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3/15/24

Calaveras County Planning Commission
San Andreas, California
(sent by email)

RE: Implementing the Government Code's group home provisions through the Zoning Ordinance Update.

Dear Commissioners,

At the meetings on March 6 and March 13, we had very productive discussions about the conditions suitable for a single-family use that could become a supportive housing or transitional housing project in the Timber Preserve Zone. The state Department of Housing and Community Development (HCD) has a very helpful technical advisory on the subject. (See Attachment 1.) I believe that all the views expressed during the March 6 and March 13 meetings have great merit and can be harmonized.

1) The Calaveras Planning Coalition (CPC) supports affordable housing.

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 twelve 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.

The CPC has a long history of supporting affordable housing in Calaveras County. We were vocal supporters of the Housing Element updates in 2010, 2015, and 2019. One of our 12 land use principles is, "A range of housing types will be available for people of all income levels." Today, our hope is to harmonize the letter and intent of multiple state statutes for the benefit of the people and lands of Calaveras County.

As we discussed on March 13, and as described in the HCD group home technical advisory, there are many different kinds of group homes serving many different target populations.¹ Some group homes need state licenses to operate, while others do not. Some group homes provide supportive services over a long period of time to residents with permanent disabilities. Other group homes provide transitional housing for a year or so as residents prepare to join (or rejoin) the mainstream community. Group homes may serve residents who are physically disabled, developmentally disabled, emotionally challenged, recovering from drug or alcohol addiction, escaping a violent living situation, or overcoming a combination of these challenges. Residents might be veterans, or recovering addicts, or battered women, or the elderly. Group homes may have residents who are single or who have children. A group home may provide all the services needed by the residents, or it may depend on other service providers to meet some needs.

For example, for four years I volunteered at a faith-based transitional housing program serving single moms and their children in an incorporated city. The transitional housing program provided a free furnished apartment for one year, a sober-living environment, life skills training, a playground, a tomato patch, and a supportive church community. There were off-site service providers for childcare, drug and alcohol counseling, and job search services. The group home also served as a hub for receiving donations of food, clothing, and toys. Calaveras County would be fortunate to have more group homes in community centers.

2) The group home code provisions do not force Calaveras County to allow supportive housing and transitional housing by right in the agricultural preserve and timber preserve zones.

The first questions we confront are these: Do the group home provisions of Government Code, Section 65583, Subd. (c)(3) override restrictions on residential development in agricultural preserve zones and in timber preserve zones? How do we harmonize these potentially conflicting laws?

Your consultant is correct that the code section states:

“Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. Supportive housing, as defined in Section 65650, shall be a use by right in all zones where multifamily and mixed uses are permitted, as provided in Article 11 (commencing with Section 65650).”

Your consultant correctly advised that it is very difficult if not impossible to place conditions on development that will apply to group homes. Such conditions are unlikely to survive the gauntlet

¹ HCD, Group Home Technical Advisory, 2022, p. 5-8.

of policy analyses and legal standards included in HCD's technical advisory.² Fortunately, that is not the end of our analysis.

The next questions we face are these: In the words of the statute, is it "appropriate and legally possible" to allow transitional housing and supportive housing in agricultural preserves and timber preserves? Can the County make "reasonable accommodations" for rural group homes by allowing them by right on the other thousands of acres of forestland and rangeland not encumbered by agricultural preserves and timber preserves? Would this sufficiently promote rural group homes?

As you may know, under the Williamson Act agricultural land owners receive tax reductions in exchange for maintaining their land in open space. As Director Elliot insightfully pointed out, homesites are limited in purpose and number and must be related to the agricultural use of the land. The preserves are generally 100 acres or more.³ Similarly, in the Timber Preserve Zone construction is limited to, "A residence or other structure necessary for the management of land zoned as timberland production."⁴ As noted by planner Gina Kathan during our March 6 meeting, the parcels are generally 160 acres or more.

In the words of the group home provisions of the Government Code, these are the "restrictions that apply to other residential dwellings of the same type in the same zone." It is hard to conclude that a group home is "necessary" for timber production, when most of the timber produced in California is produced without the benefit of a group home. It is also hard to see how a group home is related to the agricultural use of the land. Given these statutory restrictions, the CPC does not believe that it is "legally possible" for the County to allow transitional housing and supportive housing by right in the agricultural preserve zone and the timber preserve zone.

We also feel it is not "appropriate" to require that supportive and transitional housing be allowed by right in agricultural preserves and timber preserves in Calaveras County. As was explained by local firefighters on March 13, many of these lands pose an unreasonable risk to loss of life and property from wildfire. They are in very high wildfire risk areas and distant from firefighting services. Many of these lands do not provide the essential support services needed by the target populations of group homes. Winter travel over the snow and on muddy dirt roads can be difficult for both residents and emergency service providers. Without the proper conditions (that as we noted above are unlikely to be allowed), such development in these areas could pose an unreasonable risk to public safety and welfare. Finally, allowing group homes on isolated parcels does not contribute to the intent of the statute which is to confront the discrimination faced by such projects when proposed in existing residential neighborhoods in existing communities.⁵

² HCD, Group Home Technical Advisory, 2022, pp. 8-23.

³ Government Code, Secs. 51200, et seq.

⁴ Government Code, secs. 51104, Subd. (h)(6).

⁵ "Group homes help their residents live in deinstitutionalized settings and integrate into local **communities**," "State law not only protects them from discriminatory land use policies and practices, it mandates that local governments affirmatively support group homes locating in their **communities**," "The **communities** of choice for many group homes are often single-family **neighborhoods**.]; "They risk continuing the **history of discrimination** against group homes," "As the historical record and California and federal legislative histories confirm, local land

Thus, it is neither “appropriate” nor “legally possible” to force Calaveras County to allow group homes by right in the timber preserve zone and agricultural preserve zone. Therefore, Calaveras County need not do so.

3) The County has properly followed the legislation by allowing group homes by right in residential neighborhoods.

As HCD has stated, the main purpose of the code section is to break down the barriers to group homes in existing residential neighborhoods so that group home residents can integrate into these communities.⁶ In Calaveras County those neighborhoods are in the city of Angels and in unincorporated community centers. There are no residential neighborhoods in the timber preserve zone or the agricultural preserve zone. The nearest neighboring resident may be a mile or more away. There are only large and isolated parcels without the appropriate supportive community setting and services. We should not try to force the legislation into zones where the legislation was never intended to apply. Let’s not try to force a round peg into a square hole.

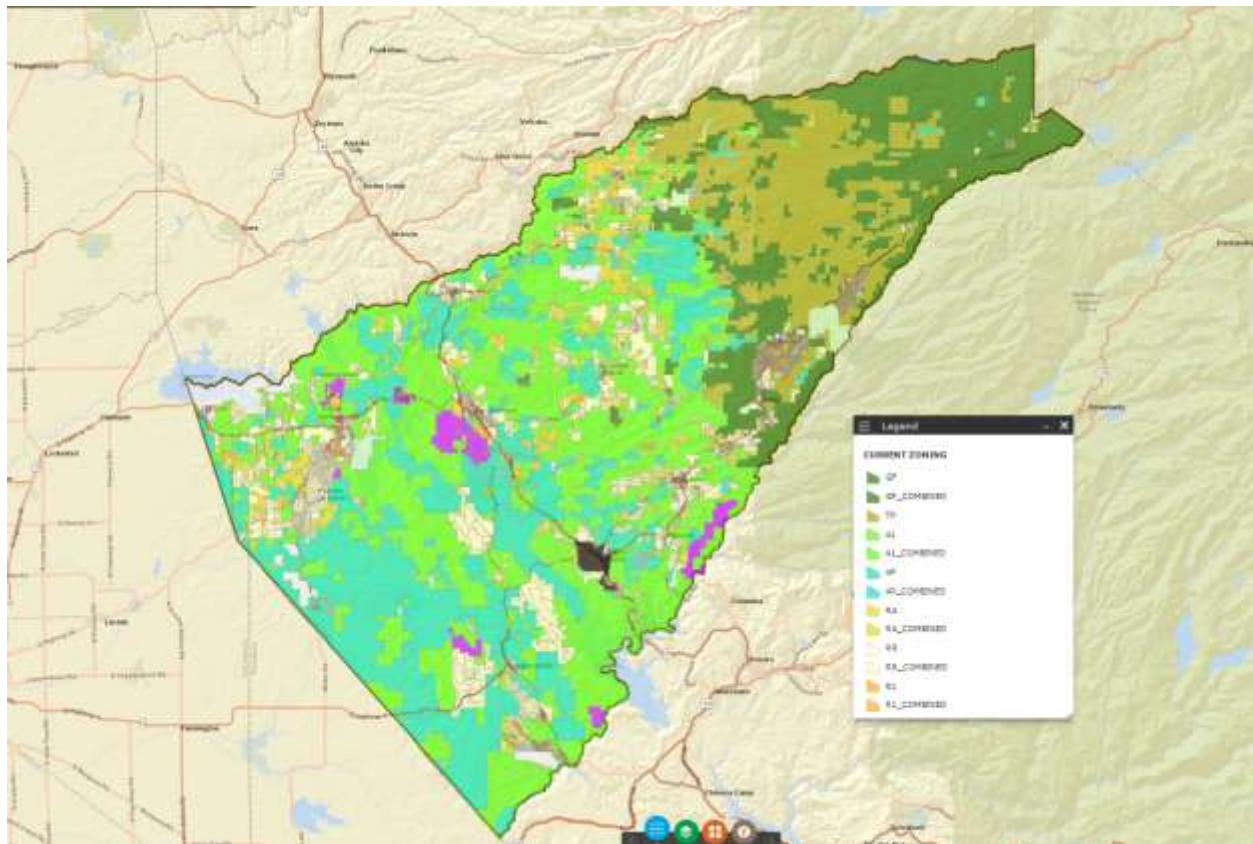
As intended by the state, the 2019 Calaveras County Housing Element protects and promotes the housing rights of persons with disabilities. In addition, the proposed zoning ordinance meets the purpose of the legislation by allowing supportive housing and transitional housing by right in the residential and commercial zones including RR, R1, R2, R3, HC, C1, and C2. Appropriately, providing group homes in existing residential neighborhoods and near community centers will help meet the needs of both disabled persons and other target populations served by group homes.

We recognize that some group homes may want to locate on forest lands or rangelands. Some supportive housing and transitional housing programs serving troubled youth have been successful by isolating youth from bad influences, teaching them job skills, teaching them life skills, and instilling in them constructive social values. If some transitional or supportive housing programs want to locate in the forest or on the range, there are thousands of acres of agricultural land and forest land in Calaveras County **NOT** encumbered in timber preserve zones and agricultural preserves. For example, there are approximately 60,000 acres land zoned agriculture (over 90 square miles) in Calaveras County. Some of these lands are closer to support services in

use laws have too often treated group homes as problems to be avoided or restricted. Local governments’ obligations under state law have been misunderstood as being limited to **avoiding discrimination** and meeting a minimum threshold for fulfilling the locality’s share of regional housing needs for persons with disabilities.” But local governments must go beyond these basic requirements by actively supporting the inclusion of group homes in their **communities** and removing constraints on this housing. This includes, for example, supporting the housing choices of individuals with protected characteristics. Persons with disabilities have the right to live in accessible housing in **the most integrated setting appropriate** to their needs, which includes having access to **disability-related support and services** that individuals need to live in deinstitutionalized settings. (HCD, Group Home Technical Advisory, 2022, pp. 6-8, 11; emphasis added.)

⁶ Ibid.

community centers. (On the map below see the light green areas near Mokelumne Hill, Valley Springs, San Andreas, the City of Angels, Copperopolis and Murphys.)



By allowing group homes by right in these zones, Calaveras County would more than sufficiently accommodate any local demand for rural group homes. By way of comparison, many counties in California (e.g. San Francisco, Santa Clara, Alameda) could not come close to providing such a huge opportunity for rural group homes in excess of local demand. They simply do not have the rangeland and timberland to do so.

4) There is no need for use permits for traditional farm homes, ranch homes, and timberland caretaker cottages on existing parcels.

Land development is a balance between the interests of the public in health, safety, welfare, and environmental integrity and the interest of the owner of the land to do what he wants with his land.

On March 6, some Commissioners expressed the desire **not** to impose discretionary permits on single family dwellings in the TPZ, because it involved too much interference with a person's right to do what he wants with his land.

Generally speaking, building a single-family home on an existing parcel does not involve discretionary permits. You get a building permit, comply with the building code and zoning code standards, and comply with any conditions required by the approval of the subdivision. (As noted above, in the case of Agricultural Preserves and Timber Preserves, there are additional

development restrictions.) While the code standards and conditions are still required to protect the public and future buyers, the lack of need for discretionary permits reflects the desire to let people do what they want with their own land. In Calaveras County, there are also less onerous code requirements for owner-builders to further reflect the same desire to let people do what they want with their own land.

As noted above, there is no need to allow group homes on agricultural preserves and timber preserves by right. If the County removes the risk that a single-family residence will become a group home in the agricultural preserve zone and the timber preserve zone, then there will be no need to require discretionary use permits for a single-family home on a timber preserve or agricultural preserve. In this way we would honor the commissioners' desires to let people do what they want with their own land.

That being said, we support the Commission identifying some additional fire safety standards for residential uses in the TPZ. Perhaps the firefighters who spoke on March 13 would be able to make some useful suggestions or provide acceptable examples.

5) When considering new subdivisions to create new parcels, please consider the zoning ordinance provision from Amador County that seeks to ensure adequate emergency services and adequate emergency access.

New subdivisions are different than existing parcels. People creating five or more new parcels are not going to live on all of those parcels. They are creating new parcels where other people will live. In this instance, the scales tip toward the interest of the state and local government in ensuring the health, safety, and welfare of those future residents and the integrity of their environment. The right of the subdivider to "do what he wants with his own land" has less weight when he is creating parcels and building homes where other people will live.

On March 6, one commissioner expressed a concern that emergency service providers have access to parcels and that residents have an opportunity to evacuate safely. That concern was echoed by the guest speakers on March 13. We at the CPC share that concern. Unfortunately, our County has not adopted a county-wide system of emergency evacuation routes. A recent study by the Calaveras Council of Governments identified over 750 barriers to safe evacuation on the routes most likely to be used by residents. These are consolidated into approximately 250 projects to remove the barriers. (See Attachment 2.) The County has not yet approved or funded a plan to remove these barriers. Even if we are successful in getting all of these projects into the 2026 Regional Transportation Plan (a long shot at best), it is likely to take 20 years or more to complete the projects. I think we all saw the grizzly photos of charred skeletons inside cars stuck during evacuation from the Camp Fire in 2017. Nobody ever wants to see that again.

Please review the attached code provisions from Amador County. (Attachment 3.) These address concerns regarding emergency evacuation and emergency service access to new subdivisions. We hope that you will at some point consider including these or similar provisions in the zoning ordinance or subdivision ordinance to improve the safety and insurability of new homes.

6) Consider consulting the State Department of Housing and Community Development.

If you commissioners or County Counsel are uncertain about the legal interpretation or approach above, it would be prudent to consult the California Department of Housing and Community Development (HCD) to get their interpretation of the law. The next update of the Calaveras County Housing Element will address the implementation of state housing requirements. HCD will need to review and approve the update of the Calaveras County Housing Element. Thus, it would be useful to get HCD's advice **BEFORE** amending the zoning code in a way that HCD might later find objectionable. If you do consult HCD, please let the public know so that we too can provide HCD with factual information that the agency may find useful in its deliberations.

Thank you for your thoughtful consideration of this matter.

With Gratitude,

A handwritten signature in dark ink, reading "Thomas P. Infusino". The signature is written in a cursive, flowing style.

Thomas P. Infusino, Facilitator
Calaveras Planning Coalition

Cc. Planning Director, County Counsel