

Talking Points

For the Planning Commission's General Plan Hearing on 5/23/19

Regarding the General Plan Introduction

(Please pick one of these for making a short speech to the Planning Commission. Your time will probably be limited to 3 minutes)

1) Include the Community Plans in the General Plan Update.

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.” 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 of these areas have no chance to “preserve the character of historic communities,” nor foster “economic growth, the delivery of services, and provision of infrastructure.” Please include the texts of the community plans in the General Plan Update, or at least include them as non-binding reference documents in a separate volume of the General Plan Update.

2) Do not allow the perpetual continuation and expansion of legal non-conforming uses posing land use conflicts.

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.” (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.” (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. There are three solutions.

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.”

These solutions meet the needs of both the non-conforming use and the surrounding land uses.

3) Please allow compatible existing uses to continue.

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.

However, the County is required to maintain consistency between its general plan and its zoning. Because the zoning code for residential areas does not allow for some 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.

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 a 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, the chance 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.

The goals of the General Plan and subsequent rezoning can avoid needless disruption of compatible land uses.

4) The County is giving away its discretion to deny or condition certificates of compliance for historic parcels.

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. (Introduction, p. INT-8.)

Just because somebody applies for an unconditional certificate of compliance does not mean they should be given an unconditional certificate of compliance. Some applicants may not be eligible for a certificate of compliance, because the historic parcels were eliminated by a later lot line adjustment or subdivision.

On the other hand, just because a historic parcel currently does not meet public health and safety standards should not make it ineligible for a properly conditioned certificate of compliance. A historic parcel with no road or no well could be granted a conditional certificate of compliance requiring that the road and well be completed.

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 ineligible applications for certificates of compliance, and retains its discretion to grant conditional certificates of compliance to historic parcels.

This change would allow the County both to approve properly conditioned certificates of compliance for a broader range of historical parcels, and to deny unworthy certificate of compliance applications.