

Talking Points for the BOS General Plan Hearing 7-30-19

III. Items to Fix by Element

A) The GPU Introduction

1) Do not allow the perpetual continuation 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.

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.

After the fiasco with the asphalt plant and the gun club, you should now understand that your Zoning Code is not functioning well in this regard.

B) Land Use Element

1) Fix Table LU-1 to eliminate excessively intense commercial, industrial, and residential development on wells. (CPC Memo, March 20, 2019, p. 22.)

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, commercial recreational resort developments with no minimum parcel size, and a floor to area ration 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.

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.

2) Direct staff to hire a consultant to complete a detailed GPU implementation plan within one year of plan adoption. (CPC Memo, March 20, 2019, p. 25.)

At the Planning Commission hearing in May, the Planning Director was not confident that he could complete a list of staff, time, and financial requirements for each of the implementation tasks in the GPU. Please consider hiring staff or a consultant to complete this task, so that the Board of Supervisors will have the information it needs to set annual implementation priorities.

C) The Circulation Element.

1) Begin the Congestion Management Plan now. (FEIR, p. 2-177.)

2) Eliminate the conflicts between the GPU and the Regional Transportation Plan. (FEIR, P. 2-179.)

3) Commit to adopt the completed but not yet adopted pedestrian, bicycle, and mobility plans. (CPC Memo, 5-29-19, p. CEC-9.)

D) The Conservation and Open Space Element

1) Restore the Oak Woodland Mitigation Policy proposed by your consultants in the Draft FEIR, or use it in the interim pending the development of a long-term strategy in the Zoning Ordinance Update. (Staff Report, 5/22/19, Attachment 1, pp. 4-5.)

2) Restore specific riparian corridor setback recommended by your professional consultant.

3) Do not limit the application of General Plan and Zoning Code efforts to reduce impacts to air quality, oak woodlands, biological resources, and riparian corridors to merely the large projects reviewed under CEQA and given mitigation measures.

The Planning Commission changed these policies to apply only projects subject to CEQA review. This is very short sighted.

Why? Because many projects with impacts are subject only to ministerial approvals, and therefore there is no CEQA review. Other projects that get CEQA review are approved on Negative Declarations, and are not given impact mitigation measures. The cumulative effect of these unmitigated impacts can result breaching the thresholds of harm that will trigger development moratoriums. In those cases, the economy, property rights, and the environment all lose. Because the current zoning ordinance requires ministerial projects to conform to the general plan, the language included in the GPU would preclude both the current zoning ordinance and its pending update from reducing these impacts for ministerial projects.

Including objective standards for approvals can ensure that every project that has an impact contributes to mitigation. This results in less harm to the environment, allows more projects to develop, and postpones development moratoriums.

E) Community Planning Element

- 1) Leave in the general plan the existing plans for Ebbetts Pass Highway, Arnold, Avery/Hathaway Pines, and Murphys/Douglas Flat, pending their update.**
- 2) Add the 2013 Copperopolis Community Plan and the 2017 Valley Springs Community Plan to the GPU.**

F) FEIR

- 1) Fix the responses to comments. (CPC Memo, 6/12/19.)**
- 2) Fix the mitigation measures.**

The Final EIR is deficient in its mitigation of potentially significant impacts.

First, with regard agricultural impacts, the EIR does not evaluate mitigation proposals made by agencies and the public during scoping and in DEIR comments, to determine if the measures are feasible. It does not explain why those mitigation proposals were not adopted.

Second, the FEIR improperly identifies optional policies and programs which the County has not committed to implement as mitigation for potentially significant impacts to agriculture, land use, traffic, and energy impacts.

Third, the FEIR improperly defers the development of mitigation measures to the future without justifying the deferral, and without specifying the performance standards to be achieved for impacts to traffic, land use, and biological resources.

Please have these errors corrected before you certify the Final EIR. If there is something we can do to reduce the impacts of future development, we need to do it. Thank you.

3) Evaluate a range of policy alternatives.

An alternatives analysis is supposed to look at a broad range of alternatives to reduce plan impacts and to inform decision makers and the public. This is especially true when it is in a Program EIR like the one in question. (CEQA Guidelines, secs. 15126, 15168.)

However, in this instance the alternatives analysis in the DEIR does not include policy options for ANY action alternative. (A3 CPC GP DEIR Comments, p. 6-1 to 6-2.) The only choice is between the existing (fatally flawed) General Plan and the proposed (fatally flawed) General Plan. This is despite the fact that many policy options were provided by the public over the years in the form of optional elements, draft general plan input, and scoping comments. (See sections II, B, 1 & 2 below.) No action alternative considered including the existing and proposed community plans in the General Plan Update despite the ongoing public and decision maker debate over these plans, and despite the fact that the existing community plans have feasibly mitigated many development impacts, under the current general plan, for decades. (A3 CPC GP DEIR Comments, p. 6-3 to 6-5.) Finally, the DEIR does not consider as a policy alternative the Mintier General Plan text which is the culmination of years of public input and over \$900,000 in public expenditure and which remains a central part of the public and decision maker debate over the General Plan Update. (A3 CPC GP DEIR Comments, p. 6-2 to 6-3.) Because there are over two dozen significant impacts of the plan and so many policy options were presented to reduce those impacts during the general plan update process, the failure of the DEIR to consider ANY policy option means the range of alternatives is not only insufficient, it is non-existent.

Please fix these flaws before certifying the EIR. If there is a better path forward into the future, we need to consider it.

G) Plan Implementation.

1) Complete a Mitigation Monitoring and Reporting Plan prior to plan adoption.

Page 4 of the May 22 staff report refers to the general plan as “self-mitigating”. It is true that the mitigation measures are contained in the general plan, rather than in a separate document as you might see with a development project. However, this does not mean that the mitigation measures are automatically implemented. Diligent, often time-consuming, and sometimes expensive efforts will be needed to implement the policies and programs in the general plan mitigation measures. An effective mitigation monitoring and reporting plan will be essential.

H) Please waive your claimed privileges and release the Mintier General Plan.

America is celebrated by freedom loving people around the world, not because of what one group of Americans says, or one group of Americans believes, or reads, or writes. America is celebrated because we acknowledge the rights of **all** the people to speak, to believe, to write, and to read as they choose, and to vote as they choose.

These basic and fundamental Constitutional freedoms transcend political affiliation. Republican President Dwight D. Eisenhower implored, “Don't join the book burners. Don't think you're going to conceal faults by concealing evidence that they ever existed. Don't be afraid to go in your library and read every book...” Similarly, Democratic President John F. Kennedy said, “We are not afraid to entrust the American people with unpleasant facts, foreign ideas, alien philosophies, and competitive values. For a nation that is afraid to let its people judge the truth and falsehood in an open market is a nation that is afraid of its people.” Note that both great presidents identified the enemy of these Constitutional freedoms; and that enemy is fear.

When we began this General Plan Update process back in 2006, people were inspired by their leaders who committed to helping them plot a course to a brighter future. Today, people want to be inspired by their leaders again. They want leaders who will do more than salute a flag, they want leaders who will defend every Constitutional right. So my challenge to you today is to be not afraid.

So I plead with you:

-Restore the faith of your people in the justice of their local government. For it is written that those who lead the many to justice, shall be like the stars forever.

-Give people the Mintier General Plan they paid for with their time, and their effort, and their taxes. For it is written, ask and it shall be given unto you.

Good ideas to help people should not be imprisoned. Please waive your claimed privileges and free the Mintier General Plan.

Thank you.