

To: Calaveras Board of Supervisors

From: Tom Infusino, CPC

Re: Failure to Complete the General Plan Update (GPU)

Date: 11/7/19

## **I. Background**

The General Plan Update began in 2006 with the identification of flaws in the 1996 General Plan that needed to be corrected. In 2008, an Issues and Opportunities Report identified additional locally relevant issues that the Board of Supervisors needed to confront and resolve in the General Plan. Instead, many of these issues have been ignored, or decisions on them have been deferred indefinitely. In addition, throughout the General Plan Update process, the CPC has expressed concerns that the GPU lacks necessary components routinely found in a general plan, such as objectives for achievement, standards for performance, and timelines for completion. The combination of not addressing these issues directly during the 13-year the GPU process, and not providing components in the GPU to assure any effective treatment of the issue during the 20-year horizon for the plan, results in a GPU that is not complete and comprehensive as required by law. Below we remind the Board of Supervisors that the failure to comprehensively address issues relevant to the County is a serious violation of land use law. **Please add the required components to your general plan to address the suite of issues identified as relevant to the County early in the GPU process, or explain how these issues have become no longer relevant to the GPU.**

## **II. A General Plan must address required issues to the degree that they are locally relevant.**

To ensure that localities pursue “an effective planning process” (§ 65030.1), each city and county must “adopt a comprehensive, long-term general plan” for its own “physical development.” (Government Code, sec. 65300.) When adopting a general plans, a locality must “confront,

evaluate and resolve competing environmental, social and economic interests.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571, 276.) A general plan is supposed to be comprehensive, in that it addresses development and conservation issues to the full degree that they are present in the jurisdiction. (Government Code, sec. 65301, subd. (c).) A general plan also must include development policies, “diagrams and text setting forth objectives, principles, standards, and plan proposals,” and seven predefined elements—land use, circulation, conservation, housing, noise, safety, and open space. (Government Code, secs. 65302, subds. (a)-(g), 65303.)

If the plan adopted does not reflect substantial compliance with those requirements, the Board and other responsible agencies of the County have failed in the “performance of an act with the law specially enjoins.” “Substantial compliance, as the phrase is used in the decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute,” as distinguished from “mere technical imperfections of form.” (*Stasher v. Harger-Haldeman* (1962) 58 Cal.2d 23, 29, 22 Cal.Rptr. 657, 372 P.2d 649 ; *International Longshoremen’s & Warehousemen’s Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265, 273); *Camp v. Mendocino Board of Supervisors* (1981) 123 Cal.App.3d 334, 348 [The land use, housing and noise elements were not in substantial compliance with the Government Code; See also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Garat v. City of Riverside* (1991) 2 Cal.App.4<sup>th</sup> 259, 292-293.)

### **III. The General Plan Update neither timely nor substantively the addresses many issues to the full degree that they are present in Calaveras County.**

#### **A) During the preliminary stages of the GPU, the County properly identified key issues that needed to be confronted and resolved in the GUP process.**

The 2006 evaluation of the 1996 General Plan identified many serious flaws in the 1996 General Plan that needed to be corrected in the GPU. One major problem was that the implementation programs did not have “clear measureable outcomes and timelines.” One problem with the Land Use Element is that it did not meet the requirements for consistency with the airport land use

plan. A problem with the Circulation Element is its inconsistency with the Regional Transportation Plan. A problem with the Safety Element was the lack of evacuation routes, minimum road widths, and peak water lode requirements.

The 2008 Issues and Opportunities Report listed additional issues that needed to be addressed in the GPU. These issues were identified by local residents at workshops throughout the County, confirmed by the County's expert planning consultant, and accepted by the Board of Supervisors. Page 7 of the report noted the need to preserve open space with conservation easements, the need to protect wildlife corridors and the need to protect oak woodlands. Pages 9 to 11 of the report indicate the need to preserve community identity, and to provide for local control of design review, and to preserve agricultural lands. Page 18 of the report indicated that infrastructure fees were inadequate, and sewer capacity was inadequate in some areas. The report noted the need for new development to mitigate its impacts, to connect to sewer systems, and to be approved only after infrastructure and impact fees are in place. Page 19 of the report noted the need to require water conservation and recycling. Page 21 of the report notes the need to provide for transit, community by-pass roads, and pedestrian facilities. Page 22 of the report acknowledges that the County lacks funding for necessary transportation improvements. Page 24 lists the need to address truck traffic, to restructure traffic impact fee programs, to fund bike and pedestrian improvement projects, and to make more effective economic development of the airport. Page 25 notes the need to improve emergency response times, to employ additional fire fighters and law enforcement officers, and to provide for emergency evacuation routes. Page 27 of the report indicated that the GPU would address fire and flood safety to protect County residents. Page 28 of the report indicated the need to increase revenues for law enforcement and emergency service facilities and personnel, and to develop necessary standards to decrease risks from wildfire fires and floods.

**B) The GPU does not address the following development and conservation issues to the degree that they are present in Calaveras County.**

Unfortunately, rather than confronting and resolving the critical planning issues it identified early in the GPU process, the GPU instead simply restates the needs and defers dealing with them until an unspecified time in the future.

For example, look how the GPU addresses the problems identified in the 2006 evaluation of the 1996 General Plan. The implementation programs in the GPU still do not have “clear measureable outcomes and timelines.” There is still no current analysis of the consistency of the Land Use Element with the Airport Land Use Compatibility Plan, and the analysis is deferred in implementation LU-3A to an unspecified time in the future, if it becomes a BOS priority. When asked to fix a list of inconsistencies between the Circulation Element and the RPT, the County refused to address the inconsistencies. (Response to Comments on the DEIR, Number 11-157.) The identification of designated evacuation routes has been deferred by implementation measure S-1C to an unspecified time in the future, if it becomes a BOS priority.

The GPU’s handling of the Issues and Opportunities Report topics reflect a similar pattern of restating the problem and deferring decisions on key matters to unspecified times in the future, if they become a BOS implementation priority. Addressing wildlife corridors and oak woodland mitigation is deferred by implementation measures COS-4E and 4D. Community design standards are deferred in implementation measure LU-4A to an unspecified time in the future, for unspecified communities. Agricultural land conservation is deferred under implementation measure RP-1F, and the general plan does not include the required maps with relevant information for agricultural land conservation, despite their availability. The issues of infrastructure fees being too low and transportation improvement funds being insufficient are deferred in implementation measures C-1C, C-2D, and C-2E. The issue of water conservation is deferred by implementation measure PF-2H. The issue of truck traffic and noise is deferred by implementation measure N-1C. The issue of emergency response times is deferred by implementation measures S-1B, PF-1A, PF-1B, and PF 4A. The issue of identifying evacuation routes is deferred by implementation measure S-1C. The issue of the need for law enforcement officers is deferred by implementation measure PF-4A. The issue of funding emergency services is deferred by implementation measure PF-4C.

As a result of the pervasive indefinite deferral of decisions about the key issues that needed to be addressed in the General Plan Update, the GPU is not complete. If a BOS were allowed to simply perpetually defer confronting and resolving the most important planning issues in the county, then the requirement for adoption of a general plan would be meaningless. Obviously, that was not the intention of the legislature when it passed land use law.