

To: Calaveras County Planning Commission
From: Muriel Zeller, 2640 Stagecoach Drive, Valley Springs, CA 95252
Regarding: Calaveras County Zoning Code Update: Zone District and Use Regulations
Date: October 18, 2023

Via email

Dear Commissioners,

Thank you for receiving questions and comments on the Zoning Code Update. I'm sure it will be quite an undertaking.

Please complete a legally compliant open space plan for the county.

The county does not have a legally compliant open space plan, which means they can't legally create open space zoning, which means they can't legally update the zoning code, because open space zoning is required by law and the General Plan must be internally consistent.

"No building permit may be issued, no subdivision map approved, and no open-space zoning ordinance adopted, unless the proposed construction, subdivision or ordinance is consistent with the local open-space plan (CA Government Code § 65567)." Consistency with the local open space plan cannot be achieved if the open space plan is legally inadequate. In fact, as the General Plan Guidelines (Chapter 9, Implementation, page 255) state, "In order for zoning and other measures to comply with consistency requirements, the general plan itself must first be complete and adequate (i.e., it must address all required issues and be internally consistent)." A completed open space plan is required.

In the Calaveras County General Plan, COS-1A reads, "Review the County Code and revise as necessary, or adopt a new open space zoning ordinance pursuant to Government Code §65910 et seq., as a means to identify lands which have been dedicated to open space purposes for managing unique, important, or significant natural and cultural resources." To this end, the zoning code update will include a new zoning district, Open Space (OS).

COS-1A is to be implemented "pursuant to Government Code §65910 et seq" which says, **"Every city and county by December 31, 1973, shall prepare and adopt an open-space zoning ordinance consistent with the local open-space plan adopted pursuant to Article 10.5 (commencing with section 65560) of Chapter 3 of this title (emphasis mine)."**

Consequently, the new open space zone would have to be "consistent with" the open space plan mandated by Article 10.5. Open-Space Lands [§65560 - 65570]. Calaveras County has not met many of the objectives of Open-Space Lands [§65560-65570], so how can the county adopt a new open space zone pursuant to Government Code §65910?

You may see the relevant code for a plethora of ways in which the county has failed to complete an open space plan, but here are a few examples:

- a) The county has not completed and adopted an open-space plan which includes a description of the methods by which open-space resources will be inventoried and conservation measures determined.
- b) The county has not completed an action program consisting of specific programs which the board of supervisors intends to pursue in implementing its open-space plan.
- c) The county has not identified and mapped:
 - all agricultural land subject to a conservation easement,
 - agricultural land that is within two miles of land zoned for housing,
 - agricultural land that is likely to be developed in the next eight years, or
 - agricultural land designated a priority for conservation.

Please explain how the county can proceed with the creation of an open space zoning ordinance when it cannot comply with COS-1A pursuant to Government Code §65910, because it has not complied with Government Code §65560 - 65570. The open space zoning code cannot be consistent with something that does not exist.

In January 2021, former Planning Director Peter Maurer said to the Board of Supervisors, “I think that the commenter [me] made a very good point and that is that before creating the [open space] zone we need to look at an overall plan, identify what we have out there. Are there other areas that need to be looked at? And, so, um, you know, you might consider adding open space planning to the programs that the department should be working on.” That sounds like an implicit admission that the county does not have a legally adequate open space plan. However, the supervisors refused to designate open space planning a priority, and yet now they want an open space zone and updated zoning ordinance consistent with their deficient open space plan.

Please consider a broader and more specific definition of open space.

In the draft regulations, the OS Zone “is intended for lands dedicated to open space purposes for managing unique, important, or significant natural and cultural resources, including undeveloped park lands, visually significant open lands, water areas, and wildlife habitat. These areas are typically set aside as permanent open space preserves and may include trails, trail heads, and other facilities for low-impact recreational or agricultural uses.”

The definition sounds as if it is talking about existing areas. Can you give me an example of permanently protected “undeveloped park lands, visually significant open lands,” and “wildlife habitat” that will be zoned OS?

The county might consider a broader and more specific definition of open space such as in El Dorado County, “The OS Zone is applied to set aside for primarily open space purposes including, but not limited to, the protection of rare and endangered plant or animal habitat; wildlife habitat, such as critical winter deer range and migration corridors; sensitive riparian areas; oak woodlands; visual resources as a part of a development plan or along a designated scenic corridor; and watersheds and groundwater recharge areas. Intensive agriculture is not compatible, although low intensity agriculture such as seasonal grazing may be compatible.

Recreational uses that have little impact and do not require substantial permanent structures or facilities are also compatible.

“The OS Zone can also designate land set aside to protect agricultural lands covered by an open space easement or as a part of a development plan in an Agricultural District, as identified on the General Plan land use maps, or on other identified agricultural lands. Where the OS Zone is applied as part of a development plan, the uses allowed under the development plan permit are allowed, including a full range of recreational facilities.”

When the Zone District and Use Regulations definition mentions “permanent open space preserves” doesn’t it just mean conservation easements? I don’t understand why the definition of open space does not include conservation easements specifically. The General Plan Guidelines tell us that the open space plan inventory must identify open space for natural resources, including conservation easements (Chapter 4, Required Elements, page 125). It seems an open space inventory would really facilitate the discussion surrounding open space zoning.

A conservation easement overlay on the land use map, for example, would also identify the potential for connectivity between existing permanently protected lands including BLM and Forest Service land and coincide with the California Department of Fish and Wildlife Sierra Nevada Foothills Wildlife Connectivity Modeling Project, which is “using species-specific data to model connections between blocks of protected lands.”

Such an easement overlay would also help to prioritize land for conservation (another state mandate). In addition, land that provides connection between existing protected acreage is often the best choice for mitigation purposes.

Clustered development is not defined in the Zone District and Use Regulations

The Calaveras County General Plan defines clustered development or clustering as development “in which a number of dwelling units are placed in closer proximity than usual, or are attached, with the purpose of retaining an open-space area, e.g., conservation, recreation and/or agriculture (page GL-2).” Unfortunately, the definition is vague and does not distinguish rural clustered development from other types.

The General Plan has proposed “to maintain open space, conserve and promote effective use of natural resources, and preserve the rural character of the county through encouraging clustering, infill, and designing new development to conserve natural, scenic, and cultural resources (page COS-1).”

To facilitate clustered development the general plan contains the following policies and implementation measures:

- COS 3.1: To protect sensitive biological resources, new development shall use site planning techniques, including buffers and setbacks, and encourage other techniques such as clustering of development (IM COS-4B).

- LU 4.4: Encourage clustering of residential development where appropriate, based on availability of infrastructure and community character, to increase open space and housing affordability, and reduce infrastructure costs (IM LU-2A and LU-2E).
- LU-2E Innovative Techniques: Adopt standards for the application of clustered development or other innovative techniques that may provide development flexibility and minimize development impacts on resource production or other sensitive lands (Implements: Policy LU 1.2 and LU 4.4).
- H 1.4, “Promote the use of cluster housing, density transfers, or planned development concepts that preserve open space (page 131).”

Clustered development does not make housing more affordable as LU 4.4 above claims. In fact, “cluster development inherently creates a marketing and sales advantage [for the developer], because greenways, open space, common areas and wildlife are attractive amenities for potential home buyers (<https://planningtank.com/urbanisation/cluster-development>).”

However, it is LU-2E, in particular, which gives me pause, because it specifically talks about the “application of clustered development... on resource production or other sensitive lands,” which is not a new idea in Calaveras County. In February 2012, then Planning Director Rebecca Willis gave a presentation to the Board of Supervisors on how to cluster residential development on a working ranch as part of a discussion on the General Plan land use map. So let’s look at a hypothetical clustering scenario on resource production land:

- A 320-acre working cattle ranch zoned A1
- Density = one dwelling per 20 acres
- Subdivision potential = 16 parcels

Under the zoning, a rancher could create sixteen 20-acre parcels, which would follow traditional subdivision design, or he/she could create a residential cluster of fifteen one-acre parcels with one 305-acre remainder parcel, which would effectively preserve the working ranch and the open space with its ecosystem services intact.

The first step would be to identify the open space to be protected and design the residential development on the remaining land. The ranch would be protected in perpetuity with a conservation easement which would assure the buyers of the one-acre parcels that they would never lose their adjacent open space. The rancher may or may not be the builder/developer, but, in any case, the rancher makes money from the sale of the residential parcels and from the sale of the development rights on the 305-acre remainder parcel which would be under a conservation easement held by a qualified land trust.

There are, however, some potential problems with this scenario. Where is the ranch located? What is the level of service on the roads used to access the property? What about emergency services? Will there be adequate groundwater? Would 15 homes clustered on a ranch outside of a community center be leapfrog development? What if the rancher owns an entire section, i.e., 640 acres? We now have the potential for 31 clustered homes well removed from any community center.

Cluster development “has been criticized as a tool that promotes sprawl, just a different form of sprawl than conventional development. Such criticism is valid, and it is important to note that this tool best helps to protect open space when used in conjunction with other tools, such as Urban Growth Boundaries (<https://planningtank.com/urbanisation/cluster-development>).” Clustered development or conservation subdivision design is best applied to areas in or adjacent to community centers. Such developments could make good transition zones between the dense development of a community center and the surrounding open landscape.

In addition, many planners “believe that rural cluster housing could conflict with, rather than protect, agricultural uses. This suggests that rural clustering may make more sense as an alternative to large-lot (one to 10 acres) zoning in transitional areas where residential development is already displacing major commercial farming and forestry operations. In these circumstances, rural cluster developments can prevent open lands from being fragmented and can preserve open tracts large enough for wildlife habitat, recreation, and certain kinds of smaller-scale agriculture and forestry that are compatible with residential development. The preservation of these activities amid residential development will enhance the rural character of the area (Rural Cluster Zoning: Survey and Guidelines by Gary Pivo, Robert Small, and Charles R. Wolfe).”

Clustered development is best used as a replacement for traditional subdivisions on land that is already slated for residential or commercial development. Clustered development should not be used to justify residential developments on resource production land away from community centers. As part of the current Calaveras County zoning code update, please support rural clustered development zoning that prevents sprawling development on resource production land outside community planning boundaries.

Thank you for your patience and consideration.

Regards,
Muriel Zeller

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