

The Calaveras County General Plan Update

Alternative "D"

April 18, 2010

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1 Introduction

1.1 Introduction to Alternative "D"

In reference to the Calaveras County General Plan Update, there are plenty of differing opinions on how the County should develop.

At some of the public workshops participants rejected the prescribed Alternatives A, B & C and suggested an Alternative "D" which would transform existing zoning into land use designations, but also would allow maximum flexibility for future change in accordance with the free market and would protect the property rights of all.

Alternative "D" is to provide protection of the property owner, and by establishing flexibility in land use, we would tend to change direction of land use planning from government choice to that of the free market. This would change the nature of public forums on development projects to consideration of the rights of neighbors and the public, rather than public approval which is so political and frequently violates the property rights.

In leading up to the Alternatives Phase of the General Plan Update process, the County has failed to include protecting property rights as a core consideration - especially during the "Visioning" phase. The next step in the General Plan Update process is the Goals & Policies phase, in which the Board of Supervisors is to take the "Vision" and chosen Alternative and create the legally binding portion of the General Plan.

Alternative "D" does not support the processes used to derive the Vision and Alternatives and we ask the Board of Supervisors to consider the Alternative "D" as a replacement for both the Vision and Land Use Alternatives as presented by Mintier Harnish.

1.2 Choosing an Alternative

In reviewing the Alternative "D" Report during the Board / Planning Commission Study Sessions, County decision-makers should consider the following questions in the evaluation of the alternatives:

- Which alternative best protects property rights?
- Which alternative best promotes future flexibility and opportunities for our children to choose how they use their property?
- Which alternative best streamlines the land use / permit approval process, while keeping within the rule of law?
- Which alternative best supports market driven, not planned development? The current market should determine what the current market wants and needs.

2 The Calaveras County Vision Statement

"The three great rights are so bound together as to be essentially one right. To give a man his life, but deny him his liberty, is to take from him all that makes his life worth living. To give him his liberty, but take from him the property which is the fruit and badge of his liberty, is to still leave him a slave." - George Sutherland, Associate Justice of the United States Supreme Court, 1921.

Many of us seem to share the vision that it is possible and important to protect, preserve and restore our free society. This may be why our Constitution seems so important today. The American form of government was established to protect the unalienable rights of the people.

"Visioning", as exercised in the CEQA process, seems to involve an emotional and motivating exercise whereby participants envision how other people's property should be used or not used over time. There is a danger in this type of visioning. It is like the soft and warm velvet glove hiding the cold iron fist of enormous future police power.

The vision of Alternative "D" is of our children living in a free and prosperous society with the free market deciding what land use would emerge, all in harmony with their human and Constitutional rights to life, liberty and property.

2.1 General Plan Goal Statement

The general plan shall within applicable state and federal statutes preserve property rights and enhance orderly and proper land development with the least possible regulation, process and delay.

2.2 General Plan Guiding Principles

Sometimes, we forget that the Planning and Building Departments must be carefully watched to protect liberty and property rights.

FIRST: All permitted land uses on every parcel at the time the GPU is adopted shall be deemed valid land use designations and in compliance with zoning ordinances in perpetuity or until changed under the terms of said General Plan and zoning ordinance.

SECOND: Existing residential neighborhoods shall not be re-zoned to accommodate higher densities (Smart Growth) except by a two thirds affirmative vote of the affected property owners.

THIRD: Land use regulations should be cumulative such that any use permitted in a more protected zone or use designation may be carried on in a less protected zone or land use designation, thus allowing mixed-use development.

FOURTH: The document shall use only common words with precise meaning. The General Plan is not a "blueprint", it is an ordinance with the force of law and, to be effective, it must be clear, generally understood and accepted by the public and easily enforced. Words like "sustainability", "vision" and "rural character" are vague, subject to many interpretations and therefore unsuitable in legal text.

FIFTH: Any use not expressly permitted in a particular or less restrictive zone or land use designation shall be a conditional use subject to the approval process. (This will allow flexibility allowing for special or unforeseen situations.)

SIXTH: Amendments to the General Plan may be made:

A. Upon application by a property owner or his representative and approval by the Planning Commission. Interested parties may appeal the decision of the Planning Commission to the Board of Supervisors within thirty days of commission action. Applications not approved or denied within 180 days shall be deemed approved as submitted and the applicant may proceed with his project.

B. When initiated by the county or a public agency with the consent of the property owners involved and after notice has been advertised and posted on the county website for 60 consecutive days. An affirmative vote of not less than four Supervisors including the Supervisor representing the affected district shall be required for passage.

SEVENTH: Zoning and variance permits shall automatically take effect within 180 days of application unless denied by the county for clear, well-defined reasons expressed in the General Plan. This is practiced successfully in Oregon. Placing the burden of stopping a particular land use by an owner on the government eliminates unreasonably long delays.

EIGHTH: Application fees shall be reasonable and shall not exceed the reasonable direct cost of process.

NINTH: To eliminate duplicity, the general plan shall be written in general, and inclusive terms to minimize the necessity for change when zoning is changed.

TENTH: Permit application process shall be simplified, streamlined, clearly defined and included in the General Plan.

Every parcel in the county already has a zone. In most every case the property owner understood the rights and responsibilities of that zone when the property was purchased. Using these zones and streamlining the approval process will provide the best framework for future market based development.

Zoning types are only a part of the development cycle. Complex rules and rigid enforcement cause economic stagnation and unnecessary hardship on property owners and with no benefit to society whatsoever. Under dozens of agencies at every level of government, the planning process has become a quagmire of multi-agency complexity, conflicting purpose, vague and unclear language and bureaucratic confusion. Streamlining the process is an essential goal.

3 Method for Creating Land Use Designations

To eliminate duplicity, on a parcel by parcel basis, all current zoning and land use ordinances and regulations at the time the GPU is adopted and shall be deemed valid land use designations and in compliance with zoning ordinances in perpetuity unless amended. The General Plan shall become the sole ordinance governing land use in Calaveras County.

Eminent Domain may not take property for private use.

Amendments to the General Plan may be made:

A. Upon application by a property owner or his representative and approval by the Planning Commission. Interested parties may appeal the decision of the Planning Commission to the Board of Supervisors within thirty days of commission action. Applications not approved or denied within 180 days shall be deemed approved as submitted and the applicant may proceed with his project.

B. When initiated by the county or a public agency with the consent of the property owners involved and after notice has been advertised and posted on the county website for 60 consecutive days. An affirmative vote of not less than four Supervisors including the Supervisor representing the affected district shall be required for passage.

The Planning Department asserts the current 120 zoning types are confusing. However, 120 well documented zones leaves maximum flexibility for property owners. The Mintier Harnish General Plan Update Alternatives Report suggested the GPU should, "consolidate and streamline these designations to create a simple, complete, and consistent set of land use designations for the new General Plan." Unfortunately, fidelity to current permitted uses was not the criteria and ended up reducing property rights. Consolidation can be beneficial if current property rights are maintained.

If it is true that "State law requires zoning to be consistent with the General Plan", this is the easiest way to accomplish that requirement.

4 Baseline Growth

Alternative "D" does not have access to software such as uPlan and therefore must accept the baseline growth values presented in the Mintier Harnish General Plan Update Alternatives Report for Alternative A.

"Alternative A is based on the trends for growth in Calaveras County over the past 10 to 15 years, and on the existing regulatory environment. Alternative A uses population projections derived directly from California Department of Finance (DOF) projections published in 2007. It also assumes a declining household size based on regional and state-wide trends and projections. The jobs and employed residents projections were developed based on an analysis of recent trends, an employment sector analysis, and correlation with population and household growth projections."

4.1 Summary of the policy direction that Alternative "D" encompasses:

- Protect Property Rights to the maximum extent possible under State and Federal Regulations.
- Land use regulations should be cumulative such that any use permitted in a more protected zone may be carried on in a less protected zone.
- Existing residential neighborhoods shall not be re-zoned to accommodate higher densities except by a two thirds affirmative vote of the affected property owners.
- Development of infrastructure would be the responsibility of the property owners - as it should be. The owner would collaborate with infrastructure providers as they do now. Problems with ground water depletion etc. would be solved primarily by the property owners.
- Development should be market driven, not planned. The current market should determine what the current market wants and needs. Our children and grandchildren will be perfectly capable of deciding for themselves. They should not be locked into anything that is decided now.
- Alternative "D" should just change land use designation to reflect the current zoning; this will relieve the county of possible lawsuits (thereby relieving the taxpayers of this burden).

5 Comparison of the Alternatives:

Alternative "D" can not endorse any of the other proposed Alternatives because, to some extent, they all take property rights.

Alternatives B & C represent a major revision to the current zoning present in the County. This revision restricts the free market to adapt to future needs.

Alternative A is documented as: "Alternative A reflects the existing configuration of land use designations translated into the new GPU land use designation system". It is this translation that is flawed. Instead of translating a land use from a more restrictive designation to a less restrictive designation, the translations were defined making the new designations more restrictive.

Example: RR becomes RA (Lots with no public services)

Current: RR Zone

- Allows 1 Dwelling Unit per 5 acres (up to 8 units on 40 acres) (County code 17.22.070 A)
- Allows Accessory dwelling (cc 17.66.010 B)
- Allows Sub-Divisions (cc 17.64)

New: RA Land Use

- Allows 1 Dwelling Unit per 5 acres but only one unit per current parcel. (GPU Pg. 49 Table B1)
- No Accessory dwelling (GPU Pg. 49 Table B1)
- No Sub-Divisions (GPU Pg. 7 & 34)

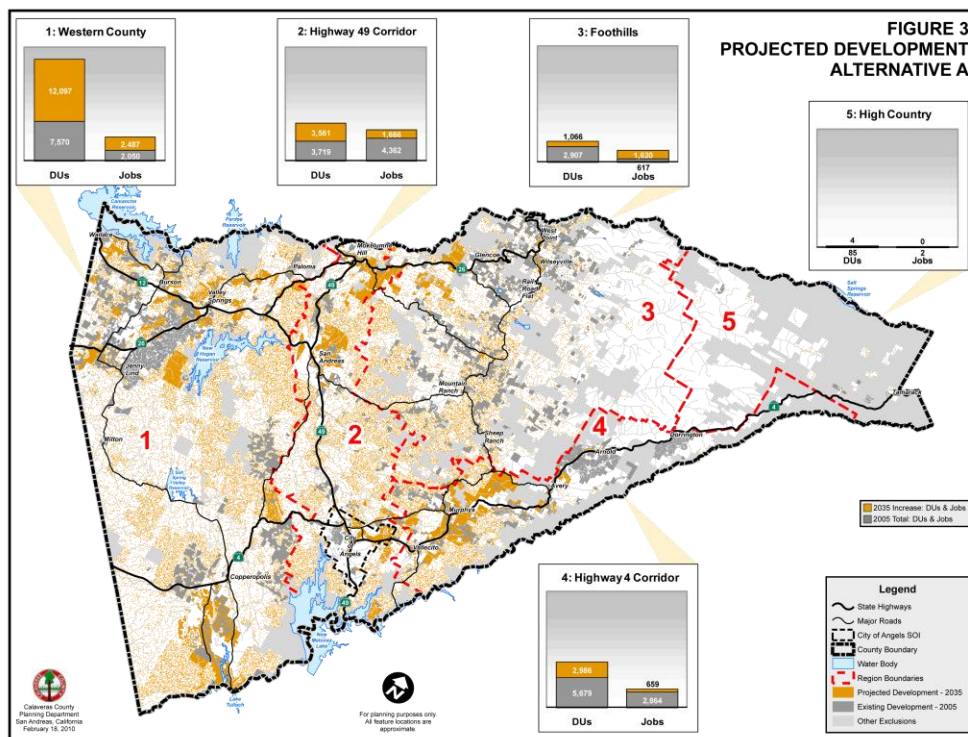
In addition:

Alternatives "B" and "C" will tend to be difficult to administer and will impede economic development.

Alternatives "B" and "C" attempt too much control of the housing market, which tends to suppress this industry and therefore make housing less affordable. In addition, there is an implied obligation created which suggests that it is the government's responsibility for the provision of housing.

6 Growth Projections

In the Mintier Harnish General Plan Update Alternatives Report land use growth projections maps were created by a weighting system¹ somewhat devoid of market realities. Proximity to existing developed areas and transportation facilities were assumed to develop first. The market may develop very differently as some people move to Calaveras to be further from developed areas. In addition, parcels are generally cheaper as they get further from developed areas. Mintier Harnish said these maps were representations, not parcel by parcel accurate. Understanding that, upon closer inspection, when compared to actual parcels, development is indicated where none could occur. There is not enough detail to determine if this is an accurate estimation of probable development.



¹ For example, it is assumed that development will occur in areas that are attractive due to proximity to existing developed areas and transportation facilities. The UPlan model also assumes that the closer a vacant property is to an attraction, the more likely it will develop in the future. UPlan creates a composite suitability index for each land use designation based on the combination of all of the development attractions, discouragements, and exclusions in the model. This composite index becomes the template for the allocation of projected land development in the future. The model allocates future development starting with the most attractive areas. As the higher-valued areas are consumed, the model looks for incrementally lower-valued areas until all of the projected land consumption in each land use designation is allocated.

7 Countywide Land Use Patterns and Community Identity

The free market has the greatest potential for creating innovative solutions for land use, now and in the future. Today's needs may not be significant tomorrow.

Community Identity is not buildings, but is the result of each property owner's dreams mixing with his neighbor's dreams, resulting in a unique expression shaped by free people enjoying their liberty.

In the Mintier Harnish General Plan Update Alternatives Report:

"In terms of acreage, the GPU can have the most impact on the two-thirds of county land that is currently classified as "unimproved" by the County assessor, meaning it is used for ranching, agriculture, forestry, or mining. About half of this is currently designated for 5- to 40-acre single family residential uses, the majority of which is undeveloped but has significant potential for low density residential development."

In reality it is in these areas where property rights are more personal; with families, dreams and in many cases retirement income at stake. Alternative "D" aims to protect these rights and prevent the government's "impact".

7.1 Related Draft General Plan Guiding Principles:

- All permitted land uses on a parcel at the time the GPU is adopted shall be deemed valid land use designations
- Development should be market driven, not planned.
- The permit application process shall be simplified, streamlined, clearly defined and included in the General Plan.

8 Scenic and Community Character

Alternative "D" proposes that it is not the County's responsibility to preserve character unless it is extremely necessary for public needs and with either the owner's consent or just compensation. *Just compensation* means, "In the best interest of the owner - not the county's."

8.1 Related Draft General Plan Guiding Principles:

- County forced infill may destroy the desirability of existing neighborhoods by increasing crowding, traffic congestion and parking shortages. It also threatens historic features of the gold rush communities. Infill should not be a priority in Calaveras County.
- Private interests preserve historic buildings and sites as a matter of economic self interest. It is not the County's responsibility to preserve history.

9 Economic Growth

In an environment where the Government is predictably defending property rights using simple and efficient land use and permitting processes, new business can choose to locate in the County confident they can correctly estimate current costs and plan for future growth. Alternative "D" represents an effective approach to job creation for Calaveras County when we allow market forces maximum reasonable freedom to meet the public demand for housing, services, goods and jobs. That policy has a proven track record of success.

The County has many programs and regulations in addition to land use, such as the Road Impact Mitigation Fee Program, that impact development for economic growth. These regulations should be consolidated, simplified, streamlined and some eliminated.

9.1 Related Draft General Plan Guiding Principles:

- The County shall ensure that its adopted policies, regulations, and procedures do not add unnecessarily to the time required for development or cost of construction.
- The General Plan shall become the sole ordinance governing land use in Calaveras County.
- The County shall protect Property Rights to the maximum extent possible under State and Federal Regulations.

10 Community Infrastructure

To quote the Mintier Harnish General Plan Update Alternatives Report, "Calaveras County's infrastructure is underdeveloped, under-funded, and poorly maintained." This is true, but seems largely due to political processes not land use designations.

10.1 Related Draft General Plan Guiding Principles:

- Development of infrastructure would be the responsibility of the property owners. The owner would collaborate with infrastructure providers as they do now. Problems with ground water depletion etc. would be solved primarily by the property owners in collaboration with service providers.
- The General Plan shall not restrict development based on access to public water and wastewater services.

11 Transportation and Mobility

Alternative "D" does not have access to the software TransCAD. It is interesting that in the Mintier Harnish General Plan Update Alternatives Report we find that, "for the more dispersed development pattern in Alternative A results in slightly lower traffic volume impacts than Alternative B in the TransCAD model."

Highway and road safety, maintenance, and design are largely political decisions driven by self-evident public needs based on current and near-term "Level of Service" requirements. Right-of-way changes will need to "justly compensate" the property owners.

11.1 Related Draft General Plan Guiding Principles:

- Invite entrepreneurs to provide transit alternatives. The county transit busses that run empty benefit very few at great cost to many. Private operators will put their resources where the demand is.
- The General Plan will not promote "Walkable Communities".

12 Air Quality and Greenhouse Gas Emissions

Alternative "D" is obligated to accept the results of the EMFAG software that shows Alternative "A" is the most CO2 friendly.

"Sierra Research used EMFAC software to quantify both greenhouse gas and criteria pollutant emissions from transportation related sources for the three land use alternatives." "CO2 emissions are estimated to increase from 2005 to 2035 by 109 percent under Alternative A to 116 percent under Alternative B and 145 percent under Alternative C."

13 Public Health and Safety

Freedom of choice, free enterprise and neighborhood self-determination is far more likely to create real livable communities than a plan based on regulation, subsidies, and bureaucratic control.

Providing enough funds and resources towards Public Safety is a political issue and not a Land Use issue.

It is disingenuous to assert that it is more expensive and require greater response times to provide public safety to a dispersed population. That dispersed population already exists and the County is already obligated to provide public safety to all of its citizens.

13.1 Related Draft General Plan Guiding Principles:

- The free market is sufficiently incentivized to avoid (or mitigate) high fire and flood prone areas. State and Federal regulations already impede development with regulations and the County should not add to the regulatory burden. It is not the County's duty to solve problems or obligate the taxpayers for poor choices made in the free market.

14 Other General Plan Work

The General Plan Update process has been underway since at least 2007. The General Plan is to include many "elements", some of which are well under way. In light of the fact that the County has failed to include protecting property rights as a core consideration, these elements will need to be reviewed as well.

- Water Element
- Housing Element
- Economic Element
- Agriculture Element
- Community Plans and Community Visions

The Housing Element Update Background Report and Policy Document HCD Review Draft November 16, 2009 clearly violate property rights. Topics include rezoning, preserving open space, eliminate single-family houses as permitted uses in the Two-family (R-2) and Multi-family (R-3) zoning districts, and give priority for permit processing to development projects that include an affordable residential component, to name just a few. When regulations create housing that is not wanted by the free market, it drives up the cost of housing that the market actually wants. Planning is counterproductive.