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***Protecting our rural environment by promoting citizen participation***

***in sustainable land use planning since 2006***

1/21/21

RE: Updated Zoning Map

Dear Planning Director Maurer:

Thank you for the opportunity to comment on the update of the Zoning Map to conform to Table LU-2 of the Land Use Element of the 2019 General Plan Update (GPU).

As you know, 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.

Below we provide comments on the Zoning Map.

**A. Thank you for updating the Zoning Map to conform to Table LU-2 of the 2019 GPU.**

The CPC recognizes that the County is completing this update of the Zoning Map in an effort to implement the 2019 GPU by making the Zoning Map consistent with the Land Use Designation map in the GPU. We appreciate this effort.

We recognize that choosing the zoning category, especially for previously unclassified parcels, requires a number of judgment calls. It is true that, in some cases, other choices could have been made. We appreciate the restrained exercise of discretion reflected in the proposed Zoning Map. As a result, we are not choosing to second guess your judgment calls.

We do respect the efforts of those individuals and community organizations who will urge you to choose different zoning categories for selected parcels to make the Zoning Map **more consistent** with the rest of the 20019 GPU and/or its community plans. We encourage you to give due considerations to their suggestions. We also encourage you to reject the suggestions of those who would make the zoning of the parcels **less consistent** with the remainder of the 2019 GPU.

**B. Proposed development projects must also be consistent with the rest of the 2019 GPU.**

We hope that the County recognizes that the result of your effort merely makes the Zoning Map consistent with Land Use Element Table LU-2 and the Land Use Map page of the 2019 General Plan Update. It does not make the Zoning Map consistent with the remaining hundreds of pages of the 2019 GPU. It implements none of the other Zoning Ordinance changes, County Code changes, or other programs called for by the 2019 GPU (over 120 by our count). In particular, it does nothing to ensure that a project applicant has completed the project-specific analyses called for in the 2019 GPU (49 by our count). Thus, a project’s mere compliance with the updated Zoning Map and the current Zoning Ordinance **does not** make a proposed project consistent with the 2019 GPU as required by law.

We bring this up because we see other jurisdictions making the mistake of finding that consistency with the land use designation and the zoning map are sufficient to demonstrate a project’s consistency with the general plan. We also see this mistake made among those in the development community. Once a Zoning Map update is approved, they incorrectly believe that the path is clear for approval of any discretionary project listed in the zoning category.

**So as new projects come forward for approval, in the absence of a new Zoning Ordinance and 2019 GPU program implementation, where do we go from here?**

**C. Please direct project applicants to provide the information needed for valid project approvals consistent with the 2019 GPU.**

The CPC encourages the County to implement the new Zoning Map in conjunction with both the 2019 GPU’s analytical requirements for discretionary projects, and the 2019 GPU’s substantive policies to improve new development. We encourage the County to have applicants for project approvals indicate how their projects advance each of the GPU policies and implementation measures to improve new development, and do not impede the achievement of their objectives.

It is understood that no project will (or needs to be) completely consistent with each individual provision of the 2019 GPU. Inconsistency with some optional general plan provisions is anticipated. On one end of the spectrum, when there are questions about a project’s consistency with a provision of the 2019 GPU (and there usually will be) we strongly encourage the Board of Supervisors to find a way for the project to comply with the intent of the GPU provision. On the other end of the spectrum, if there are irreconcilable differences between the project and specific, mandatory, and fundamental provisions the 2019 GPU, we strongly encourage the County to comply with its lawful duty to deny the project. (FN1)

Ultimately the law entrusts the elected officials, not County staff, with these critical public policy decision associated with general plan implementation at the project level. We strongly encourage the County to make clear findings that explicitly link the evidence in the record to your ultimate conclusions. Just like with high school math problems, it is not enough to get the right answer, you also have to show your work. Providing both your evidence and the Supervisors’ explanations will give the public more confidence that you have made a good decision and, over time, build trust that you look for solutions that work for everyone.

Following these planning and decisionmaking procedures, will lead you to more consistently approve superior projects, reject inferior projects, accurately exercise your discretion, and produce decisions that are properly insulated from valid challenges in court. This is good for local government, advances both the economic development and other societal goals in the general plan, and promotes the lawful exercise of private property rights.

Ignoring these planning and decisionmaking procedures leaves you vulnerable to approving problematic projects and being viewed as abusing your discretion. It also exposes your decisions to the costs and delays associated with valid legal challenges. This is not good for local government, for economic development, or for the exercise of private property rights.

**D. Progress depends on promptly completing the Zoning Ordinance update, the County Code update, and other 2019 GPU Implementation Programs.**

It will be far easier for all parties concerned when the Zoning Ordinance, the County Code, and other 2019 GPU implementation programs are completed and properly incorporated into the development application and review process. At that point, developers will not have to guess how to make their projects conform to the 2019 GPU, as the instructions for doing so will be codified or otherwise documented. Projects will be processed faster, because so many of the projects will automatically include the improvements to meet codified standards. Community members will not have to advocate for as many of their interests on each project, because more standards to protect those interests will be in place and uniformly applied to projects. Planning Commissioners and Supervisors will have fewer controversial issues to address regarding projects.

We at the CPC again request that the County seek and secure available state and federal funding to assist in these general plan implementation tasks, and to hire sufficient staff to promptly implement the 2019 General Plan Update. We realize that some of the Supervisors and some of their constituents believe that small and passive local government best serves economic development and private property right interests. However, this is an instance when prompt government action serves both public and private interests.

Sincerely,



cc. Planning Commissioners, Supervisors

**Footnote**

(1) (Government Code, sec.66473.5,  *Families Unafraid To Uphold Rural El Dorado County v. County of El Dorado* (1998) 64 Cal.App.4th 1332 [Court orders County to rescind project approval not consistent with mandatory, fundamental, and specific policies in the general plan], *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342 [Court ruled that a specific plan was invalid because of inconsistency with general plan’s traffic goals and policies], *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th777 [Court overturned project approvals due to their inconsistency with mandatory requirements of a general plan and specific plan].)