



**CALAVERAS COUNTY PLANNING COMMISSION
STAFF REPORT**

Hearing Date	December 13, 2012
Project Number/Name	Project # 2006-110, Sawmill Lake Project
Supervisory District Number	District 4, Supervisor Tom Tryon
Assessor's Parcel Number(s)	061-003-001, 054-007-003, 054-007-006, 054-007-018, 054-007-019, 054-006-030, -031, -032, and -037.
Planner	Rebecca Willis, Planning Director

This public hearing was continued from the September 13, 2012 Planning Commission Meeting at the request of the Applicant. This staff report focuses on new information since the September 13th hearing.

Date: December 7, 2012

Project Description: The Sawmill Lake Project is a proposed 243-acre, mixed-use and residential master planned community. The project area is a 243-acre site located south of the intersection of State Route (SR) 4 and Little John Road in the unincorporated community of Copperopolis. The Sawmill Lake Project application requests a General Plan Amendment, Specific Plan (including Zoning Regulations), Vesting Tentative Subdivision Map, and Development Agreement. The applicant and landowner is Castle & Cooke Calaveras, Inc., 100 Town Square Road, Copperopolis, CA 95228.

BACKGROUND

At the September 13, 2012 public hearing, staff recommended denial of the project without prejudice. Draft Resolution No. 2012-028, included as **Attachment 1** to this report, provides a recommendation from the Planning Commission to the Board of Supervisors, that the Board deny without prejudice 2006-110 Sawmill Lake Project. The Minutes of the Planning Commission meeting of September 13, 2012 are included as **Attachment 2**. The Planning Commission received verbal and written evidence and testimony on the project. Verbal testimony is described in the Minutes of the Planning Commission meeting. Written testimony submitted at the Planning Commission meeting, comprising nine documents, is included as **Attachment 3**. Additional comment, comprising three documents, was received subsequent to the close of the public hearing of September 13, 2012, and is included as **Attachment 4**. Follow-up correspondence, comprising four documents, between the County and Castle & Cook is included as **Attachment 5**.

The Planning Commission Packet for September 13, 2012 is included as **Attachment 6** and is submitted under separate cover. The Staff Report of September 13, 2012 provides background, analysis, recommendation, and correspondence.

At the public hearing of September 13, 2012, the applicant requested, and the Planning Commission granted, a 90-day continuance of the project to December 13, 2012 to allow the applicant and staff to work on issues. On September 24th, the applicant, staff, and CSERC met and discussed how Castle & Cooke could move forward with a project at this time. Staff proposed a potential "grasslands project" on a 25-40 acre site next to the Town Square, designated Community Development Lands in the General Plan, and shown as grasslands in biological reports. The applicant rejected the concept because it does not provide Castle & Cooke the assurance they would ultimately be able to move forward with the portion of Sawmill Lake Project currently envisioned within the Natural Resource Lands. Planning staff provided follow-up correspondence on October 11th, 2012 to Castle & Cooke, describing the content and outcome of the September 24th meeting, reiterating the County's concerns with regard to the project, and requesting submittals by October 22, 2012. A one-page letter from Castle & Cooke, dated October 12, 2012, acknowledged receipt of the County's correspondence. Correspondence from CSERC to the Planning Commission, dated October 16, 2012, raised additional issues with the environmental review process and presented new information regarding wastewater treatment capacity issues relevant to the project. On November 19, 2012, the applicant, staff, and CSERC met again and reviewed a revised land plan prepared by Castle & Cooke that responds to various issues identified in the September 13th public hearing. Staff and CSERC acknowledged improvements and identified areas where there are still outstanding issues and concerns.

REQUEST FOR A TIME EXTENSION

On November 27, 2012, Castle & Cooke submitted a letter to the Planning Commission suggesting that they have an approach that will resolve the issues (see **Attachment 5**). They are requesting the Planning Commission grant another continuance so Castle & Cooke may amend their applications for the Sawmill Lake Project. They anticipate they will have amended documents in January 2013 which would be ready for recirculation. The applicant suggests that after the documents have been reviewed by the County and recirculated to the public for comments, the continued Sawmill Lake Project public hearing can be rescheduled.

Staff does not concur with Castle & Cooke's assertions that the alternative approach will resolve the issues. Based on meetings between Castle & Cooke and staff, Castle & Cooke is not willing to substantially reduce development within the Natural Resource Lands as part of their application, therefore critical issues remain. Staff recommends the Planning Commission deny the requested continuance. ***A continuance will accomplish additional delays, additional project redesigns, additional studies, additional review and analysis by staff, and still fail to address critical issues pertaining to the General Plan, General Plan Update, infrastructure, CEQA, and the required Findings that the lead agency must adopt in order to approve the project.*** Please refer to **Attachment 1** for Resolution # 2012-028, Recommending Denial without Prejudice for the Sawmill Lake Project.

ANALYSIS

Castle & Cooke has acknowledged various concerns expressed at the September public hearing and has made an effort to reduce the impacts in the revised land plan. The revised land plan, presented in outline format on November 19, 2012, is "preliminary" to illustrate the

concepts that Castle and Cooke intend to pursue further (see **Attachment 5**). These efforts do not resolve critical issues. Castle & Cooke is not willing to remove development from the areas of concern. The following is a table of some of the revisions and preliminary comments:

<i>Revised Land Plan</i>	<i>County Comments</i>
Proposes a reduction in the number of units in the land plan from 800 to 580 mixed-use units (409 residential units plus 71 units associated with the inn/resort). Yet, the applicant verbally indicated they will still retain the maximum of 800 units in their request for entitlements.	It is not clear what reduction of units is proposed, if any. Clarification is needed.
Suggests that the number of oak trees to be removed will be reduced from 8,000 to something less.	The revised plan incorporates some larger custom lots that will be sold for people to construct individual homes in future. However, the tree count does not include those oak trees to be removed in future when the custom lots are developed by individual owners. This defers tree removal as oppose to reducing tree removal. At this time, there are no commitments for building envelopes or another tool to limit or quantify trees to be removed. Impact analysis for oak trees is incomplete.
Incorporates an "urban-area" setback from the lake and creek. The setback is proposed to be a minimum of 33-feet between the water and the developed urban uses. This is called a wetland wildlife corridor in the revised land plan.	County staff, USFWS, and CSERC have indicated that a 33-foot setback is not adequate to constitute a wildlife corridor. The site is not in an urban area as defined by CEQA or other applicable codes. The site is Natural Resource Land in a rural, unincorporated area of the County. The proposed 33-foot setback is not expected to be adequate with State and Federal agencies with jurisdiction over the other aspects of the project (wetland permits, streambed alteration, bridge construction). Correspondence from the USFWS on October 26, 2012, indicates a 200-foot setback from both sides of Sawmill Creek is warranted. This is the setback required along Sawmill Creek in the Oak Canyon Biological Opinion and Corps Permits.
Includes bridges over the wildlife corridor instead of at-grade roads.	Positive improvement, but the wildlife corridor is still too narrow.
Removes the 21-acre parcel that is part of the Copper Cove subdivision from the project site.	This responds to concerns by the Copper Cove homeowners association that their parcel was included in the Sawmill Lake Project boundaries.

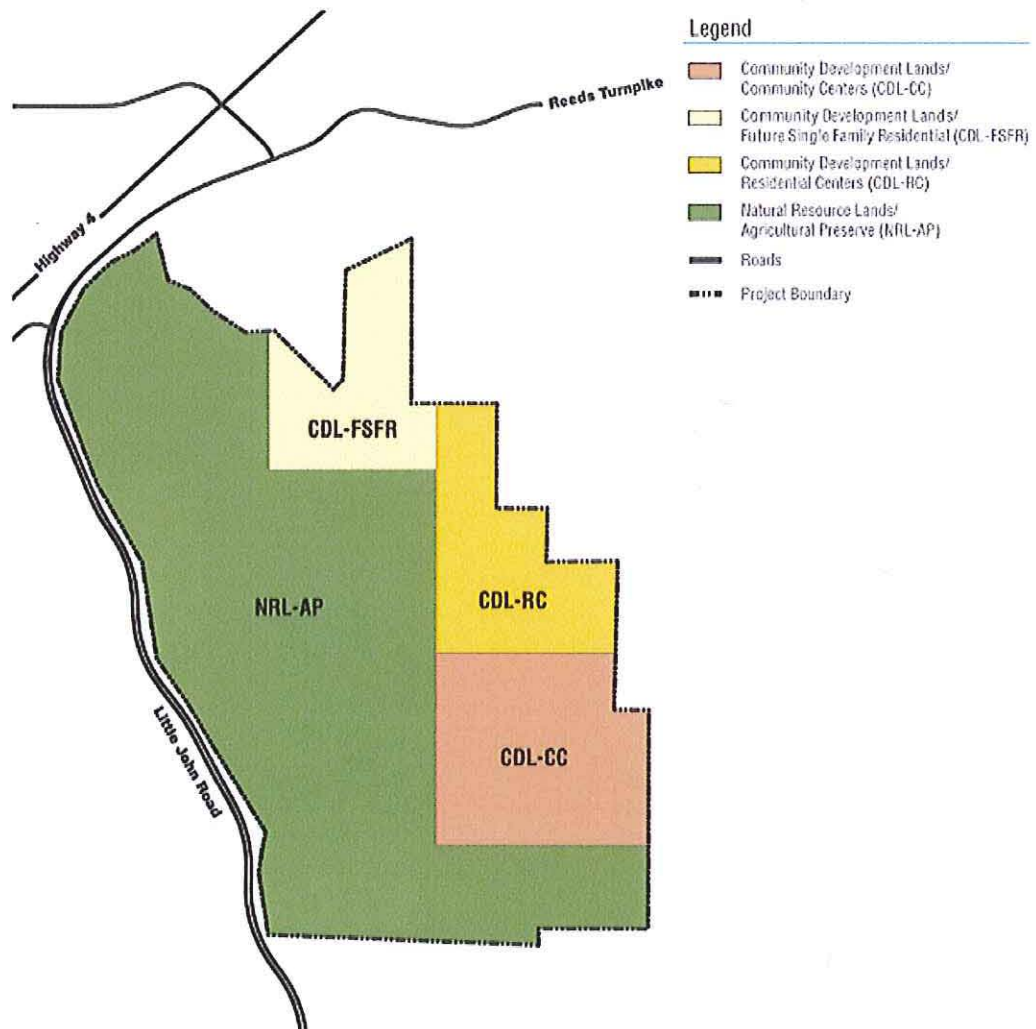
Critical Issues

Staff noted that the applicant's efforts represent an improvement, but they do not resolve the critical issues. The project continues to be problematic in six areas:

1. General Plan Inconsistency
2. Foreclosing Options in the General Plan Update
3. Inadequate Infrastructure to Serve the Project
4. Design and Improvements of the Project are likely to Cause Substantial Environmental Damage
5. Statements of Overriding Considerations are Unwarranted
6. Inability for the County to make Mandatory Findings for Project approval

1. General Plan Inconsistency:

The applicant is requesting to change more than 150 acres of Natural Resource Lands to Community Development Lands. This would result in additional residential and commercial development not previously considered by the General Plan. It would designate an area for urban development that is currently designated for natural resources. The land designated Natural Resource Lands is shown in green below.



The applicant's legal counsel submitted a letter dated July 23, 2012 that states "...even though a public entity's General Plan is undergoing an update, the update does not invalidate the then-current General Plan, nor does it preclude the public entity from making land use decisions in the interim." The letter goes on to describe an unpublished decision in a Bakersfield case where an environmental group challenged a commercial project, in part, on the basis that the project was inconsistent with the City's outdated General Plan.

The circumstances with Calaveras County's General Plan are quite different from the Bakersfield case. There is prior published case law that states, "If the general plan fails to provide required criteria relevant to the use sought by the permit, there is no valid measure by which the permit may be evaluated". Ironically, this is from the lawsuit *Neighborhood Action Group for the Fifth District v. County of Calaveras*, 156 Cal.App.3d 1176, 1185 (1984). This is a lesson that Calaveras County learned in court decades ago, and need not learn again. There is a lack of required criteria in the current General Plan relevant to the applicant's request remove and/or convert the County's significant wildlife habitat, botanical habitat, riparian habitat along streams and rivers, significant archaeological or cultural sites, and to negatively impact scenic resources. The applicant's request to convert over 150 acres of land in the Sawmill Lake Project designated Natural Resources to Community Development Lands, with an environmental document that fails to mitigate impacts to a less than significant level, is inconsistent with the current General Plan.

The State has adopted General Plan Guidelines to serve as a valuable reference for cities and counties to prepare and maintain local general plans. The Guidelines are an official document explaining California's legal requirements for general plans. The Guidelines state that all elements of a general plan, whether mandatory or optional, must be consistent with one another. The Guidelines also state there must be consistency within the elements. The Guidelines reference the court decision in *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90 to illustrate both of these points. There is substantial information in the record that questions the County's ability to make the General Plan consistency findings **between elements and within elements** for the Sawmill Lake Project, including:

- "Nowhere does the Land Use Element explain which neighborhoods in particular are expected to grow, and by how much. Thus, there is nothing for the Circulation Element to supposedly be correlated with. The County could not have "designed the transportation plans and policies to contribute to the achievement of the planned land-use pattern" when the Land Use Element itself fails to specify where and how the County is expected to grow. This is a fundamental problem undermining the entire General Plan, so there is no way this General Plan can provide an adequate basis for subsidiary land use decisions, such as specific project approvals." See Shute, Mihaly & Weinberger letter dated November 20, 2007
- "The County's current existing General Plan suffers from numerous deficiencies that are currently being addressed during the General Plan update process. Accordingly, this project application for a large development in the Copperopolis area is premature and should not be evaluated or analyzed for impacts and consistency with County policies until the General Plan Update process is completed – with the revised General Plan adopted by the County and certified by the state. As specific plans are subordinate to General Plans, a specific plan cannot be approved if a General Plan is legally deficient. No project of this scale should move forward until such legal deficiencies are addressed." See CSERC letter dated April 28, 2011

- “As just one of its numerous legal deficiencies, the current General Plan fails to set population density standards as required by state law. Although it may be the desire of some influential members of the Copperopolis community to expand development in the area significantly, the Copperopolis Community Plan has yet to be evaluated under the General Plan Update. The potential environmental impacts associated with this level of growth must legally be evaluated on a comprehensive General Plan level, rather than the piecemeal project-level review that continues to occur, particularly in the Copperopolis area. The Sawmill Lake EIR contains no discussion of the allowable densities under the current General Plan designations for the site because these standards do not exist in the General Plan. Because these standards do not exist, there is no baseline for evaluation of the impacts of the proposed population densities that would result from build-out of this project.” See CSERC letter dated June 1, 2010

In order to approve a General Plan Amendment, the County is required to make certain Findings. A paramount concern is that the project conflicts with nine Goals in the current General Plan:

1. Goal II-3 of the Land Use Element of the General Plan is to “Preserve and manage those lands identified as Natural Resource Lands for the future good of the general public.” The Project will result in the conversion of approximately 157.9 acres of Natural Resources Lands to the Sawmill Lake Master Project Area, to allow a broad range of mixed-use development not envisioned in the current General Plan. The purpose of a Specific Plan is to provide a long-term comprehensive development plan for an area consistent with the broader provisions of the General Plan, and the California Government Code (Section 65454) states that no Specific Plan may be adopted or amended unless the proposed plan or amendment is consistent with the General Plan. The Sawmill Lake Specific Plan is not consistent with the Calaveras County General Plan.
2. Goal II-24 of the Land Use Element of the General Plan is to “Provide for environmentally acceptable disposal of the County’s solid and septic wastes,” and Goal II-25 of the Land Use Element is to “Provide for adequate disposal of the County’s sewage to protect water supplies and public health, safety and welfare.” The Project will cause significant cumulative adverse impacts to wastewater disposal that cannot be mitigated to a less than significant level (Utilities and Services Impact CUM-16).
3. Goal III-2 of the Circulation Element of the General Plan is to “Create and maintain a road system to serve the County’s needs.” The Project will cause significant adverse impacts and significant cumulative adverse impacts that cannot be mitigated to a less than significant level to existing plus Project roadway capacity for Calaveras County, Tuolumne County, and Caltrans roadways (Transportation and Traffic Impact TR-2 and Impact TR-5).
4. Goal IV-10 of the Conservation Element of the General Plan is to “Provide for adequate domestic water supplies.” The Project will cause significant cumulative adverse impacts to water supplies that cannot be mitigated to a less than significant level (Utilities and Services Impact CUM-16).
5. Goal V-1 of the Open Space Element of the General Plan is to “Preserve and enhance the County’s significant wildlife and botanical habitats.” The Project will cause significant cumulative adverse impacts to wildlife and botanical habitat, vernal pools and wetlands, and to Oak Woodlands that cannot be mitigated to a less than significant level (Biological Resources Impact CUM-4a, Impact CUM-4c, Impact CUM-4d, and Impact CUM-4e).

6. Goal V-2 of the Open Space Element of the General Plan is to "Protect streams, rivers and lakes from excessive sedimentation due to development and grading." The Project will cause significant cumulative adverse impacts that cannot be mitigated to a less than significant level to wetlands, Sawmill Creek and Sawmill Lake (Biological Resources Impact CUM -4b).

7. Goal V-3 of the Open Space Element of the General Plan is to "Protect and preserve riparian habitat along streams and rivers in the County." The Project will cause significant cumulative adverse impacts that cannot be mitigated to a less than significant level to the riparian habitat and wildlife corridor along Sawmill Creek (Biological Resources Impact CUM-4b and Impact CUM-4d)

8. Goal V-4 of the Open Space Element of the General Plan is to "Preserve or allow recovery of the County's significant archaeological sites and artifacts." The Project will cause significant adverse impacts that cannot be mitigated to a less than significant level to cultural and historical resources (Cultural Resources Impact CUL-1).

9. Goal V-6 of the Open Space Element of the General Plan is to "Preserve and protect the scenic qualities of the County." The Project will cause significant adverse impacts, and significant cumulative adverse impacts that cannot be mitigated to a less than significant level to scenic resources, the viewshed and the scenic character of the area (Aesthetics Impact AES-1, Impact AES-2, Impact CUM-1 and Biological Resources Impact CUM-4e).

10. Goal III-2 of the Circulation Element of the General Plan is to "Create and maintain a road system to serve the County's needs." The Project will cause significant adverse impacts and significant cumulative adverse impacts that cannot be mitigated to a less than significant level to existing plus Project roadway capacity for Calaveras County, Tuolumne County, and Caltrans roadways (Transportation and Traffic Impact TR-2 and Impact TR-5).

2. Foreclosing Options in the General Plan Update:

Evidence in the record, including correspondence from the U.S. Fish and Wildlife Service of June 30, 2010 and January 21, 2011, describes the significance of the biological resources remaining within the open space lands of the Copperopolis planning area and at the Sawmill Project site. Special status animal species include the California red legged frog, California tiger salamander, valley elderberry longhorn beetle, vernal pool tadpole shrimp, vernal pool fairy shrimp, burrowing owl and American badger. Special status plant species include Hartweg's golden sunburst, Colusa grass, and Chinese Camp brodiaea. Significant habitats include extensive expanses of oak woodland, riparian corridors, wetlands, springs, seeps, vernal pools, streams, ponds and lakes. Sawmill Lake, Sawmill Creek, and Black Creek have been identified as key components within the interconnected habitats.

The U.S. Fish and Wildlife Service states that "the on-going loss and reduction in natural habitat and wildlife movement corridors for listed species and wildlife in this portion of Calaveras County is of concern." The Service, in addition, has provided a firmly worded recommendation that a Habitat Conservation Plan or Regional Conservation strategy be prepared and approved prior to further development in the area. Comments from jurisdictional agencies are considered expert witness testimony by the Courts that should not be ignored if supported by substantial evidence.

Approval of the Project will result in the conversion of 157.9 acres of very high quality habitat lands currently designated as Natural Resources Lands in the General Plan, and will foreclose

the option of incorporating the key habitat values of those lands into the County's habitat conservation planning efforts.

Approval of the Project is inconsistent with Goal V-1 of the Conservation Element of the General Plan, which is to "Preserve and enhance the County's significant wildlife and botanical habitats." The Project will eliminate, as an alternative for conservation, the highest quality habitat lands remaining in the area, and will preclude any kind of meaningful comparison pursuant to CEQA.

3. Inadequate Infrastructure to Serve the Project:

In order to approve the project, the County must find that there is or will be adequate infrastructure available to serve the project, including water, wastewater, and traffic.

Water: A Water Supply Assessment is required for a residential project over 500 units. As described in the September 13th staff report, CCWD is limited to no more than 6,000 acre feet of water delivery to the Copper Cove Service area "until further order of the State Water Resources Control Board". CCWD prepared a Water Supply Assessment and states it has ample water rights to serve the Sawmill Lakes Project as well as previously entitled projects. However, the existing previously approved entitlements for Oak Canyon Ranch, plus Tuscany at full build out would require CCWD to deliver at least 7,200 acre-feet. The Sawmill Lake Project would add another 650 acre-feet. This means that the total need for water to serve the previously approved projects plus Sawmill Lakes Project is 7,850 acre-feet. Clearly, this exceeds the 6,000 acre-feet of water that CCWD is entitled to draw from the lake.

CCWD must obtain approval by the State Water Resources Control Board to exceed 6,000 acre-feet of water delivery in the Copper Cove Service area. CCWD's Water Supply Assessment says "it is anticipated that the SWRCB would take 2-3 years to process a change petition" and "the cost...could range from \$50,000 to \$500,000 or more..." It should be noted that CCWD will have to prepare a CEQA document to accompany the request for an increase in diversion. The State Water Resources Control Board will consider environmental impacts, other competing water needs of the state, and protests from other agencies and non-government organizations. Clearly, an approval of the State Water Resources Board is speculative, at best.

Staff met with CCWD and discussed this issue. CCWD is not able to request an increase in diversion since the development community is not coming forward to enter into facilities agreements to build the infrastructure to use the water that is "available" to them. Therefore, the State is unlikely to increase their diversion since they do not have a demonstrated need for water above and beyond the 6,000 acre-feet threshold. Yet the County has approved projects that exceed the 6,000 acre-feet threshold, assuming there will be water available. There is no contingency plan on how to allocate water if the economy turns around and the developers come forward at the same time to construct their projects, exceeding the 6,000 acre-feet capacity. CCWD stated that water would be provided "first come, first served" for those that execute facilities agreements. It is unknown what would happen to the rest of the developers when the 6,000 acre-feet capacity is taken. The County may end up with "paper subdivisions" without water. This could cause many other problems. For example, the traffic impacts and road improvements are based on projected units. If units are projected, but never built due to lack of water, the County may find itself with RIM fees, benefit basin fees, and road improvements that are excessive and unnecessary.

The final section of the Water Supply Assessment for Sawmill Lake is titled "Water Supply Commitment". The last three sentences of the document reads:

This WSA does not, in any way, create a right or entitlement to water service or any specific level of water service. Each project proponent is required to enter into development or facilities agreements with the District, as the District deems appropriate. This WSA does not, in any way, purport to satisfy the requirements of Government Code Section 66473.7.

This is problematic for the County. This language means that CCWD has not promised water to the Sawmill Lake Project. This places the burden on the County to make the Findings that water will be available for the Sawmill Lakes Project. Obviously, the County has no authority or jurisdiction to allocate water, and further, the County has no basis to assume that the available water would be allocated to Sawmill Lakes instead of other projects (Oak Canyon Ranch, Tuscany, etc.).

This is also problematic for CCWD. CCWD must demonstrate water is put to beneficial use to perfect its water rights. It will be more difficult for CCWD to demonstrate water is being put to beneficial use if the array of development projects approved in Copperopolis have no promise of water to serve their needs.

Government Code 66473.7(b)(1) requires the County's approval of the Sawmill Lakes vesting tentative map to include a condition that "sufficient water supply" will be available. The County's goal would be to demonstrate the future water supplies are real and not illusory. This is an awkward burden on the County given the circumstances. Notwithstanding, in order to meet our obligations, staff would suggest that the Water Supply Assessment include CCWD's plans and measures for obtaining State Water Resources Control Board's authorization to divert additional water under its Stanislaus River water rights (or for acquiring other water rights or entitlements). The plans should include cost and financing projections for the additional water diversions, the permitting and approval requirements (including anticipated CEQA review) associated with the additional diversions, and the timeframe in which CCWD expects to obtain the State's approval. There may need to be a discussion of "curtailment", which would impose a moratorium on future development activities until the State Water Resources Board approves additional diversions to serve the approved developments in the Copperopolis service area.

At this time, there is insufficient evidence an adequate long-term water supply exists. While CCWD has identified sufficient water rights to serve cumulative development in the project area, owing to uncertainty associated with the permitting of these water rights and owing to the need for substantial infrastructure to serve long-term development, the cumulative effects to long term water supply remain significant and unavoidable.

There is yet another issue with water in the EIR documents. CCWD and the applicant are not in agreement on the source of water and the required infrastructure to serve the Sawmill Lake Project. According to CCWD's comment letters dated June 7, 2010 and May 12, 2011, the offsite water described in the Recirculated EIR does not reflect their comments and discussions with the developer. CCWD states that the water system described in the EIR is incorrect. To serve the Sawmill Lake Project, CCWD indicates a new 12-inch transmission main is planned to be installed in Little John Road from Copper Cove Drive to the Project. The Draft and Recirculated EIR describes a system extending from the Town Square development, which is the Copperopolis water system.

The applicant's response to the disagreement, documented in the administrative draft Final EIR submitted to the County, explains that the applicant prefers the Copperopolis system as the source of water since it was evaluated in the EIR for the Copper Mill project, was previously approved and is substantially constructed. The applicant states the Copper Cove system has not been evaluated under CEQA so it would require environmental review, approval and construction. The applicant "chose to include reliance on this system in the Sawmill Lake Specific Plan project description." The administrative draft Final EIR concludes that CCWD's comment identifies no additional significant environmental effect or an increase in the severity of an existing environmental effect, no new mitigation would be necessary, and no additional modification of the EIR would be required to respond to the comment.

The County has no desire to arbitrate a disagreement between the water purveyor and a developer on the appropriate water source and location of water utilities. The response to CCWD's comments in the administrative draft Final EIR does not reflect the County's independent judgment. The County respectfully remands the issue back to CCWD to work out with the developer. If offsite improvements that have not yet been reviewed under CEQA are necessary to serve this project, the EIR as prepared by the developer fails to do that.

Wastewater: Staff has recently become aware of a wastewater issue that was not disclosed in the Draft or Recirculated Draft EIR. On March 9, 2012, the Central Valley Regional Water Quality Control Board issued a complaint for violations of Water Discharge Requirements by CCWD and Saddle Creek Golf Course at the Copper Cove Wastewater Reclamation Facility. On June 8, 2012, the California Regional Water Quality Control Board adopted a Time Schedule Order requiring CCWD, Saddle Creek Golf Course, and the Copper Cove wastewater reclamation facility to comply with certain requirements to bring their facility into compliance to meet effluent limits and water quality standards. Attached is correspondence from CSERC dated October 16, 2012 on this matter. (See **Attachment 4**)

At this time, there is insufficient evidence that adequate wastewater treatment services can be provided for the Project. Additional evidence in the record shows that the EIR does not provide a clear, full and timely assessment and/or analysis of the inability of the CCWD Copper Cove treatment system to meet effluent limits and water quality standards. The EIR does not provide any discussion of alternatives, of potential mitigation measures tied to the Sawmill Lake projects' effluent, or an admission that wastewater violations are a significant impact. The inability of CCWD to treat its current wastewater load calls into question the ability to treat wastewater from the Project. Sawmill Lake may have a significant impact on public services and water quality not adequately analyzed in the EIR pursuant to PRC 21094 and CEQA Guidelines Section 15088.5.

Traffic: Comment letters (09-13-12 MyValleySprings_Techel, and 09-25-12 MyValleySprings_Plat_Techel, see **Attachment 3**) received on the Draft and Recirculated Draft EIRs asked which Copperopolis Benefit Basin traffic fees will be charged for the project. Specifically, the commenter asks if the applicable fee will be the existing, but outdated 2002 fee schedule or based on fees in place when the Sawmill project is actually built. The response in the administrative draft Final EIR submitted by the developer states, "County staff is currently researching this comment; the response will be forwarded as it become available." This fails to respond to the comment. The commenter is asking a valid question since the 2002 fee structure would not fully mitigate traffic impacts, and the Copperopolis Benefit Basin update is not yet completed. Staff notes that the Sawmill Lakes Project includes a development agreement, which would be an appropriate vehicle for the County and developer to identify and document a traffic fee that mitigates the impacts of the Sawmill Lake Project in advance of

the County updating and adopting the Copperopolis Benefit Basin fee structure. If this is not feasible, then additional work is needed in the EIR to address the question.

4. Substantial Environmental Damage:

Public Resources Code Section 21081(a) requires that any Lead Agency which approves a project for which an EIR has been certified which identifies one or more significant effects on the environment that would occur if the project is approved, shall make a formal finding with respect to each significant effect. These findings shall include one or more of the following:

- (a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- (b) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (c) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact.

The Administrative-draft Final EIR as prepared and presented by the applicant is not an adequate informational document. The Administrative-draft EIR does not represent the unbiased and independent judgment of the County, does not fully identify and disclose the potentially significant impacts of the proposed Project, and does not assess all reasonable, feasible mitigation measures or changes to the Project that would reduce the significance of identified impacts. If the Project is approved, substantial environmental damage will occur. Absent a public disclosure of all reasonable, feasible mitigation measures, the Lead Agency cannot find that impacts have been adequately mitigated.

Evidence in the record shows that comments submitted in response to the Draft EIR, the Recirculated Draft EIR and the Administrative-draft Final EIR describe "new" information and raise important questions about additional significant impacts to be generated by the project and the likely need for additional review and not-yet identified mitigation. Pursuant to CEQA Guidelines Section 15088.5, the County must revise the EIR and recirculate it for public review before it can approve the Project. See the September 13, 2012 staff report for additional information on the following topics where significant new information has been identified: loss of oak woodlands, western pond turtles, wildlife corridors and riparian habitat, Tuolumne button celery, Chinese camp brodiaea, and water supply.

5. Statements of Overriding Considerations are Unwarranted:

The Draft EIR, the Recirculated Draft EIR, and the Administrative-draft Final EIR identify significant and unavoidable environmental impacts and significant cumulative impacts that cannot be mitigated to a less than significant level in the following resource areas:

- Aesthetics: damage to scenic resources, changes to the viewshed, and changes to visual character.
- Aesthetics: the introduction of light and glare sources in a previously undeveloped area.
- Cultural Resources: the disruption of known cultural or historic resources.
- Traffic and Transportation: existing plus project roadway capacity for Calaveras County, Tuolumne County, and Caltrans Roadways.

- Cumulative Impacts to Aesthetics: nighttime glow effects and adverse visual quality impacts due to development in the area.
- Cumulative Impacts to Biological Resources: impacts to individual oak trees, oak woodlands, annual grasslands, wildlife habitat, biodiversity, protected birds, wetlands, riparian habitat, special status plant species, special status wildlife species, interference with animal migratory routes and activities of nocturnal wildlife species.
- Cumulative Impacts to Transportation and Traffic: cumulative plus project roadway capacity for Calaveras County, Tuolumne County, and Caltrans roadways.
- Cumulative Impacts to Utilities and Services: impacts to water supply and wastewater disposal.

Public Resources Code Section 21081(b) mandates that, for those impacts that cannot be mitigated to a less than significant level, the Lead Agency must make a formal finding, via a Statement of Overriding Consideration, that specific overriding economic, legal, social, technical, or other benefits of the project, outweigh the significant effects on the environment and the courts have held that those findings must be based on substantial evidence. Evidence in the record indicates that the CEQA review process did not represent the unbiased and independent judgment of the County, did not fully identify and disclose the potentially significant impacts of the proposed Project, and did not assess all reasonable, feasible mitigation measures or changes to the Project that would reduce the significance of identified impacts. Further evidence in the record indicates that the Project's likely benefits on balance would not outweigh these significant adverse impacts. In the absence of overriding considerations, the substantial environmental damage from the Project justifies denial of the Project in its entirety. Staff does believe that legally defensible overriding considerations for the Project as proposed exist.

6. Inability for the County to make Mandatory Findings for Project Approval:

The Planning Commission must make a finding that for the public safety and welfare and for orderly development consistent with the General Plan, it is necessary to require that conditions of approval be placed on a project. Conditions of approval shall include those necessary to protect the interests of the individual or to serve the broader interests of the general public and its health, safety and welfare, and shall include:

- (a) Requirements for safe, adequate access to accommodate future land uses and users as set forth in County Code;
- (b) Proof of an adequate supply of potable water at a usable sustained yield;
- (c) Proof of the existence of an approved septic system or accommodation for the sanitary disposal of sewage;
- (d) Any other requirements necessary to protect the public health, safety and general welfare.

Evidence in the record, including the significant and unavoidable adverse impacts, and the significant and unavoidable cumulative adverse impacts to Transportation, Traffic, Utilities and Services have shown that there are no mitigating measures that will allow the above-required conditions of adequate access, adequate water, and adequate sewage disposal to be met. Based on the foregoing evidence, the required findings cannot be made.

COMMENT LETTERS RECEIVED

Comment letters received prior to the September 13, 2012 public hearing were included as an attachment to the Planning Commission Packet for that date. All testimony and comment letters received on this project at the September 13th public hearing and subsequent to public hearing to date are included as an attachment to the Planning Commission Packet for December 13, 2102. All comment letters will be posted on the Planning Department's website and available at the Planning Department for public review and are part of the record for this project.

CONCLUSIONS

Based upon the above factors and considerations, Staff feels there is a preponderance of evidence that the Sawmill Lake Project:

1. Is Inconsistent with the current General Plan
2. Forecloses Options in the General Plan Update
3. There is Inadequate Infrastructure to serve the Project
4. The Design and Improvements of the Project are likely to Cause Substantial Environmental Damage
5. Statements of Overriding Considerations are Unwarranted
6. There is an Inability for the County to make Mandatory Findings for Project approval

Therefore, Staff recommends the Planning Commission recommend denial without prejudice for the Sawmill Lake Project.

FINDINGS

Project Findings are included in the Resolution 2012-028 (see **Attachment 1**).

RECOMMENDATION

Staff recommends that the Planning Commission deny the requested continuance and adopt the Resolution recommending that the Board of Supervisors deny without prejudice the General Plan Amendment, Specific Plan, Vesting Tentative Map, and Development Agreement for the Sawmill Lake Project based upon the Findings contained therein.

ATTACHMENTS TO STAFF REPORT OF DECEMBER 13, 2012

Attachment 1 Resolution No. 2012-028, dated December 13, 2102 Recommending that the Board of Supervisors Deny without Prejudice 2006-110 Sawmill Lake Project

Attachment 2 Minutes of the Planning Commission Meeting of September 13, 2012

Attachment 3 Correspondence and Testimony Presented at the Hearing of September 13, 2102

09-07-12 Shute Mihaly Weinb_Folk_CSERC
09-12-12 Calaveras Planning Coalition_Infusino
09-12-12 Shute Mihaly Weinb_Folk_CSERC
09-13-12 MyVallySprings_Platt_Testimony
09-13-12 MyValleySprings_Techel

09-14-12 CCALTOA_Forkner
09-14-12 DaValle Comment
09-24-12 CSERC Buckley Additional Comment
09-25-12 MyValleySpring_Platt_Techel Additional

Attachment 4 Correspondence and Testimony Presented Subsequent to the Hearing of September 13, 2012

10-16-12 CSERC to Planning Commission
10-26-12 U.S Fish and Wildlife Service to County
09-26-12 Shute Mihaly Weinb PRA Request

Attachment 5 Correspondence between the County and Castle & Cooke

11-27-12 Castle & Cooke to Planning Commission
10-19-12 Castle & Cooke Outline of Revisions
10-12-12 Castle & Cooke to County
10-11-12 County to Castle & Cooke

Attachment 6 Planning Commission Packet for September 13, 2012 Sawmill Lake Project

Attachment 1
to Planning Commission Staff Report of December 13, 2012

Resolution No. 2012-028, dated December 13, 2012, Recommending that the Board of Supervisors Deny Without Prejudice 2006-110 Sawmill Lake Project

COUNTY OF CALAVERAS, STATE OF CALIFORNIA
PLANNING COMMISSION

RESOLUTION NO. 2012-028

>>A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS DENY THE SAWMILL LAKE PROJECT IN ITS ENTIRETY (PROJECT # 2006-110 GENERAL PLAN AMENDMENT, SPECIFIC PLAN INCLUDING ZONING REGULATIONS, VESTING TENTATIVE SUBDIVISION MAP AND DEVELOPMENT AGREEMENT FOR THE SAWMILL LAKE PROJECT).

WHEREAS, on or about July 28, 2006, a formal application was filed with the Calaveras County Planning Department and fees were paid by Castle & Cooke Calaveras, Inc., for a General Plan Amendment for Assessor Parcel Numbers 054-006-029 054-006-030 054-006-031 and 054-006-032, comprising approximately 244 acres at and near 101 Olive Ranch Road in Copperopolis, Calaveras County, California (Project # 2006-110); and

WHEREAS, the July 28, 2006 application requested a General Plan Amendment from Natural Resource Lands/Agricultural Preserve (NRL/AP) and from Community Development Lands/Future Single Family Residential (CDL/FSFR) and from Community Development Lands/Residential Center (CDL/RC) and from Community Development Lands/Community Center (CDL/CC) to the Sawmill Lake Master Project Area; and

WHEREAS, on or about August 28, 2006, the Calaveras County Planning Department deemed the July 28, 2006 application incomplete and requested additional information from the applicant; and

WHEREAS, on or about September 11, 2006 a revised application for a General Plan Amendment was submitted to the Calaveras County Planning Department; and

WHEREAS, on or about October 4, 2006, the Calaveras County Planning Department deemed the September 11, 2006 application incomplete and requested additional information from the applicant; and

WHEREAS, on or about January 17, 2007, a revised application for a "Master Project Area Specific Plan" which included a "Preliminary Draft Specific Plan" was submitted to the Calaveras County Planning Department; and

WHEREAS, on or about January 18, 2007, the application was revised to further include the additional Assessor Parcel Numbers 061-003-001 054-007-003 054-007-006 054-007-018 and 054-007-019, and on or about January 25th, 2007, a revised Site Plan Map reflecting these new APNs was received under separate cover; and

WHEREAS, on or about February 21, 2007, the applicant, Castle & Cooke Calaveras, Inc., submitted a letter to the Calaveras County Planning Department "confirming" a mutual agreement made at a meeting of February 7, 2007, that Castle & Cooke would prepare an Administrative Draft Environmental Impact Report (EIR) for the Sawmill Lake Project, and further, that Castle & Cooke would reimburse the County for an independent consultant, hired by Calaveras County, to process the project application and to peer review the Administrative Draft EIR; and

WHEREAS, on or about March 2, 2007, the Calaveras County Planning Department considered the January 18, 2007 application for a "Master Project Area Specific Plan" complete for processing; and

WHEREAS, application materials were routed for comments to County Departments, Special Interest Organizations, Local Public Agencies, California State Departments and the Planning Commissioner and Supervisor for the District in which the proposed project was located, and Technical Advisory (TAC) Meetings were scheduled for August 22, 2007 and September 26, 2007; and

WHEREAS, on or about December 13, 2007, the applicant submitted a letter to the Calaveras County Planning Department authorizing Mid Valley Engineering and Hogle-Ireland to act on the applicant's behalf to process a General Plan Amendment, a Zoning Amendment, a Tentative Subdivision Tract Map and a Development Agreement for the Sawmill Lake Project; and

WHEREAS, on or about December 13, 2007, the applicant submitted to the Calaveras County Planning Department a preliminary draft revised Project Application (application fees were not paid) to include the General Plan Amendment, Zoning Amendment, Tentative Subdivision Tract Map and Development Agreement, an updated Project Description, and a draft Notice of Preparation/Initial Study (without baseline studies) for County Staff's review; and

WHEREAS, on or about January 14, 2008, the applicant submitted a letter to the Calaveras County Planning Department stating Castle & Cooke's intention to prepare separate and unique Zoning Codes for Sawmill Lake and Copper Valley Ranch and referencing a meeting of January 17, 2008 wherein these issues would be discussed; and

WHEREAS, on or about February 7, 2008, the Calaveras County Water District submitted a Water Supply Assessment for the Sawmill Lake Specific Plan, approved January 30, 2008 by CCWD Resolution No. 2008-10; and

WHEREAS, on or about April 9, 2008, a formal application was filed with the Calaveras County Planning Department and application fees were paid by Castle & Cooke Calaveras, Inc., for the General Plan Amendment (including a Revised Draft Specific Plan), Zoning Amendment (including a draft Zoning Code), and a Development

Agreement for Assessor Parcel Nos. 061-003-001 054-007-003 054-007-006 054-007-018 and 054-007-019, 054-006-029 054-006-030 054-006-031 and 054-006-032; and

WHEREAS, on or about April 18, 2008, the Calaveras County Planning Department determined that the project could result in significant environmental impacts and required the preparation of an Environmental Impact Report (EIR) consistent with the requirements of the California Environmental Quality Act (CEQA); and

WHEREAS, as required by CEQA Guidelines, Section 15083, the County prepared a Notice of Preparation (NOP) of an EIR for the Project on April 18, 2008, and the County was identified as the Lead Agency for the proposed Project. This notice was circulated to the public, local, state and federal agencies, and other interested parties to solicit comments on the proposed Project; and

WHEREAS, on or about June 13, 2008, a formal application was filed with the Calaveras County Planning Department and fees were paid by Castle & Cooke Calaveras, Inc., for a Tentative Subdivision Tract Map to create 434 Lots (800 Dwelling Units maximum) with an average lot size of 5,000 square feet, on Assessor Parcel Nos. 061-003-001 054-007-003 054-007-006 054-007-018 and 054-007-019, 054-006-029 054-006-030 054-006-031 and 054-006-032; and

WHEREAS, on July 7, 2008, the Calaveras County Planning Department deemed the June 13, 2008 TSTM application incomplete and provided to the applicant a TSTM Application Checklist requesting additional information and/or clarification; and

WHEREAS, on or about July 23, 2008, a letter response was submitted to the Calaveras County Planning Department from Mid Valley Engineering, providing revised Site Plan Maps and preliminary responses for outstanding issues described on the TSTM Application Checklist; and

WHEREAS, on or about August 12, 2008, the Calaveras County Planning Department determined that the project as revised could result in significant environmental impacts and required the preparation of an EIR consistent with the requirements of CEQA; and

WHEREAS, as required by CEQA Guidelines, Section 15083, the County prepared a Notice of Preparation (NOP) Addendum of an EIR for the Project on August 12, 2008, and the County was identified as the Lead Agency for the proposed Project. This notice was circulated to the public, local, state and federal agencies, and other interested parties to solicit comments on the proposed Project; and

WHEREAS, on or about August 14, 2008, an evening Public Information Meeting was held with the Calaveras County Board of Supervisors at the Copperopolis Armory; and

WHEREAS, on or about August 19, 2008, a letter was submitted to the Calaveras County Planning Department from Hogle-Ireland which included a revised Sawmill Lake Zoning Code for Staff review; and

WHEREAS, on or about November 3, 2008, a Traffic Impact Study for the Sawmill Lake Subdivision was prepared by Prism Engineering; and

WHEREAS, on or about September 17, 2009, an applicant-prepared Administrative Draft EIR was submitted to the Calaveras County Planning Department; and

WHEREAS, Staff provided written comments on the Administrative Draft EIR of September 17, 2009 in a 34-page document dated January 29, 2010; and

WHEREAS, on or about December 14, 2009, a letter was submitted to the Calaveras County Planning Department from Ms. Debra Grimes, on behalf of the Calaveras Band of Mi-Wuk Indians and the California Valley Miwok Tribe, acknowledging the Native American Tribal Consultation process; and

WHEREAS, on or about January 19, 2010, the Calaveras County Planning Department was provided with a copy of correspondence from Planning Partners and Prism Engineering to Paul Stein of Castle & Cooke, addressing and rebutting the County's comments on the Administrative Draft EIR; and

WHEREAS, a Draft EIR (DEIR) was prepared and a Notice of Completion (NOC) filed with the Governor's Office of Planning and Research, and the DEIR was circulated for a 45-day review period, from April 23, 2010 to June 7, 2010, in compliance with CEQA Guidelines, Section 15087. The DEIR contained a description of the Project, description of the environmental setting, identification of Project impacts, and mitigation measures for those impacts found to be significant as well as an analysis of project alternatives. On April 23, 2010, the County also filed a Notice of Availability (NOA) with the Governor's Office of Planning and Research to begin the public review period (Pub. Res. Code Section 21161); and

WHEREAS, concurrent with the NOA, the County provided public notice of the availability of the DEIR for public review, and invited comment from the general public, agencies, organizations, and other interested parties. The 45-day public review and comment period closed on June 7, 2010, and a substantial number of comments were received regarding deficiencies in the DEIR; and

WHEREAS, on or about October 19, 2010, the project applicant submitted to the Calaveras County Planning Department a new Transportation Study for the Sawmill Lake Specific Plan EIR, prepared by LSC Transportation Consultants Inc.; and

WHEREAS, on or about November 30, 2010, the project applicant submitted to the Calaveras County Planning Department an Administrative Recirculated Draft EIR incorporating regulatory and trustee agency comments and public comments; and

WHEREAS, a Recirculated Draft EIR (Recirculated DEIR) was prepared and a Notice of Completion (NOC) filed with the Governor's Office of Planning and Research, and the Recirculated DEIR was circulated for a 45-day review period, from March 18, 2011 to May 2, 2011, in compliance with CEQA Guidelines, Section 15087. The Recirculated DEIR contained a description of the Project, description of the environmental setting, identification of Project impacts, and mitigation measures for those impacts found to be significant as well as an analysis of project alternatives. On March 18, 2011, the County also filed a Notice of Availability (NOA) with the Governor's Office of Planning and Research to begin the public review period (Pub. Res. Code Section 21161); and

WHEREAS, on or about April 8, 2011, a revised Traffic Study and Traffic Count information was prepared and submitted by LSC Transportation Consultants to the Calaveras County Department of Public Works; and

WHEREAS, on or about April 27, 2011, the project applicant submitted a Draft Road Modification Request to the Calaveras County Public Works Department; and

WHEREAS, concurrent with the NOA , the County provided public notice of the availability of the Recirculated DEIR for public review, and invited comment from the general public, agencies, organizations, and other interested parties. The 45-day public review and comment period closed on May 2, 2011, and a substantial number of additional comments were received; and

WHEREAS, on or about May 9, 2011, Mid Valley Engineering provided to the Calaveras County Planning Department a Road Modification Request, a Response to Comments document and revised Site Plan drawings; and

WHEREAS, on or about June 13, 2011, Mid Valley Engineering provided to the Calaveras County Planning Department a Revised Road Modification Request, further Responses to Comments and further revised Site Plan Drawings; and

WHEREAS, following the public review period for the Recirculated DEIR, an Administrative Draft Final EIR was prepared by the applicant and was offered to the Calaveras County Planning Department on or about August 18, 2011. The Administrative Draft Final EIR also contained the applicant's proposed amendments to the text of the Recirculated DEIR necessary to clarify and amplify the Project's description, impacts and proposed mitigation measures; and

WHEREAS, on or about June 25, 2012, a letter was submitted to the Calaveras County Board of Supervisors from Jones & Beardsley, P.C., Attorneys at Law, of Bakersfield, California, on behalf of the project applicant requesting certain actions by

the County, including "that the County complete and certify a final EIR for the Sawmill Lake Project by August 17, 2012"; and

WHEREAS, on August 28, 2012, a Notice of Public Hearing regarding the Project was published in a newspaper of general circulation in the County and mailed to interested persons within 300 feet of the Project; and

WHEREAS, the Notice of Public Hearing stated that Staff recommends that the Planning Commission direct Staff to prepare a Resolution recommending that the Board of Supervisors deny without prejudice the General Plan Amendment, Specific Plan, Vesting Tentative Map and Development Agreement for the Sawmill Lake Project based on the Findings contained therein, to be brought back to the Planning Commission for action; and

WHEREAS, the proposed Project, as described in the various application materials and for the purposes of CEQA review, is defined as follows:

- The Sawmill Lake Project is a proposed 243-acre mixed use and residential master-planned community adjacent to Copperopolis Town Square. The applicants are requesting a General Plan Amendment, Specific Plan (and Zoning Regulation), Vesting Tentative Subdivision Map and a Development Agreement. The General Plan Amendment proposes to change the land use designations from Natural Resource Lands – Agricultural Preserve and from Community Development Lands – Future Single Family Residential, - Residential Center, and –Community Center to Master Project Area. The Specific Plan organizes the project into seven villages including a maximum of 800 dwelling units, village center, community park and open space. The Vesting Tentative Subdivision Map proposes 417 lots. The Development Agreement would vest the applicant's ability to implement the project and mitigation measures.

WHEREAS, on September 13, 2012, the Calaveras County Planning Commission held a noticed public hearing on the proposed Sawmill Lake Project, at which time the Planning Commission heard and considered all verbal and written evidence and testimony presented on the Project, including the Administrative Draft Final EIR, which was submitted into the record of the hearing by the project applicant. At the public hearing, the applicant requested that the project be continued for ninety days so that the applicant could work with Staff on issues. The Planning Commission, at the applicant's request, continued Project 2006-110 to the December 13, 2012 Planning Commission Hearing, and directed staff to work with the applicant on possible modifications to the project to better address issues and mitigation measures. Staff was further directed to work with CCWD on outstanding water supply issues; and

WHEREAS, on or about September 24, 2012, Dave Haley of Castle & Cooke met with County Staff and John Buckley of Central Sierra Environmental Resource Center, one of the main commentators on the proposed Project, to discuss issues relating to the Project; and

WHEREAS, on or about October 11, 2012, the County provided a letter to Castle & Cooke (Dave Haley) regarding the 90-day continuance of the Sawmill Lake Project, identifying the outstanding issues and requesting clarification regarding the extent to which the project will be modified to resolve the issues; and

WHEREAS, on or about October 19, 2012, Dave Haley of Castle & Cooke met with County Staff for a preliminary presentation of Castle & Cooke's revised project; and

WHEREAS, on or about November 19, 2012, a meeting took place between representatives of Castle & Cooke (Dave Haley and Clarence Hartley), John Buckley of CSERC, and County Staff. Castle & Cooke presented further information on proposed project revisions and discussed issues with CSERC. County Staff advised Castle & Cooke that issues remained which cannot be resolved with further revision and a recommendation for Project denial would be taken forward on December 13, 2012; and

WHEREAS, on or about November 27, 2012, a correspondence was received by the Calaveras County Planning Commission from Castle & Cooke describing their efforts in consultation with County Staff and requesting an additional continuance in order to allow for further revision to the project; and

WHEREAS, based on the September 24, 2012, October 19, 2012 and November 19, 2012 meetings between Planning staff and the project applicants, Planning staff did not recommend any further continuances of Project consideration dependent on revisions to the proposed Project as it did not appear to Planning Staff that the project applicant intends to address the public comments and deficiencies in the applicant prepared Administrative Draft Final EIR through appropriate revisions to the proposed Project; and

WHEREAS, in further, based on the September 24, 2012, October 19, 2012 and November 19, 2012 meetings between Planning staff and the project applicants, Planning staff did not recommend any further continuances of Project consideration dependent on revisions to the proposed Project as inconsistencies with the General Plan remain outstanding, and as project approval will foreclose options in the General Plan update, and as water and wastewater infrastructure remain inadequate to serve the Project; and

WHEREAS, on December 13, 2012, the Planning Commission held a continued meeting/public hearing on the proposed project; and considered all of the information presented to it, including its staff report, information presented by the Planning Department, and public testimony presented in writing and at the meeting; and

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the County of Calaveras does hereby recommend that the Board of Supervisors deny Application # 2006-110 Sawmill Lake Project, based on the following Findings:

Section 1. Recitals.

The Planning Commission finds that the foregoing recitals are true and correct and incorporates them herein by reference.

Section 2. CEQA Determination.

The Planning Commission finds that certification of an environmental document for the proposed Project is not required pursuant to CEQA.

Evidence:

The County of Calaveras is the Lead Agency for the proposed Project and has the discretionary authority to disapprove a project, pursuant to CEQA Guidelines Section 15042. During public review and public hearings on the proposed Project, comments were received into the record that the Administrative Draft Final EIR as prepared and presented by the applicant did not represent the unbiased and independent judgment of the County, did not fully identify and disclose the potentially significant impacts of the proposed Project, and did not assess all reasonable, feasible mitigation measures that would reduce the significance of identified impacts. Further concerns were expressed regarding inconsistency of the proposed Project and Specific Plan with the current General Plan, foreclosure of habitat conservation planning options in the General Plan update, inadequate infrastructure to support the project, and assertions that the benefits of the Project failed to override the environmental impacts associated with Project approval and Planning Staff concurred with the comments. Based on those comments and the findings set forth in this Resolution, the Planning Commission voted to recommend denial of the project in its entirety. CEQA does not apply to projects that a public agency rejects or disapproves [CEQA Guidelines Section 15270(a)].

Section 3. Findings Supporting Denial of the Project.

All documents referred to in these findings are in the administrative record for this Project and are incorporated herein by reference.

A. The Planning Commission finds that the Project and the Specific Plan, even with the project applicant's proposed revisions, are inconsistent with the Calaveras County General Plan.

Evidence:

1. Goal II-3 of the Land Use Element of the General Plan is to "Preserve and manage those lands identified as Natural Resource Lands for the future good of the general public." The Project will result in the conversion of approximately 157.9 acres of Natural Resources Lands to the Sawmill Lake Master Project Area, to allow a broad range of mixed-use development not envisioned in the current General Plan. The purpose of a Specific Plan is to provide a long-term comprehensive development plan for an area consistent with the broader provisions of the General Plan, and the California Government Code (Section 65454) states that no Specific Plan may be adopted or

amended unless the proposed plan or amendment is consistent with the General Plan. The Sawmill Lake Specific Plan is not consistent with the Calaveras County General Plan.

2. Goal II-24 of the Land Use Element of the General Plan is to "Provide for environmentally acceptable disposal of the County's solid and septic wastes," and Goal II-25 of the Land Use Element is to "Provide for adequate disposal of the County's sewage to protect water supplies and public health, safety and welfare." As described in the Administrative-draft Final EIR, the Project will cause significant cumulative adverse impacts to wastewater disposal that cannot be mitigated to a less than significant level. Utilities and Services Impact CUM-16 to wastewater disposal, (Recirculated Draft EIR, March 2011, p. 18-45) remains significant and unavoidable even with implementation of all reasonable mitigation measures.

3. Goal III-2 of the Circulation Element of the General Plan is to "Create and maintain a road system to serve the County's needs." As described in the Administrative-draft Final EIR, the Project will cause significant adverse impacts and significant cumulative adverse impacts that cannot be mitigated to a less than significant level to existing plus Project roadway capacity for Calaveras County, Tuolumne County, and Caltrans roadways. Transportation and Traffic Impact TR-2 and Impact TR-5 to roadway capacities in Calaveras County, Tuolumne County and Caltrans roadways remain significant and unavoidable even with implementation of all reasonable mitigation measures (Recirculated Draft EIR, March 2011, p. 15-28 and p. 15-39).

4. Goal IV-10 of the Conservation Element of the General Plan is to "Provide for adequate domestic water supplies." The Project will cause significant cumulative adverse impacts to water supplies that cannot be mitigated to a less than significant level. As described in the Recirculated Draft EIR, Utilities and Services Impact CUM-16 to water supplies remains significant and unavoidable even with implementation of all reasonable mitigation measures (Recirculated Draft EIR, March 2011, p. 18-45).

5. Goal V-1 of the Open Space Element of the General Plan is to "Preserve and enhance the County's significant wildlife and botanical habitats." The Project will cause significant cumulative adverse impacts to wildlife and botanical habitat, vernal pools and wetlands, and to Oak Woodlands that cannot be mitigated to a less than significant level. As described in the Recirculated Draft EIR of March 2011, Biological Resources Impact CUM-4a, Impact CUM-4c, Impact CUM-4d, and Impact CUM-4e remain significant and unavoidable even with implementation of all reasonable mitigation measures. (Recirculated Draft EIR, March 2011, pp. 18-21 through 18-24)

6. Goal V-2 of the Open Space Element of the General Plan is to "Protect streams, rivers and lakes from excessive sedimentation due to development and grading." The Project will cause significant cumulative adverse impacts that cannot be mitigated to a less than significant level to wetlands, Sawmill Creek and Sawmill Lake. As described in the Recirculated Draft EIR of March 2011, Biological Resources Impact CUM -4b

remains significant and unavoidable even with implementation of all reasonable mitigation measures. (Recirculated Draft EIR, March 2011, pp. 18-21 through 18-22)

7. Goal V-3 of the Open Space Element of the General Plan is to "Protect and preserve riparian habitat along streams and rivers in the County." The Project will cause significant cumulative adverse impacts that cannot be mitigated to a less than significant level to the riparian habitat and wildlife corridor along Sawmill Creek As described in the Recirculated Draft EIR of March 2011, Biological Resources Impact CUM-4b and Impact CUM-4d remain significant and unavoidable even with implementation of all reasonable mitigation measures. (Recirculated Draft EIR, March 2011, pp. 18-21 through 18-24)

8. Goal V-4 of the Open Space Element of the General Plan is to "Preserve or allow recovery of the County's significant archaeological sites and artifacts." The Project will cause significant adverse impacts that cannot be mitigated to a less than significant level to cultural and historical resources. As described in the Draft EIR of April, 2010, Cultural Resources Impact CUL-1 remains significant and unavoidable even with implementation of all reasonable mitigation measures. (Draft EIR of April, 2010, pp. 8-15 through 8-24).

9. Goal V-6 of the Open Space Element of the General Plan is to "Preserve and protect the scenic qualities of the County." The Project will cause significant adverse impacts, and significant cumulative adverse impacts that cannot be mitigated to a less than significant level to scenic resources, the viewshed and the scenic character of the area. As described in the Draft EIR of April 2010, Aesthetics Impact AES-1, Impact AES-2, Impact CUM-1 and Biological Resources Impact CUM-4e remain significant and unavoidable even with implementation of all reasonable mitigation measures. (Draft EIR of April, 2010, pp. 7-28 through 7-33 and pp. 8-15 through 8-24).

10. Goal III-2 of the Circulation Element of the General Plan is to "Create and maintain a road system to serve the County's needs." The Project will cause significant adverse impacts and significant cumulative adverse impacts that cannot be mitigated to a less than significant level to existing plus Project roadway capacity for Calaveras County, Tuolumne County, and Caltrans roadways. As described in the Recirculated Draft EIR of March 2011, Transportation and Traffic Impact TR-2 and Impact TR-5 remain significant and unavoidable even with implementation of all reasonable mitigation measures. (Recirculated Draft EIR, March 2011, pp. 15-26 through 15-29 and pp. 15-36 through 15-40).

B. The Planning Commission finds that approval of the Project and the Specific Plan, even with the project applicant's proposed revisions, are premature and will foreclose habitat conservation planning options in the General Plan update process.

Evidence:

Evidence in the record, including correspondence from the U.S. Fish and Wildlife Service of June 30, 2010 and January 21, 2011, describes the significance of the biological resources remaining within the open space lands of the Copperopolis planning area and at the Sawmill Project site. Special status animal species include the California red legged frog, California tiger salamander, valley elderberry longhorn beetle, vernal pool tadpole shrimp, vernal pool fairy shrimp, burrowing owl and American badger. Special status plant species include Hartweg's golden sunburst, Colusa grass, and Chinese Camp brodiaea. Significant habitats include extensive expanses of oak woodland, riparian corridors, wetlands, springs, seeps, vernal pools, streams, ponds and lakes. Sawmill Lake, Sawmill Creek, and Black Creek have been identified as key components within the interconnected habitats.

The U.S. Fish and Wildlife Service states that "the on-going loss and reduction in natural habitat and wildlife movement corridors for listed species and wildlife in this portion of Calaveras County is of concern." The Service, in addition, has provided a firmly worded recommendation that a Habitat Conservation Plan or Regional Conservation strategy be prepared and approved prior to further development in the area.

Approval of the Project will result in the conversion of 157.9 acres of very high quality habitat lands currently designated as Natural Resources Lands in the General Plan, and will foreclose the option of incorporating the key habitat values of those lands into the County's habitat conservation planning efforts.

Approval of the Project is inconsistent with Goal V-1 of the Conservation Element of the General Plan, which is to "Preserve and enhance the County's significant wildlife and botanical habitats." The Project will eliminate, as an alternative for conservation, the highest quality habitat lands remaining in the area, and will preclude any kind of meaningful comparison pursuant to CEQA.

C. The Planning Commission finds that there is inadequate infrastructure to serve the Project.

Evidence:

1. Utilities and Services Cumulative Impact CUM-16 describes a significant and unavoidable adverse cumulative impact to water supply to result from the project. There is insufficient evidence an adequate long-term water supply exists. While CCWD has identified sufficient water rights to serve cumulative development in the project area, owing to uncertainty associated with the permitting of these water rights and owing to the need for substantial infrastructure to serve long-term development, the cumulative effects to long term water supply remain significant and unavoidable.

2 Utilities and Services Cumulative Impact CUM-16 describes a significant and unavoidable adverse cumulative impact to wastewater disposal to result from the Project. There is insufficient evidence that adequate wastewater treatment services can be provided for the Project. Additional evidence in the record shows that the EIR does

not provide a clear, full and timely assessment and/or analysis of the inability of the CCWD Copper Cove treatment system to meet effluent limits and water quality standards, as evidenced by the Central Valley regional Water Quality Control Board Administrative Civil Liability Complaint R5-2012-0521 for Assessment of Mandatory Minimum Penalties, CCWD and Saddle Creek Golf Course, L.P., Copper Cove Wastewater Reclamation Facility, Calaveras County, dated 9 March 2011. The EIR does not provide any discussion of alternatives, of potential mitigation measures tied to the Sawmill Lake projects' effluent, or an admission that wastewater violations are a significant impact. The inability of CCWD to treat its current wastewater load calls into question the ability to treat wastewater from the Project. Sawmill Lake may have a significant impact on public services and water quality not adequately analyzed in the EIR pursuant to PRC 21094 and CEQA Guidelines Section 15088.5.

D. The Planning Commission finds that the design and improvements of the proposed Project, even with the project applicant's proposed revisions, are likely to cause substantial environmental damage.

Evidence:

1. Public Resources Code Section 21081(a) requires that any Lead Agency which approves a project for which an EIR has been certified which identifies one or more significant effects on the environment that would occur if the project is approved, shall make a formal finding with respect to each significant effect. These findings shall include one or more of the following:

(a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(b) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(c) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact.

The Administrative-draft Final EIR as prepared and presented by the applicant is not an adequate informational document. The Administrative-draft EIR does not represent the unbiased and independent judgment of the County, does not fully identify and disclose the potentially significant impacts of the proposed Project, and does not assess all reasonable, feasible mitigation measures that would reduce the significance of identified impacts. If the project is approved, substantial environmental damage will occur. Absent a public disclosure of all reasonable, feasible mitigation measures, the Lead Agency cannot find that impacts have been adequately mitigated.

2. Evidence in the record shows that comments submitted in response to the Draft EIR, the Recirculated Draft EIR and the Administrative-draft Final EIR describe “new” information and raise important questions about additional significant impacts to be generated by the project and the likely need for additional review and not-yet identified mitigation. Pursuant to CEQA Guidelines Section 15088.5, the County must revise the EIR and recirculate it for public review before it can approve the Project.

E. The Planning Commission finds that Statements of Overriding Consideration are unwarranted.

Evidence:

1. The Draft EIR and the Recirculated Draft EIR and the Administrative-draft Final EIR identify significant and unavoidable direct and indirect environmental impacts and significant cumulative impacts that cannot be mitigated to a less than significant level in the following resource areas:

- Aesthetics, including damage to scenic resources, changes to the viewshed, and changes to visual character; and
- Aesthetics, including the introduction of light and glare sources in a previously undeveloped area; and
- Cultural Resources, including the disruption of known cultural or historic resources; and
- Traffic and Transportation, including existing plus project roadway capacity for Calaveras County, Tuolumne County, and Caltrans Roadways.
- Cumulative Impacts to Aesthetics, including “nighttime glow effects and adverse visual quality impacts due to development in the area”; and
- Cumulative Impacts to Biological Resources including impacts to individual oak trees, oak woodlands, annual grasslands, wildlife habitat, biodiversity, protected birds, wetlands, riparian habitat, special status plant species, special status wildlife species, interference with animal migratory routes and activities of nocturnal wildlife species; and
- Cumulative Impacts to Transportation and Traffic including cumulative plus project roadway capacity for Calaveras County, Tuolumne County, and Caltrans roadways; and
- Cumulative Impacts to Utilities and Services including impacts to water supply and wastewater disposal.

Public Resources Code Section 21081(b) mandates that, for those impacts that cannot be mitigated to a less than significant level, the Lead Agency must make a formal finding, via a Statement of Overriding Consideration, that specific overriding economic, legal, social, technical, or other benefits of the project, outweigh the significant effects on the environment. Evidence in the record indicates that the CEQA review process did not represent the unbiased and independent judgment of the County, did not fully identify and disclose the potentially significant impacts of the proposed Project, and did not assess all reasonable, feasible mitigation measures that would reduce the

significance of identified impacts. Further evidence in the record indicates that the Project's likely benefits on balance would not outweigh these significant adverse impacts. In the absence of overriding considerations, the substantial environmental damage from the Project justifies denial of the Project in its entirety.

F. The Planning Commission finds and determines that it cannot make the mandatory findings as required by County Code Section 16.09.010.

Evidence:

The Planning Commission must make a finding that for the public safety and welfare and for orderly development consistent with the General Plan, it is necessary to require that conditions of approval be placed on a project. Conditions of approval shall include those necessary to protect the interests of the individual or to serve the broader interests of the general public and its health, safety and welfare, and shall include:

- (a) Requirements for safe, adequate access to accommodate future land uses and users as set forth in County Code;
- (b) Proof of an adequate supply of potable water at a usable sustained yield;
- (c) Proof of the existence of an approved septic system or accommodation for the sanitary disposal of sewage;
- (d) Any other requirements necessary to protect the public health, safety and general welfare.

Evidence in the record, including the significant and unavoidable adverse impacts, and the significant and unavoidable cumulative adverse impacts to Transportation and Traffic and to Utilities and Services have shown that there are no mitigating measures that will allow the above-required conditions of adequate access, adequate water, and adequate sewage disposal to be met. Based on the foregoing evidence, the required findings cannot be made.

G. The Planning Commission finds and determines that the following grounds for denial of the Project's TSTM, pursuant to Government Code Section 66474 exist:

1. That the proposed map is not consistent with the General Plan.

Evidence:

Finding A set forth above is incorporated here by reference.

2. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damages or substantially and avoidably injure wildlife or their habitat.

Evidence:

Findings D and E set forth above are incorporated here by reference.

3. That the design of the subdivision or type of improvements is likely to cause serious public health problem.

Evidence:

Finding C set forth above is incorporated here by reference.

ON A MOTION by Commissioner _____ and seconded by Commissioner _____, the foregoing Resolution Recommending that the Board of Supervisors Deny Without Prejudice Project 2006-110 was duly passed and adopted by the Planning Commission of the County of Calaveras, State of California, on the 13th day of December, 2012 by the following votes:

AYES: Allured, McLaughlin, Plotnik, Miller, Gustafson

NOES

ABSTAIN:

ABSENT:

Chair, Planning Commission

ATTEST:

Rebecca L. Willis, Planning Director

The project files are available for public review in the Planning Department, County of Calaveras, Government Center, 891 Mountain Ranch Road, San Andreas, CA. 95249, between the hours of 8:00 a.m. and 4:00 p.m.

Attachment 2
to Planning Commission Staff Report of December 13, 2102

Minutes of the Planning Commission Meeting of September 13, 2012

CALAVERAS COUNTY PLANNING COMMISSION

Summary Minutes for Meeting of September 13, 2012

An audio recording of the meeting is on file at the Planning Department, 891 Mountain Ranch Road, San Andreas, CA 95249. To schedule an appointment to review it, please contact the Planning Department at 209-754-6394. Approved minutes also may be viewed at:

www.co.calaveras.ca.us/planning_commission.asp

Planning Commission decisions may be appealed to the Board of Supervisors, and must be filed with the Board Clerk within fifteen (15) days of the Planning Commission hearing. For more information, contact the Board Clerk's office at 209-754-6370.

A. CALL TO ORDER AND ROLL CALL

The regularly scheduled meeting of the Calaveras County Planning Commission was called to order at 9:00 a.m. in the Board Chambers located at 891 Mountain Ranch Road, San Andreas, California.

Present:

Planning Commissioners:	Ted Allured, District 1 Fawn McLaughlin, District 2 Michelle Plotnik, District 3 Mike Miller, District 4 Gregory Gustafson, District 5
Planning Department:	Rebecca L. Willis, Planning Director Debra Lewis, Planner III Gina Kathan, Planner II
Legal Staff:	Megan Stedtfeld
Recording Secretary:	Annette Huse, Planner I

B. AGENDA CHANGES/ANNOUNCEMENTS: None

C. PUBLIC COMMENT PERIOD:

- Brian Wilson, Diamond XX Subdivision spoke regarding a future bridge across Stagecoach that funds were allocated for and no work has begun.

- Rebecca Willis, Planning Director responded by stating that she will have the Public Works Department contact him.

D. CONSENT AGENDA:

1. APPROVAL of MINUTES from the August 23, 2012 Planning Commission Meeting.

MOTION: Commissioner Gustafson moved to approve the August 23, 2012 minutes and Commissioner Plotnik seconded the motion. Motion was approved 5-0-0-0.

E. PUBLIC HEARINGS:

1. 2008-064 ZONING AMENDMENT for JEFF & JAMI DAVIDSON: The applicants are requesting a Zoning Amendment from PS (Public Service) to RA-5 (Residential Agriculture, Five Acre Minimum) to allow for the construction of a single family residence. The parcel has a General Plan Land Use designation of Future Single Family Residential. The property, located at 7434 Leslie Court in Wallace, is identified as Lot 48 in the Southworth Ranch Estates Subdivision. (APN 048-075-007 is a portion of Section 35, T04N, R09E, MDM).

STAFF DISCUSSION:

- Gina Kathan, Planner II gave a brief history and presentation on the project.
- Commissioner Gustafson asked if there was a fire station in Burson.
- Kathan responded by stating that Foothill Fire has a station in Burson and Valley Springs.

PUBLIC COMMENT:

- Ken Hedrick spoke regarding his knowledge of the parcel and voiced his concerns. Hedrick asked if the County had the authorization to auction off the said parcel.
- Rebecca Willis, Planning Director stated that the Commission does not get involved with civil land transactions and instructed them to take action on the Zoning Amendment only. Willis stated that the parcel is an existing legal lot and mentioned that the parcel can be rezoned even though it is less than five acres. Willis stated that if the County didn't allow the landowner to rezone from Public Service, this may prevent the landowner from economic use of the property and raise questions of a "takings".
- Gina Kathan, Planner II stated that the subdivision map did not indicate a 200' setback for any reason and also stated that it was not in the title

report. Kathan also stated that the Environmental Management Agency Department has never heard of a 200' setback for airborne viruses.

- Commissioner Gustafson asked Ken Hedrick where he got all of his information.
- Hedrick responded and stated that he got most of his information from the original subdivision developer.
- Rebecca Willis, Planning Director stated that it is not the purview of the Commission to determine ownership.
- Tim Brown expressed his concern regarding disruption of the soil in regards to airborne viruses. Brown requested that an Environmental Impact Study be done.
- Rick Torres spoke regarding the land being set aside for a fire station. Torres also spoke regarding state codes which applies to residential housing and expressed his concerns.
- Commissioner Plotnik stated that the RA zoning would not allow for multiple units. Plotnik also stated, that the state code mentioned, is a blanket government code for all of the parcels.
- Gina Kathan, Planner II stated that the RA zone is the same as all of the other parcels in the subdivision.
- Ron Spreadborough expressed his concern about the property values going down.
- Jo Ann Jaurigue spoke regarding the possibility of property values declining due to rental properties.
- Jason Robteille, Fire Chief for Foothill-Jenny Lind Fire stated that a station in this area would be advantageous to their mission.
- Joe Kelley asked if there were County Ordinances regarding setbacks for treatment issues.
- Gina Kathan, Planner II stated that code requires a 150' setback from the open pond and a 100' setback from the spray field for wells. Kathan stated that the Fire and Life Safety setback for structures is 30' because it is over an acre.
- Bob Scruggs expressed his concern regarding the treatment facility, odor, and fumes.

- Jeff Davidson, Applicant spoke regarding the history of acquiring the parcel. Davidson stated that his intention for the parcel is to build a residence for himself. Davidson stated that he received a copy of the CC&R's when he purchased the lot. Davidson stated that he is willing to talk to the fire district.
- Commissioner Plotnik asked if this parcel was part of a larger parcel when it was rezoned from U to RA-5. Plotnik stated that she had some reservations of rezoning this parcel if the intentions were for a fire station on a parcel of less than five acres.
- Commissioner Miller stated that he was in agreement with Commissioner Plotnik.
- Gina Kathan, Planner II stated that she was uncertain why the fire station was never built.
- Rebecca Willis stated that the intention for this parcel was to become a fire station and it never happened. Willis stated that there was a development agreement with the landowner for a ten year period for the land to change hands and it didn't happen.
- Commissioner McLaughlin spoke regarding expectations of the adjacent property owners. McLaughlin stated that it is unrealistic for the property owner to have this property remain Public Service.
- Jeff Davidson, Applicant stated that he is very skeptical of the fire district wanting to purchase this land for a fire station. Davidson stated that he has spoken with Mike Sillgo and was informed that Foothill Fire does not have the funds to purchase this property.

Commissioner Allured closed the public hearing.

MOTION: A motion was made by Commissioner McLaughlin and seconded by Commissioner Gustafson recommending that the Planning Commission pass a motion authorizing the Chair to sign Resolution 2012-013 recommending the Board of Supervisors approve Zoning Amendment 2008-064 for Jeff and Jami Davidson Amending real property in Calaveras County from PS (Public Service) to RA-5 (Residential Agriculture – 5 acre minimum parcel size) subject to the findings contained therein. Motion was denied 1-4-0-0.

MOTION: A motion was made by Commissioner McLaughlin recommending that the Planning Commission continue this item to the October 11th, 2012 Planning Commission Meeting. Motion dies due to the lack of a second.

MOTION: A motion was made by Commissioner Plotnik and seconded by Commissioner Miller to deny the request for Zoning Amendment 2008-064 for Jeff and Jami Davidson based on the findings that this parcel was intended for public service with a parcel size less than the minimum required and to continue the public hearing to October 11, 2012 for the purpose of reviewing the findings for denial. Motion was approved 4-1-0-0.

2. 2006-110 SAWMILL LAKE PROJECT: GENERAL PLAN AMENDMENT, SPECIFIC PLAN, VESTING TENTATIVE SUBDIVISION MAP AND DEVELOPMENT AGREEMENT for the SAWMILL LAKE PROJECT IN COPPEROPOLIS for CASTLE & COOKE CALAVERAS, INC. The Sawmill Lake Project is a proposed 243-acre, mixed use and residential master-planned community adjacent to Copperopolis Town Square. The applicants are requesting a General Plan Amendment, Specific Plan (and Zoning Regulations), Vesting Tentative Subdivision Map and a Development Agreement. The General Plan Amendment proposes to change the land use designations from Natural Resource Lands-Agricultural Preserve, and Community Development Lands-Future Single Family Residential, -Residential Center, and -Community Center to Master Project Area. The Specific Plan organizes the project into seven villages including a maximum of 800 dwelling units, village center, community park, and open space. The Vesting Tentative Subdivision Map proposes 417 lots. The Development Agreement would vest the applicant's ability to implement the project and mitigation measures.

The site is located south of Highway 4, east of Little John Road, and west of the Copperopolis Town Square, within portions of Sections 3 and 4, Township 1 North, Range 12 East, MDB&M on the Copperopolis 7.5 Minute United States Geological Survey (USGS) Topographic Quadrangle Map. Assessor Parcel Numbers include 054-006-030, 054-006-031, 054-006-032, 054-006-037, 054-007-003, 054-007-006, 054-007-018, 054-007-019, and 061-003-001. A Draft EIR was prepared and circulated on April 23, 2010, and Revised Draft EIR Sections ("Recirculated Draft EIR") were prepared and circulated on March 14, 2011. A Final EIR has not yet been prepared and released. Staff is recommending denial without prejudice on the Project and that no action be taken on the Draft Environmental Impact Report pursuant to CEQA Guidelines Section 15270.

Before the staff presentation on this item,

- Commissioner Allured stated that he met with Dave Haley for an informational meeting and no decisions were made.

- Commissioner McLaughlin stated that she met with Dave Haley for an informational meeting and no decisions were made.
- Commissioner Plotnik stated that she met with Dave Haley for an informational meeting and no decisions were made.
- Commissioner Gustafson stated that he met with Dave Haley for an informational meeting and no decisions were made.
- Commissioner Miller stated that he met with Dave Haley for an informational meeting and no decisions were made.
- Rebecca Willis, Planning Director gave a presentation on the project.
- Commissioner Plotnik spoke regarding water allocations and CCWD water rights.
- Willis responded and stated that it is up to CCWD who controls water.

PUBLIC COMMENT:

- Dave Haley, Vice President of Castle & Cooke gave a history of the project.
- Mark Jones, Jones & Beardsley, attorney for Castle & Cooke, spoke regarding the history of the project.
- Bob Klousner, Planning Partners spoke regarding the project and EIR.
- Jeff Davidson, President Calaveras County Chamber of Commerce stated that he supports the project with appropriate mitigation measures.
- Eva Keysen spoke in regards to the draft EIR, the lack of activity at the Towne Center, and the removal of Oak trees.
- Donna Stevenson asked that the Commission to approve the project.
- Penny Kesterson expressed her concern with impacts to roads, water, and septic.
- Al Segalla, Calaveras County Taxpayers Association expressed his concern regarding regulations and recommended approval of the project.
- Brian Wilson spoke regarding a water line that is exposed on Reed's Turnpike and the impacts to the population verses density.

- Mel Thompson spoke regarding a lot that is referenced in the EIR as part of the Copper Cove Rocky Road Association. Thompson stated that the CC&R's state that this lot cannot be subdivided or changed in size.
- Bruce McClenehan stated that he approves of the project and spoke of the lack of economic development in the County.
- Joe Kelley suggested that a meeting be setup with CCWD and find out what the issues are on water.
- Marti Crane expressed her concern with water rights and timelines.
- Joyce Techel, MyValleySprings.com submitted a comment and spoke regarding the Copper Benefit Basin and fee schedule. Techel stated that she supports CSERC's and Tom Infusino's decisions.
- John Buckley, CSERC stated that there is no legal justification to approve the project with this many flaws. Buckley mentioned that 17,000 lots are buildable in Calaveras County. Buckley urged the Commission to deny without prejudice.
- Dianna Lopez suggested the Commission deny approval.
- Steve Hutchings asked what entitlement means.
- Rebecca Willis, Planning Director responded by stating that entitlement means approved, which means that they've gone through the complete environmental process and the public hearing process which includes the Planning Commission and the Board of Supervisors.
- Commissioner Allured asked if the status of Oak Canyon Ranch will affect the Sawmill project.
- Rebecca Willis, Planning Director stated that she didn't think that Oak Canyon Ranch will affect the Sawmill project but raised the questions as to who will get the water.
- Cliff Edson expressed his concerns regarding water, sewer and road impacts and requests denial of the project.
- Kathy Mayhew, Keep It Rural Calaveras & Calaveras Planning Coalition, read Tom Infusino's comment regarding the project.
- Colleen Platt, MyValleySprings.com submitted a comment regarding concerns with water, oaks, traffic impacts, species, General Plan, paper rights, Habitat Conservation Plan, Water Control Board and is in agreement that project approval is premature at this time.

- Bob Klousner, Planning Partners spoke regarding water issues. Klousner stated that a water supply assessment was prepared by CCWD and it documented that there was sufficient water available for a twenty year period for all the projects in the area. Klousner also mentioned that the assessment documented CCWD having water rights and spoke regarding the unavoidable impacts of the redistribution of water from the lake into the water treatment plant. Klousner also spoke regarding the Oak Tree mitigation and the botanical impacts along the streams.
- Dave Haley, spoke regarding the water issue, oak trees, and the traffic circulation element. Haley requested that the Commission approve the project to the Board of Supervisors.
- Rebecca Willis spoke regarding CEQA and stated that the water analysis needs to properly disclose and mitigate impacts. In addition, Willis spoke regarding the approval of the subdivision map and stated that the County has to find that there is a sufficient water supply available. Willis spoke regarding the Administrative Draft Final Environmental Impact Report and stated that it is not yet complete and needs recirculation.
- Megan Stedtfeld stated that the Administrative Draft Final Environmental Impact Report was drafted by the applicant's consultant, but the applicant is requesting the County adopt it as its own document. Stedtfeld stated that the County must agree with the conclusion.
- Rebecca Willis recommended that the Commission look to see if this project conflicts with the General Plan and the General Plan Update.
- Commissioner Miller stated that he was in favor of approving the project.
- Commissioner Gustafson stated that he was in favor of approving the project.
- Rebecca Willis stated that this project differs from other projects because it includes a General Plan Amendment. Willis stated that this will go to the Board of Supervisors whether you recommend approval or denial of the project.
- Commissioner Plotnik stated that she was not prepared to say that the Final EIR document is ready. Plotnik felt that it was a developer driven document. Plotnik stated that she would like to see the project continue, but that there are a lot of environmental issues.

- Commissioner McLaughlin expressed her concern with outstanding environmental issues. McLaughlin spoke regarding oak trees, cumulative impacts, water, and infrastructure. McLaughlin spoke regarding denial verses recirculation.
- Commissioner Allured spoke regarding the integrity of Castle & Cooke. Allured stated that he was in favor of moving forward with the project, but agrees that there are areas in the EIR that need to be amended.
- Rebecca Willis stated that there may be a major project modification to move forward. Willis expressed her concern with water issues and CCWD's commitment. Willis suggested dual resolutions; one that recommends denial without prejudice, and another recommending the Board of Supervisors to direct staff to work with the applicant on modifying the Sawmill Lake Specific Plan, and work with CCWD on the water issues. Willis also added that the recommendation state that no action be taken on the CEQA work done to date.
- Dave Haley recommended to the Planning Commission continue the item for ninety days to work with staff on issues. Haley stated that they have no intention of starting the process over.

MOTION: A motion was made by Commissioner Plotnik and seconded by Commissioner Miller recommending that AT THE APPLICANT'S REQUEST, the Planning Commission continue item 2006-110 General Plan Amendment, Specific Plan, Vesting Tentative Subdivision Map and Development Agreement for Sawmill Lake to December 13, 2012; and direct staff to work with the applicant on possible modifications to the project to better address issues and mitigation measures, and for staff to work with CCWD on outstanding water issues with CEQA and the Subdivision Map Act and additional CEQA issues. Motion was approved 5-0-0-0.

STUDY SESSION: None

F. PUBLIC COMMENT:

- John Buckley spoke regarding protocols for balance of time on public comment in regards to the applicant verses public. Buckley also mentioned that the applicant was awarded rebuttal and surrebuttal and the public only received five minutes.
- Penny Kesterson spoke regarding substandard roads and stated that everyone should work together so that solutions can be met.

G. REPORTS: None

H. ADJOURNMENT:

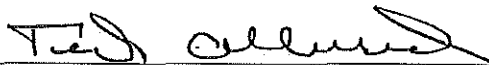
The meeting was adjourned at 3:22 p.m.



Rebecca L. Willis, Planning Director

9/27/12

Date



Ted Allured, Planning Commissioner Chair

Date

Attachment 3

to Planning Commission Staff Report of December 13, 2012

Correspondence and Testimony Presented at the Hearing of September 13, 2102

09-07-12 Shute Mihaly Weinb_Folk_CSERC
09-12-12 Calaveras Planning Coalition_Infusino
09-12-12 Shute Mihaly Weinb_Folk_CSERC
09-13-12 MyVallySprings_Platt_Testimony
09-13-12 MyValleySprings_Techel
09-14-12 CCALTOA_Forkner
09-14-12 DaValle Comment
09-24-12 CSERC Buckley Additional Comment
09-25-12 MyValleySpring_Platt_Techel Additional

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ELLISON FOLK
Attorney
folk@smwlaw.com

September 7, 2012

RECEIVED

SEP 07 2012

Via Facsimile (209-754-6733) & U.S. Mail

Calaveras County Planning Commission
891 Mountain Ranch Road
San Andreas, California 95249-9709

Calaveras County
Planning Department

Re: Sawmill Lake Project

Dear Members of the Planning Commission:

I am writing on behalf of the Central Sierra Environmental Resource Center with respect to the staff recommendation for denial of the Sawmill Lake Project as set forth in the Planning Department's August 24, 2012 staff report. CSERC will also respond in a separate letter to issues raised by representatives of the Castle & Cooke.

As detailed below, the staff report sets forth some of the many reasons why the County cannot legally approve the proposed project at this time based on the environmental review completed to date. The staff recommendation is carefully documented, and it is consistent with controlling law. Therefore, CSERC respectfully requests that the Commission either accept the staff recommendation and deny the Project, or that the Commission defer action on this matter until the current General Plan deficiencies are rectified through the General Plan update process.

I. The Staff Report Correctly Notes that The Project Cannot Be Approved Under the Current General Plan and Would Interfere with the Goals of an Updated General Plan.

The Sawmill Lake Project site comprises 243 acres of natural habitat and ranch lands, consisting primarily of gently sloping hills, grasslands, and native oak woodlands. Some of these lands have been designated as mitigation lands for the Copperopolis Town Square development. The staff report notes a number of areas where the Project would be inconsistent with the current, existing General Plan, including the loss of significant wildlife and botanical habitat caused by the removal of as many as 8,000 oak trees, including high value oaks described as "Heritage Oak Trees" and "Grand

Oak Trees." Beyond that, approval of the Project would implicate several current inadequacies in the existing General Plan, and therefore this major Project cannot be approved until the County updates its General Plan to correct the legal deficiencies.

For example, the Project proposes to convert a significant area of natural habitat to residential villages, with up to 800 dwelling units. To do this, the Project requires an amendment of the existing General Plan designations to allow for substantial residential and commercial development not currently planned for by the existing Calaveras County General Plan. This development will also substantially increase traffic and result in significant impacts to the Level of Service for existing roads. As documented by the independent consultant hired by the County to evaluate the General Plan, the existing Calaveras County General Plan does not contain an adequate circulation or land use element, and the circulation and land use elements are not adequately correlated. October 12, 2006 Mintier Report at p. 26, 31. (Future land use distribution not tied to population densities); November 20, 2007 Letter from Shute, Mihaly & Weinberger to Calaveras County at pp. 4, 6-7. Therefore, the Project implicates an existing inadequacy in the current General Plan and cannot be approved until the General Plan is brought into compliance with State requirements. *Neighborhood Action Group for the Fifth District v. County of Calaveras*, 156 Cal.App.3d 1176, 1184-85 (1984) (A General Plan that fails to contain the information required by state law and that fails to properly correlate its various elements cannot serve its purpose as the constitution for future development.)

II. The Project Will Have Numerous Significant Impacts that Must Be Addressed in a Revised EIR Before the Project May Be Approved.

The staff report also identifies a number of areas where comments on the draft EIR contain significant new information that requires re-circulation of the EIR before the Project may be approved. Public Resources Code section 20192.1 (An agency must re-notice and re-circulate an EIR for public review whenever significant new information is added to the EIR prior to certification.) The standard for re-circulation prior to certification of an EIR is lower than that which applies after an EIR has been certified. *Laurel Heights Improvement Ass'n. v. UC Regents* (1993) 6 Cal. 4th 1112. Among other reasons, recirculation is required whenever new information shows that a project impact will be more severe than disclosed in the EIR or where the original EIR failed to provide a meaningful opportunity for comment on the project. *Id.* at 1130.

Here, staff has identified a number of significant impacts that were not adequately addressed in the draft EIR and that will be more severe than previously disclosed, including impacts to threatened and endangered species and the loss of oak

woodland. Staff Report at 9-15. In addition, comments from the United States Fish and Wildlife Service indicate that the Project's impacts to threatened and endangered species could result in an unlawful "take" under the Endangered Species Act. Jan. 21, 2011 Letter from Fish & Wildlife Service. Therefore, the FWS recommends the development and adoption of a Habitat Conservation Plan to address these impacts and avoid the unlawful take of threatened species. This information regarding the potential take of listed species and the proposed new mitigation measures should be included in a revised and re-circulated EIR.

Comments on water supply also demonstrate the EIR's failure to adequately address potential water supply impacts caused by the Project. Thus, while the EIR found that the Project would not have significant impacts on water supply, comments on the EIR demonstrate that it improperly relied on unrealistic assumptions about the availability of water to serve the Project. Staff Report at 14-15. Because the assumed source of water for the Project is already committed to other uses and legally approved development projects, the EIR has not provided adequate assurance of water supply for the Sawmill Lake Project and cannot find that the impact to water supplies is less than significant. *Planning and Conservation League v. Department of Water Resources* 83 Cal. App. 4th 892, 914 – 915 (2000); *Stanislaus Natural Heritage Foundation v. County of Stanislaus*, 48 Cal.App.4th 182 (1996).

In addition to the issues raised in the staff report, the comments of CSERC demonstrate that the EIR is inadequate for failure to adequately evaluate the Project's climate change impacts. First, the EIR fails to account for all of the potential sources of greenhouse gases and mitigation measures. The DEIR analyzes the emissions from a "mitigated" and an "unmitigated" project in order to compare them to a baseline. However, the DEIR fails to clearly explain what mitigation measures are included in the mitigated project or how they will address greenhouse gas emissions. The only mitigation measures that the DEIR refers to are measures AQ-2a to AQ-2f, which include mitigation for impacts on air quality.¹ DEIR at 6-91. The document also makes vague references to "mitigation from other sections" even though "this mitigation is not specifically designed for GHG reduction," DEIR at 6-92. There is no discussion of how these mitigation measures will impact the Project's greenhouse gas emissions.

¹ Footnote 131 to the DEIR's Air Quality and Climate Change section refers to mitigation measure AQ-2g. This mitigation measure is not described anywhere else in the document and appears to be an error.

This lack of analysis constitutes a significant flaw in the DEIR. California courts have long held that EIRs must rely on substantial evidence. Pub. Res. Code § 21082.2(c) (“[a]rgument, speculation, unsubstantiated opinion or narrative, [and] evidence which is clearly inaccurate or erroneous” does not constitute substantial evidence). Simply asserting that certain mitigation measures will reduce emissions without explaining how they will do so or even identifying what they are does not provide the public or the County with substantial evidence on which to base its decision. *See Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1, 17 (“[C]onclusory statements do not fit the CEQA bill.”)

Moreover, the DEIR fails to discuss in any detail how the mitigation will actually reduce emissions. The DEIR identifies six categories of emissions but only discusses in detail how one mitigation measure, oak tree conservation, will reduce the project's climate change impacts. Moreover, the mitigation measures it does discuss are vague and unenforceable. For instance, measure AQ-2f calls the development to “incorporate existing transit systems to provide alternative modes of transportation for the future residents.” DEIR at 6-52. This measure includes no performance criteria or enforcement mechanism. Additionally, measure AQ-2c calls for buildings to “incorporate energy efficiency that exceeds the Title 24 2005 standards by 20%.” While this may seem very efficient, Title 24 is updated every three years and the 2011 update calls for higher efficiency than 2005 standards. In this case, since the project would not be built for some time, it is highly likely that even greater efficiency standards would apply as Title 24 is updated again in 2014 and 2017. To serve as meaningful mitigation that actually results in efficiencies greater than existing law (or business as usual in the EIR's parlance), this measure should be revised to require that project buildings are 20% more efficient than title 24 standards applicable at the time building permits are submitted.

Even the discussion of oak tree mitigation is insufficient and contradictory. The DEIR admits that the project will remove 8500 oak trees, including historic oak trees and Grand Oak trees. DEIR at 6-93. It then claims that the landscaping plan requires the planting of 1000 trees on the site. Yet the very next sentence states that “[a]dditionally, Mitigation AQ-2e requires the landscape plan which includes a minimum of 1000 trees.” This discussion double-counts the number of trees that will be planted on the site. An adequate EIR must clarify the number of trees that will be planted on site. Further, the analysis assumes that the project will include 500 “fast” conifers and 500 “fast” hardwoods, yet mitigation AQ-2e does not specify which type of trees should be planted. *See Appendix XII to Appendix F*, at 17; DEIR at 6-52, 93. The assumption that the landscaping plan includes only fast-growing trees overstates the Project's potential as a carbon sink.

Moreover, the idea that mitigating the Project's destruction of carbon sinks by conserving an equal number of trees obscures the fact that the Project will result in a net loss of trees. Even though the Project includes a conservation easement over 8500 oak trees, the carbon sink calculation fails to account for the greenhouse gases released by the destruction of the 8500 trees on the project site. See Appendix XII to Appendix F at 17; DEIR at 6-93. Although the DEIR states that there will be a net *increase* of 21 metric tons of carbon storage, the analysis ignores the impact of the carbon stored in the 8500 destroyed trees. The DEIR should acknowledge that the net loss of 7500 oak trees is a potentially significant impact on climate change.

The second major problem with the DEIR's climate change analysis is its use of a "business as usual" ("BAU") baseline to find that climate change impacts would not be significant. This is directly contrary to the requirements of CEQA. In evaluating project impacts, courts have repeatedly held that existing, actual environmental conditions control, not hypothetical ones that minimize the impacts of the proposed project and allow the agency to avoid analysis and mitigation. See, e.g., *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 691 ("hypothetical office park was a legally incorrect baseline [against which to measure significance] which resulted in a misleading report of the project's impacts."); *Env't Planning & Information Council v. County of El Dorado*, 131 Cal. App.3d 350 (1982) (EIR for area plan invalid because impacts were compared to existing general plan rather than to existing environment). Here, by measuring the significance of project impacts by comparing the project to a hypothetical "what if" scenario rather than the increase in emissions that will occur as a result of the project, the analysis of project impacts is improper and misleading.

The DEIR compares the Project's emissions to a hypothetical BAU scenario in order to determine whether its emissions would be significant. DEIR at 6-88. The BAU scenario includes "forecasted demographic and economic growth." In other words, the BAU scenario represents a similar project, only without mitigation or other restrictions that would restrict emissions. Courts have recognized that comparing project impacts to such an artificially inflated baseline results in "illusory comparisons that can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts, a result at direct odds with CEQA's intent." *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th 310, 322 (2010). A proper comparison would be to the project site as it currently exists, 243 acres of open space. The appropriate baseline under CEQA is not a hypothetical future project, but existing environmental conditions. Guidelines § 15126.2(a)

SHUTE, MIHALY
WEINBERGER llc

With regard to climate change, existing conditions are such that we have already exceeded the capacity of the atmosphere to absorb additional greenhouse gas emissions without risking catastrophic and irreversible consequences. Therefore, even seemingly small additions of greenhouse gas emissions into the atmosphere must be considered cumulatively considerable. See *Communities for Better Env't v. California Resources Agency*, 103 Cal. App. 4th 98, 120 (2002) ("the greater the existing environmental problems are, the lower the threshold for treating a project's contribution to cumulative impacts as significant."); see also *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007) ("we cannot afford to ignore even modest contributions to global warming.").

In keeping with the seriousness of the threats posed by climate change, the Bay Area Air Quality Management District ("BAAQMD") has proposed a project-level greenhouse gas threshold of 1,100 metric tons. See Exhibit A to this letter. Even the "mitigated" project is expected to generate almost 7,000 tons of greenhouse gases, dramatically exceeding the BAAQMD threshold. DEIR at 6-92. The District's threshold provides a highly informed adopted threshold that is applied to development in California to address climate change.² Given that the State has established that climate change impacts are of significance and must be addressed, the level of gases generated by this project obviously far exceed the level of significance – even assuming the unrealistic and inflated BAU baseline. Until the County conducts an adequate analysis of greenhouse gas emissions and adopts all feasible mitigation measures are adopted, the project will fail to be in compliance with State law.

III. The Developer Has No Vested Right to Approval of the Project as Proposed.

There are numerous legal reasons why the County should not approve the Project as proposed. Moreover, as spelled out in previous communications provided concerning this project, the County is under no obligation to approve the Project at all, whether or not the developers have poured dollars into speculative planning or project design. The Project requires a general plan amendment, the approval of a specific plan, a development agreement, and vesting tentative map. While the County must process the vesting tentative map according to the rules and regulations in effect at the time the map

² Although a trial court recently set aside the Air District's threshold because the District had not conducted CEQA review of that threshold, the court did not find that the threshold was unsupported by substantial evidence. To the contrary, the Air District's thresholds were thoroughly vetted and supported by detailed scientific reporting.

application was submitted, the developer has no right to approval of the Project – particularly given the current situation, where the Project requires a general plan amendment. At a time when the County is openly acknowledging the need for corrective action for the current General Plan, approving a general plan amendment for this project would constrain options for the County and its residents as the General Plan Update proceeds. This further underscores key reasons why no approval of the Project should be given at this time.

In addition to the County staff report, the letter from Jones & Beardsley regarding the Project's status demonstrates the many issues that remain to be resolved in connection with the proposed developments, including project access, consistency with the General Plan, the need for rezoning, and potentially significant environmental impacts. The County is under no legal obligation to approve the various Castle & Cooke development proposals, and more importantly, it could simply deny the projects because of their many inconsistencies with County planning documents and zoning requirements, their significant environmental impacts, and other deficiencies. *See Ensign Bickford Realty v. City Council, etc.*, 68 Cal. App. 3d 467, 477-78 (1977) (upholding decision of City of Livermore to deny rezoning from residential to commercial use based on City's determination that it wished to direct commercial uses to other areas); *Mira Development Corp. v. City of San Diego*, 205 Cal. App. 3d 1201 (1988) (upholding City's denial of rezoning to higher density residential use in view of impacts of proposed development); *Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 849, 850 (city under no obligation to approve project requiring general plan amendment.)

IV. Project Approval Would Affect the Community Plan.

The staff report provides clear reasons as to why Project approval should not be given at this time. It is also important to note that any approval of this major project at this time would also create a conflict with the Copperopolis Community Plan process. The County and various diverse interests of the Copperopolis basin are working diligently to create a "big picture" plan for coordinating development and infrastructure needs for coming decades in the Copperopolis basin. That Community Plan hinges in part upon maintaining options for reducing potential significant impacts to threatened and endangered species, special status species, and important wildlife movement corridors. Approving Sawmill Lake prior to the completion of the Copperopolis Community Plan assessment would prematurely limit options for retaining the rural character of the affected area. The Copperopolis Community Plan process should be completed before this Project or any other major project is allowed to alter agricultural land or natural resource land in the Plan assessment area.

Calaveras County Board of Supervisors
September 7, 2012
Page 8

Thank you for your consideration of these issues.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

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SHUTE, MIHALY
& WEINBERGER LLP

EXHIBIT A

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION No. 2010-06

A Resolution of the Board of Directors of the Bay Area Air Quality Management District Adopting Thresholds For Use In Determining the Significance of Projects' Environmental Effects Under the California Environmental Quality Act

WHEREAS, pursuant to Title 14, Chapter 3, Article 5, Section 15064.7 of the California Code of Regulations ("Section 15064.7"), the California Resources Agency encourages public agencies to adopt "Thresholds of Significance" under the California Environmental Quality Act ("CEQA");

WHEREAS, pursuant to Section 15064.7, CEQA Thresholds of Significance are identifiable quantitative, qualitative or performance levels of a particular environmental effect, non-compliance with which means the effect will normally be determined to be "significant" under CEQA, and compliance with which means the effect normally will be determined to be less than significant under CEQA;

WHEREAS, the Board of Directors ("Board") of the Bay Area Air Quality Management District ("District") finds it necessary and appropriate to adopt CEQA Thresholds of Significance as set forth in Attachment A hereto for use by District staff and by other appropriate agencies in determining whether projects may have significant effects on the environment for purposes of CEQA environmental analyses;

WHEREAS, the CEQA Thresholds of Significance as set forth in Attachment A hereto do not alter the existing procedural and substantive requirements of CEQA under California law, but simply clarify the level at which, in the District's considered opinion, an environmental effect should normally be considered "significant" for purposes of existing CEQA law;

WHEREAS, the CEQA Thresholds of Significance set forth in Attachment A hereto were developed through an extensive public review process, which included public workshops, Board meetings and meetings with local government agency and non-government organization staff including the cities of Berkeley, Colma, Daly City, Dublin, Fremont, Livermore, Oakland, Pleasanton, Richmond, San Leandro, San Mateo, San Francisco and Santa Rosa, the counties of Alameda, Contra Costa, Napa, Santa Clara and Sonoma, and the CARP Task Force, the Alameda County Planning for Healthily Communities Network and the Governor's Office of Planning and Research Local Government Roundtable;

WHEREAS, District staff held ten public workshops throughout the Bay Area on February 26, 2009, April 27, 29 and 30, 2009, September 8, 9, and 10, 2009, October 2, 2009, and April 15 and 26, 2010; solicited Thresholds of Significance options for consideration; and published for public review and comment the Threshold Options Report on April 24, 2009, the CEQA Thresholds Options and Justification Report on October 8, 2009, and the Proposed Thresholds of Significance Report on November 2, 2009, December 7, 2009 and May 3, 2010;

WHEREAS, District staff held ten local agency staff workshops throughout the Bay Area on March 30 and April 12, 13, 14, 16, 19, 20, 21 and 27, 2010;

WHEREAS, District staff considered and responded in writing to all written comments on the Proposed Thresholds of Significance that were received prior to May 25, 2010;

WHEREAS, public meetings to consider and discuss the proposed Thresholds of Significance options and staff's recommendations were held before several committees of the Board, including the Board's Executive Committee on March 16, 2009, June 29, 2009, September 24, 2009, February 22, 2010, and May 24, 2010; the Board's Climate Protection Committee on September 10, 2009; and the Board's Stationary Source Committee on November 16, 2009;

WHEREAS, the Thresholds of Significance set forth in Attachment A hereto are supported by substantial evidence, as documented in the report entitled Proposed Thresholds of Significance, dated May 3, 2010, and other documentation compiled by District staff;

WHEREAS, the substantial evidence as documented in the May 3, 2010, Proposed Thresholds of Significance report and other documentation establishes that the Thresholds of Significance set forth in Attachment A hereto reflect the levels at which environmental effects should be considered "significant" for purposes of CEQA, such that exceedance of the thresholds will normally establish that the effect is "significant" under CEQA and compliance with the thresholds normally will establish that the effect is less than "significant" under CEQA;

WHEREAS, the CEQA Thresholds of Significance set forth in Attachment A hereto are consistent with the principles and jurisprudence of CEQA law as set forth in CEQA, its implementing regulations, and applicable judicial interpretations;

WHEREAS, if the California Air Resources Board were to adopt CEQA thresholds of significance for greenhouse gas emissions at a future date, the District will reevaluate the adopted greenhouse gas thresholds of significance to ensure they are consistent with the California Air Resources Board;

WHEREAS, as SB 375 is implemented and the region develops a Sustainable Community Strategy, the District will reevaluate the adopted greenhouse gas thresholds of significance to ensure consistency with the intent of SB 375;

WHEREAS, District staff will work with cities and counties to provide technical resources and financial assistance to develop climate action plans and community risk reduction plans;

WHEREAS, the CEQA Thresholds of Significance set forth in Attachment A hereto are written and displayed so that their meaning can be easily understood by District staff and other agencies using them as a means to assess whether a project's environmental effects will be significant under CEQA;

WHEREAS, public meetings of the Board to consider adoption of the Thresholds of Significance were properly noticed and convened in accordance with all requirements of law, which public

meetings were held on November 18, 2009, December 2, 2009, January 6, 2010, May 5, 2010 and June 2, 2010;

WHEREAS, at the November 18, 2009, December 2, 2009, January 6, 2010, May 5, 2010 and June 2, 2010 public meetings, the subject matter of the Thresholds of Significance was discussed with interested persons in accordance with all provisions of law;

WHEREAS, the November 18, 2009, December 2, 2009, January 6, 2010, May 5, 2010 and June 2, 2010 public meetings and the other public review opportunities that the District has provided regarding the Thresholds of Significance, constitute a public review process as required by Section 15064.7;

WHEREAS, District staff has prepared and presented to this Board the May 3, 2010, Proposed Thresholds of Significance report, which has been considered by this Board and is incorporated herein by reference;

WHEREAS, the documents and other materials that constitute the record of the public review process under Section 15064.7 on which this Resolution is based are located at the Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, 94109, and the custodian for these documents is Ms. Lisa Harper, Clerk of the Boards;

WHEREAS, District staff recommends adoption of the CEQA Thresholds of Significance set forth in Attachment A hereto;

WHEREAS, the Board of Directors concurs with District staff's recommendations and desires to adopt the CEQA Thresholds of Significance set forth in Attachment A hereto;

NOW, THEREFORE, BE IT RESOLVED that that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the CEQA Thresholds of Significance, pursuant to the authority granted by law, as set forth in Attachment A hereto, and discussed in the Proposed Thresholds of Significance report dated May 3, 2010, with instructions to staff to correct any typographical or formatting errors before final publication of the CEQA Thresholds of Significance.

BE IT FURTHER RESOLVED that it is the policy of the Bay Area Air Quality Management District that projects that do not comply with the CEQA Thresholds of Significance will normally be determined to have a significant effect on the environment for purposes of CEQA, and projects that comply with the CEQA Thresholds of Significance normally will be determined to have a less-than-significant effect on the environment for purposes of CEQA.

BE IT FURTHER RESOLVED that it is the policy of the Bay Area Air Quality Management District that Lead Agencies in the Bay Area apply the CEQA Thresholds of Significance, except for the Risk and Hazard thresholds for Receptor Projects, for Notices of Preparation issued, and environmental analyses begun, on or after the date of adoption of this Resolution.

BE IT FURTHER RESOLVED that it is the policy of the Bay Area Air Quality Management District that Lead Agencies in the Bay Area apply the CEQA Thresholds of Significance for the

Risk and Hazard thresholds for Receptor Projects for Notices of Preparation issued, and environmental analyses begun, after January 1, 2011.

The foregoing Resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director KALRA, seconded by Director UULKEMA, on the 2nd day of JUNE, 2010, by the following vote of the Board:

AYES: BATES, GARNER, GIOIA, GROOM, HOSTERMAN, HUDSON, KALRA, MAR, ROSS, SPERING, TORLIATT, UULKEMA, YEAGER, WAGENKNECHT


NOES: NONE

RECUSED: HAGGERTY

ABSENT: BROWN, DALY, DUNNIGAN, KLATT, KNIBBS, MILEY, ZANE


Brad Wagenknecht
Chairperson of the Board of Directors

ATTEST:


John Gioia
Secretary of the Board of Directors

ATTACHMENT A

**THRESHOLDS OF SIGNIFICANCE
FOR USE IN DETERMINING THE SIGNIFICANCE OF
PROJECTS' ENVIRONMENTAL EFFECTS UNDER
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

ATTACHMENT A

Proposed Air Quality CEQA Thresholds of Significance (May 3, 2010)			
Pollutant	Construction Related	Operational Related	
Project-Level			
Criteria Air Pollutants and Precursors (Regional)	Average Daily Emissions (lb/day)	Average Daily Emissions (lb/day)	Maximum Annual Emissions (tpy)
ROG	54	54	10
NO _x	54	54	10
PM ₁₀ (exhaust)	82	82	15
PM _{2.5} (exhaust)	54	54	10
PM ₁₀ /PM _{2.5} (fugitive dust)	Best Management Practices	None	
Local CO	None	9.0 ppm (8-hour average), 20.0 ppm (1-hour average)	
GHGs Projects other than Stationary Sources	None	Compliance with Qualified Greenhouse Gas Reduction Strategy OR 1,100 MT of CO ₂ e/yr OR 4.6 MT CO ₂ e/SP/yr (residents + employees)	
GHGs Stationary Sources	None	10,000 MT/yr	
Risks and Hazards – New Source (Individual Project)	Same as Operational Thresholds*	Compliance with Qualified Community Risk Reduction Plan OR Increased cancer risk of > 10.0 in a million Increased non-cancer risk of > 1.0 Hazard Index (Chronic or Acute) Ambient PM _{2.5} increase: > 0.3 µg/m ³ annual average <u>Zone of Influence:</u> 1,000-foot radius from fence line of source or receptor	
Risks and Hazards – New Receptor (Individual Project)	Same as Operational Thresholds*	Compliance with Qualified Community Risk Reduction Plan OR Increased cancer risk of > 10.0 in a million Increased non-cancer risk of > 1.0 Hazard Index (Chronic or Acute) Ambient PM _{2.5} increase: > 0.3 µg/m ³ annual average <u>Zone of Influence:</u> 1,000-foot radius from fence line of source or receptor	
Risks and Hazards – New Source (Cumulative Thresholds)	Same as Operational Thresholds*	Compliance with Qualified Community Risk Reduction Plan OR Cancer: > 100 in a million (from all local sources) Non-cancer: > 10.0 Hazard Index (from all local sources) (Chronic) PM _{2.5} : > 0.8 µg/m ³ annual average (from all local sources) <u>Zone of Influence:</u> 1,000-foot radius from fence line of source or receptor	

AR 00006

Proposed Air Quality CEQA Thresholds of Significance (May 3, 2010)		
Pollutant	Construction-Related	Operational-Related
Risks and Hazards – New Receptor (Cumulative Thresholds)	Same as Operational Thresholds*	Compliance with Qualified Community Risk Reduction Plan OR Cancer: > 100 in a million (from all local sources) Non-cancer: > 10.0 Hazard Index (from all local sources) (Chronic) PM _{2.5} : > 0.8 µg/m ³ annual average (from all local sources) Zone of Influence: 1,000-foot radius from fence line of source or receptor
Accidental Release of Acutely Hazardous Air Pollutants	None	Storage or use of acutely hazardous materials locating near receptors or receptors locating near stored or used acutely hazardous materials considered significant
Odors	None	Complaint History—5 confirmed complaints per year averaged over three years
Plan-Level		
Criteria Air Pollutants and Precursors	None	1. Consistency with Current Air Quality Plan control measures 2. Projected VMT or vehicle trip increase is less than or equal to projected population increase
GHGs	None	Compliance with Qualified Greenhouse Gas Reduction Strategy (or similar criteria included in a General Plan) OR 6.6 MT CO ₂ e/SP/yr (residents + employees)
Risks and Hazards	None	1. Overlay zones around existing and planned sources of TACs (including adopted Risk Reduction Plan areas) 2. Overlay zones of at least 500 feet (or Air District-approved modeled distance) from all freeways and high volume roadways
Odors	None	Identify locations of odor sources in general plan
Accidental Release of Acutely Hazardous Air Pollutants	None	None
Regional Plans (Transportation and Air Quality Plans)		
GHGs, Criteria Air Pollutants and Precursors, and Toxic Air Contaminants	None	No net increase in emissions
Notes: CO = carbon monoxide; CO ₂ e = carbon dioxide equivalent; GHGs = greenhouse gases; lb/day = pounds per day; MT = metric tons; NO _x = oxides of nitrogen; PM ₁₀ = fine particulate matter with an aerodynamic resistance diameter of 2.5 micrometers or less; PM _{2.5} = respirable particulate matter with an aerodynamic resistance diameter of 10 micrometers or less; ppm = parts per million; ROG = reactive organic gases; SP = service population; tpy = tons per year; yr = year. * Note: The Air District recommends that for construction projects that are less than one year duration, Lead Agencies should annualize impacts over the scope of actual days that peak impacts are to occur, rather than the full year.		

AR 00007

RECEIVED

SEP 12 2012

Calaveras County
Planning Department

9/12/12

Calaveras County Planning Commission
C/o Calaveras County Planning Department
891 Mountain Ranch Road
San Andreas, CA 95249

**RE: Agreement with Staff Report Recommendations for the Sawmill Project on your
Agenda for 9-13-12.**

Dear Commissioners:

My name is Tom Infusino, and I am submitting these comments on behalf of the Calaveras Planning Coalition. The Coalition agrees with many of the observations and recommendations of the Staff Report for the Sawmill Project. **Overall, we agree that project approval is premature.**

First, we agree that a Final EIR must be prepared by the County prior to the Planning Commission's final review and recommendations regarding the project. (Staff Report, pp. 5-6.) A very serious component of that Final EIR is the County's response to comments on the Draft EIR. As discussed during the Planning Commission Workshop on EIRs, these responses are important because they reflect the County's official position not only on "bird and bunny" issues, but also on other critical concerns of regular folks; like law enforcement, emergency services, traffic congestion, housing, and taxes. The tone and care given these responses will affect the County's ongoing relationships with state agencies, with federal agencies, and most importantly with its local constituents. We agree that the County must make its own very thoughtful and considerate responses to these comments before issuing a Final EIR for this project. (Staff Report, p. 16.)

Second, we agree that the proposed project conflicts with the existing General Plan. (Staff Report, p. 8)

Third, we continue to agree that a comprehensive oak woodland conservation plan is needed so that the county can address oak woodland mitigation on a landscape level. (Staff Report, p. 9.) While we have supported such a plan for some time, its completion has been put on the backburner, as the General Plan Update, interim project processing, and hot button ordinances have taken priority. While we wait for that conservation plan, it is critical that we not

commit to destruction large swaths of high quality oak woodland habitat essential to the plan's success. To do otherwise would foreclose future planning options for the area.

Fourth, we agree that a setback to the 100-year floodplain boundary is not sufficient to mitigate riparian impacts. We agree that the County would be better served by adopting mitigation more likely to be consistent with U.S. Fish and Wildlife Service standards. (Staff Report, p. 10.)

Fifth, we agree that a Regional Conservation Strategy for Copperopolis would help to provide a landscape level solution to habitat impact mitigation. We also agree that we have not seen any commitment from the County or from the Copperopolis Community Plan Committee to pursue this solution. Thus, these proposals do not qualify as project level mitigation, because there is no commitment by the County to pursue them.

We also agree that, pending the completion of such a conservation strategy, it is premature to consider committing key riparian habitat components to developed uses. As noted above, to do so would preclude future planning options for the area. In other words, if we want to try to put the habitat puzzle back together, we can't keep throwing away all the best pieces.

We agree that there is a need to better coordinate land use and water supply planning in the County generally, and in the Copperopolis area specifically. (Staff Report, p. 15) Most alarming in that area is the degree to which per capita water use is increasing as new developments are approved with thirsty exotic landscapes and other water intensive features. As a start, the CPC would welcome County Planning's participation in the ongoing Mokelumne/Amador/Calaveras Integrated Regional Water Management Plan (MAC IRWMP) process. We would also hope that County Planning will be an active participant in implementing the proposed Water Element of the General Plan Update.

We agree that the approval of the Sawmill Project will interfere with the adoption of the General Plan and its Copperopolis Community Plan component. As anyone who has attended a Community Plan Committee meeting can tell you, the Committee is fiercely struggling, not to find ways to add additional entitlements to the area, but ways to meet the public service needs of the existing entitlements. Some folks are even hoping that the entitlements for the two financially troubled projects (Oak Canyon Ranch and Tuscany Hills) could somehow be withdrawn (perhaps due to failure to meet project conditions in a timely fashion), or modified by agreement with future owners, to reduce the public service burdens in the area. Adding yet another 800 units of residential development, prior to any systematic means of providing the needed infrastructure in the area, will only make the Committee's job that much harder.

We agree that project approval at this time is premature. The County has not finished its CEQA review for the project. The County has not decided how it intends to deal with a huge variety of development issues being decided in the General Plan Update process, and the Copperopolis Community Plan process. The proper time for consideration of this project is when the gavel falls on those two plans. Then we can make the adjustments to Sawmill needed to make it the first of the best projects, rather than the last of the worst ones. "Plans before projects" is a motto that will serve the Planning Commission well as we push toward completion of the general plan and community plan updates.

Thank you for considering these comments.

Sincerely,

Thomas P. Infusino, Facilitator

Calaveras Planning Coalition

SHUTE, MIHALY
& WEINBERGER LLP

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ELLISON FOLK
Attorney
folk@smwlaw.com

September 12, 2012

Via Facsimile (209-754-6733) & U.S. Mail

Calaveras County Planning Commission
891 Mountain Ranch Road
San Andreas, California 95249-9709

Re: Sawmill Lake Project

Dear Members of the Planning Commission:

I am writing on behalf of the Central Sierra Environmental Resource Center to respond to comments by Environmental Planning Partners, Inc. (EPP) on the staff recommendation for denial of the Sawmill Lake Project

In a previous letter submitted on behalf of CSERC on September 7, 2012, this firm provided explicit legal comments that supported the staff report and the recommendation for denial. This current letter not only supplements that initial letter, but responses are provided to various debatable and incorrect opinions provided on behalf of Castle & Cooke by EPP. As detailed below, the staff report sets forth some of the many reasons why the County cannot legally approve the proposed project at this time based on the environmental review completed to date. It is important that the Planning Commission recognize that the staff recommendation is carefully documented, and it is consistent with controlling law. Therefore, CSERC respectfully requests that the Commission either accept the staff recommendation and deny the Project, or that the Commission defer action on this matter until the current General Plan deficiencies are rectified through the General Plan update process.

I. The Project Is Not Consistent with the Current General and Will Interfere With Adoption of a New General Plan.

As staff noted, the Project calls for a substantial increase in development over levels anticipated by the 1996 General Plan. In response, EPP asserts that the Project is not inconsistent with the general plan because it calls for a general plan amendment. An amendment alone, however, does not reduce the actual impact of the

Project on biological resources, including its substantial impacts on wildlife, habitat, and oak woodlands.

Moreover, the applicant's insistence that the Project need not be consistent with every policy of the General Plan ignores the fundamental purpose of and goal of the consistency requirement. The general plan serves as the "constitution for all future developments" within a city or county. *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 355 (citation omitted). "[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Id.* (citation omitted). Thus, agency decisions must be consistent with "the objectives, policies, general land uses and programs specified in the general plan." *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 ("FUTURE").

Although perfect conformity is not required, a project is inconsistent if it will not "further the objectives and policies of the general plan" or it conflicts with a general plan policy that is "fundamental, mandatory, and specific." *FUTURE*, 62 Cal.App.4th at 1336, 1341-42. Moreover, even if there is no direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan's policies and objectives. *Napa Citizens*, 91 Cal.App.4th at 378-79; *see also Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

Given the scale of the Project, staff's conclusion that it would cause substantial impacts and be inconsistent with the goals of the General Plan is well supported.

Finally, an amendment to the plan to allow the development to go forward only exacerbates internal inconsistencies between the elements of the Plan, including the land use element, circulation element, and the open space element. Such inconsistencies have been previously documented and include the failure of the circulation element to ensure adequate capacity for projected growth, the failure of the circulation element to identify road capacity, and the failure of the conservation element to identify permissible uses of land designated for natural resource protection (such as much of the property at issue here.)

II. Staff's Conclusion that the Project Cannot Be Approved Until the EIR is Recirculated is Consistent with Controlling Law.

A. Recirculation is Required to Whenever New Information Demonstrates that a Project May Have New Significant Impacts or Substantially Greater Impacts than Disclosed in the EIR.

EPP's claim that recirculation is not required to evaluate new information regarding project impacts is also unsupported by the record. Although EPP cites to the correct section of CEQA requiring recirculation in this case, they fail to apply it correctly. CEQA Guidelines¹ section 15088.5 requires an agency to recirculate an EIR for an additional public comment period when "significant new information"² is added to the EIR after public notice is given of the availability of the draft EIR for public review, but before the final EIR is certified. CEQA Guidelines §15088.5(a). "[T]he term 'information' can include changes in the project or environmental setting as well as additional data or other information." *Id.* Section 15088.5(a) list four examples of types of significant new information that require recirculation. As detailed below, the new information identified in comments on the draft EIR falls within the requirements of section 15088.5 and requires recirculation of the EIR.

First, with respect to impacts to oak woodlands, the draft EIR concluded that all such impacts would be mitigated below a level of significance based on mitigation that involves a combination of replanting and conservation easements. Since release of the draft EIR, however, staff determined that the proposed site of the conservation easement is now the subject of a development application. As such, this new information shows "a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance." CEQA Guidelines §15088.5(a)(2). An agency must recirculate a draft EIR if it determines that an impact it had identified as insignificant, or that it had identified as significant but capable of being mitigated, will, in fact, be significant and unavoidable. This could happen if, for example, a planned mitigation measure becomes infeasible or if new data indicate that the mitigation measure will not have the anticipated effect of reducing the impact to a less-than-significant level.

¹ The "CEQA Guidelines" are found at California Code of Regulations, title 14, § 15000 *et seq.* All citations are to the CEQA Guidelines unless otherwise noted.

² See also Public Resources Code § 21092.1.

Although EPP claims that the EIR includes a requirement for an alternative conservation site, this alone is not sufficient to demonstrate that the Project's impacts on oak woodlands have been mitigated. For example, in *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, a draft EIR stated that, if the proposed residential development required an increase in pumping for water supply, then the project proponent would have to mitigate the impact by either reducing the density of the project or retiring pumping rights on another property. The County then identified a specific parcel from which the project proponent acquired pumping rights for mitigation in the final EIR. The court rejected this approach and required recirculation to allow public comment on the offsetting measure. *Id.* at 128. As stated by the court, the agency "must [exercise its discretion] on the basis of information collected and presented in the EIR and subjected to the test of public scrutiny" through recirculation.) *Id.* at 131. Similarly, the loss of an identified mitigation land requires recirculation of the EIR.

Indeed, the Department of Fish and Game noted the failure of the draft EIR to provide adequate assurance of mitigation for the dramatic loss of oak trees associated with the Project. Among other things, DFG pointed out the failure to identify measures to ensure that the adequate sites are available for use of a conservation easement, the failure to identify the terms of a conservation easement, and the failure to provide adequate funding for managing the conservation easement.

The draft EIR also fails to adequately address impacts to wildlife movement and riparian resources. As noted by staff, the riparian setbacks are not adequate to protect these resources from the significant impacts of development. Staff Report, p. 10. EPP's response, that setbacks will be either 25 -50 feet from the centerline of the affected resource (depending on the resource) or will coincide with the 100 year flood plain (whichever is greater) provides no assurance that impacts to riparian resources have been adequately addressed. First, by measuring from the centerline of a creek, the setback is greatly diminished. Twenty-five feet from the centerline could be just 10 or 15 feet from the edge of the affected riparian body and therefore is not nearly sufficient to protect the resources. As documented in the attached study for western Placer County, setbacks of 30 meters are commonly recommended to protect riparian resources and habitat. Exhibit 1. Moreover, the U.S. Fish and Wildlife Service also noted that the riparian setbacks are not sufficient to protect listed plant species. Thus, the Project's impacts will be substantially greater than disclosed in the draft EIR and as a result, the draft EIR must be recirculated.

Finally, the setbacks themselves allow for development of a boathouse, renovations to Sawmill Lake Dam, and trails and roadways. The impacts of this

development must be evaluated and mitigated – and if it cannot be fully mitigated, the draft EIR’s finding of no significant impact cannot be supported.

B. Recirculation Is Required to Evaluate New Mitigation Measures.

New information regarding potential mitigation measures for significant impacts to biological resources also requires recirculation of the EIR. CEQA Guidelines §15088.5(a)(3) (If the agency or public comment identifies a new, feasible alternative or mitigation measure “considerably different from others previously analyzed [that] would clearly lessen the environmental impacts of the project,” then the agency must recirculate the draft EIR.) Here, the United States Fish and Wildlife Service specifically recommended the adoption of a regional habitat conservation plan to address cumulative impacts to biological resources. Staff Report, Attachment 4. This process would address impacts to threatened and endangered species and, if properly designed and implemented, could avoid some of the identified significant cumulative impacts to biological resources.

Contrary to EPP’s assertion (EPP letter at 15), a regional habitat conservation plan is substantially different from the currently identified mitigation measure – consideration of a county biological resources preservation ordinance. At this stage, the ordinance is not required to be adopted, the EIR does not identify any standards that would guide the ordinance, and the actual mechanisms that would be used are undefined. And, as County staff notes, the ordinance would require the use of County staff and resources, whereas the regional habitat conservation plan would require the developer and other affected parties to develop the plan subject to approval by the Fish and Wildlife Service. Finally, the habitat conservation plan has a specific goal – avoiding unacceptable impacts to threatened species as set forth in the Endangered Species Act. Thus, the differences between the suggested measures in the draft EIR and the requirement to prepare a regional habitat conservation plan are demonstrable and require recirculation of the EIR.

The County is also required to provide a reasoned response to the comments of the Fish and Wildlife Service. *Berkeley Keep Jets v. Board of Port Commissioners* (2001) 91 Cal. App. 4th 1344, 1367 (“[W]here comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. There must be good faith, reasoned analysis in response.”) (internal quotations and citations omitted).

C. Recirculation Is Required to Evaluate New Impacts and Information Related to Water Supply.

EPP's attempt to support the water supply analysis in the draft EIR ignores the actual language of the EIR. Contrary to EPP's claims, the draft EIR does not contain a complete analysis of water supply impacts and supply. Rather, the draft EIR simply assumes that the CCWD could supply the Project within the 6,000 acre foot allocation for the Copper Cove service area. As stated in the draft EIR, "the CCWD's current permitted water diversion at Tulloch Reservoir (6,000 afa) would be sufficient to supply the project's demand in addition to the continued build-out of the existing Copper Cove service area." DEIR at 16-4. As noted by staff, however, other development approvals in the area have now pushed the demand for water in the Copper Cove area over 6,000 afa.

The draft EIR does not include any analysis of this scenario or a discussion of how water would be made available above the 6,000 afa allocation, whether there would be impacts associated with that increased allocation, proposed mitigation for those impacts, and project alternatives that would address those impacts. In fact, the draft EIR concedes in its discussion of cumulative water supply impacts that "the ultimate results of the SWRCB process for permitting diversion of existing CCWD water rights to serve the Copper Cove service area" is uncertain. Although this discussion originally appeared in the analysis of cumulative water supply impacts, in fact, the uncertainty associated with serving the Project is a direct impact since the record now demonstrates that – contrary to the representation in the draft EIR – there is not enough water allocated to the Copper Cove area to supply the Project.

Moreover, even if CCWD has rights to additional water, the diversion of that water to supply this Project could have significant environmental impacts and impacts on other water users. Yet, the draft EIR contains no mention of these potential impacts. Finally, the applicant cannot rely on a water supply plan issued after release of the draft EIR and which is not, and could not have been, incorporated into the draft EIR by reference. *See San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 727 ("Whatever is required to be considered in an EIR must be in the report itself."); CEQA Guidelines §15150.

D. Recirculation is Required Because the draft EIR is Inadequate as and Informational Document.

The Guidelines require recirculation of a draft EIR if the "draft EIR was so fundamentally and basically inadequate and conclusory in nature" that the public was

unable to comment effectively on the content of the final report. CEQA Guidelines §15088.5(a)(4). Courts have required recirculation pursuant to this Guidelines provision where a draft EIR failed to provide sufficient information about the potentially significant of a project. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656 (where draft EIR's inconsistent statements about whether mining production would increase with the project "were enough to mislead the public and thwart the EIR process.").

Here, the Staff Report and comments on the draft EIR reveal the fundamentally misleading nature of the draft EIR's discussion of significant project impacts. In addition to the issues identified above, the United States Fish and Wildlife Service noted that the draft EIR had not adequately documented its conclusion that the Project would not adversely impacts threatened species. For example, with respect to impacts to Chinese Camp brodiaea, the Fish and Wildlife Service notes that the draft EIR is inconsistent in its discussion of the potential for the listed plant species to occur on the Project site. In addition, the Service disagrees with the assertion in the letter from EPP that the draft EIR includes adequate mitigation to address potential impacts to the plant.

The draft EIR also fails to identify a key change in one of the access roads for the Project. Specifically, the recirculated EIR identifies a road system designed to serve not just the Sawmill Lake project area, but also two other Castle & Cooke developments (Saddle Creek, which was approved years ago and is now partially built out, and Copper Valley Ranch, which has never yet had public review). Comments on that recirculated EIR (which are just now being made public in the administrative final EIR prepared by the applicant), however, indicate that the location of that secondary access road is different than that agreed to in the Oak Canyon Ranch Land Exchange Agreement with Castle & Cooke. Comment letter from Nicki Carlsen, Alston & Bird, LLP, dated June 7, 2010, p. 3-111 of the Sawmill Lake FEIR. However, this alignment has never been disclosed to the public, its traffic impacts have not been evaluated, nor have the biological impacts of the new alignment been evaluated. Accordingly the draft EIR must be recirculated with this new element of the Project clearly identified and its impacts disclosed and mitigated.

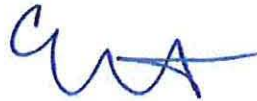
It is important to emphasize that the fact that a development company has chosen to spend large sums of money and has hired consultants to dismiss the relevance of controversial issues does not mean that Calaveras County must rush to approve a highly controversial project. On the contrary, as the staff report has made extremely clear, at this time there are still issues with insufficient analysis and concerns raised by state and federal agencies that have not yet been resolved. State law is very clear on the thresholds of adequacy that must be met for both the approval of a specific project and

the adequacy of a General Plan that is the basis for that decision. Any approval of the Sawmill Lake project at this point (in defiance of the information provided in the staff report and defiance of comments submitted by CSERC and other interest parties) would conflict with mandatory legal requirements that are well established in case law.

Thank you for your consideration of these issues.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

433212.2

Setback Recommendations to Conserve Riparian Areas and Streams in Western Placer County

Prepared for:

Placer County Planning Department

Prepared by

 **Jones & Stokes** in cooperation with **PRBO Conservation Science**

February 2005



9-13-2012 Planning Commission, Sawmill Lake Project

Colleen Platt, MyValleySprings.com

We appreciate the Planning Department's excellent staff report and we support Staff's recommendations on the Sawmill Lake project. There are many unresolved problems with the project and environmental document, inconsistencies with the current General Plan, and we believe **it is premature to move the project forward at this time.**

Questions about adequate water delivery for projects in Copperopolis need to be resolved. The Community Plan needs to be completed. The county General Plan update needs to be finished. A Habitat Conservation strategy needs to be developed. There are significant negative impacts to oaks and oak woodlands, species habitat, and cumulative traffic impacts. The Administrative Final EIR does not adequately respond to comments, does not adequately mitigate impacts, and doesn't consider new mitigations and alternatives proposed. The Sawmill Lake project is not ready to move forward.

Information in the staff report and in comment letters about CCWD's Copper Cove water supply shows that the 6,000 acre-feet allocation of **water is already over-committed to entitled projects in the service area.** This means there is not enough unallocated water to supply Sawmill Lake. CCWD will run out of available water and will need to apply for a State permit to increase capacity. *There may be water rights on paper, but there is no guarantee of obtaining an increase in river diversions from the State Water Board,* given current demands on water throughout the state. It doesn't make sense to continue to plan and approve more large subdivisions that might not be able to get water. CCWD's Water Supply Assessment says *"it is anticipated that the SWRCB would take 2-3 years to process a change petition" and "the cost...could range from \$50,000 to \$500,000 or more..."* This uncertainty about a future water supply isn't clearly stated or analyzed in the EIR. Projects should not move forward until future water supplies and alternatives are studied further.

The timing of the applicant's push to move Sawmill Lake forward now is bad for at least two reasons: **The Copperopolis Community Plan update is not complete and the General Plan update is not complete.** Approval of a major development project within community plan boundaries now would interfere and conflict with the Community Plan process, influence possible outcomes, and preclude planning options for the Copperopolis area. Similar problems would occur with the General Plan, causing interference and conflicts. Updates to Traffic Benefit Basins and RIM fee programs cannot be finished until land use and circulation plans are completed. The Sawmill Lake project needs to wait for the Community Plan and General Plan updates.

The USF&W Service recommended a Regional Habitat Conservation Plan be completed for the Copperopolis area to address cumulative biological impacts, rather than dealing with adverse effects on a project-by-project basis. **But no Habitat Conservation Plan has been proposed to be part of the Project.** Listed species and wildlife resources are at risk without a conservation plan. Development and adoption of a habitat conservation

plan is a *newly proposed mitigation measure that should be included in a Recirculated EIR.*

As currently designed, Sawmill Lake would remove over 100 acres of oak woodlands and over 8,000 oak trees. **This loss would be a significant negative impact on oak woodland habitat and has not been adequately addressed with mitigations.**

Comments made by both the Calif. Dept. of Fish & Game and CSERC state concerns with impacts to oak woodlands. CSERC recommended the applicant evaluate another project design alternative to retain as much natural vegetation and oak trees as possible by reducing the number of lots, clustering home sites, and defining building envelopes. *This alternative is a feasible mitigation to lessen impacts to oak woodlands but the applicant did not consider or adopt it.*

Fish & Game said the project fails to provide adequate mitigation for the loss of over 8000 oak trees, and that **mitigation details of the proposed conservation easement are unresolved and deferred until after the project's adoption.** F&G recommends the EIR be revised to include easement details, a funding mechanism for management and monitoring, a list of willing third parties, and that a means of conserving the mitigation site be established that would be accepted by the County and DFG *prior to project approval.*

The applicants made no modifications to the EIR "except for a clarification regarding the applicant's request to Calaveras LAFCO to form a Community Services District to fund and administer oak mitigation requirements." This response does not address F&G concerns. *A future request to LAFCO does not establish the means of conserving the mitigation site prior to project approval.*

The Sawmill Lake project and environmental documents are not ready to move forward. Project approval is premature at this time.

Thank you.

Sawmill Lake Project
Planning Commission, September 13, 2012

Joyce Techel, MyValleySprings.com

In May 2011, I asked some questions and submitted a comment letter on the Sawmill Lake Recirculated Draft EIR. I requested clarification on which Copperopolis Benefit Basin traffic fees would be charged for the project. I noted the disparity between the 2002 fee schedule of \$1,271 for a Single Family Dwelling Unit, and the 2007 proposed fee schedule ranging from \$2,635 to \$11,299 for a single unit. I asked how traffic fees would fully mitigate road impacts of the project when the new fee schedule was never adopted. My questions have gone unanswered. The response from the EIR consultants (dated over a year ago--August 2011)* was "County staff is currently researching this comment; the response will be forwarded as it becomes available." Nothing more has come forward. This response is inadequate.

The 2002 Copperopolis Benefit Basin and Fee Schedule is still "current." These are the fees being charged now. An old and outdated traffic benefit basin program cannot adequately collect fees or mitigate for project traffic and circulation impacts. Inadequate collection of fees leads to underfunding of traffic improvements and negative impacts on local roads. An update for the Copper benefit basin was introduced in 2007, but was not adopted by the Board of Supervisors because new roadway information was presented by Castle and Cooke—an extension of Little John Road. The adoption of the modified Copperopolis Benefit Basin was "continued indefinitely", which was agreeable with the developer (see Minutes from June 19, 2007 Board meeting). Since then, work on the General Plan update and Copperopolis Community Plan update has prevented the County from finishing the Copper traffic benefit basin, because new roads and land uses could be proposed that change traffic patterns and impacts.

In the Sawmill Lake Draft EIR**, a Mitigation Measure in the Cumulative Analysis chapter calls for Calaveras County to update the Copper Benefit Basin and/or the Road Impact Mitigation (RIM) fee program in order to include and adequately fund cumulative project traffic impacts, intersection, and roadways improvements. This mitigation measure is not feasible at this time. Calaveras County can't update the Copperopolis Benefit Basin until the Copperopolis Community Plan is updated. The County can't update the Nexus Study for the RIM fee program until the General Plan and new Circulation Element are finished. Sawmill Lake needs to wait for completion of the Community Plan and the General Plan so traffic fee programs can be updated. If the project moves forward and only pays current inadequate Benefit Basin and RIM fees, traffic and circulation impacts won't be mitigated because they'll be under funded. We can't keep putting more traffic on our roads without adequate funding for them.

(**Chapter 18 Cumulative Analysis, Mitigation Measure CUM-15: Calaveras County shall update its Copperopolis Benefit Basin and/or Road Impact Mitigation Fee, at the applicant's expense, to include the signals and capacity improvements identified as follows to reduce cumulative traffic impacts to acceptable levels:)

*

Response to Letter U

Commenter Joyce Techel
May 12, 2011

U-1 The comment requests clarifications of the traffic fees to be imposed in the Conditions of Approval/Development Agreement for the project. Specifically, the commenter inquires as to whether the fees will be based on the existing (2002) schedule, or on the schedule in place when the project is built.

County staff is currently researching this comment; the response will be forwarded as it becomes available.

Public Comment and Response to Comments

Darcy Goulart

From: Joyce Techel [joytee@earthlink.net]
Sent: Thursday, May 12, 2011 3:30 AM
To: Darcy Goulart
Cc: Cathryn Jackson; Mark Jones; Colleen Platt
Subject: Comments 2008-110 GPA, ZA, TSTM Sawmill Lake RDEIR

May 12, 2011

RECEIVED

MAY 12 2011

Calaveras County
Community Development Agency
[Building] Planning [] OSS

To: Calaveras County Planning Department
From: Joyce Techel, MyValleySprings.com
Re: Comments 2008-110 GPA, ZA, TSTM Sawmill Lake RDEIR

Thank you for the opportunity to comment on this project.

Comment on Transportation and Traffic

Clarify traffic fees. What Copperopolis Benefit Basin traffic fees will be charged in Conditions of Approval/ Development Agreement for the project? Will fees be based on the existing (outdated 2002) fee schedule, or based on fees in place when the Sawmill project is actually built? U-1

Page 18-38 of the Sawmill Lake Specific Plan RDEIR, Impact TR-6 Cumulative plus project queuing at study intersections for Calaveras County, Tuolumne County, and Caltrans intersections.

Implementation of the proposed Sawmill Lake project would generate additional traffic under cumulative plus project conditions and would result in increased traffic volumes at project study roadway intersections that could result in increased queuing and decrease in operations at those intersections. Because improvements are funded and programmed through the Copperopolis Benefit Basin that would fully mitigate this effect, this would be less-than-significant impact.

The June 7, 2010 Caltrans letter states:

"The DEIR identifies specific intersection and roadway mitigation improvements that address Project impacts to be included in either the Copper Benefit Basin (CBB) or the Road Impact Mitigation (RIM) fee program. Department staff encourages strict compliance with the requirements of either fee program while noting the potential for underfunding mitigation measures and traffic improvements identified in the CBB. Already it appears, approximately 8,500 dwelling units of the 18,000, or 50%, of the 2025 forecasts for the Copperopolis Community Plan (CCP) will have been either constructed or entitled, while only 20%, or \$7,900,000 of the \$67,601,000 in anticipated costs for those improvements has been collected.

Minutes from the June 19, 2007 Board meeting. Item 18. (copied below) summarizes indefinite continuance of modifications to the Copper Benefit Basin.

18. PUBLIC WORKS (07-25, I, 180)

Rob Houghton, Public Works, referenced discussion at the meeting of June 12th

regarding roadway improvements and impact fees. Upon his recommendation, the

ordinance was introduced for the Copperopolis Benefit Basin and to delay adopting the resolution. During recent discussions with County Counsel it has been advised to instead carry these two items concurrently.

Houghton asked for an indefinite continuance, which is agreeable with the developer.

Motion made to continue indefinitely the adoption of an ordinance and approval of a resolution to modify the roadway improvements and impact fees

for the Copperopolis Benefit Basin.

Moved: Wilensky Second: Thomas Approval: Unanimous

ABSENT: Callaway

Comment:

- a) The disparity in 2002 Copperopolis Benefit Basin fees and programs vs. 2007 nexus study/road programs/proposed benefit basin schedule. An example:
2002: Single Family Dwelling Unit fee: \$1,271
2007: Single Family Dwelling Unit fee proposed: \$2,635-\$11,299
- b) Because of this disparity and that the proposed 2007 nexus study and schedule was not adopted and newer rates are not being charged, road impact fees are not currently being mitigated. This affects road impacts both here in Calaveras and in Tuolumne County.

Additional condition:

No building permits should be issued until new Copperopolis benefit basin nexus study is completed and new programs and benefit basin fees are in place.

Thank you for your consideration of these comments.

Sincerely,

Joyce Techel, Board Chair, MyValleySprings.com
PO Box 1501
Valley Springs, Ca. 95252

Response to Letter U

Commenter Joyce Techel
May 12, 2011

U-1 The comment requests clarifications of the traffic fees to be imposed in the Conditions of Approval/Development Agreement for the project. Specifically, the commenter inquires as to whether the fees will be based on the existing (2002) schedule, or on the schedule in place when the project is built.

County staff is currently researching this comment; the response will be forwarded as it becomes available.

Annette Huse

From: jforkner@caltel.com
Sent: Friday, September 14, 2012 2:52 PM
To: Plandept
Subject: Sawmill Lake Project

Calaveras County Planning Commission Feedback Submission:

First Name: Jack
Last Name: Forkner
Email Address: jforkner@caltel.com
Subject: Sawmill Lake Project

Message: Are you aware the southeast corner of the planned Sawmill Lake Project is a 21.4-acre parcel that is already in the Copper Cove Subdivision. It is Lot 712 of Unit 3, Parcel ID 061003001000. It is governed by the CC&Rs of Copper Cove which prohibit annexation or a change in lot size without permission of the Association. The Copper Cove at Lake Tulloch Owners' Association denied a lot-line-adjustment in 2008 that would have removed 19 acres from the parcel and the subdivision. Subsequent negotiations between the Association and Castle & Cooke failed to reach an equitable agreement. The Planning Department and Planning Commission need to honor the CC&Rs of this parcel as long as it remains within Copper Cove.

The file links will only link to a file if it was uploaded. A link that displays an error or "Directory Listing not Allowed" did not have a file attached.

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SEP 14 2012
Calaveras County
Planning Department

September 14, 2012

From: Steve DaValle
5195 Cherokee Rd.
Stockton CA 95215
209-482-2261
sdavalle@clearwire.net

To: Calaveras County Planning Commissioners

Subject: Sawmill Lake

Dear Commissioners

I have been reading in the Calaveras Enterprise and The Stockton Record about the discussions with Castle and Cooke regarding approval of the Sawmill Lake project. I own a home in the Copper Cove subdivision of Copperopolis which my family and I use as a second/vacation home. We do not rent it out.

We have occasion to visit the Copperopolis Town Square and enjoy it very much. I think it is a first class facility and feel it is a valuable asset the county. The surrounding population is inadequate to support a commercial enterprise of this size and more people would no doubt help it to prosper. I would hate to lose it. I do not support unbridled sprawl but I do support growth when it makes sense. Increased population would also impact the traffic on Lake Tulloch which tends to get crowded on weekends and holidays.

Not too long ago there was a discussion regarding the building of a new access road and launch ramp at New Melones. One suggestion I have is to see if Castle and Cooke would be interested in participating in the construction a new access road to New Melones between Copperopolis and Angels Camp. This would encourage non-residents to proceed to New Melones and could help offset the increased traffic on Tulloch while providing more residents to support the Town Square.

Thank you for your consideration,

Sincerely
Steve DaValle

RECEIVED

SEP 14 2012

Calaveras County
Planning Department



Central Sierra Environmental Resource Center

Box 396, Twain Harte, CA 95383 • (209) 586-7440 • Fax (209) 586-4986

Visit our website at: www.cserc.org or contact us at: johnb@cserc.org

September 24, 2012

Calaveras County Planning Commission
Calaveras County
891 Mountain Ranch Road
San Andreas, California 95249-9709

RECEIVED

SEP 28 2012

**Calaveras County
Planning Department**

Dear Planning Commission:

Based on communications and e-mails after the September 13, 2012 planning commission session, our Center is concerned that the County may not have a full and complete record of testimony provided at that meeting, comments made by the developer and his team of support staff, and specific statements made by planning commissioners as well as planning staff. If an accidental malfunction of equipment or inadequate recording equipment has resulted in a loss of a significant portion of the legal record of the meeting, there may be no way to validate exactly what was stated or claimed by various speakers.

To the extent that I can remind the Planning staff of the comments that I personally made during my 5-minute testimony slot, I am making the effort to document points that I raised.

Testimony points raised

I provided statistical information concerning the 3,000 existing vacant lots within the Copperopolis basin, the 3,400 approved, but not yet built housing units at Oak Canyon Ranch, the 335 approved, but not yet built units at Tuscany Hills, and the overall level of well over 17,000 credible existing vacant lots in total in Calaveras County. I shared that there is no rationale for approving a project with significant environmental impacts that will provide 800 additional new housing units when Calaveras County has absolutely no need for more vacant lots.

I reminded the Commissioners of the identified significant impacts including (1) nighttime lighting, (2) cultural resources, (3) traffic and transportation impacts, (4) visual impacts, (5) impacts for utilities and services, and (6) cumulative impacts for biological resources.

I referred to the letters from state and federal wildlife agencies that identified threats to rare plant and wildlife species and that pointed out that the County needs to do big-picture planning to reduce those risks before the County approve more big projects.

I emphasized that the Sawmill Lake project fails to adequately mitigate for GHG emission impacts despite the fact that the State has identified the issue as an already existing significant impact.

For water, I noted that CCWD has already promised more water to serve already approved projects than it has current rights to for the Copper Basin. The water supply for this project thus becomes legally speculative, because no one can guarantee that the State Water Board will increase CCWD's water rights supply.

I pointed out that State Law strictly forbids the approval of a project that would create significant impacts when there are feasible mitigation measures that reduce the level of those impacts. Yet Castle & Cooke is pushing their maximum project for approval instead of the Environmentally Superior Alternative project that would result in Reduced Project Size, but would still allow development to go forward.

I expressed my strong belief that the County cannot justify approval of a project with so many impacts.

I reminded the Commissioners that the new General Plan Update is still not completed. Thus, the legally deficient current General Plan would be the basis for approving this 800-unit development, and yet the project is inconsistent with the current plan. Even if it were consistent, I noted that reliance on a General Plan that is not currently in compliance with State law cannot be the basis for approval of such a large development.

I pointed out that as the staff report underscored, as detailed letters from the law firm of Shute, Mihaly & Weinberger have spelled out, and as our Center's comments have emphasized – any approval of this project conflicts with numerous laws, would be premature, and would primarily aid Castle & Cooke to put more speculative development on the shelf for when the good times roll again.

And in closing, I shared that in an effort to find solutions, our Center has openly offered to Dave Haley to cooperate in finding ways to reduce the impacts of Sawmill Lake so that it could possibly come back as a revised proposal that would not need as much water and not trigger the deficiencies of the current inadequate General Plan. I urged the Commission to follow the staff report and recommend denial.

Please accept this as the points I raised in my testimony if the County does not have a clear legal record of my testimony.



John Buckley

To: Rebecca Willis, Calaveras County Planning Director
From: MyValleySprings.com
Re: Sawmill Lake comments and Sept. 13 Planning Commission hearing

September 25, 2012

Director Willis,

As noted in an earlier email, no time was allowed at the September 13 Planning Commission hearing on Sawmill Lake for 'Responses by Opponents' after the 'Applicants Response' (as is usual for Planning Commission Hearing Procedures). This omission of public response time left the Applicant with "the last word." There was no opportunity for project opponents to rebut or respond to applicant's response or ask further questions. This could have provided a better balance of information for planning commissioners.

There was also a 5-minute time limit on individual comments, which restricted our input compared to the Applicant's total time allowed of over 70 minutes. MyValleySprings.com would have brought up further points and questions at the hearing if we were allowed. We are bringing them up now for the record, and are also attaching the written comments we submitted at the hearing. Following are rebuttals to some statements made by the Applicant or his representative during Applicant Response.

A. Oak Tree Mitigation

The applicant's consultant stated that oak tree mitigation and funding was "assured" by expanding mitigation to include formation of a Community Services District (CSD). MyValleySprings.com has serious doubts whether a CSD will work for this purpose. We wanted to ask these additional questions:

- 1) What makes the applicant think the CSD idea will work? Does the applicant know of a CSD that funds, administers, and manages oak conservation easements? Has he talked to the director of Calaveras LAFCO about whether formation of a CSD for this purpose will work? Forming a CSD to administer, manage, and fund an oak conservation easement is a new Mitigation Measure that has not been circulated for comments. We are not aware of any CSD that does this. LAFCO has not weighed in.
- 2) Will Fish & Game approve this idea and will it actually preserve oak tree habitat? Usually the Dept. of Fish & Game or a Conservancy/ Land Trust organization holds conservation easements, obtains funds, and has the experience to manage them. A CSD is run by an elected board of directors, usually with no background or experience in oak mitigation, and possibly no desire in the future to keep managing a conservation easement.
- 3) Isn't a CSD formed after a subdivision is approved and the map is filed? The CA Department of Fish & Game wants the means of conserving the oak mitigation site established and accepted by the County and DFG *prior to project approval*. A CSD does not seem to us to be an appropriate mechanism to do this.

Since the hearing, I have been in contact with John Benoit, Executive Director of Calaveras LAFCO. I have forwarded his responses to you. Mr. Benoit sent CSD law Subdivision section

(ae): "This subdivision allows a CSD to mitigate only the effects of its own projects, not the effects of private land developments." He expressed serious concerns about the CSD idea and suggested a different direction be taken, such as setting up an oak conservation easement with a Conservancy or Land Trust.

Additionally, the Applicant stated at the hearing that the oak tree mitigation site was "more than adequate" because they "set almost twice the acreage...there's nothing that says you can't do that and...we've identified a conservancy of like-type trees." MyValleySprings.com questions the adequacy of the oak mitigation site proposed by the developer. We looked at the proposed Oak Woodland Mitigation Area Map and do not think its habitat value is equivalent to the Impact Area. The reasons:

- 1) The number of trees per acre is 41.5 in the mitigation area vs. 82 trees per acre in the impact area—meaning the oak tree density of the mitigation area is **half** the density of the existing oak woodlands=not equivalent;
- 2) The mitigation area is **broken up** into seven (7) narrow, unconnected strips of land around the edges of a proposed residential development parcel the applicant owns. These pieces of land would not be equivalent in habitat value to the existing oak woodlands which are in one large parcel, providing connected and contiguous oak habitat, ecosystems, and wildlife corridors.

B. Traffic and Road Fees

The developer found it "unbelievable" that Joyce Techel would bring up the subject of traffic fees, and stated "we agree we will pay basin fees in effect at the time we pull the building permit." Our question: If this statement is true, why is it not in project documents?

We could find no language in Sawmill Lake documents that assured us the applicant would pay updated RIM fees and Copper Benefit Basin Fees in effect at the time building permits were pulled. We asked questions and received no answers. We searched the DEIR, RDEIR, and Development Agreement. In fact, we found contradictory language that seemed to say outdated, under funded 2002 Benefit Basin Fees or outdated RIM fees would be considered adequate mitigation, or that fees "could" be paid, not "would be paid."

We asked for clarification of traffic fees in our comments submitted on the RDEIR in May, 2011. We received no response. In the Administrative Final EIR submitted by the developer, the "Response to Letter U, Commenter Joyce Techel, May 12, 2011" contained no answer to the question, only that "staff is currently researching this comment."

Since the hearing we have compiled worrisome or vague references to traffic fees found in Sawmill Lake project documents:

2010 DEIR

From page 15-6:

Calaveras County Ordinance Approving Copperopolis Benefit Basin

Calaveras County Board of Supervisors adopted the Copperopolis Benefit Basin on December 9, 2002 to provide a means for implementing Goal III-7 and related policies and implementation measures within the General Plan specifically for the Copperopolis area. An update titled "Road Impact Fee Nexus Analysis Update" was prepared, dated

May 18, 2007. Although it was discussed, it was never adopted.

From page 15-26:

Mitigation Measure TR-1a:

The project shall be required to pay its fair share of the Copperopolis Benefit Basin Fee adopted by Calaveras County Board of Supervisors on December 9, 2002; payment of its fair share would mitigate the project's direct impact to Reeds Turnpike.

2011 Recirculated DIER

From page 15-28:

Mitigation Measure TR-2: The applicants for the Sawmill Lake project, or their successors in interest, shall pay their fair share of improvements necessary to design and construct improvements to O'Byrnes Ferry Road (for the two road segments consisting of the Lake Tulloch Reservoir Bridge, and the segment immediately north of the bridge) necessary to meet Calaveras County standards for roadway operations. Such fees could be paid through an amended Copperopolis Benefit Basin Fee and/or the RIM Fee.

From page 15-39:

Mitigation Measure TR-5b: The applicants for the Sawmill Lake project, or their successors in interest, shall pay their fair share of improvements necessary to design and construct improvements to O'Byrnes Ferry Road (for the two road segments consisting of the Lake Tulloch Reservoir Bridge, and the segment immediately north of the bridge) necessary to meet Calaveras County standards for roadway operations. Such fees could be paid through an amended Copperopolis Benefit Basin Fee and/or the RIM Fee.

2009 Development Agreement

From Section 2.6 (a):

(a) Road Impact Mitigation Fees ("RIM Fees") and Copperopolis Benefit Basin Fees ("Basin Fees"). Developer shall pay to the County at the time of issuance of building permits, those RIM Fees and Basin Fees which are set forth on the fee schedule which is attached hereto as Exhibit "C".

Not only is there no RIM or Basin Fee schedule attached in Exhibit C in the Development Agreement, but *this statement does not say they will pay fees in effect at the time building permits are pulled. No project documents say this.*

It may be the intent of the developer to pay traffic fees in effect when permits are pulled, but nothing in Sawmill Lake project documents makes that clear. We are concerned traffic and road impacts will not be adequately mitigated with outdated fees and studies. The project proposal needs to be crystal clear on payment of traffic fees.

We ask again, as we did in our May, 2011 comment letter, that an **Additional Condition** be included:

"No building permits shall be issued until a new Copperopolis Benefit Basin nexus study is completed and new programs and benefit basin fees are in place."

Thank you for your time and attention, Rebecca. If this project is to move forward in any way, it needs to be as good as it can be for the residents of Copperopolis. Please let us know if you have any questions on the above comments.

Respectfully,

Colleen Platt, Joyce Techel
MyValleySprings.com

Cc: Calaveras County Planning Commissioners
CSERC
Calaveras Planning Coalition

Attachment 4
to Planning Commission Staff Report of December 13, 2012

Correspondence and Testimony Presented Subsequent to the Hearing of
September 13, 2012

10-16-12 CSERC to Planning Commission
10-26-12 U.S Fish and Wildlife Service to County
09-26-12 Shute Mihaly Weinb PRA Request



Central Sierra Environmental Resource Center

Box 396, Twain Harte, CA 95383 • (209) 586-7440 • fax (209) 586-4986

Visit our website at: www.cserc.org or contact us at: johnh@cserc.org

October 16, 2012

To Ted Allured, chairman
Calaveras County Planning Commission
891 Mountain Ranch Road
San Andreas, CA 95249

Cc: Calaveras County Board of Supervisors
Rebecca Willis, Planning Director
Dave Haley, Castle & Cooke

RECEIVED

OCT 19 2012

**Calaveras County
Planning Department**

Dear Planning Commissioners and County Planning staff:

Based on the request by Dave Haley of Castle & Cooke at the September 13, 2012 planning commission meeting, the matter of consideration of Sawmill Lake has been postponed until December. In a letter submitted to the planning commissioners and county staff on Friday, October 12, 2012, Dave Haley shared: *"...our goal during the 90-day continuance of the public hearing to December 13th is to review and revise the Sawmill Lake 243-acre land plan to address the issues raised in order to provide a project that meets the need of the community in the context of good long-term planning principles that are environmentally responsible."*

One of the "issues raised" at the planning commission hearing by both County planning staff and members of the public (including CSERC) is the matter of the questionable adequacy of the EIR. As has been pointed out by County staff, the "final" EIR draft, produced by consultants (who were hired, directed, and retained by Castle & Cooke), does not reflect the independent opinion of Calaveras County. As of this time, the adequacy of that document has not yet been determined. In particular, letters describing "new" information of importance have been submitted and have been recognized as raising important questions about additional significant impacts that would be generated by the project and the likely need for additional, not-yet-identified mitigation.

CSERC strongly questions the neutrality, accuracy, and legality of the current version of the FEIR that was developed, organized, and submitted by an environmental consultant who showed up at the September hearing to testify assertively in support of the Sawmill Lake project and the developer. But moving beyond that legal point, what is most relevant is whether or not the existing overall EIR analysis has fully assessed potential significant impacts of the proposed project and whether the EIR has spelled out all reasonable, feasible mitigation measures that would reduce the significance of those significant impacts.

Waste Discharge Violations Tied To The Copper Cove Treatment System

While visiting the website of the Central Valley Regional Water Quality Control Board for a completely unrelated conservation issue, our CSERC staff came across a waste discharge complaint (item R5-2012-0521) that directly affects the question of the adequacy of the EIR. Attached to this letter is the cover letter for the complaint and a time schedule order from the regional water board requiring CCWD and Saddle Creek Golf Course, L.P. and the Copper Cove wastewater reclamation facility to comply with certain requirements in order R5-2006-0081. As you will see in reading this material, the CCWD Copper Cove facility as of this summer was not in compliance with the effluent limitations for waste discharge for EC, chloroform, aluminum, and manganese and/or potentially other effluents.

Why does this matter to Sawmill Lake and state-mandated environmental analysis?

Sewage produced at Sawmill Lake would be pumped to the CCWD treatment system where it would be treated by the Copper Cove facility and be disposed of by a spray irrigation system onto the Saddle Creek golf course or additional "not yet identified" spray field locations. Yet the Copper Cove facility, despite making what the Central Valley Regional Water Quality Control Board describes as "diligent progress," is still currently unable to comply with effluent limitations with the amount of sewage now being handled. Accordingly, due to CCWD's inability to halt violations, the Central Valley Board has authorized CCWD's Copper Cove facility to be exempt from the MMP's for violations of the final effluent limitations until August 2016.

The schedule order reveals that CCWD uses chlorination to disinfect the secondary effluent at the storage pond prior to application on the golf course and that the storage pond is also utilized for winter storage. The addition of the chlorine creates byproducts including chloroform and methane. Furthermore, the coagulant used to ensure proper operation of the filters ends up resulting in aluminum in the discharge.

Neither the DEIR nor the FEIR provides a clear, full, and timely assessment or analysis of the inability of the Copper Cove treatment system to meet effluent limits and water quality standards. Neither EIR document provides any discussion of alternatives, of potential mitigation measures tied to the Sawmill Lake project's effluent, or an admission that wastewater violations are a significant impact.

The new information presented about the inability of CCWD to treat its current wastewater load calls into question the ability to treat wastewater from the Sawmill Lake project. It also demonstrates that the Sawmill Lake project may have a significant impact on public services and water quality that has not been adequately analyzed in the EIR. Pursuant to Public Resources Code section 21094 and CEQA Guidelines section 15088.5, the County must revise the EIR and recirculate it for public review before it can approve the Sawmill Lake Project. Moreover, the EIR must identify feasible mitigation measures and alternatives to address this new significant impact. Pub. Res. Code §21002.1

As noted previously, the DEIR and the recirculated DEIR both cover wastewater issues for the Sawmill Lake project, but neither discuss waste discharge violations now occurring in the Copper Cove treatment system. Below are key excerpted "wastewater" sections from the DEIR

Therefore, the pump station for Sawmill Lake may be determined by CCWD to be constructed as the regional facility.

Presently, all of the sewage being generated in the Copperopolis Service Zone is treated and disposed of by a spray irrigation system onto the Saddle Creek golf course. As the volume of treated wastewater expands with new development, additional spray fields must be developed. Sufficient spray field capacity for the Sawmill Lake project is already contractually reserved by the project applicant at the Saddle Creek Golf Course. CCWD Master Plans have a financial component that assign a connection fee to new development projects to pay for expansion of the wastewater treatment plant and the installation of necessary infrastructure as it becomes needed. The applicant or successors in interest in the Sawmill Lake project would pay such fees as are determined necessary in the CCWD Master Plan."

CONCLUSION

CSERC asks that this letter and the attached Central Valley Regional Water Quality Control Board documents be made a part of the administrative record for the Sawmill Lake project and the Planning Commission's consideration of this continued matter. We also ask that the Planning Director and the County clarify to the Sawmill Lake applicant that no action on the project can be taken until full environmental analysis is provided and public consideration of the EIR is completed.

John Buckley, executive director

Ellison Folk, Shute, Mihaly & Weinberger

and the Recirculated DEIR.

DEIR – page 16-7

"The CCWD UWMP (CCWD 2007a) calls for a regional sewer lift station in the vicinity of Sawmill Lake. The project applicants have proposed to connect to the Calaveras County-approved sewer line alignment evaluated in the EIR for the Copper Mill project as discussed above. This EIR relies upon this previously approved force main to provide wastewater transmission to the Sawmill Lake project.

The Copper Cove/Copperopolis service area is approximately 3,270 acres and presently serves the town of Copperopolis and the subdivisions of Lake Tulloch and Copper Cove. The planning area is expected to experience substantial growth over the next 30 years, with an ultimate equivalent single-family connection total of near 16,000 units, compared to the 2,400 connections that were served as of 2006. Wastewater demand was examined as part of the CCWD's 2008 WSA performed for Sawmill Lake. The amount of wastewater generated is based on the assumption that 30 percent of the water usage in the average home is turned into wastewater (CCWD 2007a, 2007b). Because each unit uses 0.75 afa of water, then each unit would generate an average of 0.23 afa wastewater. Therefore, the 866 equivalent unit Sawmill Lake development will generate approximately 200 afa wastewater (or approximately 0.2 mgd).

The Copper Cove Sewer Treatment Plant was constructed in 2000. Treatment is a two-step process: the first step is biological treatment, which still takes place in the aeration ponds; the second step is tertiary treatment, which takes the stored effluent and treats it to near drinking water quality. This level of quality is suitable for irrigation with reclaimed water. All of the sewage being generated in the Copperopolis Service Zone is presently treated and sprayed for disposal via a separate pipeline system onto the Saddle Creek Golf Course. As the system expands with new development, additional spray fields must be identified; however, spray field capacity for the Sawmill Lake project is already reserved in the water balance being directed onto Saddle Creek Golf Course. Water demand for irrigation on the Saddle Creek Golf Course is presently about 550 afa, so the recycled wastewater used for golf course irrigation is presently supplemented with raw (fresh) water."

*Sawmill Lake Specific Plan 3-46 Calaveras County
Recirculated Draft EIR March 2011*

"Wastewater

Sewage from the Sawmill Lake project would be collected on-site through a CCWD standard sewage collection system and delivered to a new wastewater lift station to be constructed within the proposed Sawmill Lake project on lot 334 (Vesting Tentative Subdivision Map [VTSM], Sheet 5) and located along Sawmill Lake Road just west of the reservoir. The lift station would then pump the sewage into a force main discharge pipeline in Little John Road connecting at a utility easement located south of Sawmill Lake Road (VTSM, Sheet 6). The Sawmill Lake sewer main would connect with the CCWD water treatment plant south of the Saddle Creek along Little John Road. The as yet unconstructed sewer main connecting Sawmill Lake project and the Copperopolis Town Square development would be installed in Little John Road by the Sawmill Lake project applicant during the first phase of development. The environmental effects of constructing and operating this sewer pipeline have been evaluated previously in the EIR for the Copperopolis Town Square, and all applicable mitigation identified for the pipeline would remain in effect (Calaveras County 2005a). The CCWD Wastewater Master Plan calls for a regional sewer lift station in the vicinity of Sawmill Lake (CCWD 2003).



EDUARD G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

APPROVED

Staff

Supervisor

9 March 2012

Teresa Tanaka
Deputy Director of Utilities/Operations
Calaveras County Water District & Saddle Creek Golf Course, L.P.
423 East St. Charles St.
P.O. Box 846
San Andreas, CA 95249

CERTIFIED MAIL
7011 2970 0003 8939 1019

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0521 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CALAVERAS COUNTY WATER DISTRICT AND SADDLE CREEK GOLF COURSE, L.P., COPPER COVE WASTEWATER RECLAMATION FACILITY, CALAVERAS COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements Order R5-2006-0081 (NPDES No. CA0084620) by the Calaveras County Water District and Saddle Creek Golf Course, L.P. (Discharger) at its Copper Cove Wastewater Reclamation Facility. The Complaint charges the Discharger with administrative civil liability in the amount of **forty-eight thousand dollars (\$48,000)**, which represents the sum of accrued Mandatory Minimum Penalties for effluent limitation violations (identified in Attachment A of the Complaint) that occurred from 23 August 2006 through 31 December 2011.

On 23 February 2012, Central Valley Water Board staff issued a draft Record of Violations (ROV). The Discharger responded on 1 March 2012, did not dispute the dichlorobromomethane violations, but challenged the validity of the chlorine results. The Discharger stated that the reports by its certified laboratory and an independent engineering consultant document that the chlorine residual test results should not be identified as violations subject to MMPs. Staff considered the information submitted by the Discharger; however, the chlorine exceedances continue to be alleged as violations in the Complaint, as discussed in Attachment B.

Pursuant to CWC section 13323, the Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver by **9 April 2012**, a hearing will be scheduled for the **7/8 June 2012** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Patrick Pulupa, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 19 March 2012**.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.

Sincerely,

Original Signed by

WENDY WYELS, Supervisor
Compliance and Enforcement Section

Enclosure: ACLC R5-2012-0521
Hearing Procedures
Waiver Form

cc w/o encl: Kenneth Greenberg, USEPA, Region 9, San Francisco
Mayumi Okamoto, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ken Landau, Central Valley Water Board Advisory Team, Sacramento
Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
Calaveras County Environmental Management Agency, San Andreas
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton
Jae Kim, Tetra Tech, Fairfax, VA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TIME SCHEDULE ORDER R5-2012-0055
REQUIRING
CALAVERAS COUNTY WATER DISTRICT AND
SADDLE CREEK GOLF COURSE, L.P.
COPPER COVE WASTEWATER RECLAMATION FACILITY
CALAVERAS COUNTY

TO COMPLY WITH REQUIREMENTS PRESCRIBED IN ORDER R5-2006-0081
(NPDES PERMIT CA0084620)

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) finds that:

1. On 3 August 2006, the Central Valley Water Board adopted Waste Discharge Requirements (WDR) Order R5-2006-0081 and Time Schedule Order (TSO) R5-2006-0082, prescribing waste discharge requirements and compliance time schedules, for the Calaveras County Water District and Saddle Creek Golf Course, L.P. (Discharger) Copper Cove Wastewater Reclamation Facility (Facility), in Calaveras County.
2. WDR Order R5-2006-0081 contains in part, Final Effluent Limitations IV.A.1.b as follows:

Final Effluent Limitations – Discharge to SCGC Receiving Pond NC-2D (For UV Disinfected Effluent)

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Electrical Conductivity	$\mu\text{mhos/cm}$	900	--	--	--
Chloroform	$\mu\text{g/L}$	1.1			
Dichlorobromomethane	$\mu\text{g/L}$	0.56	1.13		
Aluminum	$\mu\text{g/L}$	87	174	--	--
Manganese, Total Recoverable	$\mu\text{g/L}$	50	--	--	--

Need for Time Schedule Extension and Legal Basis

3. The Discharger installed a new disinfection system at the tertiary treatment system that began operation in 2008 for irrigation of the golf course. The secondary effluent is filtered and then undergoes ultraviolet light (UV) disinfection. However, the Discharger is required to store disinfection secondary effluent in the storage pond, which is used for winter storage prior to tertiary treatment and reuse on the golf course. The Discharger uses chlorination to disinfect the secondary effluent. The addition of chlorine creates disinfection byproducts, such as chloroform and dichlorobromomethane, as well as, increases the electrical conductivity (EC). The Discharger proposes to treat all wastewater to tertiary levels with UV disinfection and eliminate chlorination.

Additionally, the Discharger indicated that the discharge cannot comply with the effluent limitations for aluminum and manganese. In the tertiary treatment process the Discharger

must use a coagulant (i.e., polyaluminum chloride) prior to filtration, to ensure proper operation of the filters. Polyaluminum chloride (alum) is a source of aluminum in the discharge. The Discharger conducted a study to optimize the use of alum to reduce effluent aluminum without success. In addition, the Discharger has evaluated other non-aluminum containing polymers for filtration with limited success. The Discharger is continuing its study to identify non-aluminum polymers to meet the aluminum limitation. With regard to manganese, the Discharger believes that high manganese concentrations are due to storm water runoff into the storage pond. Soils in the area are high in manganese and manganese is leached from the soils into storm water that then enters the treatment ponds. The Discharger proposes to eliminate storm water from entering treatment and storage ponds in order to meet the manganese effluent limits.

The Discharger has proposed a schedule to achieve compliance with the final effluent limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese by 1 August 2016.

4. On 12 March 2012, the Discharger submitted an infeasibility analysis and request for additional time to comply with the final effluent limitations for EC, chloroform, dichlorobromomethane, aluminum, and manganese.

Mandatory Minimum Penalties

5. California Water Code (CWC) sections 13385(h) and (i) require the Central Valley Water Board to impose mandatory minimum penalties (MMP's) upon dischargers that violate certain effluent limitations. CWC section 13385(j)(3) exempts the discharge from MMP's, *"where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308, if all the [specified] requirements are met...for the purposes of this subdivision, the time schedule may not exceed five years in length..."*.
6. Per the requirements of CWC section 13385(j)(3), the Central Valley Water Board finds that:
 - a. This Order specifies the actions that the Discharger is required to take in order to correct the violations that would otherwise be subject to CWC section 13385(h) and (i).
 - b. To comply with final effluent limitations, the Discharger has determined that an additional four years is necessary to pilot alternative coagulants, construct storm water mitigation, and construct additional tertiary facilities. The final effluent limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese were new, more stringent, or modified regulatory requirements that became applicable to the waste discharge after the effective date of WDR Order R5-2006-0081. New or modified control measures are necessary in order to comply with the final effluent limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese. The new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

- c. This Order establishes a time schedule to bring the waste discharge into compliance with the effluent limitations that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitations.
7. The final effluent limitations for EC, chloroform, aluminum, and manganese became applicable to the waste discharge on the effective date of WDR Order R5-2006-0081 (23 August 2006). TSO R5-2006-0082 provided protection from MMP's from 23 August 2006 to 1 August 2011 for violations of effluent limitations for aluminum and manganese, and from 23 August 2006 to 1 June 2009 for violations of effluent limitations for EC.
8. The final effluent limitations for dichlorobromomethane became applicable to the waste discharge on 18 May 2010, because a compliance schedule was provided in WDR Order R5-2006-0081. A cease and desist order has not been issued pursuant to CWC Section 13301 or a time schedule order issued pursuant to CWC Sections 13300 or 13308 for the final effluent limitations for dichlorobromomethane. Therefore, protection from MMP's for violations of the final effluent limitations for dichlorobromomethane has not previously been provided.
9. By statute, a Cease and Desist Order or Time Schedule Order may provide protection from MMP's for no more than five years, except as provided in CWC section 13385(j)(3)(C)(ii).
10. Per the requirements of CWC Section 13385(j)(3)(C)(ii)(I) for the purpose of treatment facility upgrade, the time schedule shall not exceed 10 years. Per the requirements of 13385(j)(3)(C)(ii)(II) following a public hearing, and upon a showing that the Discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the Central Valley Water Board may extend the time schedule for an additional five years, if the Discharger demonstrates that the additional time is necessary to comply with the effluent limitation. In accordance with CWC Section 13385(j)(3)(C)(ii)(I) the total length of the compliance schedules is less than ten years. The Central Valley Water Board finds, as described in previous findings in this Order, that the Discharger has demonstrated due diligence and is making diligent progress to bring the waste discharge into compliance with final effluent limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese contained in WDR Order R5-2006-0081. The Central Valley Water Board also finds that because of the Discharger's construction schedule, additional time is necessary to comply with the final effluent limitations.
11. Compliance with this Order exempts the Discharger from MMP's for violations of the final effluent limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese from the date of this Order until **1 August 2016**.
12. If an interim effluent limit contained in this Order is exceeded, then the Discharger is subject to MMPs for that particular exceedance as it will no longer meet the exemption in CWC Section 13385(j)(3). It is the intent of the Central Valley Water Board that a violation of an

interim monthly effluent limitation subjects the Discharger to only one MMP for that monthly averaging period.¹ In addition, a violation of an interim daily maximum effluent limit subjects the Discharger to one MMP for the day in which the sample was collected.

13. In accordance with CWC section 13385(j)(3), the total length of protection from MMP's for chloroform, dichlorobromomethane, EC, aluminum and manganese, does not exceed ten years from the date the effluent limits became applicable to the waste discharge.
14. This Order provides a time schedule for completing the actions necessary to ensure compliance with the final effluent limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese contained in WDR Order R5-2006-0081. Since the time schedule for completion of actions necessary to bring the waste discharge into compliance exceeds one year, this Order includes interim effluent limitations and interim requirements and dates for their achievement.
15. This Order includes performance-based interim effluent limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese.
16. The Central Valley Water Board finds that the Discharger can maintain compliance with the interim effluent limitations included in this Order. Interim effluent limitations are established when compliance with the final effluent limitations cannot be achieved by the existing Facility. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on a long-term basis. The interim effluent limitations, however, establish an enforceable ceiling concentration until compliance with the final effluent limitation can be achieved.

Other Regulatory Requirements

17. CWC section 13300 states: *"Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements."*
18. CWC section 13267 states in part: *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters*

¹ In accordance with Questions 39 and 40 of the 17 April 2001 State Water Board SB 709 and SB 2165 Questions and Answers document

within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

19. The Discharger owns and operates the treatment facility which is subject to this Order. The technical and monitoring reports required by this Order are necessary to determine compliance with the WDRs and with this Order.
20. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") pursuant to CWC section 13389, since the adoption or modification of a NPDES permit for an existing source is statutorily exempt and this Order only serves to implement a NPDES permit. (*Pacific Water Conditioning Ass'n, Inc. v. City Council of City of Riverside* (1977) 73 Cal.App.3d 546, 555-556.).
21. On 8 June 2012, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider this Cease and Desist Order under CWC section 13301 to establish a time schedule to achieve compliance with waste discharge requirements.

IT IS HEREBY ORDERED THAT:

1. Time Schedule Order R5-2006-0082 is rescinded upon the effective date of this Order except for enforcement purposes.
2. Pursuant to CWC Section 13300, the Discharger shall comply with the following time schedule to ensure completion of the compliance project described in Finding 6b, above:

Task	Compliance Date
Submit workplan for facility upgrades for reduction of chloroform and dichlorobromomethane	7 December 2012
Test and optimize the use of non-aluminum coagulant for reduction of aluminum	7 June 2013
Conduct source identification study to confirm manganese is from storm water run-off	7 June 2013
Construct storm water best management practices and/or reduce manganese through a pretreatment program	6 June 2014
Comply with Final Effluent Limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese	31 July 2016
Submit Progress Reports ¹	31 July 2013, 31 July 2014, 31 July 2015, 29 July 2016
¹ The progress reports shall detail the steps taken to comply with this Order, including documentation showing completion of tasks, construction progress, evaluation of the effectiveness of the implemented measures, and assessment of whether additional measures are necessary to meet the compliance dates.	

2. The following interim effluent limitations for EC, chloroform, dichlorobromomethane, aluminum and manganese shall be effective upon adoption of this Order. The Discharger shall maintain compliance with the following interim effluent limitations through **31 July 2016**, or when the Discharger is able to come into compliance with the final effluent limitations shown in Finding 2, whichever is sooner.

Interim Effluent Limitations – Discharge to SCGC Receiving Pond NC-2D (For UV Disinfected Effluent)

Constituent	Units	Interim Effluent Limit	
		Average Monthly	Maximum Daily
Electrical Conductivity	µmhos/cm	1200	--
Chloroform	µg/L	180	--
Dichlorobromomethane	µg/L	13	13
Aluminum	µg/L	1182	1182
Manganese, Total Recoverable	µg/L	1337	--

3. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

CALAVERAS COUNTY WATER DISTRICT AND SADDLE CREEK GOLF COURSE, L.P.
COPPER COVE WASTEWATER RECLAMATION FACILITY
CALAVERAS COUNTY

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or with the WDRs may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the CWC, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality
or will be provided upon request.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order signed by the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, on 8 June 2012.

Original signed by Pamela C. Creedon

PAMELA C. CREEDON, Executive Officer

Debra Lewis

From: Casey_Collins@fws.gov
Sent: Friday, October 26, 2012 10:03 AM
To: Debra Lewis
Subject: Re: Setback from a waterway

Good Morning Debra,

It is the opinion of the U.S. Fish and Wildlife Service (Service) that a 33-foot setback buffer from aquatic resources for this particular project would not be an adequate buffer. Our primary concerns for this proposed project site is run-off from development contributing to an increase in herbicides, pesticides, and overall summertime water in Sawmill Creek and Black Creek with the potential to adversely affect the Chinese Camp brodiaea (*Brodiaea pallida*) downstream. We are also concerned about potential effects to listed species downstream that we may not be aware of at the present moment and the recovery of listed species that makes this habitat so vital. As you well know, the Service has encountered this issue recently with the Oak Canyon Ranch project and a biological opinion was issued on March 24, 2011, Service File No. 81420-2008-F-0735. The applicant and the Service, in a joint effort to protect the Chinese Camp brodiaea population downstream determined that a 200-foot buffer from the centerline of Sawmill Creek would be implemented. Since the Sawmill Lake project has similar potential to adversely affect the listed plants downstream as the Oak Canyon Ranch project, the Service would recommend a 200-foot buffer for the Sawmill Lake project as well. Furthermore, the Service is currently working on a map of the Copperopolis area including California Natural Diversity Database (CNDDDB) records, habitat information, and existing, entitled and proposed developments to assist with the development of a conservation strategy for the Copperopolis area. The Service looks forward to working closely with the County of Calaveras and all stakeholders in the development of this strategy. Please don't hesitate to contact me with any questions or concerns.

Thank you,

Casey Collins

Casey Collins
Fish and Wildlife Biologist
Endangered Species Program
US Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
Phone: (916) 414-6680
Fax: (916) 414-6713
Email: casey_collins@fws.gov

Debra Lewis <dlewis@co.calaveras.ca.us>

10/23/2012 03:49 PM

To "casey_collins@fws.gov" <casey_collins@fws.gov>

cc

Subject: Setback from a waterway

Hi Casey

Can you shed any light on this issue: the developer of the Sawmill Lake Project in the Copperopolis area of Calaveras County has stated that "this area is an urbanized area, so in our development proposal we will be applying a 33-foot setback from all

waterways. This 33-foot setback is that setback recommended by the Sierra Club for waterways in urbanized areas.”

I am not familiar with any such 33-foot setback. Are you? Also, it would appear that the developer’s reasoning is circular. The area is currently undeveloped natural resource land. The developer, however, is PROPOSING to construct an “urban” development; therefore urban setbacks shall be applied.

CEQA identifies certain exemptions associated with “urbanized areas” and “infill development”, yet CEQA has a very strict definition of what constitutes an urbanized area. There are no urbanized areas within Calaveras County that meet the CEQA definition of urbanized.

Debra Lewis, Planner III
County of Calaveras
Planning Department
891 Mountain Ranch Road
San Andreas, CA 95249
Phone (209) 754-6394
Fax (209) 754-6540

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SHUTE, MIHALY
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ELLISON FOLK
Attorney
folk@smwlaw.com

RECEIVED

OCT 01 2012

Calaveras County
Planning Department

September 26, 2012

VIA U.S. MAIL

Rebecca Willis
Director of Planning
County of Calaveras
Government Center
891 Mountain Ranch Road
San Andreas CA 95249-9709

Re: Public Records Act Request

Dear Ms. Willis:

This firm represents the Central Sierra Environmental Resource Center with regard to the Sawmill Lake Project. Pursuant to the California Public Records Act, Gov't Code § 6250 *et seq.*, and Article 1, Section 3 of the California Constitution (collectively "PRA"), I hereby request that the County of Calaveras ("County") provide me with copies of, or make available for copying, the following documents:

- All documents pertaining to any development application for the Copper Valley Ranch.
- All development applications filed by Castle and Cooke or its subsidiaries, agents, or representatives, except for any documents pertaining to the Sawmill Lake Project.
- All correspondence between the County and Castle & Cooke pertaining to any development application for the Copper Valley Ranch.

For the purposes of this request, the term "documents" includes any "handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Gov't Code § 6252(g). A

Rebecca Willis
September 26, 2012
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"document" also includes all appendices and exhibits referred to in the document. The term "or" means "and/or."

Pursuant to Government Code section 6253(c), please make a determination on and respond to this request within 10 days of your receipt of it. We may be able to accommodate a request for additional time to prepare a response, but nevertheless please contact me within the statutory 10-day period to provide me with an estimate of the time it will take to make a full response.

If you determine that any of the information is exempt from disclosure under the PRA, I ask that you ensure that your determination is consistent with Proposition 59, enacted on November 3, 2004. Proposition 59 amended the state Constitution to require that all exemptions from disclosure of public records be "narrowly construed." Cal. Const. art. I, § 3(b)(2). Proposition 59 may modify or overturn authorities on which you have relied in the past.

If you nonetheless determine that the requested records are subject to a exemption that remains valid after enactment of Proposition 59, I further request that: (1) you exercise your discretion to disclose some or all of the records notwithstanding the exemption; and (2) pursuant to Government Code section 6257, with respect to records containing both exempt and non-exempt content, you redact the exempt content and disclose the rest.

Finally, should you deny part or all of this request, you are required, pursuant to Government Code section 6255, to provide a written response describing the legal authority or authorities on which you rely. If such a response is necessary, please also address how your claim of exemption is consistent with Proposition 59.

If I can provide any clarification that will help expedite your attention to this request, please contact me at (415) 552-7272. Please do not perform any duplication before notifying me and allowing me to review the documents, so that I may decide which records should be copied.

Rebecca Willis
September 26, 2012
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I thank you in advance for your efforts in responding to my request.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to read 'Ellison Folk', with a stylized flourish at the end.

Ellison Folk

436000.1

Rebecca Willis
September 26, 2012
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cc: John Buckley

436000.1