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***Protecting our rural environment by promoting citizen participation  
in sustainable land use planning since 2006***

October 10, 2023

Calaveras County Planning Commission  
891 Mountain Ranch Road  
San Andreas, CA 95249  
(Sent by email)

**RE: Zoning Ordinance Update- Draft District Rules on your 10/11/23 Workshop Agenda**

Dear Commissioners,

My name is Tom Infusino, and I am presenting these initial impressions of the draft district rules on behalf of the Calaveras Planning Coalition (CPC). As requested in the public announcements, a copy of these comments has been provided to Gina Kathan of the Planning Department. We applaud the County for entrusting the management of this effort to Gina, who is a wise and experienced local planning professional.

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 twelve 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. As some of you may recall, the CPC participated in the General Plan Update from its inception in 2006 through its completion in 2019. The CPC also participated in the Housing Element Update in 2019. The zoning code update is a critical step to implement the general plan and its housing element.

As you know, the zoning ordinance is being updated in three parts: the district rules, the county-wide rules, and the procedures. The draft district rules have been available for review this past

month. As the review and hearing process continues, the CPC hopes to suggest to you more specific edits to the text of the draft district rules to address our concerns listed below. We also look forward to reviewing your suggestions for improving the draft district rules.

Our initial impressions of the draft district rules are below. In summary, we ask you to make sure that:

- each zoning district meets the needs of people in the 21<sup>st</sup> century,
- the code update makes all of the 60-plus improvements called for in the general plan,
- the code conforms to requirements of state and federal law,
- the code is user-friendly,
- controversial uses are not concentrated into a nuisance,
- the code includes clear and quantitative standards,
- the code includes optional standards for applicants seeking simplified CEQA review,
- the project review process is open, inclusive, and responsive,
- code enforcement is meaningful, and
- conflict resolution is part of the project review and code enforcement processes.

## **I. Please build on the Draft District Rules.**

### **A) Please make sure that in each zoning district we are providing for what we need for health, safety, prosperity, and conservation in the 21<sup>st</sup> century.**

As you review the draft district rules, please ask yourself, will the code help the future to get what it needs in each district? Will the uses make sense for each district? Will the code help the economy to be diverse and resilient and to meet the needs of residents and visitors of all ages? Will the code help us to conserve range and timber resources? Will the code help us to get carbon sequestration from our lands designated for resource production? Will the code help us to provide a diversity of housing types affordable to people near where they work? Will the code help keep residential areas safe from fire? Under the code will communities conserve water and energy? Will the code help us to produce development that is functional for the 21<sup>st</sup> century?

While most of the uses in most of the districts make sense, some are confusing. Why would you allow outdoor dining and seating in the M1 and M2 industrial zones where restaurants are prohibited? (See DDR pp. 37 and 40.) Why does the Environmental Overlay still allow environmentally harmful development? (DDR, p. 50.) The Planned Development Overlay misses one of the major purposes of the Planned Development designation in the prior zoning ordinance. It was routinely applied to industrial zoned lands that were near sensitive uses (e.g., school or clinic) so that the use of the industrial zone was limited to avoid a conflict with the neighboring use. (See DDR, pp. 53-54.) Why does the specific plan overlay not list the future specific plan that is on the general plan land use map in the Copperopolis area. (See DDR. Sec. 17.11.030.)

As somebody who has been a residential composter off and on for the last 50 years, I am wondering why a residential composter will not be allowed to compost material from off the site? (See DDR, p. 65.) Many residential aerobic composters need to add materials from off-site to achieve the balance of carbon and nitrogen sources that allow the materials to compost properly, promptly, and with minimal odors.

For example, some people have lots of leaves on site for the carbon source, but no grass clippings or manure on site for the nitrogen source. Some people may also need to add material from off-site to achieve the proper potassium concentration so that the end product is a useful garden soil amendment. Others may need to add a commercial compost starter sold in local garden supply stores.

If one of our goals is to divert compostables out of the waste stream that is otherwise headed for a landfill, then we should allow residents to use compostable materials from off-site. For that matter, when have we required **any** land use to be sourced exclusively on-site? We routinely allow water, fuel, food, building materials, vehicles, and labor from offsite to be used on-site.

Perhaps we need more information about staff's concern so that we can draft a more constructive regulation to address it. For example, if the concern is smelly or vermin-ridden stockpiles of materials not promptly incorporated into a compost pile, then let's address stockpiling, not the source of the materials.

**B) Please make sure that the new zoning ordinance makes all 60-plus improvements to the County Code promised in the 2019 General Plan Update.**

In January of 2021, the Code Analysis Memo indicated that one of the objectives of the zoning code update is to implement the general plan. (Calaveras County, Code Analysis Memo, January 2021, pp. 2, 13-15.) The 2019 General Plan Update includes 54 implementation measures calling for an amendment to the Zoning Ordinance or another portion of the County Code. Eight of these implementations are also mandatory mitigation measures dealing with setbacks from agricultural lands, alternative fuels for vehicles, riparian corridors, cultural resource management, protecting water recharge areas, and diverting demolition wastes.

In addition, the 2019 Housing Element includes another 9 implementation measures calling for an amendment to the County Code. (See Attachment 1- General Plan Code Amendment Checklist.) As you proceed with the district rules, the county-wide rules, and the zoning procedures, feel free to use the attached checklist (or one of your own) to track your implementation of the 2019 General Plan Update and the 2019 Housing Element.

As you can see from the attached checklist, the draft district rules have made a good start at implementing the 2019 General Plan Update and the 2019 Housing Element. (See Attachment 1.) For example, 8 of the 9 implementation measures from the Housing Element are addressed in the draft district rules. However, many important code amendments are not yet included. Only 10

of the 54 County Code amendments called for in the 2019 General Plan Update are included in the draft district rules. While 8 of these code amendments are mandatory mitigation measures required by CEQA, only 3 of them are included in the draft district rules. We hope that **all** of these code amendments will ultimately be included in the Zoning Ordinance Update process.

Both project applicants and the public will be harmed if you fail to make all the code changes called for in the general plan and its housing element.

To be lawful and to avoid being overturned by the courts, all discretionary land use approvals by the County must be consistent with the general plan, including the housing element. As you know, the general plan is a voluminous document including general goals, directional policies, project review instructions, and a list of over 200 measures in need of implementation.

As you may recall, the CPC provided a guide for use by project applicants struggling to conform to the general plan in the **absence** of an updated zoning code. You can help applicants even more. Project applicants depend on the County to translate the general plan provisions into code standards they can follow when designing their projects. This promotes project approval and insulates projects from successful legal attacks.

Finishing the 60-plus code amendments would complete over a quarter of the general plan's implementation tasks all at once. However, if the County fails to complete the translation of general plan provisions into code standards that can be followed by project applicants by leaving out new code sections required by the general plan, then the County is setting up project applicants for project denials or successful legal challenges. This, in turn, triggers investors to find safer counties in which to invest their money.

Remember, the general plan is not arbitrarily requiring code amendments for the sake of regulation. Each of these code amendments has a valid public purpose that promotes private and/or public interests. These include diversified commerce, workforce housing, effective transportation, agricultural production, mineral production, energy conservation and production, water supply and quality, historical resource preservation, wildlife habitat conservation, recreation, public safety, and public services. For each of these code amendments you do not complete, the public is harmed in some real way: jobs are lost, homes aren't built, resource production is hampered, water supplies dwindle, people and property are physically harmed.

Thus, it would be imprudent to implement only selected general plan provisions requiring code amendments while leaving others incomplete.

**C) Please make sure that the new zoning ordinance conforms to the state and federal requirements that cover a host of topics from adult businesses to water-conserving landscaping.**

In January of 2021, the Code Analysis Memo indicated that one of the objectives of the zoning code update is to comply with state and federal laws. (Calaveras County, Code Analysis Memo, January 2021, pp. 18-22.) State and federal law regulate or require zoning regarding accessory dwelling units, housing for the disabled, residential care facilities, manufactured housing, adult businesses, cottage food operations, density bonuses, housing density limits, emergency shelters, family daycare facilities, religious land uses, signs, solar energy, telecommunications, water-conserving landscaping, timber production, open space, variances, permit timelines, due process (notices to affected landowners and a meaningful opportunity to be heard), and takings and inverse condemnation.

As you can see from the attached checklist, the draft district rules make a good start at addressing these issues of state and federal concern. (See Attachment 2.) Thirteen of the twenty-one state and federally influenced code amendments are included in the draft district rules. Again, we hope that ultimately each of the state and federal issues of concern will be addressed in this Zoning Code Update.

**D) Please make the new zoning ordinance user-friendly.**

In January of 2021, the Code Analysis Memo indicated that one of the objectives of the zoning code update is to make the code user-friendly. (Calaveras County, Code Analysis Memo, January 2021, pp. 2, 8-12.)

As you review the draft zoning ordinance, please ask yourself: Is the information needed easy to find? Are the standards clear? Are the procedures clear, lawful, fair and effective for all (staff, decision-makers, applicants, and the public) with respect to project approvals and denials, tentative map extensions, variances, non-conforming uses, penalties for code violations, and appeals?

**E) Please limit the concentration of non-traditional uses so that minor inconveniences do not turn into major problems.**

One rural residential neighbor with an event center operating every other weekend is an inconvenience. 24 rural residential neighbors with event centers are a disaster in the making. You may think such a concentration is impossible, but you only have to go as far as Amador County's Shenandoah Valley to see how non-traditional uses can turn a happy vineyard community on a windy country road into a noise ridden, auto-accident plagued, groundwater drained, battle ground. Similar problems "cropped up" when commercial cannabis grows were initially permitted in rural residential communities in Calaveras County.

Our initial assessment is that many uses are being regulated through administrative and conditional use permit systems that do not take into account the geographic concentration of these uses. (One exception is adult entertainment facilities, which must be at least 1000 feet

apart.) Remember two of the purposes of use permits are to protect public safety and peace. Please consider using geographic proximity limits to achieve these purposes.

**F) Please include quantitative performance standards or prescriptive standards that serve as a safe harbor from arbitrary judgement calls.**

The January 2021 Code Analysis Memo included comments from code users about what they wanted improved in the zoning ordinance. Parties interviewed wanted clarity and quantitative standards.

“Both sides (private and public) benefit from a **clear**, transparent Code.”

“When a Code is **clear** and everyone can agree on what it means, then you can have a discussion on whether the content is correct or appropriate”.

“There is a lot of ambiguity in the Code. Things should be **quantified** and defined clearly.”

“Make sure the Code is **clear** so that people can’t just make up rules based on personal preferences. (Calaveras County, Code Analysis Memo, January 2021, p. 24, emphasis added.)

The memo quite correctly concludes that, “[U]nclear requirements can cause developers a high level of anxiety, frustrate community residents, and severely dampen a county’s ability to attract desirable growth.” (Calaveras County, Code Analysis Memo, p. 16.)

Given that understanding, we are disappointed that there are so few meaningful numerical standards in the draft district rules, so there is little guidance for project applicants, little comfort for potentially affected neighbors, and lots of room for inconsistent judgement calls by staff and public officials. When the zoning matters of concern can be effectively resolved and communicated through quantitative standards, please provide those standards.

**G) Please consider providing optional mitigation measures and standards for those project applicants wishing both to meet zoning code standards and to proceed with mitigated negative declarations or focused EIRs.**

The CEQA review process is supposed to be integrated into the development review process. Instead, in Calaveras County there is no effective correlation between the requirements of the Zoning Code, the mitigation requirements of CEQA, and the findings requirements of state land use law. As a result, a project applicant can design a project that complies with the zoning code, but then later must address additional CEQA mitigation requirements, and still later address requirements needed to meet the state requirements for development approvals. While this may

not be difficult for professional applicants represented by experienced counsel, it may be completely confounding to the average resident seeking a use permit.

In the past, the CPC suggested better integration of the CEQA review process, the general plan, the zoning code, and the state approval requirements. (See Attachment 3.) Again, we encourage the County to consider taking this approach as you complete the Zoning Ordinance Update.

## **II. Please improve project review and code enforcement procedures.**

### **A) Please provide for an open and inclusive project review process.**

The January 2021 Code Analysis Memo calls for an update of the Zoning Code that “Creates a transparent, predictable, and consistent process” and that “Responds to community concerns.” (Calaveras County, Code Analysis Memo, January 2021, p. 2,) However, the memo later states, “Generally speaking, responsibilities should be assigned with a view toward **minimizing the number of players involved in making any given decision**, while providing opportunities for meaningful public input.” (Calaveras County, Code Analysis Memo, January 2021, p. 16.)

At the CPC we believe that public and agency participation in the development review process should be robust, should begin early, should be informed, should be listened to, and should be reasonably accommodated to secure conflict resolution. Minimizing “the number of players involved” is an exclusionary objective. The objective should be to **inclusively involve as early as possible all those with legitimate interests and concerns regarding the project application**. Otherwise, the “meaningful opportunities” for public input are too often reduced to minimal due process opportunities for people to speak for three minutes and be ignored.

The CPC’s preference is also backed up by the requirements of state and federal law. In the County’s disadvantaged communities, the general plan, and by way of extension its implementation, are supposed to “Identify objectives and policies to promote civic engagement in the public decision-making process.” (Government Code, Sec. 65302, subd. (h)(1)(b).) This is the exact opposite of “minimizing the number of players involved in making any given decision.”

In addition, over the last 35 years federal courts have heightened their scrutiny of both the substance and procedures of land use regulations. Therefore, it is important to both provide thorough notice and truly meaningful opportunities to be heard to those potentially affected by a County land use decision. It is unwise to rely on outdated state statutes with minimal notice requirements, to allow exparte communications between public decision makers and the parties to an appeal, and to unduly restrict the presentations of property owners affected by a County land use decision.

As you review the draft district rules, please ask yourself, do the allowed uses and conditional uses make sense in each zone district? Are uses allowed to adversely affect neighbors or the

environment because they are “by right” and unconditioned? Or, have conditions been included to ensure that “by right” uses are also “done right” uses? Are the Technical Advisory Committee meetings that are held early in the application process publicly noticed Brown Act meetings? When you read the code and the project review procedures, do they seem trustworthy, right, clear, and balanced in providing for the interests of the applicant and the existing residents? Can both applicants and residents be reasonably assured that development consistent with the code will be lawful, approved, neighborly, and beneficial to the community?

Our initial assessment is that most of the uses make sense in most of the districts. However, there are far too few conditions to ensure that by-right uses are also done right. While the code provides good explanations in plain language, there are not enough clear standards.

Perhaps most importantly, too many potentially controversial uses are allowed by right or by administrative permits handed out by staff over-the-counter. In these instances, the neighbors will not have an opportunity to comment on the project approvals in front of the Planning Commission, and Planning Commissioners will not get opportunities to avoid problems with projects that affect people in their districts. For example, although residential uses are the most likely to compromise fire safety in the resource production lands, they are ALL permitted by right. Allowing 24 “special events” on ag. lands (e.g., every weekend for 12 consecutive weeks) on an administrative use permit is going to cause conflicts with neighboring rural residential uses.

Active recreation like baseball and football stadiums in residential zones cause parking, noise, and light pollution problems for neighbors, yet they are allowed by administrative use permits. Bed and Breakfasts that can cause safety, noise, and parking problems in residential areas are allowed by administrative use permit. Although we have all heard the stories of conflict, animal keeping (Does anybody else remember the District 2 Chicken Man?) and home occupations are by right uses in residential zones even on one acre lots!

Might the public want to have some input on whether an elementary school in the C2 commercial zone will have its neighbor a bar or a light industrial facility? Too bad, the bar and the light industrial facility are allowed by right. The need for quiet at a college could undermine the opportunity to properly locate noisy uses in an industrial park, but a college is allowed by right even in the most intensive industrial use zone, M2.

Please ensure that controversial land use proposals are considered and conditioned by the Planning Commission and the Board of Supervisors in well noticed public forums and not granted by-right or by County staff over-the-counter and behind closed doors.

During the General Plan Update process, we repeatedly heard the Board of Supervisors reject proposals that would interfere with their ability to make the final decision regarding the details of controversial development proposals. When the zoning procedures are proposed, please consider changing the level of review for controversial uses. Please consider having more of these



approvals come to the Planning Commission for review so that members of the public and Commissioners can consider the wisdom and sufficiency of the conditions.

**B) Please ensure that there is meaningful code enforcement.**

Later in this process when you review the administrative procedures section of the zoning code update ask yourself if there is any meaningful enforcement. Is there any monitoring and public reporting of compliance with conditions and mitigation measures? Are there procedures for use permit revocation for failure to meet permit conditions? Are there meaningful penalties and restitution for violating permit conditions and mitigation measures?

**C) Please consider adding more conflict resolution as part of the development review process and the code enforcement process.**

When you get around to reviewing the administrative procedures section of the zoning code, please ask yourself if the development review process is geared toward conflict or toward conflict resolution. Are County staff, the Planning Commission, or the Board of Supervisors willing to negotiate with interested applicants and residents or not? Would it make sense to hire a mediator to resolve these land use conflicts?

The Planning Commission and the Board of Supervisors currently host adversarial project review hearings and appeals. If all the procedures are set up as adversarial, all you are going to breed are adversarial relationships among applicants and concerned residents. If you set up conflict resolution procedures, you may actually resolve conflicts.

**III. To fully complete this zoning update process, be prepared to repeat this process.**

Because the general plan failed to address so many critical planning issues, those same issues are not being addressed in the draft zoning ordinance.

**A) Repeat the process to address critical planning issues on resource production lands.**

Our initial assessment is that this problem will be especially bad on the resource production lands.

Because the general plan does not have a map of priority lands for long-term open space conservation, the zoning ordinance does not have sufficient direction to address the issues. The zoning ordinance also reflects the general plan's failure to deal with wildfire safety and water conservation by minimally regulating residential, commercial, visitor lodging and event center uses in the resource production zones no matter how windswept, dry, groundwater-dependent, and distant from firefighting services the parcels may be.

Because the general plan provided no direction on reducing impacts from by-right land uses in the resource production land use designation, the zoning ordinance does not provide for this. By not placing reasonable conditions on by-right uses in the resource production land use designation, important wildlife habitat will continue to be harmed at a time when climate change has already pushed the number of species on the brink in Calaveras County to 34. This will unnecessarily expedite the time when resource production activities may be subject to multiple injunctions as well as numerous and stiff regulations.

The environmental groups that are coming (i.e., the Center for Biological Diversity (CBD) and others) are not like the CPC. The CBD has only one purpose, wildlife habitat protection. They do not live in Calaveras, and do not care about our economy. They will sue the County in federal court in front of judges who do not care about the economy in Calaveras County. Their lawyers have a long and incredible history of successful litigation in federal court.

(<https://www.biologicaldiversity.org/about/story/>) The CBD does have one thing in common with the CP: both proposed mitigation measures for the 2019 General Plan Update to reduce impacts on wildlife habitat, and the County rejected many of the measures.

**B) Repeat the process to address critical planning issues in residential and commercial zones.**

Unfortunately, there are likely to be serious problems for the residential and commercial zones as well. The allowance of entertainment venues in residential zones is too permissive, because the general plan provided no direction on this issue. There is likely to be a lack of complete streets, roads, water and wastewater infrastructure. There is likely to be a lack of public safety services to support the commercial and residential development for which a parcel was zoned. These problems stem from the general plan's failure to include a schedule for setting emergency response time standards and for establishing and updating development impact fees. The lack of community plans on the Highway 4 corridor provides insufficient local direction to the County on how to apply the Zoning Ordinance in those areas, because the 2019 General Plan Update rescinded those community plans.

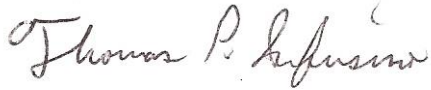
Most of these problem areas are the subject of the CPC's general plan litigation. (See Petition for Writ of Mandate, pp. 36-83, Downloadable from <http://calaverascap.com/>.) As a result, the County will probably have to finish the general plan and later the zoning ordinance to address these critical planning issues in accord with a writ from the court in 2024 or 2025. We do not write this to be arrogant or disrespectful. We write this so that you fully appreciate the entire scope of the task before you. **Of course, it would be excellent if you included zoning ordinances at this time that addressed the aforementioned critical planning issues.**

#### **IV. Conclusions**

As we move forward together in this zoning code update, we at the CPC will do our best to publicize the public comment periods and hearing dates so that people can constructively participate in the process.

As we move forward together in this zoning code update, we at the CPC will try to suggest specific edits to improve the draft zoning code text and graphics. We understand that your consultants and Planning Department staff will use their professional judgment to advise you to include, modify, or not include our suggestions. We appreciate the time you will take to review and consider these proposals. We hope that ultimately you will come up with a code that will help Calaveras County to remain a pleasant place to live, work, visit, and play.

Sincerely,

A handwritten signature in dark ink, reading "Thomas P. Infusino". The signature is written in a cursive, flowing style.

Tom Infusino, Facilitator  
Calaveras Planning Coalition

Cc. Gina Kathan