

*P.Pereira
PO Box 27
Campo Seco, Ca 95226*

*Planning Commission
891 Mt. Ranch Road
San Andreas, California 95249*

June 2, 2015

Dear Chairwoman: Fawn McLaughlin, District 2

Board Members:

Ted Allured: District 1

Lisa Muetterties: District 3

Kelly Wooster: District 4

David Tunno: District 5

In addition Supervisors:

Supervisor: Steve Kearney, District 5

BOS Chairman: Cliff Edson, District 1

*Re: Appeal: Asphalt Plant Hogan Quarry
For the Record: Protest*

I will refer to the newspaper article in the Enterprise dated Tuesday, May 19, 2015 regarding the determination of the Calaveras County Planning Director Peter Maurer that an Asphalt Concrete Plant is a permitted use in the industrially zoned land at the site.

1 of 4

Issue No. 1

There is not an adopted Revised General Plan.

Approval of the Asphalt Quarry would have been approved under the existing General Plan which is inadequate.

I am enclosing a case summary of litigation filed by the Neighborhood Action Group vs the County of Calaveras. California Court of Appeal, 1984/ 156 Cal. App.3d 1176. Copy enclosed.

The Court of Appeals held that:

- 1. A Use Permit is governed by the zoning law, which in turn must comply with the adopted general plan which in turn must conform to state law. When a general plan lacks relevant criteria, the validity of a CUP issued is questionable.*
- 2. EIR prepared for the CUP could not assess the potential noise impacts of the project without noise standards that should be provided by the noise element.*
- 3. According to the Court, the CUP was not issued in the manner required by law since it was based on an inadequate general plan.*

I believe Calaveras County has been working on a Revised General Plan since 2007? It's common knowledge the General Plan is inadequate costing taxpayers over a million dollars with no resolution. Decisions are based on the old existing general plan opening the door to litigation against the County of Calaveras and proponents of projects.

In addition the Concerned Citizens of Calaveras County vs the Board of Supervisors of Calaveras County, March 26, 1985, 166 Cal.App.3d 90, Third District Court of Appeal.

The Calaveras County BOS adopted a new general plan for the county, a writ of mandate filed that the general plan was inadequate. The Third District Court of Appeal concluded that the general plan could not identify substantial shortcomings in the circulation system, further report that no known funding sources (or other alternatives) were available to remedy the problem and still achieve statutorily mandated correlation with its land use element (which provides for substantial population increases) simply by containing a policy that the county will seek funds. Therefore, the Court determined that the land use and the circulation elements were not sufficiently correlated and violated Section 65302(b). Copy enclosed.

These litigation cases are examples that the citizenry needed to make changes and were rewarded by their persistence by the Third District Court of Appeal.

The County has raised the red flag. As a taxpayer, it's aggravating watching the red carpet rolled out as an invitation to litigation. You are repeating past mistakes.

Issue No. 2

Deputy County Counsel Julie Moss-Lewis stated (Enterprise)

The power of appeal is not "conferred on the basis of an organization's general concern about all land within a region".

Freedom of Speech and the contamination of air and water has no boundaries and is the responsibility and scrutiny of every citizen regardless of where you live and work. That's why an EIR is necessary for public review and full disclosure for a CUP. This is an opportunity to review the existing CUP, if there is one, update, revise and improve on standards.

You have a legal issue and case summary. Learn from prior mistakes costing taxpayers money spent on litigation and perhaps future damages based on an inadequate general plan.

Sincerely,



P. Pereira

*Enclosures: Neighborhood Action Group, 1984
Concerned Citizen of Cal. Co., 1985*

*Copies to: Appellants: 1. Dave Eggerton, General Mgr. CCW
Box 846, San Andreas, Ca 95249
2. J. Techel, PO Box 1501, VS 95252*

NEIGHBORHOOD ACTION GROUP V. COUNTY OF CALAVERAS
156 Cal.App.3d 1176
(California Court of Appeal, 1984)

The Facts: In 1980, Teichert Construction Company submitted an application for a conditional use permit (CUP) to the Calaveras County Planning Commission. The application requested authorization to process sand and gravel from hydraulic mine tailings near the town of Jenny Lind. On October 16, 1980, the commission approved the CUP and certified the final environmental impact report (EIR). The Neighborhood Action Group (NAG), an association of taxpayers residing in the vicinity of the project site, appealed the matter to the county board of supervisors. The board upheld the commission's decision.

Subsequently, NAG filed a suit claiming that: 1) the permit was invalid because the county's general plan did not comply with state statute; 2) the EIR was inadequate; and 3) the CUP did not conform to the current general plan. The trial court concurred with the county's contention that the facts submitted by NAG did not justify a lawsuit regarding the first allegation — the issue of an adequate general plan. The two other claims proceeded to trial and the court ruled for the county. NAG appealed.

The Holding: The California Court of Appeal reversed and held as follows:

(1) Upon reviewing relevant law, the Court held that although there is no explicit requirement that the CUP be consistent with an adequate general plan, its validity is derived from compliance with the hierarchy of planning laws — a use permit is governed by the zoning law, which in turn must comply with the adopted general plan which in turn must conform to state law. According to the Court, a general plan that fails to provide the required statutory criteria relevant to the use being sought, will not provide a valid measure by which a permit can be evaluated. Thus, when a general plan lacks relevant criteria, the validity of a CUP issued is questionable.

(2) The Court examined the county noise element and found it lacking. The EIR prepared for the CUP could not assess the potential noise impacts of the project without the noise standards that should be provided by the noise element.

(3) Having established that granting of a CUP must be based on an adequate general plan, the Court sought the legal alternatives available to Neighborhood. The Court noting Section 1094.5(b) of the Code of Civil Procedure, held that an administrative act, such as the issuance of a CUP, may be challenged if the respondent did not proceed in the manner required by law. According to the Court, the CUP was not issued in the manner required by law since it was based on an inadequate general plan.



Governor George Deukmejian



Governor's Office

OFFICE OF PLANNING AND RESEARCH

PARTNERSHIP NEWSLETTER

AUGUST/SEPTEMBER 1985

LAND USE Litigation News

GENERAL PLANS

Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County,
March 26, 1985, 166 Cal.App.3d 90, Third District Court of Appeal.

The Facts: In April 1982, the Calaveras Board of Supervisors adopted a new general plan for the county. Subsequently, a citizens' group, Concerned Citizens of Calaveras County and a resident, James Cox, (plaintiffs), filed for a writ of mandate, alleging that the general plan was inadequate because 1) the circulation and the land use elements were internally inconsistent and insufficiently correlated, 2) solid and liquid waste disposal facilities were not designated, and 3) the plan omitted population density standards for three areas of the county.

The trial court concluded that the circulation element was adequate, the land use element's omission of population density standards rendered it legally inadequate and areas for waste disposal need not be designated in the general plan until they were identified by the county. The Court therefore ordered the county to adopt proper density standards but denied the plaintiffs' request for attorney fees. The plaintiffs appealed.

The Holding: The Court of Appeal affirmed the lower court's ruling on population density standards and on waste disposal designations, but

reversed the remainder of the decision. The Court based its decision primarily on Sections 65300.5 and 65302(b) of the Government Code. Section 65300.5 requires that a general plan and its elements comprise an integrated, internally consistent and compatible statement of policies. Section 65302(b) requires that a general plan contain a circulation element which addresses transportation infrastructure and which is correlated with the land use element.

In reviewing the circulation element, the Court found that one portion of the element indicated that county roads were sufficient to accommodate the projected traffic while another portion of the element described a worsening traffic situation aggravated by continued subdivision activity and development in areas served by inadequate roads. Therefore, the Court found the circulation element internally inconsistent and in violation of Section 65300.5.

Next, the Court examined the issue of correlation between the land use and the circulation elements. The Court interpreted Section 65302(b) to mean that the circulation element must describe, discuss, and set forth standards and

proposals respecting any change in demands on the various roadways or transportation facilities of the county as a result of changes in uses of land contemplated by the plan. The Court noted that the land use element, which provided for substantial growth, did not discuss the potential inadequacy of the roadways nor contain proposals by which growth would be restricted in the event the road system was overwhelmed. At the same time, the circulation element pointed out current and expected deficiencies in the state highways serving the county. Further, the element's only policy involved with rectifying the situation was to "lobby for funds."

The Court concluded that the general plan could not identify substantial shortcomings in the circulation system, further report that no known funding sources (or other alternatives) were available to remedy the problem and still achieve statutorily mandated cor-

relation with its land use element (which provides for substantial population increases) simply by containing a policy that the county will seek funds. Therefore, the Court determined that the land use and the circulation elements were not sufficiently correlated and violated Section 65302(b).

On the matter of attorney fees, the Court awarded the fees noting that the citizens' group should have prevailed in its challenge to the land use and circulation elements.

The Significance: This decision emphasized the land use/circulation correlation requirement in determining the adequacy of a general plan. Cities and counties in reviewing or preparing their general plans should evaluate their circulation plans to check to see if it can accommodate the future traffic demands associated with the uses designated in the land use element.