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6/24/15

Calaveras County Planning Commission (transmitted by email)

C/o Calaveras County Planning Department

891 Mountain Ranch Road

San Andreas, CA 95249

Re: CPC Support for the Techel/Walker Appeal of the Planning Director's interpretation that Asphalt Plants are allowed by right in the M1 and M2 Industrial Zones.

Dear Commissioners:

My name is Tom Infusino, and I am submitting these comments on behalf of the Calaveras Planning Coalition (CPC). I have a degree in planning from UC Davis, and a law degree from University of the Pacific. I have been involved in resource management and planning efforts in the Sierra for over 20 years.

The CPC is a group of community organizations and individuals who want a healthy and sustainable future for Calaveras County. We believe that public participation is critical to a successful planning process. United behind eleven land use and development principles, we seek to balance the conservation of local agricultural, natural and historic resources, with the need to provide jobs, housing, safety, and services.

Attached are our arguments and evidence in support of the Techel/Walker appeals of the Planning Director's interpretation that Asphalt Plants are allowed by right in the M1 and M2 Industrial Zones.

In some respects we agree with the staff report. For example, we agree with the staff report that the proposed project does involve discretionary decisions that may have a significant impact on the environment, and thus triggers CEQA review. We agree that more information is needed about the project to determine the level of CEQA review, and whether it is exempt from CEQA review. (Staff

Report, pp. 10-12.) **We hope that the Planning Commission will concur that the asphalt plant is a project under CEQA.**

We agree with the staff report that the ultimate findings of the Planning Commission should not be crafted on the fly, but should be done in accordance with the Planning Commission's direction, and include a through factual and legal analysis. (Staff Report, p. 5.)

We disagree that asphalt plants should be allowed in the M1 and M2 zones by right, without the benefit of a use permit.

The M1 Zone is for light industrial uses that can be "In proximity to commercial and residential areas" and that are not "obnoxious by reason of smoke, noise odor, or similar objectionable effects." (Calaveras County Code, Section 17.40.010.) Things like bakeries, nurseries, warehouses, catering companies, and feed stores are allowed by right in this zone. (Calaveras County Code, Section 17.40.020.) By contrast, EIR's on asphalt plants from other counties indicate that asphalt plants can have significant noise, air quality, and traffic impacts. (See Attachments 1 through 5, EIRs parts on Asphalt Plants for Amador and Sonoma Counties with significant and unavoidable impacts to air quality, noise, transportation, greenhouse gases.) Asphalt plants have impacts that are far more analogous to the manufacturing uses that require a use permit in the M2 Zone. For example, plants that manufacture chemicals, fertilizer, glue, plastics, rubber; or process sewage require a use permit in the M2 zone. The Planning Director can and should have determined that asphalt plants require a use permit in the M2 Zone. (Calaveras County Code, Section 17.42.030.) This would make Calaveras County consistent with other counties make that require use permits for asphalt plants, including Amador and Sonoma. (Attachments 6 and 7, EIR parts identifying permit requirement for asphalt plants in Amador & Sonoma counties.)

In addition, when one looks at the County's land use and zoning maps, it is evident that the Planning Director's interpretation could have ludicrous and harmful results. For example, here in San Andreas, there is M2 zoned land adjacent to the Mountain Oaks School. There is also M1 zoned land across the street from the MATC Medical Clinic. (Attachment 8 & 9 - Zoning Maps and photos for school and clinic facility.) Does it really make sense to allow asphalt plants by right, without any use permits, in such close proximity to the young and the ill, who may be at greater risk from harmful air pollution emissions? If it were your hospital, or your grandchild's school, would you want a noisy asphalt plant next door? Would you want kids and ill people trying to cross the road amidst the truck traffic?

If such plants are allowed by right in the M1 Zone, people may justifiable call for changes to the zoning maps to remove existing M1 and M2 zones from near schools, clinics, and residential areas. It would not be good for the local economy to eliminate the potential for so many compatible light industrial developments, simply because the Planning Director made a bad decision regarding asphalt plants.

The staff report correctly notes that the project will subject to a specialized discretionary permit regarding air pollution, and may trigger a conditional use permit requirement to address the use of hazardous materials. (Staff Report, pp. 10 – 11.) If we are going to have to deal with these issues in permits anyway, wouldn't make more sense to address the other asphalt plant issues (like noise and traffic) in a conditional use permit as well? Doesn't it make sense to interpret the code to resolve as many of the issues associated with a project as possible? **We hope that the Planning Commission will overrule the Planning Director's interpretation of the County Code, and call for the Planning Director to require a conditional use permit for asphalt plants in the M1 and M2 industrial zones.**

Furthermore, the issues raised in this appeal call out for a much broader set of remedies than the mere application for a use permit by the project proponent. The issues raised by this appeal go directly to problems that have repeatedly arisen regarding:

> The undue influence of individual County Supervisors on County staff in the performance of their professional duties;
>
> The inadequate pre-deprivation notice afforded county residents and property owners regarding County decisions adversely affecting their health, safety, property rights, property interests, and property values;
>
> The failure to adopt findings of fact that properly draw the connection between supportive substantial evidence in the record as a whole, and the ultimate decision of the County; and
>
> The lack of early and open public processes aimed at finding fair resolutions of valid concerns regarding the health, safety, and wellbeing of County residents, property owners, workers and visitors.

Some in Calaveras County feel that a "business friendly" environment by necessity means one in which the County approves all applications as quickly and as quietly as possible, without any serious regard for the rights or interests of any neighboring residents or property owners.

We at the CPC disagree. Over the past nine years, we have watched while attempts to shortcut approval procedures have repeatedly resulted in highly publicized and justified community discord, adversarial appeals, project delays, project denials, and litigation. (Attachment 10 – Articles re Trinitas, Shooting Center, & Asphalt Plant.) Rather than a "business friendly" environment, the fallout from these "shortcut" procedures has warned-off wise investors and undermined the public's confidence that its government is watching out for its best interests.

We at the CPC strongly believe that good projects and good project proponents will succeed when the rights and interest of both project proponents and local residents alike are openly considered and accounted for in a fair public process. We also feel that collaboration is more likely to result if the early public processes are designed to promote collaboration rather than adversarial confrontations. Below we provide our suggestion for improved Planning Department procedures for making such findings in the future. **We hope that the Planning Commission will begin the process to amend Planning Department procedures to put these reforms in place.**

We at the CPC also believe that many simple projects will be processed more efficiently when the County establishes clear and fair impact mitigation standards and measures that protect public health,

safety, and wellbeing; while also providing safe harbors for project applicants. Unfortunately, the 2014 Draft General Plan provides us with very little hope for such a future. The small glimmer of hope is that the draft plan calls for the development of many impact mitigation measures and standards. However, the plan does not consistently identify the department or departments responsible for doing so. Nor does the draft plan make commitments to perform these tasks at any particular pace (e.g. two a year). Nor does the draft plan make commitments to complete these task by any particular deadline (e.g. within the first five years of plan adoption). Nor does the draft plan provides clear and fair standards for application in the interim. Moreover, the few mitigation standards that do exist in some of the community plans were left out of the 2014 Draft General Plan. **We hope that the Planning Commission will constructively address these draft plan shortcomings during your upcoming general plan hearings.**

Sincerely,

Thomas P. Infusino, Facilitator

Calaveras Planning Coalition

I. An asphalt plant should need a use permit in the M2 Zone.

A) Any and all asphalt plants are not necessarily consistent with purpose of the light industrial zone.

Remember when determining if asphalt plants are allowed by right in the M1 Zone, the question is not, 'Will the applicant's proposed asphalt plant on the applicant's proposed site be "obnoxious by reason of smoke, noise, odor, dust, or similar objectionable effects." (Calaveras County Code, Section 17.40.010.) The question is, "Could any asphalt plant on any M1 zoned land anywhere in the county have those adverse effects?"

The M1 Zone is for light industrial uses that can be "In proximity to commercial and residential areas" and that are not "obnoxious by reason of smoke, noise odor, or similar objectionable effects." (Calaveras County Code, Section 17.40.010.) Things like bakeries, nurseries, warehouses, catering companies, and feed stores are allowed by right in this zone. (Calaveras County Code, Section 17.40.020.) By contrast, EIR's on asphalt plants from other counties indicate that asphalt plants can have significant noise, odor, and traffic impacts. (See Attachments 1 through 5, EIRs parts on Asphalt Plants for Amador and Sonoma Counties with significant and unavoidable impacts to air quality, noise, transportation, greenhouse gases.)

B) Properly conditioned asphalt plants belong with other manufacturing plants in the M2 Zone.

Asphalt plants have impacts that are far more analogous to the manufacturing uses that require a use permit in the M2 Zone. For example, plants that manufacture chemicals, fertilizer, glue, plastics, rubber; or process sewage require a use permit in the M2 zone. The Planning Director can and should have determined that asphalt plants require a use permit in the M2 Zone. (Calaveras County Code, Section 17.42.030.) This would make Calaveras County consistent with other counties make that require use permits for asphalt plants, including Amador and Sonoma. (Attachments 6 and 7, EIR parts identifying permit requirement for asphalt plants in Amador & Sonoma counties.)

The staff report correctly notes that the project will subject to a specialized discretionary permit regarding air pollution, and may trigger a conditional use permit requirement to address the use of hazardous materials. (Staff Report, pp. 10 – 11.) If we are going to have to deal with these issues in permits anyway, wouldn't make more sense to address the other asphalt plant issues (like noise and

traffic) in a conditional use permit as well? Doesn't it make sense to interpret the code to resolve as many of the issues associated with a project as possible? **We hope that the Planning Commission will overrule the Planning Director's interpretation of the County Code, and call for the Planning Director to require a conditional use permit for asphalt plants in the M1 and M2 industrial zones.**

C) Unconditioned asphalt plants in the M1 an M2 zones may harm neighbors.

In addition, when one looks at the County's land use and zoning maps, it is evident that the Planning Director's interpretation could have ludicrous and harmful results. For example, here in San Andreas, there is M2 zoned land adjacent to the Mountain Oaks School. There is also M1 zoned land across the street from the MATC Medical Clinic. (Attachment 8 & 9 - Zoning Maps and photos for school and clinic facility.) Does it really make sense to allow asphalt plants by right, without any use permits, in such close proximity to the young and the ill, who may be at greater risk from harmful air pollution emissions? If it were your hospital, or your grandchild's school, would you want a noisy asphalt plant next door? Would you want kids and ill people trying to cross the road amidst the truck traffic?

D) Application of the Noise Ordinance may be more restrictive than use permit.

The restrictions of the County Noise Ordinance are waived when there are specific conditions applied to a project in a use permit. This is because the noise limits worked out specifically in a use permit are properly tailored to the specific circumstances of the project. Thus, the strict general limitations from the noise ordinance are not needed.

However, when there is no use permit, the strict regulations of the ordinance apply. (Calaveras County Code, Section 9.02.060.) The applicant may be better off getting a use permit with site specific conditions than having to live under the strict limitations of the County Noise Ordinance.

II. The Planning Director's determination is insufficient.

A) Concrete is not asphalt by definition.

The staff report indicates that concrete is not defined in the County Code so that an ordinary use of the word should be applied. The staff report then provides a common definition of concrete that includes both traditional concrete and tar based products. (Staff Report, pp. 4-5.) From this, the staff report concludes that the Planning Director was correct in saying that a concrete plant is the same as an asphalt plant.

However, the County Code states that the "common and approved" usage of words do not apply when words "may have acquired a peculiar and appropriate meaning in the law." (Calaveras County Code, Section 1.04.030.) In addition, the Calaveras County Code incorporates the California Building Standards Code, Title 24, of the California Code of Regulations. (Calaveras County Code, Section 15.04.050.) Neither the current nor the previous definition of concrete in Title 24 include asphalt. (Attachment 11 – Building Code Concrete Definitions) Thus, concrete has a "peculiar and appropriate meaning in the law"

that is recognized by the County Code. That meaning does not include asphalt. Thus, the Planning Director was in error when he determined that a concrete plant and an asphalt plant are the same under the County Code.

B) The Planning Director's finding is inadequate.

The standard of review for administrative findings, like the one made by the Planning Director and the ones to be made by the Planning Commission, were set by the California Supreme Court in *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.) Substantial evidence in the record must support the agency's findings and the findings must support the agency decision. The agency findings must bridge the analytical gap between the raw evidence and the ultimate decision. There must be a sound analytical route between the evidence in the record and the finding made.

The April 30, 2015 letter from the Planning Director neither leads us to the evidence in the record that supports his decision, nor provides us a logical roadmap from that evidence to the ultimate findings. (Staff Report, Attachment 2) **We hope and expect that the Planning Commission's findings following these appeals will provide the requisite explanation.**

It would be an exercise in futility for the Planning Director to try to fabricate a legally defensible finding that an asphalt plant is allowed by right (without a use permit) from the facts and law in this instance. Rather that directing him to do so, **the Planning Commission should rule that a use permit is required.**

III. The Project as a whole needs CEQA review.

When determining if CEQA review is required for a project, the impacts of the whole of the project: its planning, its approval, and its implementation are considered, not merely each individual permit. (CEQA Guidelines, Section 15378; *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263, 283-284.) Thus, the proper procedure when this matter came to the Planning Department would be to consult with all the other County, regional, and state departments that may have to provide a discretionary approval for the entire project. Thus, Public Works, Environmental Health, and any other relevant department would have been able to indicate if the project required them to exercise discretion and if it might have a significant impact on the environment, and if it might qualify for an exemption to CEQA. Because this interdepartmental consultation did not occur, there was confusion as to whether the proposed project is subject to CEQA review.

We agree with the Techel Walker appeal, with the Staff Report, and with the Director of the Environmental Health Department, that the approval of the proposed asphalt plant requires discretionary action on the part of the County, and may have a significant impact on the environment. More factual investigation is needed to determine the proper level of environmental review, and if an exception to CEQA exists for the project. **We urge the County to carefully investigate the facts, to discover the entire scope of the project, and to proceed accordingly with the CEQA review of the entire project.**

IV. A valid general plan is needed to support approval of the asphalt plant.

Over the last nine years we have repeatedly reminded the County that it does not have the authority to approve development projects that have a nexus to substandard aspects of the General Plan. (For example, Infusino, letter to BOS, 4/24/07, p. 5; Infusino, Letter to BOS, 10/5/09, pp. 17-20; Infusino, Letter to Planning Commission, 6/16/11, pp. 2-3; incorporated herein by reference.) As explained in the Calaveras County General Plan Evaluation prepared by Mintier and Associates, the current general plan has numerous substandard aspects in its Land Use, Circulation, Conservation, and Noise elements. (Mintier and Associates, Calaveras County General Plan Evaluation, 10/12/06, incorporated herein by reference.) There is confusion regarding the industrial land use designation. (Mintier, *Ibid.,* p. 24.) There is no clear correlation between the land use and circulation elements, and the circulation diagrams are outdated. (Mintier, *Ibid*., pp. 30-32.) The Noise Element lacks up to date noise contours. (Mintier, *Ibid*., p. 39.) The Safety Element lacks evacuation routes, peak-load water supplies for emergencies, and minimum road widths for emergency vehicle access. (Mintier, *Ibid*., pp. 42-43.)

While there is still much to learn about the details of the proposed asphalt plant, it is very likely that the proposed facility will have a nexus to the aforementioned flaws in the current general plan, as it is in the industrial zone, it will generate traffic and noise, it will need to provide for emergency access, emergency water, and emergency evacuation.

**The wisest option for the Planning Commission is to encourage the applicant to seek project approval after the completion of the General Plan Update.** This would be quicker and cheaper than trying to defend an approval under the current general plan. It would also be very wise for the Planning Commission to give careful scrutiny to the 2014 Draft General Plan Update to ensure that it unequivocally fixes all the substandard problems with the current general plan. A failure to do so will only delay future project proposals.

V. Please establish Fair and Clear Procedures for Planning Director Findings.

A) Begin with a publicly noticed Technical Advisory Committee with public participation.

We have heard many and repeated requests for a “One-Stop-Shop” for project applicants. Whereas other counties have the building space for such an operation, regrettably such facilities are not likely to be available in Calaveras County for some time.

However, we can and have had a Technical Advisory Committee comprised of representatives from Planning, Environmental Health, Public Works, and some emergency responders. They met collectively with project applicants to review issues of concern, to identify the types of permits and conditions needed, and to decide the appropriate level of CEQA review. This process can be enhanced by including the public at this early time of project processing. This gives the applicant and concerned citizens plenty of time to work out issues while the County departments are processing the project application.

B) Notice designed to reach all potentially impacted.

On past occasions we have called to the County's attention the fact that the County Code notice requirements do not serve as a safe harbor for satisfying procedural due process. (For example, Infusino, Letter to Planning Commission, 6/16/11, pp. 8-9; incorporated herein by reference.)

Because a zoning code interpretation could trigger completion of a proposed project at a specified site, we encourage the County to broaden the circle of notice when the impacts are the type that are felt far afield like noise or odors. Because these zoning code interpretations affect not only one local project, but uses allowed at similarly zoned property throughout the county, we strongly encourage the County to provide notice in newspapers of record in the county. When the potential impacts may be felt outside the county (e.g. traffic congestions, water pollution, or air pollution) we strongly encourage the County to provide notices in the newspapers of record in adjacent counties.

C) Public hearing before the Planning Commission.

We encourage the Planning Commission to hold a hearing on the subject before the Planning Director makes the finding regarding the interpretation of the zoning code. This allows all those with useful evidence to provide it to the County prior to the Planning Director's determination. A fair decision is more likely to result of both sides of a story are heard.

D) Proper Findings of Fact

1) Must be properly formatted.

As noted above, findings of fact must meet specified standards. This is not just a paper pushing exercise. By following the proper format, it forces the decision-maker to ensure that his decision is logically sound and supported by evidence. It also provides an explanation of the action to the public, so they can see that the decision is logically sound and supported by facts. Such findings can be useful in convincing people on both sides of an issue that their interests have been protected.

2) Must be made by a decisionmaker without fear of retribution.

Calaveras County has apparently had a recent history of individual Supervisors using their power to hire and fire as leverage to unduly influence Department heads in the exercise of their professional duties. We had two supervisors reprimand a Planning Director for hours in a private meeting after voting publicly in favor of her staff recommendation. She resigned. We had two supervisors privately express their lack of support for a Public Works Director, after publicly voting in favor of his staff recommendation. He resigned. When three Supervisors can fire a Department head on any given Tuesday without cause, individual Supervisors can exert undue influence over specific decisions by Department heads. Department heads need to be free to use their objective professional judgment to protect the health, safety, and wellbeing of the people of Calaveras County, without fear of retribution from political officials.

The Planning Director's determination in this matter is tainted by the fact that one Supervisor urged the Planning Director not only to give the project review priority, but also to "avoid a lengthy examination process." (Attachment 12, Email Kearny to Maurer & Moss.) The result was not merely that the plant got a more expeditious CEQA review. The result was not that the plant merely got a more expeditious route to the well noticed public hearings by Planning Commission or the Board of Supervisors. The result was that the plant was given an approval by right by the unilateral act of one man, that any such plants got approval by right throughout the M1 and M2 zones in the County, and that the public received no notice and no prior hearing on the merits of the decision. It is amazing that the Techel/Walker appellants found out about this back room deal in time to appeal.

Supervisors Kearny, as a planning commissioner, spent more than his fair share of time sitting through sometimes acrimonious hearings regarding controversial projects. I doubt that in his wildest dreams he could have imagined that his email would result the Planning Director's wholesale abandonment of the public process. However, that is just the sort of adverse result that can and did occur, because our public servants' professional judgement is constantly held hostage by three Supervisors, with the power to terminate employment on a whim.

Until Department heads get contracts for a specific term of years, and can only be removed for cause in the interim, we will continue to have overreaching individual supervisors exerting undue influence over public employees. The public should be able to rely upon our Department heads to exercise their objective professional judgement, to protect our health, safety, and wellbeing, without fear of retribution. **We strongly encourage the Planning Commission to recommend to the CAO that the objective judgement of Department heads be given such protection.**

3) Appeal rights should be broadly noticed.

The right to appeal means nothing if the Planning Director's decision is not broadly noticed, and if people are not made aware of their opportunity to appeal the decision. Due process requires notice and meaningful opportunity to be heard. **We at the CPC thank the Planning Commission for holding this appeal hearing and providing people with a meaningful opportunity to be heard.** In the future, we recommend that future Planning Director's determinations regarding the zoning code be broadly noticed in a newspaper of record, along with an explanation of appeal rights. If the determination will result in particular adverse effects to select properties due to their proximity to a proposed project, we encourage the County to notice those property owners directly.

E) Then appeals if necessary.

1) Broadly notice of appeal hearings.

When appeals are filed, we encourage the County to broadly notice the appeals and the appeal hearing dates. These Planning Director determinations affect people in the zones throughout the county. People throughout the county deserve to have a notice and a meaningful opportunity to be heard.

2) Broadly recognize standing.

We at the CPC were particularly disappointed that the original appeal by Joyce Techel of MyValleySprings.com was rejected for lack of standing. Their organizations and members reside and own property throughout the Valley Springs, La Contenta, and Rancho Calaveras areas. They have been consistent participants in land use planning activities in that area, including issues regarding the use of industrial zones. A decision to allow asphalt plants by right in the M2 zone can have adverse impacts on their property interests, as well as the water quality, air quality, traffic, and noise they experience on a regular basis.

We at the CPC understand that the County prevailed in one frivolous case alleging violation of due process and civil rights, brought by parties who received multiple public hearings to address their concerns. However, the threat of such due process and civil rights cases is no less real, simply because the county prevailed in one frivolous suit. In these cases, plaintiffs can use federal civil rights law to strip public officials of their immunity from suit, and make them personally liable for damages. **We strongly urge the Planning Commission to generously allow parties standing to appeal, to provide people with more than sufficient notice of appeal opportunities, and to provide more than an adequate opportunity to be heard.** The risks to you personally, and to our civil rights, are too great not to.

3) Briefing schedule for supplementary written arguments and evidence.

The 15-day appeal period affords the appealing parties only the time to provide basic notice of their intent to appeal, and only minimal opportunity to explain the legal and factual grounds of the appeal. That is followed by days of factual investigation and legal research. Yet the current procedures provide no deadlines for the submission of supplementary arguments and evidence by the appellant, and no deadlines for responding parties to provide supplementary arguments and evidence. This can make the actual hearings chaotic and full of surprises. Such situations can lead to the need for continuances and more delay. **We recommend that the Planning Commission have the Planning Department and County Counsel bring back to them a recommended appeal briefing schedule to reduce the surprise and chaos.**

4) Restrictions on Ex Parte Communications.

After an appeal has been filed, the Planning Commissioners will be hearing the appeal, and the Board of Supervisors are likely to hear the appeal. When acting on an appeal, the Commissioners and Supervisors are in a quasi-judicial mode; that is they act like judges. As judges, they are supposed to make their decision based upon the arguments and evidence provided through the appeals process. They are not supposed to gather evidence or listen to arguments from either side alone. Thus, things like meetings with one side to resolve issues, or field trips to a project site with only one side present, could seriously prejudice the fairness of the appeal hearing. Those hearing an appeal are not supposed to come to any conclusions regarding the appeal before hearing all the evidence and arguments. We strongly encourage the Planning Commission to have County Counsel produce some guidelines for Commissioners and Supervisors to follow once an appeal has been filed. We encourage County Counsel to remind Planning Commissioners and the Supervisors of these guidelines as soon as an appeal is filed.

5) Public Comments submitted with the staff report.

We were dismayed that the original staff report provided to the Planning Commissioners and the public for this appeal did not include the public comment letters on file with the Planning Department as attachments. As we have noted above, these zoning determinations have impacts in the entire zone throughout the County. People have a right to be heard on the way these changes will harm them. The Planning Commission must consider all the facts in the administrative record as a whole when evaluating the Planning Director's determination. **We encourage the Planning Commission to direct the Planning Department to attach all public correspondences to staff reports in the future.** This will help to demonstrate both the County and the Planning Commission's respect for the rights of the public.

F) Please remind individual Supervisors that they are to act as a Board, and to run staff tasks through the CAO's office.

In an effort to build some wall of protection between professional staff and individual political officials, the Board of Supervisors agreed with the CAO to adopt Rule of Procedure 42. It states that individual Board member referrals to staff that involve "a departure from established county or departmental policy" must be fist approved by a majority of the Board. (Board Rules of Procedure, 1/28/14, #42, pp. 10-11.) We encourage the Planning Commission to remind the Board of Supervisors of this rule, and to encourage them to send directions to Department heads through the CAO.

We at the CPC recognize that the Supervisors and department staff will often be together when receiving information from constituents. We also recognize that Supervisors sometimes need quick advice from department staff. These sorts of convenient interactions are allowed under Rule 42. We hope that the individual Supervisors will recognize that they cross the line when they begin to privately and unilaterally direct staff to short circuit required project review and due process procedures. The Board of Supervisors properly exercises its authority when it act as a Board, on matters within its jurisdiction, in public.

VI. In Calaveras County, we must provide our first line of protection.

The project proponent's attorney indicates that the County's procedure for conditional use permits, to protect people's health and safety from the threat of toxic substances, are redundant of state and federal regulations, and therefore are unnecessary. (Kindermann, Letter to Maurer, 4/29/15, pp. 5-6.) That solution is exactly backwards.

Both the police power responsibilities to protect the health, safety, and wellbeing of the good people of Calaveras County; and the jurisdiction to make local land use decisions, rest first and foremost with county government. The principle of subsidiarity, considered by some the most compelling principle of our federalist system, posits that government authority should reside at the lowest level capable of exercising it, not at the highest.

The people of Valley Springs are well aware of the wisdom of the subsidiarity principle. For years they have waited for the State of California to fix the intersection of State Routes 12 and 26. Construction is finally underway. For decades they have waited to the State of California to re-route State Route 12

past the downtown. They are still waiting. For years they have waited for clearance from the federal government to proceed with flood control projects on Cosgrove Creek. They are still waiting. The people of Calaveras County, about 1/840$^{th}$ of the California population, are well aware of the degree to which state and federal agencies can get pre-occupied with the problems of more populous and politically influential regions, while leaving us on our own to address local problems.

The good people of Calaveras County cannot effectively alter or direct the priorities of state and federal regulatory agencies. As a result, we rely on our own Environmental Health Department to protect our health and safety. We rely on our own Public Works Department to protect our roads. We depend on our own Planning Department, Building Department, and Code Enforcement to ensure that our structures are safe and sound. We depend on our County Sheriff and our fire districts to respond to our emergencies. While we at the CPC may not always agree that the efforts of our local agencies are sufficient to protect the people and the environment, we also recognize that the efforts that these agencies do agree to make are indispensable.

If there are state or federal regulations that overlap with our local practices, then it is incumbent upon the project proponent to make arguments to the state and federal governments for regulatory relief. We cannot afford to surrender the sole protection of our local people and resources to overwhelmed state and federal agencies, preoccupied with the interests of those more influential than ourselves. In these challenging fiscal times, every level of government needs to pull together. When it comes to protecting the health, safety, and wellbeing of local citizens; our local governments cannot answer in the affirmative a call to abandon their responsibilities. When it comes to protecting the health, safety, and wellbeing of its citizens; our local governments must lead the way.