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10/3/23

Director Gabriel Elliot
Calaveras County Planning Department
891 Mountain Ranch Road
San Andreas, CA 95249
(Sent by email)

RE: Natural Communities Conservation Plan Funding is Available

Dear Director Elliot,

Last week the Calaveras County Chamber of Commerce hosted a State of the County gathering. Tom Hix of CV Development Partners, L.L.C. made a very informative presentation of the company's plans for development in Copperopolis. As you can imagine, execution of these development plans will in large part depend upon a great deal of work by the Planning Department over many years. Past efforts at development in Copperopolis have been hampered by wildlife habitat concerns under the Federal Endangered Species Act.

Along those lines, I am writing to recommend that the Planning Department apply for available state funds to begin preparation of a Habitat Conservation Plan (HCP)/Natural Communities Conservation Plan (NCCP). As you may recall, "The Planning Director shall provide to the Board of Supervisors, for review and approval, an annual work plan establishing the priorities for completing programs identified in the general plan, identifying staffing and funding needs for the priorities set by the Board of Supervisors, reporting on the status of completed programs, and projecting when remaining programs will be implemented." (Calaveras County, 2019 General Plan Update, Implementation LU-1A.) When you revisit the General Plan Update implementation priorities with the Board of Supervisors in 2024, please consider placing on the list of top priorities the initiation and completion of a HCP/NCCP.

1) Background

I believe it was in 2005 that the U.S. Fish and Wildlife Service notified Calaveras County that it could no longer rely on the prompt issuance of project-specific incidental take permits regarding species listed under the Federal Endangered Species Act. In Calaveras County the species listed included the red-legged frog, the yellow-legged frog, and the California tiger salamander. At that time the County concluded that it needed a Habitat Conservation Plan to address federal concerns and a Natural Communities Conservation Plan to address the broader state issues.

By June 2006, the County and local developers were working with John McCaull. He drafted both a process for completing a HCP/ NCCP and an agreement with the State and Federal governments for collaboration in the process. (See Attachments 1- Draft HCP/NCCP Phase One Proposal and Attachment 2 – Draft HCP/NCCP Planning Agreement.) The County received a grant to complete the project from the Sierra Nevada Conservancy, but the HCP/NCCP was never finished.

Not surprisingly, the processing of project applications involving endangered species began to slow down. On February 18, 2010, Planning Director White reported to the Planning Commission that dozens of private development applications (40 of 150 pending applications) were being held up in part by the lack of a HCP/NCCP. (Attachment 3 - White, *Project Status Update*, 2/18/10) In 2012, Castle and Cooke (the predecessors in interest of CV Development Partners, L.L.C. regarding development projects in Copperopolis) brought forth its Sawmill Lake Project for review. Among the reasons for denying the project without prejudice was the lack of an HCP/NCCP to properly address the impacts of the development on listed species. (Attachment 4, *Staff Report, Sawmill Lake Project*, 12/13/12, pp. 2-3, 7-8, 11-13.)

In 2013, the BOS paid back the unused portion of the grant money for the HCP/NCCP to the Sierra Nevada Conservancy.

In 2015, the California Department of Fish and Wildlife released a report on the need for habitat connectivity from the valley to the crest of the Sierra to facilitate the movement species needed to adapt to climate change, and to avoid massive declines in the populations of many additional species in California. (Attachment 5, California Department of Fish and Wildlife, *Wildlife Connectivity Across the Northern Sierra Foothills*, January 2015, pp. 6-10.) Non-profit organizations and local governments provided input on the selection of a system of functional habitat blocks and corridors. (See for example Attachment 7 – Infusino, et al., Memo to Krouse re habitat blocks and corridors from Amador and Calaveras Counties, 5/10/13 and Attachment 8 – Map of blocks and corridors 5/10/13.)

In June of 2018, the County released a Draft EIR evaluating the General Plan Update. Appendix D of that DEIR was a Biological Resources Report evaluating the potential impacts on special status species. This report noted that 34 special status species (not just amphibians) in Calaveras County used a broad spectrum of different habitat types (not just wetland areas). (Attachment 6 - Monk and Associates, *Calaveras County Draft General Plan EIR Biological Resources*, 5/15/17.) From June through August of 2018, the County received comments on the Draft EIR for the General Plan Update. Among the commenters concerned with the mitigation of impacts

to wildlife habitat was the Center for Biological Diversity (CBD). Some of CBD's recommended mitigation measures were adopted in part by Calaveras County, but many mitigation components were not adopted. (Calaveras County, *Draft General Plan FEIR*, pp. 2-285 to 2-298.) The CBD is among the most litigious groups successful at both challenging development projects for impacts on listed species, and seeking the listing of additional species. (<https://www.biologicaldiversity.org/about/story/>)

In 2019, the General Plan Update was unanimously approved by the Board of Supervisors. It is true that the plan calls for experts to identify feasible project-specific mitigation measures to reduce the adverse impacts of discretionary projects on wildlife habitat under CEQA. However, these are precisely the sort of measures that will not address the cumulative impacts of these and other damaging by-right and extra-jurisdictional forestry projects on special status species habitat across the landscape. This cumulative impact phenomenon is often referred to as "death by a thousand cuts." Thus the 2019 General Plan Update prudently includes an implementation measure calling for preparation of an HCP subject to funding availability.

"COS-4C Habitat Conservation Plan for Amphibians

Subject to available funding and in cooperation with the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife, pursue a countywide habitat conservation plan to allow incidental take of California tiger salamander and California red-legged frog habitat. Consider expanding the plan to include special status species occupying similar habitats. Consider coordinating the effort with neighboring counties to assist in sharing the costs of preparing the plan and to expand mitigation opportunities."

"[E]xpanding the plan to include special status species occupying similar habitats" would mean protecting a natural community. That is one essential difference between a HCP and a NCCP.

2) There are many reasons to begin to prepare a HCP/NCCP at this time.

A) The necessary outside funding is available to begin the HCP/NCCP process now.

COS-4C indicates that implementation of the NCCP measure is "subject to available funding." The subject of funding availability has two components. On the one hand, some implementation programs involve costs beyond the County's usual revenue sources. As a result, the general plan includes a caveat that the program will only be implemented if funding is available. On the other hand, some implementation programs have a high priority despite their high costs. For these programs, implementation is to begin as soon as funding is available. This is to ensure that the measures will be promptly implemented despite the need for outside funding. It would be unwise to let funding windows close and thereby preclude implementation of important measures affecting economic development and resource conservation.

One key reason to begin the HCP/NCCP process now is that State funding is available now. The California Department of Fish and Wildlife is now providing Natural Community Conservation Planning Local Assistance and 30x30 Grants. The grants fund NCCP/HC planning, implementation, land acquisition, monitoring, and adaptive management efforts. While the grant

application window for 2023 has closed, you can expect it to open again in 2024. For more information about this program you can go to <https://wildlife.ca.gov/Conservation/Planning/NCCP/Grants> . Note that this funding is in part motivated by the goals of the 30 x 30 plan to secure 30% of the state in open space by 2030. The availability of such funding after 2030 is highly uncertain. As the saying goes, “Carpe diem.”

B) A HCP/NCCP process takes many years, so it should be started soon.

What makes a HCP/NCCP so much more urgent than other County priorities? Time. It may take 5 to 7 years to complete a HCP/NCCP. While other County programs can begin almost immediately upon funding, design, and approval, a HCP/ NCCP will take years to complete. This long lead time makes it very important to promptly start a HCP/NCCP process while funding is available.

C) A HCP/NCCP will remove a barrier to development in Copperopolis and elsewhere.

If a HCP/NCCP takes so much time, why bother? The County wants to bother with a HCP/NCCP because it removes a barrier to development in Copperopolis and elsewhere throughout the County. In 2010, 40 of 150 pending development applications were delayed in part by the applicants and the U.S. Fish and Wildlife Service due to issues with a couple of endangered species. (See Attachment 2.) A NCCP will cut through that red tape.

Of course, this could also be a reason for **not** doing a NCCP. If 73% of the development applications (110 out of the 150) can proceed without an NCCP, why not focus staff effort on moving forward those 73%? If we can have 73% of the economic development applied for, that is pretty good. Why waste 5 to 7 years completing a NCCP just to chase that last 27% of development? Why harm habitat at all for merely the last 27% of economic development? While those arguments may have merit there are a host of other factors to be considered when prioritizing project applications. The lack of a HCP/NCCP may result in the best project never being built. Ultimately, the bottom line is the Board of Supervisors made its policy decision in the GPU and that decision is to complete a HCP/NCCP. As you know, they are often done in tandem.

D) A NCCP can comprehensively address the issue for up to the entire suite of 34 special status species.

Why is a NCCP better than a HCP alone? While a HCP will address the issue for one or two species in a small part of the county regarding federally listed species affecting a few projects, a NCCP could address the special status species issue throughout the County. If one is to engage in a long and laborious process, it makes sense to treat the issue in its entirety. This is especially true given that scientific estimates indicate that climate change is likely to eliminate substantial quantities of wildlife habitat in the Sierra Region, necessitating habitat protection and restoration efforts. (Attachment 6 - *California’s Fourth Climate Change Assessment, Sierra Nevada Region*, 2018, pp. 27-43.) It would get tedious to repeat a HCP process again and again as extirpation of more of the 34 special status species becomes a barrier to development in different parts of

Calaveras County. While a broad NCCP process exceeds the limited direction of COS-4C to address only amphibians, it would be wise to revisit the scope of the NCCP process with the Board of Supervisors before making the mistake of spending so much staff time and money on a program whose scope is too narrow.

E) A HCP/NCCP will combine with other County efforts to facilitate securing potable water for economic development and affordable housing.

Discretionary water allocations from the State Water Resources Control Board must be in “the public interest.” In these modern times, it is difficult for blighted, over-congested and polluted urban areas to justify as “in the public interest” the huge scope of impacts associated with converting even more undeveloped land. Even in rural places like Calaveras County, the numerous significant impacts of new development under the 2019 General Plan Update admitted in the EIR and the associated findings of fact make it hard to justify such development as in “the public interest.”

As you know, as global climate change progresses, the State expects that precipitation will decline both statewide and in the Sierra region of which Calaveras County is a part. (Attachment 6 - *California’s Fourt Climate Change Assessment, Sierra Nevada Region*, 2018, pp. 43-53.) Water supply issues are likely to become increasingly contentious. At the CPC, we believe that to succeed in a 21st century fight over a water allocation a county should build a public interest profile superior to its competitors. (Attachment 7, Infusino, Public Interest Profile Enhancement, 4/29/2014, pp. 2-4.)

Since your arrival, Calaveras County has begun to enhance its public interest profile. There are now draft greenhouse gas reduction measures. There is a draft zoning ordinance to implement some of the measures to reduce the environmental impacts of new development. There is a draft oak woodland conservation ordinance. There is an evacuation readiness plan identifying the work that needs to be done to prepare for emergency evacuation. The completion of these drafts along with a NCCP would admirably demonstrate the County’s commitment to the public interest.

F) A HCP/NCCP will help to avoid untimely litigation that could impede development proposals.

Without a HCP/NCCP, any large project moving forward in Calaveras County with endangered species impacts will have to endure the risk that the Center for Biological Diversity (CBD) or a similar organization will take the opportunity to seek an injunction of the project in Federal Court. A HCP/NCCP will greatly reduce this risk.

The CBD both knows Calaveras County and recalls that Calaveras County did not accept all of the CBD’s recommendations to mitigate the impacts of the General Plan Update on special status species. While some people may view the CPC and the CBD as the same or similar, there are very meaningful differences.

The CPC advocates for a balanced set of local conservation and development issues, whereas the CBD only cares about wildlife habitat. The CPC is a local organization that cares about the futures of local people, while the CBD is an internationally active organization that, again, only cares about wildlife habitat. The CPC works hard to comment on projects and to find reasonable mitigation measures. The CBD will not waste its time trying to seek administrative remedies with uncooperative applicants, resistant Planning Commissioners, or unmotivated Supervisors.

The only time in its 17 years of existence that the CPC did go to court against the County, it filed the case in county superior court where local concerns will be addressed locally. The CBD litigates in federal court where the presiding judges are likely to be far more concerned about implementing federal law than they are about its adverse effects on Calaveras County residents.

Finally, a CBD remedy may not only include an injunction against a single project but may also include costly habitat conservation measures that will apply to other similarly situated development proposals. In short, without a HCP/NCCP, many Calaveras County development proposals will have to risk dealing with focused and formidable outside opposition.

G) Completing a HCP/NCCP is consistent with the mission of the CPC.

At this point you may be wondering, what interest does the CPC have in a HCP/NCCP? When done well, a HCP/ NCCP will provide a network of suitable habitat to support sustainable populations of special status species in Calaveras County while facilitating the provision of jobs, affordable housing, infrastructure, and services. A HCP/NCCP is developed through a process that provides for public participation in decision-making. These attributes of a HCP/NCCP are consistent with the mission of the CPC.

Thank you for considering this General Plan implementation proposal. We understand that you will use your professional judgment to determine how to proceed.

With gratitude,

A handwritten signature in cursive script, reading "Thomas P. Infusino".

Tom Infusino, Facilitator

Calaveras Planning Coalition