

6/11/14
(Submitted by email)

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Calaveras County Planning Commission
C/o Peter Maurer, Planning Director
Calaveras County Planning Department
891 Mountain Ranch Road
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RE: Items for discussion at you meeting on 6-12-14, including the Saddle Creek Development Agreement Extension.

Dear Commissioners:

My name is Tom Infusino, and I am submitting these comments on behalf of the Calaveras Planning Coalition (CPC). I have a planning degree from the University of California, Davis, and a law degree from the University of the Pacific. I have worked on CEQA issues for 25 years.

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.

I. The Calaveras County Planning Commission should provide “health check-ups” for development projects.

Many people make it a practice to get an annual physical and dental check-up from their doctor and dentist. In this way, they hope to catch medical and dental problems in their earliest stages, when they can be addressed with the least pain, the least cost, and the least risk.

Development projects also need regular check-ups. In this way, communities can catch problems early before they fester, hamper effective project implementation, create discord, and risk inspiring opposition to future projects.

Our planning laws and agreements trigger project reviews.

-Regular mitigation monitoring reports are required from public agencies pursuant to every EIR and Mitigated Negative Declaration.

-Whenever the County makes a subsequent discretionary approval for a project (e.g. the next subdivision map in a specific plan area, the extension of development agreement, etc.), the County reviews the project to determine if any changes in the project or its circumstances trigger additional environmental review. This review may involve the preparation of an initial study that considers whether the information in the original EIR remains accurate in the face of new information and changed circumstances.

-Developers file reports regarding their progress on implementing specific plans and/or development agreements.

A wise Planning Commission will take the time to review these mitigation monitoring reports, these initial studies, and these developer reports. It is a good time to invite the other agencies responsible for impact mitigation to explain their progress. (In the words of the great Ronald Reagan, "Trust but verify.") It is also a good opportunity to circulate the documents for public review, and to ask folks in the communities for their perceptions of how the projects are doing. In this way, you can identify project-related problems that arise and prepare to solve them. You may also identify regional or county-wide challenges that need attention.

As Commissioners, what questions do you ask when you are considering these reviews? You ask, what was expected when the EIR was prepared? (Was there a plan to build a school, a park, water supply project, or a road?) You identify which mitigation measures were identified to be carried out, and by what agency. Then you ask if the plans have been implemented and the mitigation performed. If not, why not?

For example, you might ask, "Did the school that was planned get built?" If not, why not? Did the school mitigation fees get collected? Was the money collected enough to build the school? Did the money get spent on something else, or is it sitting in a trust fund waiting to get spent? What are the next steps we should take to get that school built? The same questions apply to water projects, and parks, and roads for the project and the community. On countywide resource issues there are questions to ask as well. Did we adopt the air quality plan that was anticipated? Is it working to improve air quality as anticipated? Is there anything more we can do to improve air quality? What are the first steps to doing that? On the birds and bunny issues there are similar questions. Are the animals doing as well as expected? If not, why not? Does more need to be done for sensitive, threatened or endangered species? If so, what? What are the first steps we need to take to get the solutions started?

These sorts of reviews have many benefits. First, by addressing problems effectively, they improve the quality of life in our communities. Second, by improving the quality of life in our communities, it makes them more attractive to people seeking a place to settle or start a business. Third, by following through on the promises of past projects, the County will reduce public opposition to future projects. Fourth, by demonstrating impact mitigation from past projects, the County reduces the likelihood of a successful legal attack on future projects on the grounds that past projects have failed to implement their mitigation measures.

We note that when there are no project approvals scheduled, Planning Commission meetings are sometimes cancelled. Please do not cancel these meeting. Instead, have the Planning Department Staff bring forth the mitigation monitoring reports on EIRs and MND for your review, for your questions, and for consideration for action. Make those reports available to the public well in advance of the meeting, so people can study them and come prepared with intelligent questions. Consider reviewing the reports from projects by community, and holding the meeting in the community, to make it easier for people to attend. Consider holding a Planning Commission field trip in the community so that Commissioners can see the challenges up close and personal. Through this process, the Planning Commission can help to fulfill its development monitoring function.

Successful projects and successful communities do not happen by accident. They are the product of diligent effort by all of the many people in the public sector and the private sector doing their part. The Planning Commission plays a key role in making sure that important tasks for community success get completed, and do not fall through the cracks and remain incomplete. You have the position and the influence to help your communities. We strongly encourage you to take up your critical development review role to promote successful communities.

II. The Planning Commission should identify expectations for the Planning Department when they bring forth project approvals based upon prior-approved EIRs.

As you know, frequently CEQA allows a discretionary project to be approved under a previously prepared EIR or negative declaration. Sometimes a Staged EIR, or Program EIR, or even a Project EIR, prepared years before, is sufficient to support the current decision. However, sometime they are not. There are many different CEQA procedure involved with different minimum procedural standards for figuring out when a supplemental EIR is needed, and when one is not. As a result, it is difficult for planners, the courts, public officials (like you), and the public to keep them all straight. Some procedures require preparation of an initial study, others do not. Some procedures require circulation of the initial study, some do not. Some local government decisions are judged by the deferential substantial evidence test, and some are judged based upon the very challenging “fair argument test.”

Given all this complexity, we at the CPC encourage the Planning Commission to work with the Planning Department (with County Counsel, and with the CPC and the rest of the public) to

identify some basic procedural expectations for using old EIRs for new project approvals. If we could agree on some basic procedures, we could focus our future energies and attentions on solving the real problems, rather than fighting over the correct paperwork.

We encourage you to include the following steps in the procedure to promote compliance with CEQA and to provide an effective collaborative public participation process.

1) Step 1 should be a detailed initial study that evaluates if changes in the project, new information, or changed circumstances trigger the need to supplement the original EIR or negative declaration.

As suggested earlier, it is difficult to come up with generalizations in this area, given the fact that there are so many different minimum procedures. However, in general, the cities and counties that do prepare detailed initial studies that evaluate the adequacy of the prior EIR or negative declaration, and produce detailed findings supported by substantial evidence in the record, are the most successful in defending their decisions in court. This also discourages people from challenging the decisions.

Preparing such an initial study involves investigation of each of the impact areas on the CEQA checklist.

For example, one would review the Mitigation Monitoring Reports to see if mitigation and conditions of approval are working. If the mitigation is not working, then the project may be having more severe impacts than previously anticipated. That would need to be disclosed in an EIR supplement.

For another example, such an investigation involves reviewing available documentation on new information and changed circumstances since the EIR for the project, on all CEQA checklist issues. The documents checked in such an investigation include, General Plan and Community Plan updates, environmental reviews for subsequent projects in the area, updated regional transportation plans, updated air quality standards and plans, greenhouse gas inventories and mitigation measures; new sensitive, threatened, or endangered species lists. These are the sorts of documents that may indicate that the original EIR is out of date and needs to be supplemented.

In project approval, it is important to differentiate between the valid public concerns regarding environmental, health, and safety issues, and the mere opposition to any change at all. My perception of the Board of Supervisors is that they have great sympathy for those with valid concerns, and little patience for those opposed to any change at all. By properly doing these initial studies, and addressing any issues that arise, the County can both address the valid health, safety, and environmental concerns, while also reducing the likelihood of a successful challenge by those simply opposed to change.

2) Try to identify any new mitigation measures to address the new or more severe impacts.

If mitigation is failing, if new information or changed circumstances suggest the need for additional mitigation, or if additional community concerns need to be addressed, identify a list of additional mitigation measure, conditions of approval, or terms for the development agreement that could address these. That means looking at how other cities and counties have solved these problems, and trying to figure out a way to solve them in Calaveras County. Do not just claim the impacts are “significant and unavoidable.” Be solution oriented, not defeatist.

3) Circulate the Initial Study and Proposed Finding for Agency and Public Review.

While sometimes required by CEQA and sometimes not, circulating the initial study will help you make the right decision. People who live in the neighborhood of the project may have knowledge of its problems that the Planning Department does not have. Expert agencies may have access to new information or be aware of changed circumstances that the Planning Department lacks. Better yet, they may have suggestions for mitigating the new or more severe impacts. The comments of people and expert agencies can help the Planning Commission to make the right decision about preparing or not preparing an EIR supplement. They can help the Planning Commission solve problems.

4) Planning staff should hold at least one meeting in the community near the project to get input on the initial study and proposed findings.

These meetings will help people get their input into the process. Consider having the local Planning Commissioner participate in a field trip to the community to see the concerns of people up close and personal. Talk about ways to solve the problems people raise regarding the project.

These sorts of meetings and trips help people feel that their concerns are being seriously considered and not swept under the rug. People are less likely to fight then. People are more inclined to fight when the County appears not to care about them. That is the impression people get when there is no initial study prepared, no initial study circulated for public review, no local meeting or field trip, and no staff report until the Friday before the meeting, and the Planning Commission notice is buried in the classified section of the newspaper. That just makes people feel railroaded and mad.

5) If the County needs to charge developers a fee for this process, then the Planning Department should update the fee list to do so.

We understand that financial times are hard, and that money is tight. We also realize that project proponents get economic value from these project approvals. If the County needs to charge project proponents so that the County can more effectively comply with CEQA and improve public perception of the projects, then the County should do so.

I know that the Planning Commissioners care about their communities. Michelle Plotnik served with distinction on the Board of the Community Action Project. Fawn McLaughlin was instrumental in developing the Mokelumne Hill Community Plan update. Kelly Wooster served on the committee that developed the latest draft of the Copperopolis Community Plan.

I know that people respect the Planning Commissioners and project applicants, and want to provide useful input in a timely fashion so that project applicants and the Planning Commission can address important issues. Unfortunately, the current less-than-a-week process makes us all appear less caring and less respectful in a government setting, than we are inclined to be as individuals. Government should strive to do the opposite. Government should design its procedures so that we are more caring and more respectful in the government setting, than we are inclined to be as individuals.

We note that lately there has been a lot written in the press about developing more collaborative processes for addressing controversial issues. Above is our attempt to identify such a collaborative process. Please do not pass up this opportunity. If you do pass up this collaborative opportunity, then you are forcing people to seek justice through more adversarial procedures and forums. That would be a shame.

III) CPC comments on the Saddle Creek Development Agreement Extension on your agenda for June 12, 2014.

A) Is there a Public Facility Finance Plan for this Specific Plan?

Government Code, Section 65451, indicates that a specific plan needs to include a program with “financing measures” needed to implement “the major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities ... needed to support the land uses described in the plan.” The 1993 EIR includes a fiscal analysis, but that is not the same thing as a public facility finance plan.

The 1993 EIR identifies a number of public facility expansions expected to occur to serve the proposed specific plan. These include expansions of roads, schools, fire protection, water supply, and waste water treatment facilities. A public facility finance plan is a key element to ensure that these infrastructure expansions will be timely completed. For example, sometimes impact mitigation fees are front loaded onto earlier phases of the project to facilitate the timely construction of the infrastructure, and developers are given mitigation credit to use for later phases of the project.

Problems can arise when there is no public facility finance plan. Recently, the County had to deobligate from road expansion grants for projects in the Copperopolis area because it did not have the matching funds. Thus, hundreds of thousands of dollars in state road funds were lost to

the County. (Calaveras County Public Works, Requests to Deobligate CIP Project Power Point, 5/27/14.) This poor financial planning for those public facilities may delay their completion for years to come. Timely public improvements (schools, water, wastewater, roads, etc.) are needed both to support development approvals, and to make the communities attractive to prospective residents and businesses. The success of the community depends upon the infrastructure. The infrastructure depends on good financial planning.

If there is a public facility finance plan for the Saddle Creek Specific Plan, then please post it on the County website so we all can get a look at it. If there are public facility finance plans for other specific plans in the Copperopolis area, please post those on the County website as well.

If there is no public facility finance plan for Saddle Creek, then we encourage the County to seek a provision in the development agreement calling for one to be prepared by June 2016, or as soon as possible thereafter prior to the expiration of the development agreement in 2019.

B) The CEQA Exemption finding is not supported by rational argument and substantial evidence in the administrative record.

1) The Rules

a) The CEQA exemption claimed for the Development Agreement Extension is Government Code Section 65457. It states that

“Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. However, if after adoption of the specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption provided by this subdivision does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code. After a supplemental environmental impact report is certified, the exemption specified in this subdivision applies to projects undertaken pursuant to the specific plan.”

b) Public Resources Code, Section 21166 states:

“When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) **New information**, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”

c) Public Resources Code Section 21166 is implemented by CEQA Guideline Section 15162. It states:

“(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) **Substantial changes occur with respect to the circumstances** under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) **New information of substantial importance**, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more **significant effects not discussed in the previous EIR** or negative declaration;

(B) **Significant effects previously examined will be substantially more severe** than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency’s role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. **If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project,** if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.”

2) The Proposed finding lacks the support of logic and substantial evidence.

The Proposed Finding is a conclusory statement that, “No substantial changes to the project are proposed, no changes in circumstances have occurred, and no new information has become available since the EIR was prepared that would require the preparation of a supplemental EIR pursuant to Section 21166 of the California Public Resources Code.” The reference to evidence to allegedly support this finding obliquely states, “On the basis of the whole record there is no substantial evidence that the project may cause a significant effect on the environment that was not discussed in the Specific Plan EIR.” There is no listing of the documents in the record that were investigated to arrive at this determination. The documents were not posted on the Planning Commission web page. There is no impact-by-impact evaluation of the information in the 1993 Specific Plan EIR relative to the information in the “whole record.”

This finding fails to meet basic CEQA standards. "A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (*People v. County of Kern* (5th Dist 1974) 39 Cal.App.3d 830, 841-842 [115 Cal.Rptr. 67], quoting *Silva v. Lynn* (1st Cir. 1973) 482 F.2d 1282, 1285.) A clearly inadequate or unsupported study will be entitled to no judicial deference. (*State Water Resources Control Board Cases* (App. 3 Dist. 2006) 136 Cal.App.4th 674.) An agency must produce rigorous analysis and concrete substantial evidence to support a determination that the project's impacts are insignificant. (*Kings County Farm Bureau et al. v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692 [270 Cal.Rptr. 650].) "Argument, speculation, unsubstantiated opinion, or narrative evidence which is clearly erroneous or inaccurate ... does not constitute substantial evidence." (CEQA Guidelines, sec. 15384.)

Implicit in this finding is that the mitigation for the project is being properly and successfully implemented. However, the mitigation monitoring reports that are supposed to have been filed by the many agencies in charge of mitigation over the last two decades have not been posted on the Planning Commission web page. The administrative record must contain substantial evidence supporting the agency's view that the measures will mitigate the impacts. "A clearly inadequate or unsupported study is entitled to no judicial deference." (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 422 & 409 fn. 12 [253 Cal.Rptr. 426.]). “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260 - 1261.)

Also implicit in this finding is that the cumulative impacts of construction of the remaining over 1200 residential units will be as insignificant as anticipated in the 1993 Specific Plan EIR. However, there is no impact-by-impact evaluation of the additional development that has been approved in Copperopolis since 1993, and that now must be included in any cumulative impact analysis. The discussion of cumulative impacts must either "list past, present, and reasonably anticipated

future projects producing related or cumulative impacts" or provide "A summary of projections contained in an adopted general plan or related planning document which described or evaluated regional or areawide conditions." Then it must summarize their "expected environmental effects" and "examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (CEQA Guidelines, sec. 15130.) "It is vitally important that an EIR avoid minimizing the cumulative impacts. Rather it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them." [Citation.] A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval. [Citation.] An inadequate cumulative impact analysis does not demonstrate to an apprehensive citizenry that the governmental decisionmaker has in fact fully analyzed and considered the environmental consequences of its action." *Citizens to Preserve Ojai v. County of Ventura* (2d Dist. 1985) 176 Cal.App.3d 421, 431 [222 Cal.Rptr. 247], quoting *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1st Dist. 1984) 151 Cal.App.3d 61, 79 [198 Cal.Rptr. 634].) An adequate cumulative impact analysis would describe related projects and their known impacts on air, traffic, noise, and biological resources in the vicinity, and included the number and distribution of vehicle trips. An EIR which completely ignores cumulative impacts of the project is inadequate under CEQA. (*Fairview Neighbors v. County of Ventura* (1999) 70 Cal.app.4th 238.)

In summary, the proposed finding is substandard, and does not support the decision to approve the Development Agreement Extension absent the preparation of a Supplemental EIR.

C) At this time the evidence in the record supports only the conclusion that a supplementary environmental review is needed.

Since no Initial Study was prepared for this Development Agreement Extension, and no document investigation was provided, I did my own document review over the last week. It includes rational arguments based upon properly referenced substantial evidence in the record. As noted above, a more thorough investigation is warranted, but the lack of time between the staff report posting (6/6/14) and the Planning Commission hearing prevented this.

1. Aesthetics

The 1993 EIR for the Calaveras Country Club Specific Plan (A.K.A. Saddle Creek EIR) indicated the project would have no significant cumulative aesthetic impact. (CCCSP DEIR, pp. 4-68 to 4-71; CCCSP FEIR, p. 2-24; CCCSP Findings of Fact, 12/6/93, p. 15.) However, review of a subsequent EIR for a project in the area indicates more severe cumulative aesthetic impacts will result. (See 2011 Sawmill Lake RDEIR, pp. 18-6 to 18-7.) Thus, a supplemental EIR is needed to disclose this more severe impact. The County may need to seek additional mitigation in the development agreement.

2. Biological Resources

The 1993 EIR for the Specific Plan indicated that impacts to wildlife would be less than significant. (CCCSP FEIR, pp. 2-15 to 2-16; CCCSP Findings of Fact, 12/6/93, p. 20.) Since 1993, two new species of concern have been listed in the area: California Tiger Salamander and California Red-legged frog. (Sawmill Lake Staff Report, 12/13/12, p. 7.) These species were not surveyed for in the original wildlife assessments for the project. (CCCSP FEIR, Appendix 3, Biotic Species List, Zetner & Zetner, Data Report for Plants and Animals, March 1992, pp. 3 to 4, 12 to 15.) Two more recent EIRs on a nearby project indicated that impacts of development in the area may be cumulatively significant. (2006 Tuscany Hills RDEIR, p. 5.0-1; 2011 Sawmill Lake RDEIR, p. 18-21.) In addition, U.S. Fish and Wildlife has indicated that it would like the County to develop an HCP for these species, rather than relying solely on onsite project-specific mitigation. (Sawmill Lake Staff Report, 12/13/12, p. 7.) The County tried to develop an HCP with a grant from the State, but did not complete that project. The prior Planning Director, Rebecca Willis, proposed the creation of a sub-regional HCP for the Copperopolis area, but she was subsequently pressured to resign.

The General Plan Update is currently underway, and anticipated to be complete within the five year life of the Development Agreement Extension. Depending on the terms of the final General Plan and the interpretation of the Development Agreement, the Development Agreement may preclude application of its mitigation measures to future construction in the specific plan area through 2019. (DA, Section 2.5, subd. d, pp. 12-13.) For instance, Section 2.5 of the DA precludes the application of any new enactments that are not “uniformly applied on a County-wide basis to all substantially similar types of uses.” However, since the Board of Supervisors has directed the Planning Department to prepare for 2/3 of the anticipated growth under the new General Plan to occur in Copperopolis, it is very likely that Copperopolis will have unique impact mitigation programs and fees that do not apply County-wide. (Infusino, CPC Letter to Gillarde re Population Projections Identified at the BOS meeting of 5/14/13, 6/27/13, pp. 8, 9, 12.) As noted above, before being pressured into resigning, the previous Planning Director had proposed a sub-regional Habitat Conservation Plan for the Copperopolis area to address U.S. Fish and Wildlife and California Fish and Wildlife concerns about TES species including Tiger salamanders and Red-legged frogs. Section 2.5 of the DA would prohibit the application of such mitigation programs to the over 1200 units yet to be constructed in the Specific Plan Area.

Unless the project proponent is willing to amend or remove Section 2.5 of the Development Agreement, and accept the new mitigation that may come from the General Plan Update, a supplemental EIR is required. (CEQA Guidelines, sec. 15162, subd. (a)(3).)

3. Greenhouse Gas Emissions

The 1993 EIR for the Specific Plan did not evaluate the significance of greenhouse gas emissions from the specific plan. Since 1993, the implementation of international, national, state, regional, and local strategies have failed to stem the increasing concentration of GHGs in the atmosphere. New information regarding the adverse impacts of global climate change suggests that it will have significant impacts on the environment in the State of California and Calaveras County. (Attachment 1, Sierra Nevada Alliance, Sierra Climate Change Toolkit, 2005.) Since 1993, new CEQA protocols for the analysis and mitigation of GHGs have been adopted. (CEQA Guidelines, sections 15125, subd. (d); 15126.4, subd. (c).) Since 1993 new state efforts to mitigate GHGs have been identified. (See Attachment 2, Brown, Addressing Global Warming Impacts at the Local Agency Level, 3/11/08.) Many of these mitigation measures could be applied to new development in the Specific Plan Area without interfering with the vested development density. A Supplemental EIR is needed to evaluate this new impact, and to identify suitable mitigation measures the County could seek to include in the updated Development Agreement.

4. Land Use Planning

The new information and changed circumstance is that the General Plan Update is currently underway, and anticipated to be complete within the five-year life of the Development Agreement Extension. Depending on the terms of the final General Plan and the interpretation of the Development Agreement, the Development Agreement may preclude application of its mitigation measures to future construction in the specific plan area through 2019. (DA, Section 2.5, subd. d, pp. 12-13.) For instance, Section 2.5 of the DA precludes the application of any new enactments that are not “uniformly applied on a County-wide basis to all substantially similar types of uses.” However, since the Board of Supervisors has directed the Planning Department to prepare for 2/3 of the anticipated growth under the new General Plan to occur in Copperopolis, it is very likely that Copperopolis will have unique impact mitigation programs and fees that do not apply County-wide. (Infusino, CPC Letter to Gillarde re Population Projections Identified at the BOS meeting of 5/14/13, 6/27/13, pp. 8, 9, 12.)

For example, before being pressured into resigning, staff at the Public Works Department were working on a Copperopolis Basin Plan for funding the roads needed in that area. Similarly, before being pressured into resigning, the previous Planning Director had proposed a sub-regional Habitat Conservation Plan for the Copperopolis area to address U.S. Fish and Wildlife and California Fish and Wildlife concerns about TES species including Tiger salamanders and

Red-legged frogs. Section 2.5 of the DA would prohibit the application of such mitigation programs to the over 1200 units yet to be constructed in the Specific Plan Area.

Unless the project proponent is willing to amend or remove Section 2.5 of the Development Agreement, and accept the new mitigation that may come from the General Plan Update, a supplemental EIR is required. (CEQA Guidelines, sec. 15162, subd. (a)(3).)

5. Transportation/Traffic

The 1993 EIR for the Specific Plan indicated that there would be no cumulative traffic impacts following the application of the mitigation measures. (CCCSP Findings of Fact, 12/6/93, p. 21.) However, a more recent DEIR for a project in the area indicated that cumulative traffic impacts on State and County Roads would be significant. (2011 Sawmill Lake RDEIR, pp. 18-37 to 18-38.) This new information must be disclosed in a Supplemental EIR for the Development Agreement Extension.

Additional new information (and a changed circumstance) is that the General Plan Update is currently underway. It is anticipated to be complete within the next five years. Depending on the terms of the final General Plan and the interpretation of the Development Agreement, the Development Agreement may preclude application of its mitigation measures to future construction in the specific plan area through 2019. (DA, Section 2.5, subd. d, pp. 12-13.) For instance, Section 2.5 of the DA precludes the application of any new enactments that are not “uniformly applied on a County-wide basis to all substantially similar types of uses.” However, since the Board of Supervisors has directed the Planning Department to prepare for 2/3 of the anticipated growth under the new General Plan to occur in Copperopolis, it is very likely that Copperopolis will have unique impact mitigation programs and fees that do not apply County-wide. (Infusino, CPC Letter to Gillarde re Population Projections Identified at the BOS meeting of 5/14/13, 6/27/13, pp. 8, 9, 12.) For example, before being pressured into resigning, staff at the Public Works Department were working on an updated Copperopolis Basin Plan for funding the roads needed in that area. Section 2.5 of the DA would prohibit the application of such mitigation programs to the over 1200 units yet to be constructed in the Specific Plan Area.

Unless the project proponent is willing to amend or remove Section 2.5 of the Development Agreement, and accept the new mitigation that may come from the General Plan Update, a supplemental EIR is required. (CEQA Guidelines, sec. 15162, subd. (a)(3).)

6. Utilities

The 1993 Specific Plan EIR indicated that cumulative water supply impacts would be less than significant impact, since CCWD had plans for improving the infrastructure and increasing the water supply from the Stanislaus River. (CCCSP DEIR, pp. 4-46 to 4-47; CCCSP Findings of Fact, 12/6/93, p. 22.) However, an EIR and a Staff Report for more recently proposed projects in Copperopolis indicate that the cumulative impacts of development in the Copperopolis area on water supply will in fact be significant. (See Tuscany Hills RDEIR, 2006, p. 5.0-2; Sawmill Staff Report, 12/13/12, pp. 8 to 10.) As a result, a Supplemental EIR will be needed to evaluate this impact. The County may need to seek additional mitigation measures in the development agreement to address this impact.

The 1993 Specific Plan EIR indicated that wastewater treatment would not pose a significant impact. (CCCSP DEIR, pp. 4-47 to 4-51; CCCSP Findings of Fact, 12/6/93, p. 22.) However, the more recent Staff Report for the nearby Sawmill Lake Project indicated that the wastewater treatment facility had recently been noticed with a violation of its waste discharge requirements. (Sawmill Lake Staff Report, 12/13/12, p. 10.) Unless the facility has already made the necessary improvements to avoid such incidents in the future, the Supplemental EIR would need to disclose this problem. The County may need to seek to add a mitigation measure the development agreement to avoid prematurely overburdening the treatment system.

Table 1 below summarizes sources of the new information and changed circumstances that reveal new and more severe cumulative impacts since the 1993 EIR for the Saddle Creek Specific Plan.

Table 1: Evidence of New Information and Changed Circumstances Regarding New and More Severe Cumulative Impacts Triggering a Supplemental EIR for the Saddle Creek Development Agreement Extension.

	1993	I 2006	I 2011	
	Saddle Creek	I Tuscany	I Sawmill	I Other
	EIR	I RDEIR	I RDEIR	I Report
1) Cumulative Project Plus Roadway Capacity for State & County Roads	LTS	LTS	SIG	SIG (SML Staff Report)
2) Cumulative Visual Resources & Aesthetics	LTS	LTS	SIG	
3) Cumulative Biological Resources	LTS	SIG	SIG	SIG (SML Staff Report)
4) Cumulative Utilities and Services	LTS	SIG	SIG	
A) Water Supply	LTS	SIG	LTS	SIG (SML Staff Report)
B) Waste Water Treatment	LTS	LTS	LTS	SIG (SML Staff Report)
5) Land Use Planning	LTS	LTS	LTS	SIG (This Letter, p. 12.)
6) GHG Emissions	NA			SIG (This Letter, p. 12.)

LTS=Less than significant. SIG=Significant. NA=Not Analyzed.

All of the EIRs and the Staff Report used in the analysis above were prepared for the County, reviewed by the County, distributed to the public by the County, and stored by the County. Yet nobody at the County bothered to do the basic analysis needed to properly evaluate the adequacy of the old Specific Plan EIR to support the proposed CEQA exemption. That is very disturbing. That strongly suggests the need for the Planning Commission to set some clear expectations and clear procedures for the Planning Department to follow when using previously approved EIRs for new project approvals.

IV) The Development Agreement is the broadest vehicle to solve project-related problems.

When considering the need to do an EIR supplement, one asks if the agency has the jurisdiction, and the proposed decision has the scope, to mitigate any of the new or more severe project impacts. Fortunately, a development agreement has the broadest scope of any vehicle that is used to reduce impacts.

Mitigation measures themselves are limited to avoiding significant impacts of the project on the human environment. Also, mitigation must meet the nexus and rough proportionality tests imposed by constitutional limits on exactions from developers.

County ordinances can be broader than mitigation measures, in that they can address specific public health, safety, and welfare issues, regardless of whether those issues pose a significant impact on the human environment.

Development Agreements are contracts between the County and a developer. These are broader than existing ordinances, since the County can address any public health, safety, or welfare issue within its jurisdiction (i.e. not pre-empted by state or federal law). The contracts are freely entered into (or not) by the parties for their respective benefit. There is no constitutional requirement that the public benefit received involve a nexus to a significant project impact. There is no requirement that a public benefit received be roughly proportional to any specific project impact. For example, if the County wants a golf course and the developer is willing to provide a golf course, then that is a fine development agreement provision, even if there is no nexus to a significant project impact, and the expense is not roughly proportional to mitigation cost.

Because the development agreement is the most versatile of vehicles for addressing the public concerns regarding a project, the County should be very careful in evaluating the adequacy of the agreement, and in modifying it to conform to the current needs of the County and its people. If new issues have arisen (e.g. greenhouse gases, new endangered species, etc.) or if new funding strategies are needed to address old issues (e.g. school construction, or traffic basin fees, etc.) then the development agreement is an excellent place to address these issues.

V) What are we asking of the Planning Commission?

A) Direct staff to put on an upcoming Planning Commission agenda the review of mitigation monitoring reports, specific plan reports, and development agreement reports.

B) Direct staff to put on an upcoming Planning Commission agenda the creation and adoption of a protocol for the review of existing EIRs prior to their use to support new decisions.

C) Direct staff to complete a Supplementary EIR for the proposed Saddle Creek Development Agreement Extension. Please seek modifications to the development agreement to mitigate significant impacts identified in the Supplemental EIR.

D) Please drop from the Saddle Creek Development Agreement those provisions that would preclude as prompt and as complete an application of the General Plan Update to subsequently approved development of the site.

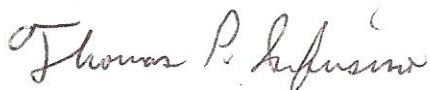
E) Please include in the Saddle Creek Development Agreement provisions for the prompt completion of an effective Public Facility Finance Plan.

F) If all of this is too much to consider at the last minute during a very busy Planning Commission meeting, please continue the hearing on the Saddle Creek Development Agreement Extension so that everybody can give it the attention it deserves.

Rather than addressing these items as a group, we would ask that a Planning Commissioner make these suggestions as separate motions, so that the Planning Commission has an opportunity to vote separately on each item. This gives any item that the Commission finds merit in an opportunity for adoption, regardless of the Commission's feelings regarding the other items.

Thank you for your consideration.

Sincerely,



Thomas P. Infusino, Facilitator

Calaveras Planning Coalition

(Note: Please retain a copy of this communication for the administrative record. The EIRs, the Staff Report, and the other project-related documents referenced above are documents already in the possession of the County Planning Department, and are hereby incorporated by reference into the administrative record for the propose decision. If the County wishes additional copies of any of these documents, please let me know.)

List of Attachments

Attachment 1, Sierra Nevada Alliance, Sierra Climate Change Toolkit, 2005.

Attachment 2, Brown, Addressing Global Warming Impacts at the Local Agency Level, 3/11/08.