From: Tom Infusino, Facilitator, Calaveras Planning Coalition

To: Planning Commission

Re: Changes to consider for the ZOU related to oak and ag. land impact mitigation, clustering, and administrative procedures

Date: April 2, 2024

I. Please create a suffix to the zoning designation to identify parcels for which the County has restricted further general plan amendments, rezones, subdivisions and or building.

As we move forward implementing the general plan, there will be many instances in which County approvals result in restrictions on further general plan amendments, rezones, subdivisions or building. For example, the General Plan dictates that there will be mitigation required for the conversion of resource production lands and oak woodlands to non-agricultural, forestry, or woodland uses. One of the anticipated impact mitigation measures is the acquisition of a conservation easement prohibiting the conversion of resource production lands or oak woodlands elsewhere in the County. (See Conservation and Open Space Element, Policy COS 3.6 and Implementation COS-4D; Resource Production Element, RP-1F.)

If there is no indication on the Zoning Map that future general plan amendments, rezones, subdivisions, or building on these mitigation lands are restricted for a parcel, then the Planning Director may mistakenly grant zoning clearances, the building official may mistakenly issue building permits, and the Planning Commission and Board of Supervisors may mistakenly approve general plan amendments, rezones, or subdivisions on that parcel.

I understand the other reasons for getting rid of the other past uses for the "X" suffix to zoning designations, however, there remains this one important need for a suffix to denote property for which future development is restricted.

II. Please consider creating a zoning suffix to facilitate the clustering of development.

The General Plan encourages clustering of development. (Conservation and Open Space Element, Policy 3.1and Implementation COS-6A.) This is the concentration of allowed development density in one part of the development to allow for conservation of scenic open space or habitat in another section of the development. Inherent in clustering is some recognition that the section not developed will remain so for some time.

For instance, instead of subdividing 400 acres of ag. land into 10 forty-acre parcels, one would subdivide the land into 10 two-acre residential parcels (served by public water), leaving the other 380 acres in scenic ag. land. Or, one might subdivide 10 five-acre residential parcels, with the other 350 acres remaining in ag. land.

The idea is to allow ranches near existing community centers to develop residential uses on the part of the ranch nearest to public water, public schools, promptly available emergency services,

and effective evacuation routes; while retaining as much of the scenic agricultural land in resource production as possible. Clustering should not be used to create leapfrog development in isolated areas distant from necessary services.

This again demonstrates the need to have some zoning category suffix to denote that there is some level of restriction over some period of time on general plan amendments, rezones, and subdivision on the remaining agricultural land.

The detailed definition of clustering can happen in the Zoning Ordinance, or it can wait until the amendment of the subdivision ordinance of the County code. Nevertheless, it would be wise and efficient to create the zoning category necessary to facilitate clustering at this time, when the zoning ordinance is getting its 40-year overhaul.

III. Please consider these changes to the Administrative Procedures Section of the Zoning Ordinance.

A) Help the County timely make its own decision about the general plan consistency of applications including residential uses.

State law now requires that the County to notify an applicant that the project is inconsistent with the General Plan within 30 days of determining that an application is complete for a housing project under 151 units, or within 60 days of determining that an application is complete for a housing project that exceeds 150 units. If the County does not provide the notice in time, by default the County deems the project consistent with the General Plan. (Government Code, Section 65589.5, subdivision (j)(2).) The idea is to stop County's from putting housing developers through an expensive multi-year application process and then rejecting the project at the last instance for inconsistency with the General Plan. (See attached: HCD, Housing Accountability Act Technical Assistance Advisory, p. 12.)

We at the CPC would like the County to issue a notice when the application for a project involving residential uses is deemed complete, so that the public can comment and the County can affirmatively decide whether a proposed project is or is not consistent with the General Plan within the statutory time limit. We at the CPC do not like the idea that a housing project gets to violate the general plan whenever the County misses a short decision window. We do not like the idea that the County might be forced to later defend an indefensible default finding of general plan consistency, simply because the County missed the very tight decision and notice window.

We propose that you add the following language to 17.27.040, subdivision A, part 2:

When an application that includes residential uses is deemed complete, the County will issue a notice of this in accord with the requirements of Section 17.27.070, so that the public may comment on the application's consistency with the general plan, and so that the County may actively make and deliver a timely written assessment of general plan inconsistency, pursuant to state law.

Without this section all of those other sections indicating that the County must find that the project is consistent with the General Plan become moot for applications with residential uses,

because the Planning Commission and BOS hearings on general plan consistency would take place far later than 30-days from the time an application is deemed complete.

If you feel the need to be crystal clear about this, you could include such a provision in every application section for each type of approval: Zoning Clearance (17.28.040), AUP (17.30.040), CUP (17.31.040), Limited Exceptions (17.34.040), Variances (17.35.040), Planned Development (17.36.030), Development Agreements (17.37.030), Zoning Amendments (17.38.040), General Plan Amendment (17.39.040), and Specific Plan (17.40.040).

B) Please note that the General Plan includes specific procedures for environmental review and mitigation.

Section 17.27.060 explains the general procedure for the environmental review of applications. Please note here that the General Plan includes very specific procedures for evaluating specific environmental impacts and mitigating those impacts. We recommend adding the following language to this section:

"The General Plan includes specific procedures for evaluating specified environmental impacts and for mitigating those impacts. These include, but may not be not limited to, COS 3.2, COS 3.3, COS-4E Wildlife Corridors, COS-4H Impacts to Biological Resources, COS-4I Biological Impact Evaluation, COS-4K Invasive Species Control, COS-4l Streams and Wetlands, COS-4M Upland Habitat, COS-4N Riparian Corridors, COS-4M Wildlife Corridor Road Crossings, COS-4P Bat Roosting, COS-5F Air Pollutant Evaluation, COS-5H Air Quality Guidelines, COS-5I Air Quality Buffers, COS-5K Odors, COS-6C Scenic Highway Protection, COS-8A Identify Native American Resource Sensitivity Areas, and COS-H Preservation of Historic Resources."

Otherwise, unaware applicants may fail to follow these environmental review procedures and mitigation standards, and their projects may later be rejected or challenged as inconsistent with the General Plan.

C) Please consider adding the words "peace and morals" after the words health, safety, and welfare."

The County's police powers, and the Planning Commission's authority to condition projects, includes protecting health, safety and welfare, and extends to protecting peace and morals. The County Code addresses peace when regulating noise. The Zoning Code addresses morals when it regulates sexually explicit businesses. At times the County may need to condition permits, enforce permits, or even revoke permits of violations of conditions related to peace and morals. It would be wise to include those words in the code.

Where the code refers to "health, safety and welfare" you would want to amend it to say "health, safety, welfare, peace and morals." Sections where this makes sense include: 17.27.130, C, 5 – Revocation of Permits; 17.30.050, C – Required Findings; 17.31.050, C – Required Findings; 17.40.080 – Required Findings; 17.41.070 - Permit Issuance and Outstanding Violations.

D) Please clarify that the exhaustion of administrative remedies does not apply when the approval in question was done by the Director without public notice or an opportunity to be heard at a hearing.

Section 17.27.140, Subdivision E, discusses exhaustion of administrative remedies. Please make it clearer that the exhaustion of administrative remedies does not apply when the approval in question was done by the Director or other official without public notice or a meaningful opportunity to be heard at a hearing. We recommend adding a sentence to the end of this subdivision as follows: "The exhaustion of administrative remedies does not preclude a member of the public from raising new issues or presenting new facts during the appeal of a County decision that was not preceded by public notice and an opportunity to be heard."

E) Please consider changes to a mitigation measure as a major amendment of an approved planned development.

Section 17.36.070 deals with amending approved planned developments. These amendments are either considered major or minor. Major amendments receive Planning Commission review and a hearing before the Board of Supervisors. To the list of major amendments, we respectfully request the addition of the following: "Any change to a mitigation measure adopted as part of the planned development approval."

F) Please make kinder and gentler code enforcement regarding owner-occupied dwellings an explicit part of zoning ordinance enforcement.

The CPC understands the importance of strict code compliance and enforcements in new developments and rental housing. That being said, we also understand the need to be merciful regarding code violations related to owner-occupied dwellings. Many people live in substandard conditions not because they are intentional code violators, but because they are too poor to fix their home. Issuing citations, collecting fines, and charging for inspections is not going to help these people comply with the code, it is just going to make them poorer. Requiring people to leave a livable home due to code violations is not going to get the building up to code, it is just going to make one of our neighboring families homeless.

The goal of code enforcement should be ultimate compliance with the code, without the inconvenience of making the housing occupant homeless for an extended period of time. Many cities and county's find that getting code compliance staff to work with affordable housing staff and nonprofits can help secure the funding for the housing rehabilitation needed to achieve code compliance, without making the owner-occupant poorer and homeless. Such mercy is still needed for owner-occupants of substandard housing in the Butte Fire burn scar.

Please consider adding the following language in the enforcement section of the code.

"When the subject of the violation is an owner-occupied home, the enforcement official may collaborate with other County agencies and non-profit housing providers to establish financial assistance, technical assistance, and a reasonable timeline for remedying the violation in order to allow the occupant to remain in the home, or to find short-term lodging and return to the home as soon as possible."

G) Please give code enforcement staff the freedom to develop programs to seek broader voluntary code compliance with less staff effort.

In Amador County, code compliance staff and the staffs of local fire departments were have very little success in getting homeowners to comply with defensible space requirements. Inspections and remediation notices were taking a lot of staff time and not making a dent in the problem.

So, one code compliance officer applied for and received a state grant to fund free woody debris dumping for one week in July. The money went to pay for the dumpster rentals and staff to manage the dumping. The program has been going on for 2 years. In both weeks in 2022 and 2023 people disposed of over 700 yards of woody debris. This is far in excess of the amount of cooperation code compliance staff and fire officials garnered from the far more staff intensive inspections and remediation program. But that is not the end of the story.

Not to be outdone by the folks at code compliance, the Air District then applied for and received a grant to give out 50 vouchers a month from April to August for people to dump up to 4 yards of woody debris at the transfer facility. The program is so successful that there are never any undistributed vouchers. The vouchers are given away on a weekday morning so the recipients tend to be retired or unemployed people who can use the $100 savings.

The point is that we can get better code compliance with less staff effort if we use our code compliance staff and other County staff to inspire more voluntary code compliance. If you don't want to do this in the enforcement section of the Zoning Code, please do so using another mechanism.