe that, when the California Legislature passed and later amended the detailed requirements of the Subdivision Map Act, it actually intended to waive these requirements on hundreds of thousands of acres ag. and forest lands, in favor of square lots without roads, water or septic capability, laid out by the federal government 150 years ago.) Thus, a 1000-acre ranch could have 25 such 40-acre lots on it, many with no road, no well, and no suitability for a septic system.

Problems rarely result from lands still owned by a ranching family. At most, they sometimes get a certificate of compliance for one or two very marketable historic parcels as a quick and cheap way to sell off some land to pay a mortgage, put a child through college, or meet some otherwise overwhelming financial need. They usually keep as much of their ranch in tact as possible. They usually sell parcels with road access, wells, and septic capability, because they need the property to sell because they need the money. Chances are they could have gotten the parcel map approved anyway. The certificate of compliance is just a quick and cheap way to get to the same result.

The problem comes when a ranch is acquired by a speculator who wants to blackmail a County into allowing a major development on what should remain isolated ranch land. The speculator gets certificates of compliance on all the historic parcels. (For example, in 2007 a modern owner of the historic Reddington Ranch forced Mariposa County to issue certificates of compliance for the all the contiguous historic parcels on the ranch.) Then the speculator can either sell the "ranchettes" to suckers who assume that the parcels would not be created without water or access; or they offer to eliminate the historic parcels if the County agrees to allow a code-compliant modern development of similar size. To add insult to injury, because counties usually allow lands with parcels that size to stay in Williamson Act contracts until they are rezoned for development, the speculator continues to get Williamson Act tax advantages while perpetrating the scam.

A hallmark of the proposed general plan land use map is that it removes the 5-arce sprawl potential from thousands acres of ranch and forest lands in the County. To avoid this result, some land owners could try to get certificates of compliance on their "historic parcels." In the aggregate, the large scale abuse of certificates of compliance could result in unconditioned residential sprawl with disastrous consequences for public health, public safety, and environmental protection.

The very good news is that a county does have the discretion to deny these certificates of compliance. One practice guide states that, "Although the language of Govt C 66499.35 suggests that the local agency must, in all instances, issue either a certificate of compliance or a conditional certificate of compliance, the courts have upheld the denial of an application when appropriate." (Lingren & Mattas, California Land Use Practice, CEB 2006, sec. 9.139, p. 424.) For example, the historic parcels could have been extinguished by a subsequent subdivision or lot line adjustment, and thus are not eligible for a certificate of compliance. Also, if there is evidence that the owner intended to merge the lots, rather than to retain them in a subdivided form, then the county can deny the certificates of compliance. For example, if the person

purchased 4 contiguous 40-acre lots from the federal government at one time, but only recorded the purchase of a 160-arce block of land with the county, that suggests that the owner intended to land to be one 160-acre parcel. Just because somebody applies for a certificate of compliance does not mean that they qualify to receive one.

However, the Introduction to the General Plan Update seems to waive the County's discretion to deny applications of certificates of compliance for alleged historical parcels. Also, it limits the County's discretion to place conditions on the certificates of compliance so that the land will not be available for residential development until an adequate road, water supply, septic system, and firefighting capacity has been provided. Such conditions would only be allowed if there is a "written statement made by the Calaveras County Environmental Health Department that the development of the parcel would constitute a hazard to public health or public safety."

The solution is to change the wording in the General Plan Update so that the County retains its discretion under the Government Code to deny applications for certificates of compliance, and retains its discretion to conditions the agricultural, residential, commercial, or industrial development of the parcel created.

Another solution when issuing the certificate of compliance would be to require the owner to make any general plan amendment and/or rezone of the property needed to achieve the development objectives of the property owner in the next ten years. Lands not so simultaneously re-designated and/or rezoned would have to wait for a period of 10 years before seeking to be re-designated and/or rezoned. This would smoke out the intention of the developers and avoid the piecemeal consideration of large or intense developments, while still allowing responsible ranch families the chance to use certificates of compliance as a cheap alternative to residential parcel maps.

6) The Introduction lacks detail regarding the use of the general plan.

The Mintier Plan included an introduction that was released to the public. That introduction included a very useful explanation of how the plan would be used in making land use decisions. (LU4, Mintier Harnish Draft 2035 GP Introduction, pp. 1-8 to 1-10.) There is no similar part of the 2016 Draft General Plan.

The solution is to add this section back into the Introduction.

III) The Land Use Element

A) Legal flaws and their correction.

1) There is inconsistency between the General Plan Introduction's direction for interpreting the plan and the Land Use Element's direction for interpreting the plan.

A general plan must be internally consistent. (Government Code, sec. 65300.5) There must be consistency between elements. (*Concerned Citizens of Calaveras County v. Board of Supervisors*

(1985) 166 Cal.App.3d 90.) The objective of a land use element is to set forth a pattern of land use that is coherent and *predictable.* It should be detailed enough so that all users of the plan can reach the same conclusion of the appropriate use of any parcel of land. (67 Ops.Cal.Atty.Gen. 70.)

The Introduction of the 2016 Draft General Plan states that, "Unless the policy specifically identifies another entity such as an applicant, the policy language shall be assumed to read, 'The County shall…'" (INT# 2016 Draft General Plan, p. INT-7) This direction affects the majority of the policies in the plan, as they generally skip over the subject and the modifier, and simply state an action. For example, "Respect and protect property rights," "Support growth in and around existing communities," "Maintain the compatibility of surrounding land uses." (LU1, 2016 Draft General Plan, Land Use Element, pp. LU15 to LU16.) Unless there is countervailing language in the policy creating options, the assumed phase "The County shall" makes all of these policies mandatory. Such a general plan interpretation would make the Land Use Element more coherent and predictable.

However, the last paragraph of the Background Section of the Land Use Element states:

> "It is the intent of the General Plan to be *flexible* in nature to allow market forces, creative ideas, and the desires of business and property owners exercising property rights to contribute to an improved economic climate. Goals and policies are to be interpreted consistent with the goal of being *general and flexible*." (LU1, p. LU4, emphasis added.)

The Draft General Plan cannot on the one hand, indicate that the majority of the policies in the general plan will be phrased in the mandatory, and also indicate that those same policies should be interpreted to be general and flexible. The conflict between these methods of interpreting general plan policies makes the Land Use element incoherent in unpredictable.

Perhaps one could claim that because many of the "mandatory" policies require the County to generally "Support", "Encourage", and "Facilitate" actions, they provide the County with the flexibility to determine which means and to which degree it will offer support, encouragement, and facilitation. (LU1, p. LU15 to LU17.) Thus, while the support is mandatory, the nature of the support remains flexible.

Nevertheless, I predict that, unless corrected by the County or the courts now, the contrast between these two opposing views on the interpretation of the 2016 Draft General Plan will cause problems for decisionmakers, the public, and the courts for years to come. I also foresee that this dichotomy will cause unnecessary strife during the public review of development projects.

One solution is to drop the last paragraph of the Background Section. It is neither required nor necessary. It needlessly creates inconsistency among the elements.

2) It is not clear what lower intensity and density zones will be allowed in which land use designations.

A land use element "designates the proposed general distribution and general location and extent of uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste facilities, and other categories of public and private uses of land." (Government Code, sec 65302, subd. (a). The objective of a land use element is to set forth a pattern of land use that is coherent and *predictable.* It should be detailed enough so that all users of the plan can reach the same conclusion of the appropriate use of any parcel of land. (67 Ops.Cal.Atty.Gen. 70.)

Page LU14 includes Table LU-2 that is supposed to provide "Basic Guidance" regarding which zoning districts are consistent with the land use designations in the 2016 Draft General Plan. It does identify **some** of the zoning districts that would be consistent with each land use designation. However, there is a note on the page stating "Lower density or intensity zoning shall be considered a compatible zone. See Policy LU-1.4." That policy states "Less intensive residential and agricultural zoning districts shall be deemed compatible with the General Plan's land use designation as an interim zone, until such time as infrastructure and services are available to support intended development." What does this mean?

Does this mean that a lower intensity residential zoning districts can be compatible with more intense residential land use designations? It some cases is makes sense to allow a land owner the flexibility to build a single-family home instead of a duplex or an apartment building. However, the price of such development is finding additional parcels for multifamily housing to meet housing element requirements.

Does this mean that lower intensity agricultural zoning districts can be compatible with a higher intensity agricultural land use designation? It makes sense for a few 20-acre Rural Transition A parcels that are part of a large Ag. Preserve to stay in the Ag. Preserve zoning until there is some need for development of the parcel.

Does this mean that lower intensity agricultural zoning district can be compatible with higher intensity residential land use designations? On the one hand, it might keep the area in agriculture longer, and the infrastructure needed for development may never reach the parcel. On the other hand, should a ranch destined to become 500 to 900 homes, and designated Future Specific Plan, be given agricultural zoning so that current owners can keep their taxes low pending their future development? In El Dorado County they use this ploy to let large specific plan developers keep their taxes low under the Williamson Act as long as possible prior to development. Reasonable minds may differ on the wisdom of this policy.

Or, does this mean that a less dense residential zoning district can be compatible with a more dense commercial designations? Or with a more dense industrial designations? If so, this policy essentially creates a residential overlay across commercial and industrial designations that sharply increases the potential for land use conflicts. A senior citizen home does not belong next to a late-night music venue or an asphalt plant.

If the purpose of this policy is to allow existing uses to continue, then it should say that. It makes sense for agricultural lands to stay in agriculture pending their residential development. It

makes sense for houses in commercial districts to remain homes pending their conversion to commercial uses. However, that is not what this policy says.

As demonstrated above, the zoning chart and policy create great ambiguity regarding which uses and intensities of use will be allowed in each land use designation. This makes the pattern of land use unpredictable. Thus, the plan is not detailed enough so that all users can reach the same conclusion of the appropriate use of a parcel of land.

The solution is to redraft this policy to allow its good applications and to prevent its bad applications. In addition, it should allow for less dense commercial zoning in Historic Centers and Community Centers, so that existing businesses are not forced out of their locations, and existing historic structures are not made prematurely obsolete, as property values and taxes increase.

3) There is no designation, zone, inventory, or diagram that differentiates the very different types of public uses.

A land use element "designates the proposed general distribution and general location and extent of uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste facilities, and other categories of public and private uses of land." (Government Code, sec 65302, subd. (a). The objective of a land use element is to set forth a pattern of land use that is coherent and *predictable*. It should be detailed enough so that all users of the plan can reach the same conclusion of the appropriate use of any parcel of land. (67 Ops.Cal.Atty.Gen. 70.)

The code section specifically calls out three types of public land uses separately: education, public buildings and grounds, and solid and liquid waste facilities. The General Plan Guidelines indicate that these three land uses should each be given their own land use designation. (General Plan Guidelines, pp. 55-61.) This makes sense for a couple of reasons. First, because the public land uses, while all beneficial, are hardly interchangeable. For example, the siting criterial for a public school (e.g. near residences) is different from the siting criteria for a liquid waste facility. Second, it is critical to give the market place the correct information it needs to make informed decisions regarding the acquisition of land for investment. An investor may wish to locate a residential development near the site of a future school, and to avoid locating near a future solid waste facility. Finally, the road and other infrastructure needs will be different each of these land uses. For example, road access for a school has to be prepared to provide for peak period traffic at the beginning of the school day and at the end of a school day. On the other hand, traffic to a government office building will be spread out more evenly across the day. Because these public land uses are so different, it makes sense to uses distinct land use designations, or a land use designation with subsections like Public-waste, Public-education, and Public-office. Only in this way can one determine if the land use designation as mapped is appropriate and consistent with all elements of the general plan.

However, the Land Use Element currently lumps these distinct land uses into one designation, PI: public institutional. (Draft General Plan land Use Element, page LU-9.) This makes it impossible to determine if sufficient land is properly designated for each distinct type of public use.

The solution is to provide a distinct land use designation that divides the PI designation into similar types of land uses. For example:

PI-Emergency Services for law enforcement, fire, airports, emergency medical services, and similar compatible uses;

PI-Waste for sewer and water treatment facilities, solid waste and liquid waste treatment and disposal facilities, cemeteries, and similar compatible uses;

PI-Office for public buildings and grounds, libraries, community centers and similar compatible uses.

PI-Education for schools.

4) Community design guidelines will be developed without community input.

The 2016 Draft General Plan calls for the Board of Supervisors to develop design guidelines for communities. The 2014 Draft General Plan had called for the community design guidelines to be developed by a community planning process to incorporate community input. This public participation part of the process was eliminated by the Planning Commission's editing. This change is contrary to CAP's mission to support public participation in planning processes.

In disadvantaged communities (low income and pollution exposed), the County is required by law to "promote civil engagement in public decisionmaking processes." (Government Code, sec. 65302(h).) Design guidelines can affect the ability to walk or bicycle in a community, and to be buffered from pollution sources. These are exactly the kind of "public decisionmaking processes" the law is intending to engage the public in. Thus, for disadvantaged communities, the County's community design guideline process may be illegal, as contrary to the promotion of civil engagement in public decisionmaking.

The solution is to restore the former language in the program requiring public input in a community planning process.

5) The lack of standards for hillside development suggest that the plan lacks issue comprehensiveness.

A general plan is supposed to be comprehensive, in that it addresses development and conservation issues to the degree that they are present in the jurisdiction. (Government Code, sec. 65301, subd. (c).) For example, because tens of thousands of acres of private land in Calaveras County is comprised of steeply sloped stream and river canyons, the general plan must

address standards for the safe development of some slopes, and the avoidance of development on other slopes.

The solution is to put back into the general plan the program to develop hillside development standards. These standards should deal with issues beyond erosion, and address interference with water supply and water quality of down-gradient wells, and the fire safety mitigation needed for development on steep slopes where fire spreads faster. This should require a use permit that is reviewable on appeal to the Planning Commission and the Board of Supervisors.

For an example of the problem with by right and ministerial approvals, one need only to look as far as El Dorado County. Its steep slope development permits are granted by ministerial approval, and therefore receive no public or Planning Commission scrutiny, and need not be consistent with the general plan. The staff gave out 500 such approvals in ten years. Placing 500 potential ignition sources, on steep slopes, in high fire hazard areas, isolated from firefighting resources, can seriously compromise community fire safety.

6) The incomplete treatment of historic resources suggests that the plan lacks issue comprehensiveness.

The 2016 Draft General Plan acknowledges that the County includes communities rich in "Gold rush era" history that value their heritage. It even sets up a Historic Center land use designation. (p. INT1, LU2, LU8.) One implementation program is to establish a compatible Historic Commercial/Mixed Use zone, and the other is to facilitate implementation of state and federal incentive programs for historic preservation. There will be significant aesthetic impacts associated with development in historic centers, because the Planning Commission removed the program for creating historic design standards from the 2014 Draft General Plan. (2014 Draft General Plan, p. LU25.) In addition, the County rejected the recommendations of local experts to address historic preservation. These included the proper implementation of existing laws. Thus, one could make a convincing argument that the general plan reflects a failure to comprehensively address the issue.

The solution is for the general plan to include the programs recommended by local expert Julia Costello.

B) Weaknesses and their correction.

In addition to the above noted aspects of the plan, that arguably violate state planning law, there are also weaknesses of the plan, which may not rise to the level of legal invalidity. Nevertheless, these weaknesses should be corrected by the Board of Supervisors and the Planning Department before the General Plan Update is approved. These corrections will make the plan more accurate, easier to implement, more defensible, more informative, more comprehensive, and more realistic.

1) The plan does not mention that Oak Canyon Ranch has been re-designated. (pp. LU2, LU13.)

In the section on population and growth projections, at the bottom of page LU2, the plan says that, "In 2004 a specific plan was adopted for a large development project in the Copperopolis area, Oak Canyon Ranch." On page LU13, the plans says, "Currently the County has two Specific Plans, Oak Canyon Ranch…" These statements are misleading, because Oak Canyon Ranch has been re-designated and is now an agricultural preserve.

One solution is to delete the two references to Oak Canyon Ranch.

2) There is a lack of reference to sources of data. (p. LU3)

The land availability analysis on Page LU3 references a great deal of data on acres of land for various types of development and their potential buildout (e.g. 519,000 acres of vacant private land, maximum development potential 51,688 units, likely buildout scenario approximately 23,000 units and 56,000 new residents). It also provides estimates of the likely buildout potential of various land use designations (e.g. Community Center designation 20% of maximum, residential likely to build out at 50%, working lands at 30%.) There is no reference to the sources for these numbers. There is no way to check their validity. Getting these number right becomes critical when trying to estimate the need for resources and infrastructure, and the need to reduce impacts. Providing the basis in substantial evidence for these numbers would make the plan more credible and defensible.

One solution is to reference and provide the source data and analyses that resulted in these conclusions.

3) The buildout analysis undermines the legitimacy of the plan.

The buildout analysis assumes no conversion of agricultural land. Major development approvals under the current general plan have been on rangelands (e.g. Tuscany Hills.) Major projects on agricultural lands have been in the project review phase during the General Plan Update (Ponte Ranch, Copper Valley, Sawmill Lake, etc.). The Draft General Plan Update does not include policies to prevent such conversion. It is not realistic to exclude reasonably foreseeable projects in a buildout analysis.

Even if you disregard the aforementioned weakness, the buildout analysis shows that, even using the most conservative assumptions, the map provides four times the number of necessary units (23,000 units when 5,413 units needed) and accommodates six times the necessary population (56,000 new residents when 8498 expected) for twenty years of growth. (See p. LU3, p. INT2.)

Since there are no quantitative objectives in the plan regarding **interim levels** of growth that is are feasible and desirable for each community, it is very hard to turn these outrageously large county-wide numbers in the plan into workable short-term development objectives in the existing

communities. Unfortunately, this leads to very bad guesswork by water agencies and other service providers trying to plan for the future. (LU2, Mokelumne Long-Term Water Needs Study, CCWD 2017, p. 31; LU3, CPC Scoping Comment on Mokelumne River Long-term Water Needs Study 8-25-17., pp. 2-6, 9-10)

On solution is to break down the **expected** 20 year growth (5,413 units and 8498 people) by existing community. You could begin by identifying a range of growth desired by each community You could then identify the cost of overcoming barriers to different levels of growth in each community (public water, public sewer, school expansion, etc.), and the availability of funding to overcome those barriers. This would turn the "pie in the sky" plan for the County into a real plan for the existing communities. This would be a very useful exercise to support the recently initiated Housing Element Update.

4) There is no table listing the acreage of land uses by community. (p. LU3)

While the county-wide numbers for vacant acres in each land use designation under the plan are interesting, there is no breakdown of the vacant acres in each community for each land use designation. Since people live in the individual communities, the future of those communities matter to people.

One solution is to identify the **potential** and **expected** buildout in each community. In a plan that seeks community-centered development, this makes sense. A similar analysis was done when the County was looking at land use alternatives earlier in the general plan update process. (LU5, Alternatives Report 2010, p. 56.) However, that was long before the land use designation maps were completed for the Draft General Plan Update. As noted above, such updated numbers will help to identify potential barriers to achieving certain levels of growth (e.g. roadway level of service, sewer treatment capacity, water line distance, etc.), and the reasonable efforts that are available to overcome those barriers (road widening, sewer plant expansion, extending water lines, etc.)

5) The Background and Setting section focusses on land for development and not on land used for other purposes.

The Background Section provides acreage estimates for residential, commercial, and industrial land development, and includes an entire section on economic development. However, there is no detailed discussion of the other uses of land. There is no listing of the acres of agriculture, mining, and forest lands, and the trends in their conversion; even though they are acknowledged as the historic basis for the economy. There is no discussion of the acres of land allocated for public buildings, parks, schools, waste disposal, or flood zones. These public and safety uses of land have not been given equal treatment. (LU1, 2016 Draft General Plan, Land Use Element, pp. LU3 to LU4.)

One solution is to add a paragraph on agriculture, mining, and forest acreage in the subsection on "Land Availability", and to add a section entitled "Public Uses of Land" after the section on "Economic Development." (LU1, 2016 Draft General Plan, Land Use Element, pp. LU3 to LU4.)

6) There is too intense commercial, industrial, and residential development on wells.

Table LU-1 gives the level of building intensity and population density for each land use designation.

With climate change we expect groundwater resources to be less reliable. On the other hand, state laws are requiring more certainty for water supplies for development. Water Supply Analyses are required for larger discretionary projects. Groundwater Management Plans are being completed for groundwater basins. Some counties are looking to manage the number of wells dug. Other counties with fractured rock groundwater systems are voluntarily completing groundwater availability studies to aid in making land use decisions. The Community Plans vary regarding the allowed intensity of groundwater-dependent development, because they recognize local conditions vary. Even the County's 1996 general plan includes a map that crudely acknowledges that some areas of the County have more reliable groundwater than other areas.

However, the land use designations in the Draft General Plan Update seem oblivious to these concerns. (LU1, 2016 Draft General Plan, Land Use Element, page LU8-LU9) For example, while we know of the groundwater problems experienced on 20-acre lots in Diamond XX, the Rural Residential land use designation is allowing groundwater-dependent residential development on parcels just over 5 acres in size. Does Calaveras County want to become known as the place where people are conned into buying dry lots, or the place where a residential lot is ready to build upon? Similarly, in Historic Centers of communities, groundwater and septic-dependent residential developments up to 12 units per acre, and commercial development up to a floor to area ratio (FAR) of 2.0 may be allowed. Is this really what **every** community with a Historic Center wants? Industrial development with an FAR of 0.50 can be groundwater-dependent. Commercial recreational resort developments with no minimum parcel size, and an FAR of 0.25, can be groundwater dependent. Does Calaveras County want to become known as the place where visitors are constantly running short of water, or the kind of place where visitors can rely on water availability?

One solution is to limit density of groundwater-dependent development in areas known to have unreliable groundwater. This is an example of when "one size does not fits all" planning does not work.

Another solution is to require very thorough vetting of well capacity before parcels are subdivided.

Another solution is to expand the spectrum of uses that require public water.

7) There is no platted lands overlay to stop the spread of undesirably sprawling land use designations.

There are two land use designations, Rural Transition A and Rural Transition B, that are supposed to be applied only to existing isolated developments that fit their description. The focus of the plan is to avoid making more of, or expanding, these types of isolated and sprawling residential developments. However, the description of the designation does not preclude additional subdivisions of these types.

One solution is to make it clear in the description of the land use designation that the County is not making more RTA or RTB subdivisions.

An additional solution is to use a platted lands overlay on the land use map. This is an overlay that ends at the existing borders of RTA and RTB lands, indicating that these existing subdivisions are not to be expanded.

8) There are no building intensity or population density figures for public buildings.

Currently there are no population density or building intensity limits listed for the Public Institutional (PI) designation, nor are there any public water and sewer requirements. As previously discussed, such ambiguity regarding future public land uses can have a chilling effect on the use and acquisition of neighboring vacant lands. Also, there are actually capacity limits for public meeting halls that are established by fire safety rules.

One solution previously mentioned was to break down the PI designation to better reflect the future public use. An additional solution is to identify building intensity limits and capacity limits for each of these sub-designations.

9) Too many important documents that guide or regulate land uses have not been noted.

The section on Relationship to Other Plans and Documents does not mention the annual review of FEMA and DWR flood maps, and the Sustainable Communities Strategy. (LU1, 2016 Draft General Plan, Land Use Element, p. LU11) These are additional documents that guide or regulate land use.

One solution is to make mention of these plans and documents in this section of the Draft General Plan Update.

10) Policy LU 1.4 may result in unnecessary, premature, and unpopular rezoning, especially in commercial areas.

LU 1.4 allows for less intensive agricultural and residential zoning in general plan land use designations for intensive development. This is a policy that works in concert with Policy LU

2.2 to allow ranches to continue to be zoned agricultural, and to collect Williamson Act subsidies, while still being designated in the general plan for future residential development.

However, it appears that the upzoning hiatus will expire when, "infrastructure and services are available to support intended development." Thus, at that point, the County may rezone the property regardless of the land use and economic implications for the owner. That is what happened in 2015 in El Dorado County, when thousands of acres of agriculturally zoned lands were rezoned to residential.

Unfortunately, there is no similar option to forestall the economic dislocation for commercially designated areas, as upzoned properties are sold, and commercial rents inflate. Thus, the adverse economic side effects noted above for Historic Centers may occur in other commercial areas as well. The loss of long-lived commercial enterprises can be very disruptive for communities. Some businesses (bars, diners, barbershops, hair salons, hardware stores, grocery stores, bakeries, butcher shops, bowling alleys, etc.) are cultural institutions that contribute both to a community's identify and to a resident's sense of belonging. (Where would Clyde go if the barbershop had to close?)

One solution is to leave property in the lower intensity zone while those uses persist, and to only upzone them when requested by the property owner. This allows the existing use to continue, while leaving open the option of more intensive use when it becomes desirable to the owner. This avoids the sort of heavy handed, government-forced land use change so many people find distasteful.

Another solution is to create subcategories of the commercial zone, to apply them to reflect the existing intensity of use, and to only upzone them when requested by the property owner. This allows the existing use to continue, while leaving open the option of more intensive use when it becomes desirable to the owner. This avoids the sort of heavy handed, government-forced land use change so many people find distasteful.

11) There is insufficient direction regarding home-based businesses.

Home-based businesses, when carefully managed, can be a blessing to a community. When badly managed, they can be a curse. Overtaxed septic systems can foul neighboring wells. Over-taxed fractured rock water supplies can dry up neighboring wells. Isolated ignition sources, distant from fire protection services and located on unpaved roads, can result in uncontrollable wildfires. Dispersed commercial locations increase VMT. Nuisances can be approved by staff over the counter with no opportunity for Planning Commission, Board of Supervisor, or public review.

Policy LU 5.2 and Implementation Measure LU-5C just talk about expanding home-based businesses without any direction. Will they be allowed in existing community centers that already have areas zoned for commercial? Will they require a use permit or be by right and ministerial? Will they have a separate sign ordinance to follow? Will multiple businesses be allowed to operate out of one home? Will they have off-street parking requirements? Will they

be allowed where chemical commercial wastes are discharged into septic systems? Will they be allowed in areas relying on well water? Will they be allowed in isolated locations without paved roads and distant from fire protection and other emergency services? This is a huge problem in El Dorado County where the 2015 Zoning Ordinance allows very disruptive commercial uses by right and by ministerial approval, in the most inappropriate locations, with no opportunity for the Board of Supervisors, the Planning Commission, or the public to intervene.

One solution would be to provide clearer direction to staff regarding the parameters for the home occupation zoning ordinance.

12) The "Annual Work Plan" provides no deadlines for completing programs, and makes no commitment to seek any levels of staffing or funding to timely implement programs.

As noted above, the entire set of implementation measures in the plan suffer from lacking specific deadline, staff, budgets, and financing needed to accomplish tasks. Staff has indicated that the Board should consider "priority-based" budgets. This would be a good place to start.

One solution is for the General Plan Update to include implementation deadlines for programs.

An additional solution would be to have the Annual Work Programs required each year to try to meet those implementation deadlines by identifying staffing and funding needs, and the means to meet those needs.

13) There is no direction on the objectives of updating the zoning ordinance other than to result in consistency with the general plan.

Because the general plan has conflicting policies, the direction to make the zoning ordinance consistent with the general plan provides little meaningful direction. Will the code be amended to reduce public and Planning Commission review of projects, and to eliminate Board of Supervisors discretion to condition or deny projects, to meet the policy of creating a business friendly environment? Will the ordinance have more prescriptive standards to meet the policy of having "clear" development standards? (LU1, 2016 Draft General Plan, Land Use Element, Policy 5.6, p. LU18.) Or, will the ordinance have general wording that the Board will evaluate on a case by case basis, to meet the policy of keeping rules general and flexible? As noted above, providing direction on the zoning categories could be critical to allowing people to maintain existing uses while having the option to upzone in the future.

One solution is to give clearer direction in the General Plan regarding the types of things the Board wants to see in the updated zoning ordinance. This could do a lot to help ease people's concerns regarding both the general plan and the zoning ordinance update.

14) A CEQA exemption for infill development is unrealistic and dangerous.

It would be great if we could identify infill standards that actually fully mitigate impacts, and thus JUSTIFY **a negative declaration** for infill development. This would be a good start in developing such standards for other types of development.

However, it is unlikely that a CEQA **exemption** would be justified for infill development. A CEQA exemption is for projects that by their nature are UNLIKELY to have a significant impact, not because they meet certain standards. Infill lots are usually vacant for a reason. Infill development is often in the most traffic congested areas, posing the most intractable land use conflicts, on toxic contaminated sites, on lots that don't percolate, or on lots with insufficient room to meet setback and parking requirements. In other words, infill development, by its very nature, IS NOT the kind of development that qualifies for a CEQA exemption.

One solution is to simply delete the last sentence of the implementation measure.

Another solution is to change the word "exemption" to "negative declaration."

15) Lack of screening, landscaping, and rear parking areas.

The Planning Commission, dropped the implementation program to develop standards for screening parking areas from public roads and viewsheds. (2014 Draft plan, p. LU25.) Rather than being eliminated, this program actually needed to be broader. It should have included standards for vegetation cover over parking areas to reduce heat-island effects and to make parking areas more attractive. It should also have promoted fronting buildings along sidewalks and placing parking in the rear to make commercial areas more pedestrian friendly, and to preserve the historic look of historic centers.

The solution is to put the expanded implementation program back into the plan.

16) Streamlining permitting for special events.

Implementation Measure LU-5D calls for reviewing the zoning ordinance to evaluate the feasibility of streamlining permitting for special events.

Calaveras County currently varies event permit requirements (and approval timelines) based upon the intensity of the event, and provides exceptions for events held at pre-approved permanent venues. This streamlines permit approval when feasible, encourages the use of centrally located public buildings, and brings people to the community centers where they can enjoy related commercial endeavors (dining, drinking, overnight stays, etc.). There seems to be little room for improvement. This implementation measure seems like a solution looking for a problem. Before putting such a policy in the General Plan, please consult the current event permit staff at the Planning Department and get their input.

By way of contrast, neighboring counties in the region have failed to make event permitting work. In Amador County, special event permitting has become a huge problem in the winemaking areas, as wineries have been enhanced to be the venues for everything from weddings to rock concerts. The result is that, since so many wineries have been pre-approved for so many events each season, the County is rejecting additional use permits for wineries with event centers. Similarly, El Dorado County has expanded opportunities for more and larger rural special events on isolated agricultural and forest lands. This sharply conflict with the desire for peace and quiet that motivated many people to invest their life savings to live in isolated parts of rural areas. Given the fiasco associated with cannabis cultivation permits under the urgency ordinance, I am not convinced that Calaveras County is committed to creating the institutional capacity to **more** effectively administer events permits.

One solution is to remove this implementation from the general plan.

A second solution is to hold a public workshop with permitting staff present to find out if there are any helpful tweaks needed in the zoning ordinance.

17) The plan gives business groups exclusive access for free general plan amendments.

Implementation Measures LU-5F calls for the Planning Department to seek relationships with business groups to identify ways to reduce constraints to economic development. These constraints are then to be adopted as general plan amendments. The idea that one sector of the public should get exclusive access to the planning staff to promote their private interests is contrary to the public process promoted by planning law.

Also, there have been recent code enforcement proposals from County Counsel's office regarding shipping containers and code violation abatement that were developed after consultation with "industry group representatives." It became so controversial that the Board of Supervisors directed County Counsel's Office to hold community workshops and then come back with a revised ordinance. This seems like a test of this selective consultation approach to code reform. The test failed.

One solution is to eliminate this provision from the Draft General Plan Update.

Another solution is to open up the process, so that every 6 months the Planning Department takes in public interest suggestions for general plan and zoning code amendments from the general public, evaluates the proposals, and presents them to the Board of Supervisors for direction on which to move forward for review and approval.

cc. Planning Director Maurer,

Deputy County Counsel Moss-Lewis,

Planning Commission.

Summary of Introduction and Land Use Element – Problems and Solutions

A) Legal flaws in the Draft Introduction, and their correction.

1) The General Plan Purpose is too narrow.

The solution is to use the words from the Government Code to finish the purpose statement in the general plan:

> "The Calaveras County General Plan is intended to serve as an effective guide for orderly growth and development, preservation and conservation of open space lands and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan."

2) The reasons for general plan adjustments are too narrow.

The solution is to change the sentence to: "Adjustments to the plan may be necessary to serve the public interest."

3) The general plan is too general, flexible, and not specific, to be practical.

The solution is to change to guideline to reflect the law. For example:

> "When a policy or program is intended to mitigate an impact of the General Plan, it will express a mandatory commitment on the part of the County to implement the policy or program, and will include a performance standard. Other general plan policies and programs may be phrased in more general rather than specific terms, to promote flexibility and adaptability."

4) The Community development guiding principles are not consistent with the Community Plan Element.

The solution is to include the community plans in the General Plan Update.

5) The General Plan is not consistently based upon the DOF's population projections.

One solution is to not designate unsuitable lands for development.

Another option is to remove the excess development density from the map each time a development is approved.

Another solution is to warn people that parcels generally designated for development may, upon closer examination, be burdened by circumstances that make development infeasible.

A fourth solution, which should be used in conjunction with the third solution, is to convert the unsubstantiated population expectation into an established threshold that, when reached, requires further environmental review of additional mitigation measures to address the increased impacts of new development under the General Plan Update

6) The General Plan Background Report misplaces and mistreats information that must be in the general plan elements.

One solution is to include the required background information in of each general plan element prior to the goals, policies, objectives, and implementation programs that address the information.

7) The County is allowing the continuation and expansion of legal non-conforming uses.

The solution is to change the first sentence to read that the use, "shall be discontinued after a reasonable period allowing the owner an opportunity to receive the benefit of the owner's initial investment."

The solution is to change the second sentence to read, "Legally existing non-conforming uses will not be allowed to expand in size, or capacity, or production, or duration, or in undesirable impacts; or to add additional non-conforming uses."

The solution is to add two sentences:

> "When the legally existing non-conforming use is not posing any public nuisance or land use conflict, the site may be rezoned into a zone in which the use is allowed by right or with a use permit. If the legally existing non-conforming use creates a public nuisance, or is in violation of health and safety laws or regulations justifying a cessation of operations, then County will cease the operation as soon as possible."

B) Policy weaknesses in the Introduction, and their correction.

1) General plan adjustments are restricted to those consistent with the narrow vision and guiding principles.

The solution is to change the Guiding Principles to the ones in the 2008 Draft or to the ones proposed by the CPC in 2015. (I2 TI to PC re Vision Statement 7-8-15.)

2) The descriptions of the some elements are incorrect.

On solution is to correct the mistakes in the general plan so that the elements are correlated, and the community plans are included.

Another solution, which should be used in conjunction with the first solution, is to create a table like the one in the general plan guidelines, but customized for the Calaveras County General Plan Update.

Another solution is to eliminate this section of the Introduction, as it is not a required part of the General Plan.

3. The plan preparation discussion is misleading.

One solution is to amend the plan preparation discussion to include the missing information.

A second solution is to simply remove that last misleading statement about how the public process "directly shaped" the general plan.

A third solution is to eliminate the plan preparation discussion because it is not a required section of the plan.

4) The County is compelling more zoning changes than are necessary.

The solution is to put in strong policies allowing existing uses in the new zones, and preventing the County from unilaterally and prematurely rezoning lands for more intensive uses.

5) The County is giving away its discretion to deny certificates of compliance for historic parcels and remainders.

The solution is to change the wording in the General Plan Update so that the County retains its discretion under the Government Code to deny applications for certificates of compliance, and retains its discretion to conditions the agricultural, residential, commercial, or industrial development of the parcel created.

Another solution when issuing the certificate of compliance would be to require the owner to make any general plan amendment and/or rezone of the property needed to achieve the development objectives of the property owner in the next ten years. Lands not so simultaneously re-designated and/or rezoned would have to wait for a period of 10 years before seeking to be re-designated and/or rezoned.

6) The Introduction lacks detail regarding the use of the general plan.

The solution is to add this section back into the Introduction.

C) Legal flaws in the Draft Land Use Element, and their correction.

1) There is inconsistency between the General Plan Introduction's direction for interpreting the plan and the Land Use Element's direction for interpreting the plan.

One solution is to drop the last paragraph of the Background Section. It is neither required nor necessary. It needlessly creates inconsistency among the elements.

2) It is not clear what lower intensity and density zones will be allowed in which land use designations.

The solution is to redraft this policy to allow its good applications and to prevent its bad applications.

3) There is no designation, zone, inventory, or diagram that differentiates the very different types of public uses.

The solution is to provide a distinct land use designation that divides the PI designation into similar types of land uses. For example:

PI-Emergency Services for law enforcement, fire, airports, emergency medical services, and similar compatible uses;

PI-Waste for sewer and water treatment facilities, solid waste and liquid waste treatment and disposal facilities, cemeteries, and similar compatible uses;

PI-Office for public buildings and grounds, libraries, community centers and similar compatible uses.

PI-Education for schools.

4) Community design guidelines will be developed without community input.

The solution is to restore the former language in the program requiring public input in a community planning process.

5) The lack of standards for hillside development suggest that the plan lacks issue comprehensiveness.

The solution is to put back into the general plan the program to develop hillside development standards.

6) The incomplete treatment of historic resources suggests that the plan lacks issue comprehensiveness.

The solution is for the general plan to include the programs recommended by local expert Julia Costello.

B) Weaknesses in the Draft Land Use Element and their correction.

1) The plan does not mention that Oak Canyon Ranch has been re-designated. (pp. LU2, LU13.)

One solution is to delete the two references to Oak Canyon Ranch.

2) There is a lack of reference to sources of data. (p. LU3)

One solution is to reference and provide the source data and analyses that resulted in these conclusions.

3) The buildout analysis undermines the legitimacy of the plan.

On solution is to break down the **expected** 20 year growth (5,413 units and 8498 people) by existing community.

4) There is no table listing the acreage of land uses by community. (p. LU3)

One solution is to identify the **potential** and **expected** buildout in each community.

5) The Background and Setting section focusses on land for development and not on land used for other purposes.

One solution is to add a paragraph on agriculture, mining, and forest acreage in the subsection on "Land Availability", and to add a section entitled "Public Uses of Land" after the section on "Economic Development." (LU#, pp. LU3 to LU4.)

6) There is too intense commercial, industrial, and residential development on wells.

One solution is to limit density of groundwater-dependent development in areas known to have unreliable groundwater. This is an example of when "one size does not fits all" planning does not work.

Another solution is to require very thorough vetting of well capacity before parcels are subdivided.

Another solution is to expand the intensity of uses that require public water.

7) There is no platted lands overlay to stop the spread of undesirably sprawling land use designations.

One solution is to make it clear in the description of the land use designation that the County is not making more RTA or RTB subdivisions.

An additional solution is to use a platted lands overlay on the land use map. This is an overlay that ends at the existing borders of RTA and RTB lands, indicating that these existing subdivisions are not to be expanded.

8) There are no building intensity or population density figures for public buildings.

One solution previously mentioned was to break down the PI designation to better reflect the future public use. **An additional solution** is to identify building intensity limits and capacity limits for each of these sub-designations.

9) Too many important documents that guide or regulate land uses have not been noted.

One solution is to make mention of these plans and documents in this section of the Draft General Plan Update.

10) Policy LU 1.4 may result in unnecessary, premature, and unpopular rezoning, especially in commercial areas.

One solution is to leave property in the lower intensity zone while those uses persist, and to only upzone them when requested by the property owner.

Another solution is to create subcategories of the commercial zone, to apply them to reflect the existing intensity of use, and to only upzone parcels when requested by the property owner.

11) There is insufficient direction regarding home-based businesses.

One solution would be to provide clearer direction to staff regarding the parameters for the home occupation zoning ordinance.

12) The "Annual Work Plan" provides no deadlines for completing programs, and makes no commitment to seek any levels of staffing or funding to timely implement programs.

One solution is for the General Plan Update to include implementation deadlines for programs.

An additional solution would be to have the Annual Work Programs required each year to try to meet those implementation deadlines by identifying staffing and funding needs, and the means to meet those needs.

13) There is no direction on the objectives of updating the zoning ordinance other than to result in consistency with the general plan.

One solution is to give clearer direction in the General Plan regarding the types of things the Board wants to see in the updated zoning ordinance. This could do a lot to help ease people's concerns regarding both the general plan and the zoning ordinance update.

14) A CEQA exemption for infill development is unrealistic and dangerous.

One solution is to simply delete the last sentence of the implementation measure.

Another solution is to change the word "exemption" to "negative declaration."

15) Lack of screening, landscaping, and rear parking areas.

The solution is to put the expanded implementation program back into the plan.

16) Streamlining permitting for special events.

One solution is to remove this implementation from the general plan.

A second solution is to hold a public workshop with permitting staff present to find out if there are any helpful tweaks needed in the zoning ordinance.

17) The plan gives business groups exclusive access for free general plan amendments.

One solution is to eliminate this provision from the Draft General Plan Update.

Another solution is to open up the process, so that every 6 months the Planning Department takes in public interest suggestions for general plan and zoning code amendments from the general public, evaluates the proposals, and presents them to the Board of Supervisors for direction on which to move forward for review and approval.