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THOMAS P. INFUSINO (SBN 137598)
P.O. Box 792
Pine Grove, CA 95665
Telephone: (209) 295-8866
Email: tomi@volcano.net
Attorney for Petitioner

FILED

DEC 17 2019

Clerk of the Court
Superior Court of California
County of Calaveras

By T. COOMBS Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CALAVERAS

CALAVERAS PLANNING
COALITION,

Petitioner and Plaintiff,

v.

CALAVERAS COUNTY BOARD OF
SUPERVISORS, COUNTY OF
CALAVERAS, and
DOES 1-20,

Defendants and Respondents,

AND DOES 21-40,

Real Parties in Interest.

CASE NO. 19CV44471

**NOTICE TO ATTORNEY GENERAL OF
PETITION FILED PURSUANT TO THE
CALIFORNIA ENVIRONMENTAL QUALITY
ACT (CEQA).**
(Pub. Resources Code 21000, et seq.)

Assigned for all purposes to:
Hon. TBD

Petition Filed: December 9, 2019
Served: December 9, 2019
Hearing Date: TBD
Time: TBD

1 **TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:**

2 **A) PLEASE TAKE NOTICE**, under Public Resources Code Section 21167.7, and Code of
3 Civil Procedure Section 388, that on December 9, 2019, the CALAVERAS PLANNING
4 COALITION filed a petition for writ of mandate and complaint against the CALAVERAS
5 COUNTY BOARD OF SUPERVISORS (Board), and the COUNTY OF CALAVERAS in
6 Calaveras County Superior Court. The petition alleges that the Board violated the California
7 Environmental Quality Act (CEQA) in connection with the approval of the 2019 General Plan
8 Update and related planning documents. The petition alleges that the Board violated CEQA by
9 (1) failing to adequately analyze, adopt, and implement mitigation measures, (2) failing to
10 analyze alternatives, (3) inadequately responding to public comments on the EIR, and (4) failing
11 to make proper findings of fact. The petition also alleges that the Respondents violated land use
12 law, by approving a general plan that is neither comprehensive nor internally inconsistent. The
13 petition also alleges that the Respondents are unlawfully withholding a public record. A copy of
14 the petition is enclosed with this notice.
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18 **B) THE ATTORNEY GENERAL SHOULD ACTIVELY PARTICIPATE IN THIS CASE**
19 **BECAUSE AT RISK ARE THE INTEGRITY OF STATE ENVIRONMENTAL, LAND**
20 **USE, AND PUBLIC DISCLOSURE LAWS.**

21 Under normal circumstances, the paragraph above would provide sufficient notice to the
22 Attorney General. In reply, a letter from the Attorney General's Office (A.G.) would ask the
23 Petitioner to inform the A.G. if and when the case goes to appellate court. That would be the end
24 of the correspondence. But, these are not normal circumstances. If justice is to prevail to protect
25 the residents and resources of California, then we must move beyond boilerplate notices and
26 form letter responses.
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1 **1) THE RESPONDENTS' LEGAL INTERPRETATION WOULD GUT CEQA.**

2 The Respondents' justification for rejecting mitigation measures is that such measures do not
3 provide the flexibility the County desires to promote economic development and property rights.
4 Mitigation measures under CEQA are **required to be enforceable commitments.** (CEQA
5 Guidelines, sec. 15126.4, subd. (a)(2).) They are not excessively flexible by definition. If the
6 County's excuse were to prevail, then **every** local government and **every** agency could avoid
7 adopting **any and all** mitigation measures using the same excuse. This is inconsistent with the
8 court's repeated acknowledgment that CEQA "should be interpreted to afford the fullest possible
9 protection to the environment within the reasonable scope of the statutory language."

10
11 (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th
12 98, 110; citing *Laurel Heights Improvement Association v. Regents of University of California*
13 (1988) 47 Cal.3d 376, 390.)
14
15

16 **2) THE RESPONDENTS' LEGAL INTERPRETATION WOULD GUT GENERAL PLAN
17 LAW.**

18 The Respondents contend that they can begin the general plan process by identifying the key
19 issues that need to be addressed as required by the government code, but then indefinitely defer
20 actually following through and planning to address those issues. If a local government can defer
21 addressing general plan issues indefinitely, then the requirement for a local government to
22 **complete** a comprehensive general plan would become meaningless.
23
24

25 **3) THE RESPONDENTS' LEGAL INTERPRETATION WOULD GUT THE PUBLIC
26 RECORDS ACT AND THE CALIFORNIA CONSTITUTION.**

27 The Respondents contend that virtually any document not finalized by the government qualifies
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1 as a draft document, and can be withheld from the public under the California Public Records
2 Act, to protect the deliberative process privilege of the agency in deciding not to finalize the
3 document. If this interpretation of the law prevails, **this exception would swallow the rule** that
4 public documents must be available to the public. Any agency or local government could hide
5 its most embarrassing mistakes or secrets simply by making a decision not to finalize a draft
6 document. This expansive interpretation of the exceptions is contrary to the California
7 Constitution, which calls for **the narrow interpretation of exceptions** to the release of public
8 records. (*California Constitution*, article I, section 3, subdivision (b)(1).)
9

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11 **C) THE ATTORNEY GENERAL SHOULD ACTIVELY PARTICIPATE IN THIS CASE**
12 **BECAUSE THE INTERESTS OF STATE AGENCIES ARE AT RISK.**

13 The Petitioner was pleased that three state agencies participated in the GPU process. The Board
14 of Forestry and Fire Protection reviewed the Draft Safety Element, and made specific
15 recommendations for improvements to meet the state's interest in fire safety. The Department of
16 Conservation commented on agricultural land protection through the use of conservation
17 easements, and on the importance of **mandatory** mitigation measures to lessen or avoid
18 otherwise significant impacts. The Department of Fish and Wildlife expressed concern for special
19 status species.
20

21 As you can see from the attached letters the Petitioner sent to those agencies, the
22 recommendations of those agencies to the County fell on deaf ears.
23

24
25 **D) THE ATTORNEY GENERAL SHOULD ACTIVELY PARTICIPATE IN THIS**
26 **CASE BECAUSE RESOURCES OF THE STATE OF CALIFORNIA ARE AT RISK.**

27 The Attorney General is empowered by law to guard the natural resources of the State of
28

1 California against unlawful waste and destruction. The aforementioned efforts to gut land use
2 and environmental law would justify immediate action by the Attorney General **anywhere** they
3 were perpetrated in California. But, Calaveras County is not just "anywhere." Calaveras County
4 is blessed with a wealth of natural resources. It has tens of thousands of acres of productive farm
5 and rangelands. It has tens of thousands of acres of productive forest lands, in both public and
6 private holdings. These lands provide habitat for the State's fish and game, and for dozens of
7 special status species in need of careful management. Flowing through watersheds in Calaveras
8 County, are the mighty Mokelumne River, the vibrant Calaveras River, and the turbulent
9 Stanislaus Rivers, which provide water and power to distant farms and to urban developments in
10 the San Joaquin Valley and in the East Bay.

11
12 Rather than conserving natural resources and preserving open space lands, implementation of
13 the Calaveras County 2019 General Plan Update is expected to have significant unmitigated
14 impacts including the conversion of farmland, the destruction of oak woodlands, and the loss of
15 habitat. As noted above, this is because the County rejects measures to mitigate these impacts
16 that are routinely applied in other jurisdictions throughout California.
17

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19 **E) THE ATTORNEY GENERAL SHOULD ACTIVELY PARTICIPATE IN THIS CASE**
20 **BECAUSE THE LIVES OF PEOPLE IN CALAVERAS AND NEIGHBORING**
21 **COUNTIES DEPEND UPON IT.**

22
23 This case is about more than the integrity of the law, more than the interests of state agencies, and
24 more than the protection of natural resources. This case is also about saving the lives of
25 Californians. Indefinitely deferring fire safety efforts, delaying emergency response funding, and
26 making fire safety measures in new development optional threatens lives. Exempting
27 commercial, industrial, and residential development for tourists from fire safety reviews and fire
28

1 safety mitigation measures threatens lives. Allowing residential development by right on parcels
2 no matter how dry, how fuel-laden, how windswept, and how isolated from emergency services
3 threatens lives. All of these threats are all part of the 2019 Calaveras County General Plan
4 Update. All of these combine to create unreasonable risks of loss of life.
5

6
7 It is true that there is a class of people in Calaveras County who have the money and ability to
8 live and work where ever they wish. They can afford to choose to reduce and avoid the worst fire
9 risks, or to bear those risks for the sake of solitude and a view. However, most of the people in
10 Calaveras County have to take the jobs they can get, and live in the homes they can afford, where
11 ever those may be, regardless of the risks. Often these people are parents living with young
12 children. It is especially for the health and safety of these families that the County must establish
13 a foundation of fire safe building and zoning codes, upon which all legitimate development is
14 based. This is more than a matter of public safety, it is a matter of human decency. These people
15 depend on the County to protect them from unnecessary catastrophe in accord with land use law.
16 Calaveras County saw tens of thousands of acres burn in the Butte Fire in 2015. The State's own
17 studies indicate that a major risk of climate change in the region is an **increase** in wildfires. The
18 Board of Forestry and Fire Protection identified what Calaveras County needed to do address
19 wildfire safety, but the County chose to defer those efforts indefinitely.
20
21 Once a fire starts in Calaveras County, it can easily spread to neighboring counties. While it is
22 one thing for Calaveras County to impose unreasonable fire risks on its own people in a
23 misguided effort to promote local economic growth and property rights, it is far beyond the
24 jurisdiction of Calaveras County to impose that unreasonable risk on the lives of Californians in
25 neighboring counties. This exercise of misguided extra-jurisdictional power needs to be checked
26
27 by the Attorney General.
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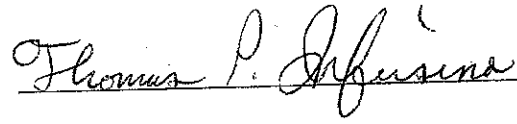
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How many more fires must scorch California communities, and how many more lives must be lost, before the A.G. will take action to stop local governments from defying the law by putting defenseless hard-working people in the path of a wildfire's destructive force? We are begging you help us protect our families from harm. If not here, where? If not now, when?

The Petitioner respectfully requests that the recipient of this notice follow procedures to promptly alert the highest authorities at the A.G.'s office of the importance of this case, so that the A.G.'s office can begin to actively participate in this case as soon as possible.

Dated: 12/17/19

Respectfully submitted:



Thomas P. Infusino
Attorney for Petitioner
Calaveras Planning Coalition

Enclosure: Petition for Writ of Mandate

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Attachment 1: 3 Letters to Agencies

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Tom Infusino, Facilitator
Calaveras Planning Coalition
P.O. Box 792
Pine Grove, CA 95665

Edith Hannigan
California Board of Forestry
(Sent by email.)

August 22, 2019

RE: The Calaveras County General Plan Update (GPU) allows County NOT to address key fire safety issues identified in the Board of Forestry's 2015 review of the draft safety element – The supervisors are to adopt plan in early September.

Dear Ms. Hannigan:

My name is Tom Infusino, and I am Facilitator of the Calaveras Planning Coalition. The CPC is a group of community organizations and individuals who want a healthy and sustainable future for Calaveras County. We believe that public participation is critical to a successful planning process. United behind eleven land use and development principles, we seek to balance the conservation of local agricultural, natural and historic resources, with the need to provide jobs, housing, safety, and services.

1. Have the BOF's 2015 concerns been addressed to your satisfaction?

I am writing to you because in 2015 the Board of Forestry reviewed the Calaveras County draft safety element. (Attachment 1 – BOF Review 2015.) That review identified a number of medium and high priority shortcomings in the Draft Safety Element regarding fire safety. These shortcomings could have devastating effects in a County where 89% of the land is classified as having either high or very high fire risk.

During the Calaveras County Planning Commission hearing on the General Plan Update held in May and June of 2019, Planning Director Maurer indicated that he has been in regular contact with you regarding the Safety Element. He did not indicate that you had any outstanding concerns.

If in fact you do not have any lingering concerns about the Safety Element, then you may find the content of this letter surprising, as we at the CPC have grave concerns. On the other hand, if you do have lingering concerns regarding the adequacy of the Safety Element, please make them known to the Calaveras County Board of Supervisors before early September, when they are scheduled to adopt the GPU.

2. The GPU has grave fire safety implications.

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Many aspects of the General Plan Update pose a serious fire safety threat.

One threat is the extension of groundwater-dependent and intensive commercial and industrial development into forestlands and rangelands isolated from fire protection services. This increases the risk of ignitions in steep places with dry fuels and winds, without piped fire-flows, accessed by minimal rural roads, with lengthy response times for firefighters. Under these conditions, a wildfire could easily get out of control. As you can see from the land use designation table commercial recreation (including destination resorts) and industrial facilities will be allowed in areas without public water. (Attachment 2 - Land Use Element, Table LU-1.) Those designations could expand beyond the lands on the current land use designation map through future general plan amendments, as there are no fire safety limitations to prevent such amendments. (Attachment 2 - Land Use Element, LUD Map, page LU11.)

A second threat is the expansion of "Agritourism." Many of these groundwater-dependent commercial uses will happen on isolated forests and ranchlands designated for Resource Production. Many of these uses are by right or ministerial permits, and therefore will not have fire hazard impacts reduced by CEQA review and mitigation measures. (Attachment 3 - 17.16.20 Permitted Uses include Agritourism; Attachment 4 - Resource Production Element, RP-1A, Attachment 5 - Agritourism Performance Standards; Attachment 6 - Agritourism Defined.) These land use designations dominate the county's high and very high wildfire risk areas. (Attachment 3 - Land Use Element LUD Map, page LU11; Attachment 7 - Wildfire Risk Map.) Many of these lands are far from fire stations, where limited fire crews cover extensive mountainous districts, where response times are long. (Attachment 8- Fire Stations; Attachment 9 - Fire District Maps.)

As you well know, when a wildfire gets out of control in these sorts of areas, it can instantly wipe out families, homes, businesses, and the essential assets in major agricultural and forest operations that took generations to accrue. The 2015 Butte fire in Calaveras County is had some of those devastating characteristics. (Attachment 10 - Butte Fire Article.)

A third threat is the cumulative impacts of the aforementioned land uses in the context of a changing climate. As the area gets less rain, water will become scarcer, and fire risk will increase. As forests type convert from conifers to oak woodlands, commercial forest lands are likely to be converted more developed uses. This is especially likely along the Highway 4 corridor where TPZ land is immediately adjacent to existing communities in the very high fire risk zone. (Attachment 11 - 2015 Open Space Map.) The Resource Production Element calls for the County to amend its code to allow for the immediate rezone of lands that owners seek to remove from the TPZ. (Attachment 4 - Resource Production Element, Measure RP-3A.)

Of course, these fire safety challenges are in addition to the ordinary challenges associated with retaining volunteer firefighting crews, maintaining reliable equipment, and keeping up with the demand for services in a County with no development impact mitigation fees for emergency services, etc.

1 Given these fire safety threats, and in the wake of the 2015 Butte Fire, you would think that the
2 GPU would ensure prompt implementation of all the instructions in the BOF 2015 Safety
3 Element review to protect the county residents, homes, and businesses. The good news is the
4 GPU's Safety Element does include policies reflecting the BOF recommendations. The bad
5 news is that:

- 6 (a) the Implementation Measures do not commit the County to do anything to improve fire
7 safety by any particular time,
8 (b) there are no specified fires safety requirements on new development projects,
9 (c) there is no recognition that some areas are too dry, windy, steep, fuel laden, and poorly
10 accessible that they are inherently unsafe for new developments (residential, special event,
11 tourist lodgings, manufacturing, etc.) that will concentrate people in those areas,
12 (d) there remains no coordinated post-fire recovery plan for the people, plants, and animals in the
13 2015 Butte Fire burn scar.

14 **3. The GPU's Safety Element has four major flaws that will undermine achievement of the**
15 **fire safety objectives inherent in the BOF's 2015 review.**

- 16 (a) **The Implementation Measures do not commit the County to do anything to improve**
17 **fire safety by any particular time.**

18 Many of the requests of the 2015 BOF review of the Safety Element were superficially
19 incorporated into policies and implementation measures. However, the Safety Element deferred
20 adoption of the fires safety implementation measures to an unspecified time in the future. The
21 Safety Element includes no deadlines or priorities for implementing the following fire safety
22 measures: S-3A to update the County Code to improve fire safety, S-3B to review fire district
23 standards, S-3C to create a fire safety standards reference, S-3H to assist with fire district impact
24 fee adoption, S-3I to formulate county standards and ordinances for fire safety, S-3J to amend
25 the County Code to address post-fire rehabilitation, S-3K to create post-fire recovery plans, S-3N
26 to evaluate the fire safety of the existing affordable housing stock, S-3O updating community
27 plans to include wildfire safety, S-3Q securing funding for dead tree removal, and S-3U
28 adopting an ordinance allowing the installation of temporary communication facilities during
emergencies. (Attachment 12 - Safety Element.) This is critical weakness, as the GPU includes
dozens of deferred programs without priorities or implementation deadlines. The only hope of
getting fire safety reforms implemented is for people to convince the Supervisors that it is a
priority during the Board's annual selection of general plan measures to implement. (Attachment
2 - Land Use Element, Tentative Annual Work Plan Measure LU-1.A.)

- (b) **Fires safety requirements for new development projects remain optional.**

While new discretionary developments will get reviewed for fire safety as requested by the BOF,
the County's application of fire safety measures to these projects remains optional.
Implementation measure S-3S indicates that fuel reduction plans for new developments "should"
consider fuel reduction in common areas, "should" address recording fuel management
easements, and "should" encourage projects to become Firewise Communities. Thus, all these

1 fire safety efforts remain optional. Similarly, while measure S-3W calls for CalFire and fire
2 districts to review proposed new developments, it only requires the County to "consider" the
3 recommendations in those reviews. Again, the fire safety efforts for new developments remain
4 optional. (Attachment 12 - Safety Element.)

5 The Community Wildfire Protection Plan provides guidance not only for meeting building
6 requirements, but also for maintaining fire safe landscapes and communities. (See pp. 34-84 of
7 the CWPP at <http://www.calaverasfiresafecouncil.org/CWPP.html>.) Clearly we know how to
8 construct and maintain safer communities. However, unless optional Safety Element
9 implementation measures become required, we will continue to build less fire safe
10 neighborhoods, in less fire safe communities. If we are going to keep local employees and
11 residents safe, this has got to change.

12 **(c) There is no recognition that some areas are so dry, windy, steep, fuel laden, and poorly
13 accessible that they are inherently unsafe for new developments that will concentrate
14 people in those areas.**

15 The overarching land use policy in the GPU is that every legal lot in the natural resource,
16 residential, or mixed-use designations is suitable for residential development, no matter how dry,
17 windy, steep, fuel laden, and poorly accessible. (Attachment 2 - Land Use Element, Table LU-
18 1.) In addition, the GPU applies land use designation, policies, and implementation measures for
19 residential, commercial, and industrial development across the entire land use map of the
20 County, regardless of the unsafe fire conditions on the landscape. (Attachment 2 - Land Use
21 Element, LUD Map, page LU11; Attachment 7 - Wildfire Risk Map.) This error is compounded,
22 as future zoning is required to be consistent with these land use designations, again regardless of
23 the unsafe fire conditions on the landscape. Development proposals can be approved and built if
24 they are consistent with these inherently unsafe general plan land use designations and zoning
25 categories. In these areas, CEQA's fire safety impact mitigations measures are considered
26 "infeasible," because they would make development too expensive. If we are going to keep local
27 residents and employees safe, this has got to change.

28 It is true that there is a class of people in Calaveras County who have the money and ability to
live and work where ever they wish. They can choose to avoid fire risks. However, the majority
of the people in Calaveras County have to take the jobs they can get, and live in the homes they
can afford, where ever those may be. Where these parents live, their young children live with
them. It is for the health and safety of these people that the County must establish a foundation of
fire safe building and zoning codes, upon which all legitimate development is based. This is
more than a matter of public safety, it is a matter of human decency. These people depend on the
County to protect them from unnecessary incineration. Please help us to convince the Board of
Supervisors that providing for the safety of the people of Calaveras County is not a burden they
should unload, but an honor they should embrace.

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(d) There remains no coordinated post-fire recovery plan for the people, plants, and animals in the 2015 Butte Fire burn scar.

Section 8 of the BOF review calls for burn area recovery plans, the use of stat-of-the-art fire safe building techniques in redevelopment, and the restoration of wildlife habitat.

Nearly four years have passed since the Butte Fire burned through Calaveras County. A lot has been done. Emergency erosion control, hazardous material clean-up, and hazard tree removal have been done. PG&E has paid settlement funds, and road reconstruction efforts are under way. A new CWPP is in place identifying fire safety projects for future funding. However, these efforts continue to be independent, un-coordinated, and haphazard. There remains no post-fire recovery plan for the people, plants, and animals that reside in the burn scar. Opportunities are being missed to underground utilities, to build more fire safe buildings, to restore critical habitat, and to reconfigure transportation dead-ends and bottlenecks.

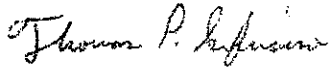
Today, nearly four years later, many families that remain in the burn scar are still living in substandard conditions as they wait to rebuild their homes. Meanwhile, the brush returns among the down logs and limbs across the dry and unshaded landscape. Residents fear the next round of fire will come soon.

4. Please convey your concerns to the Board of Supervisors.

The Board of Forestry has been given the responsibility to review and comment on updates to safety elements. (Government Code, Section 65302.5.) You have completed your obligation by reviewing the Draft Safety Element in 2015. We at the CPC thank you for your effort.

We realize that you are busy, and under no obligation to take any further action on behalf of the 45,000 people who reside in Calaveras County. However, 80% of Calaveras County is in a State Responsibility Area. Thus, the County's fire safety failures today are likely to cost the State of California a great deal in firefighting costs in the future. So, we humbly request that you communicate any lingering fire safety concerns of the BOF to the Calaveras County Board of Supervisors before they approve the GPU in early September. We have done all we can. They do not listen to us. They listened to you. Please comment as if somebody's life depends upon it; because somebody's life does.

Sincerely,



Tom Infusino, Facilitator
Calaveras Planning Coalition

P.S. Please send me a copy of what you send to the County.

1 Tom Infusino, Facilitator
2 Calaveras Planning Coalition
3 P.O. Box 792
4 Pine Grove, CA 95665

4 Monique Wilber
5 Conservation Program Support Supervisor
6 California Department of Conservation
7 801 K Street
8 Sacramento, CA 95814

7 August 19, 2019

8
9 **RE: Calaveras County General Plan Update was altered by Planning Commission and
10 Supervisor's review *contrary to your recommendations*, and needs your expert review and
11 recommendations by early September.**

10 Dear Ms. Wilber:

11 My name is Tom Infusino, and I am Facilitator of the Calaveras Planning Coalition. The CPC is
12 a group of community organizations and individuals who want a healthy and sustainable future
13 for Calaveras County. We believe that public participation is critical to a successful planning
14 process. United behind eleven land use and development principles, we seek to balance the
15 conservation of local agricultural, natural and historic resources, with the need to provide jobs,
16 housing, safety, and services.

14 **I. The GPU's Potential Impacts to Farm, Forests, and Rangeland are Significant.**

15 I am writing to you because on August 9, 2018 you commented on the Calaveras County General
16 Plan Update DEIR. (Attachment 1- DOC Letter.) As you know, the General Plan Update will
17 affect the use of private land throughout the County for decades, including hundreds of
18 thousands of acres of farmland, forests and rangelands.

18 Many aspects of the General Plan Update pose a threat to the long-term productivity of farms,
19 forests and rangelands.

19 Of course, the agricultural and forest lands adjacent to community centers are most likely to be
20 converted as water and sewer are extended to them. (See Attachment 2 – Map of Ag. Land
21 adjacent to community centers, Attachment 3 – Water & Sewer Service Areas.) In fact, the
22 General Plan Update supports development of agricultural lands around community centers
23 when infrastructure and services are extended to them. (Attachment 4, Land Use Element, Policy
24 LU 1.2. & LU 1.4)

1 In addition, the extension of intensive groundwater dependent residential and commercial
2 development into rangelands could dry up the only economical source of water for local ranches.
3 (Attachment 4, Land Use Element, Table LU-1 - shows groundwater-dependent development in
4 rural areas, Attachment 5 - Well Yield and Water Availability Map; Attachment 4 - LUD Map,
5 page LU11.) In addition, with the expansion of "Agritourism", many of these groundwater-
6 dependent commercial uses will happen on forests, farms, and ranches by right or ministerial
7 permits, and therefore will not have impacts reduced by CEQA mitigation measures.
8 (Attachment 7 - 17.16.20 Permitted Uses include Agritourism; Attachment 6 - Resource
9 Production Element, RP-1A, Attachment 8 - Agritourism Performance Standards; Attachment 9
10 - Agritourism Defined.)

11 Third, the location of these residential and commercial uses in isolated and fire prone areas
12 adjacent to agricultural and forest operations dramatically increases the risk of a wildfire.
13 (Attachment 10 - Wildfire Risk Map) Such a fire can instantly wipe out the essential assets in
14 major agricultural and forest operations that it took generations to accrue. The 2015 Butte fire in
15 Calaveras County is a good example of such devastation. (Attachment 11 - Butte Fire Article.)

16 Fourth, while these adverse effects would be bad enough on their own, they are likely to be
17 worse due to the cumulative impacts of climate change. As the area gets less rain, water will
18 become scarcer, and fire risk will increase. As forests type convert from conifers to oak
19 woodlands, commercial forest lands are likely to be converted to other uses. This is especially
20 likely along the Highway 4 corridor where TPZ land is immediately adjacent to existing
21 communities.

22 Of course, these adverse effects on agriculture are in addition to the other challenges that will
23 make it difficult to sustain operations in the future: trade wars, foreign competition, lack of a
24 viable business succession plan, energy and transportation costs, and local hostility to
25 conservation easements. It is not surprising that data in the General Plan Background Report
26 indicates that over 189,000 acres of rangeland and over 32,000 acres of farmland went out of
27 production in Calaveras County between 2000 and 2014. (Attachment 12 - Table 12 Ag. Land
28 Loss 2000-2014.)

Given these threats to agriculture, you would think that the County would place a high priority
on following your advice to preserve a sustainable agricultural land base in the General Plan
Update. Unfortunately, you would be wrong to think that.

II. Your letter asked the County to do four things.

Regarding the potential for conversion of agricultural land, you specifically asked the County to
do four things:

"All mitigation measures that are potentially feasible should be considered. A measure brought
to the attention of the Lead Agency should not be left out unless it is infeasible based on its
elements. The Department suggests that the County consider the adoption of an agricultural land
mitigation program that will effectively mitigate the conversion of agricultural land."

1 "Mitigation via agricultural conservation easements can be implemented by at least two
2 alternative approaches: the outright purchase of easements or the donation of mitigation fees to a
3 local, regional, or statewide organization of agency whose purpose includes the acquisition and
4 stewardship of agricultural conservation easements."

5 You encouraged the County to use the model mitigation policies in the California Council of
6 Land Trusts' guidebook.

7 You asked the County to provide you with notices of hearings and staff reports. (Attachment 1 -
8 DOC Letter.)

9 **III. The Draft FEIR included the conservation program changes you suggested.**

10 After your comment, County staff proposed changes to the General Plan Update in the Draft
11 Final EIR, in compliance with the suggestions in your DEIR comment. It included an interim
12 agricultural land conservation program with specific mitigation standards to be implemented
13 immediately upon adoption of the GPU. This would be followed by drafting, approval, and
14 adoption of a long-term program. (Attachment 13 - New Policy in Response to DOC Comment.)

15 **IV. The Planning Commission gutted the program, and the Supervisors let them.**

16 In June of 2019, the Planning Commission eliminated the interim conservation program that
17 would have required the acquisition of conservation easements at specified mitigation ratios.

18 Also, the Planning Commission deferred adoption of the long-term conservation program to an
19 unspecified time in the future, without explaining why deferral was needed. This is critical, as
20 the GPU includes dozens of deferred programs without priorities or implementation deadlines.
21 The only hope of getting an agricultural land conservation program is for people to convince the
22 Supervisors that it is a priority during the Board's annual selection of general plan measures to
23 implement. (Attachment 14 - Tentative Mitigation Policy RP-1F, Attachment 15 - Tentative
24 Annual Work Plan Measure LU-1.A.)

25 Finally, the Planning Commission allowed in-lieu fees to be spent on rangeland improvement
26 projects that are not linked to long-term land conservation. It is not clear that there is a sufficient
27 nexus to charge an ag. land conversion fee and spend it on rangeland enhancement projects.

28 In July, the Supervisors did not vote to cure the harm done by the Planning Commission.

Did the County provide you with notice of the Planning Commission's May and June GPU
hearings, or the Board of Supervisor's July GPU hearing, and the corresponding staff reports, as
you requested in your DEIR comment letter?

V. There are missing pieces in the agricultural conservation part of the GPU.

Because the impacts of the GPU on farm, range, and forests lands are likely to be so significant,
and because the impact mitigation program has been gutted, it is even more problematic that

1 there are essential pieces missing from the Resource Production Element, and the Open Space &
2 Conservation Element.

3 Government Code, Section 65565 identifies the required contents of a general plan that contains
4 a section on agricultural land conservation. If there is an agricultural land element, it must
5 identify priority lands for conservation, establish policies and objectives to support the long-term
6 protection of agricultural land, and establish implementation measures to achieve the policies
7 and objectives. (Government Code, sec. 65565, subds. (a)(1)(K), (a)(2), (a)(3).) While the soil
8 mapping data was not timely made available to the County, there was no excuse for not
9 providing some of the other information in the GPU.

10 The following information, maps, and data should be in the Resource Production Element but are
11 not despite the availability of the data:

12 -parcels subject to conservation easements, (Attachments 16-19.)

13 -the total acreage of land within two miles of land zoned for housing, business, or industry,
14 (Attachment 2 - Williamson AG Preserve & A1 near housing.)

15 -identification and designation of priority land for conservation. The County set no priorities.

16 -objectives for the long-term protection of agriculture. The County adopted no objectives. ("An
17 objective is a specified end, condition, or state that is an intermediate step toward attaining a
18 goal. It should be achievable and, when possible, measurable and time-specific." [OPR, 2017
19 *General Plan Guidelines*, p. 381.] (See Attachment 6 - Resource Production Element,
20 Attachment 20 - Conservation & Open Space Element.)

21 How can County decisionmakers in the future know if they have succeeded in conserving
22 enough acres of priority agricultural lands if the Resource Production Element and the
23 Conservation and Open Space Element designate no land as a conservation priority, and adopt no
24 objectives for the long-term protection of agriculture?

25 **VI. Please Review the Resource Production and Conservation/Open Space Elements.**

26 The Department of Conservation has been given the responsibility to review and comment on
27 general plan amendments that include an agricultural land conservation component. 45 days
28 prior to adoption, the city of county is supposed to send the Department the proposal. The
Department reviews it and makes recommendations. The jurisdiction considers those
recommendations prior to approval. Has the County sent you the latest draft of its proposed
elements since the Planning Commission completed its review on June 13, or the Board of
Supervisors completed their review on July 31?

Given the substantive changes that weaken the Resource Production Element's ag. land
conservation program, and the many missing pieces of the elements relating to ag. land
conservation, we hope that you will review and comment on the element prior to the BOS

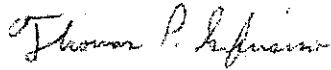
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approval in early September. Given your status as a reviewing agency, you have much more influence on the General Plan Update process than we do.

Please send a letter to the Board of Supervisors asking them to reconsider the modification of your suggestion. Ask them to comply with CEQA by adopting a proper mitigation measure. Ask them to include the missing ag. land conservation information in the Resource Production Element. If there is somebody else in your Department that does these reviews, please forward this email to them. As the citizens who hope to benefit from your agency's expertise, we would very much appreciate your expert review and recommendations.

Please send me a copy of what you send to the County.

Sincerely,



Tom Infusino, Facilitator
Calaveras Planning Coalition

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Tom Infusino, Facilitator
Calaveras Planning Coalition
P.O. Box 792
Pine Grove, CA 95665

Tina Bartlett
Regional Manager
California Department of Fish and Wildlife
1701 Nimbus Road
Rancho Cordova, CA 95670

August 20, 2019

RE: Calaveras County General Plan Update (GPU) was altered by Planning Commission and Supervisor's review *contrary to your recommendations*, and needs your expert comments by early September.

Dear Ms. Bartlett:

My name is Tom Infusino, and I am Facilitator of the Calaveras Planning Coalition. The CPC is a group of community organizations and individuals who want a healthy and sustainable future for Calaveras County. We believe that public participation is critical to a successful planning process. United behind eleven land use and development principles, we seek to balance the conservation of local agricultural, natural and historic resources, with the need to provide jobs, housing, safety, and services.

1) We agree that implementation of the GPU may result in the take of listed species.

I am writing to you because on August 13, 2018, you commented on the Calaveras County General Plan Update DEIR. (Attachment 1- CDF&W Letter.) As you know, the General Plan Update will affect the use of private land throughout the County for decades, including tens of thousands of acres of forests, rangeland, and riparian habitats.

Many aspects of the General Plan Update, in combination with climate change, pose a threat to the long-term viability of special status species.

Of course, the rangelands and forest lands adjacent to community centers are most likely to be converted as water and sewer are extended to them. (See Attachment 2 – Map of Ag. Land adjacent to community centers, Attachment 3 – Water & Sewer Service Areas.) In fact, the General Plan Update supports development of such lands around community centers when infrastructure and services are extended to them. (Attachment 4, Land Use Element, Policy LU 1.2. & LU 1.4)

1 With the expansion of Agritourism, there will be additional lodges and commercial uses in
2 previously isolated habitat areas. Many of these uses will be allowed by right or administrative
3 permit, so that no CEQA review or impact mitigation will occur. (Attachment 5 – 17.16.20
4 Permitted Uses include Agritourism; Attachment 6 – Conservation and Open Space Element,
5 COS #, Attachment 7 – Agritourism Performance Standards; Attachment 8 – Agritourism
6 Defined.)

7 While these adverse effects would be bad enough on their own, they are likely to be worse due to
8 the cumulative impacts of climate change. As the area gets less rain, water will become scarcer,
9 and habitat will degrade for many species. As forests type-convert from conifers to oak
10 woodlands, commercial forest lands, and the habitats therein, are likely to be converted to other
11 developed uses. This is especially likely in the Stanislaus River Watershed along the Highway 4
12 corridor, where TPZ land is immediately adjacent to existing communities. (Attachment 9 –
13 Open Space Map.)

14 Given these threats to sensitive species habitat, and the potential for economically harmful
15 development injunctions under the Federal Endangered Species Act, you would think that the
16 County would place a high priority on following your advice to preserve a suitable habitat and
17 sustain viable populations of special status species. Unfortunately, you would be wrong to think
18 that.

19 **2) Many mitigation actions are not specified and scheduled as you requested.**

20 Your letter correctly requested that mitigation measures “be specific, enforceable, and feasible
21 actions.” Your letter went on to note that, “Mitigation measures should establish performance
22 standards” and “describe when mitigation measures will be implemented, and explain why the
23 measure is feasible.” (Attachment 1, p. 3.)

24 Unfortunately, many of the mitigation measures in the Conservation and Open Space Element do
25 not conform to your request. (Attachment 6 - Conservation and Open Space Element.)

26 For example, Implementation Measure COS-3C indicates that the County will develop riparian
27 setback standards, but does not specify minimum setbacks that apply in the interim, and does not
28 say when the County will get around to developing standards. Implementation Measure COS-4B
calls for establishing mitigation measure for biological resources. Again, there is no list of
specific feasible measures to choose from, no performance standards, and no indication when the
County will establish the mitigation measures. Similarly, Implementation measure COS-4C calls
for pursuing a habitat conservation plan for tiger salamander and red-legged frog, but is does not
say when they County intends to do this. Implementation Measure-4E calls for establishing
protection for migration corridors, but does not say when this will be done. This latter flaw is
crucial, as the GPU contains dozens of mitigation provisions without any priority for
implementation. While development under the GPU will begin immediately, God only knows
when the mitigation programs will be put in place.

In the interim, project-level mitigation will be identified by the project applicant’s biologist for
reducing the impacts of invasive species and reducing impacts to riparian corridors. (See COS-

1 4K, COS-4N) There are no minimum standards for riparian corridor protection, because the
2 Planning Commission removed them.

3 It is important to understand the very limited scope of the impact mitigation under the GPU. To
4 reduce the requirements on developments, an important feature of the GPU is that it precludes
5 reducing impacts by applying standards to ministerial projects. By way of contrast, many
6 jurisdictions have objective standards in their general plans and zoning ordinance that establish
7 streamside setbacks, open-space and habitat mitigation ratios, and other impact reducing
8 measures so that all developments in the area (discretionary or ministerial) contribute to impact
9 reduction. This allows more projects to be developed before habitat elimination places stricter
10 limits on development. The Planning Commission and the Board of Supervisors specifically
11 rejected this concept for the GPU. The project-level mitigation of impacts to biological
12 resources, biologically sensitive communities, invasive species, streams and wetlands, riparian
13 corridors, wildlife corridors will only occur for discretionary projects. (See COS-4H, 4I, 4K, 4L,
14 4N, 4O, 4P.) These are only a fraction of the impacting land uses in the County.

15 **3) Your bat-roosting mitigation requests were not accepted.**

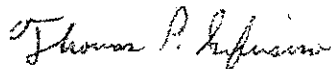
16 Your bat roosting mitigation requested multiple survey visits. Your mitigation requested that
17 replacement roosts be in place a year prior to the project development. Your mitigation indicated
18 that the project would not be implemented until the roosts are documented to be in use by the bat
19 species. Your mitigation indicated that roost structures should be removed outside the critical
20 hibernation and maternity seasons. (Attachment 1, pp. 5-6.) These safeguards are needed to
21 ensure that impacts are effectively reduced. None of these safeguards made it into the County's
22 mitigation measure. (See COS-4P.)

23 **4) Were you notified of the Planning Commission and Board of Supervisor's hearings?**

24 Did the County provided you with notice of the Planning Commission's May and June GPU
25 hearings, or the Board of Supervisors' July GPU hearing, as you requested in your letter?
26 (Attachment 1, p. 8.)

27 Please send a follow-up letter to the Board of Supervisors asking them to reconsider your
28 suggestions. Ask them to comply with CEQA by adopting proper mitigation measures. If there
is somebody else in your Department that sends these letters, please forward this email to them.
As the citizens who hope to benefit from your agency's expertise, we would very much
appreciate your expert recommendations. Please send me a copy of what you send to the County.

Sincerely,



Tom Infusino, Facilitator
Calaveras Planning Coalition
(209) 295-8866

PROOF OF SERVICE BY MAIL

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2
3 Thomas P. Infusino certifies and declares as follows:

4 I am over the age of 18 years, and not a party to this
5 action.

6 My address is P.O. Box 792
7 Pine Grove, CA 95665

8 which is located in the county where the mailing described
9 below took place.

10 On December 17, 2019, I deposited in the mail at
11 Pine Grove, California, a copy of the attached
12 document entitled Notice to Attorney General of
13 Petition Filed Pursuant to CEQA

14 with postage fully prepaid, addressed to:

15
16 County Counsel, Office of the Attorney
17 County of CALAVERAS General
18 891 Mountain Ranch Road P.O. BOX 944255
19 San Andreas, CA 95249 SACRAMENTO, CA 94245-2550

20
21 I certify and declare, under penalty of perjury under the
22 laws of the State of California, that the foregoing is true
23 and correct.

24 Executed on 12.17.19, by: Thomas P. Infusino
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