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Placer County Board of Supervisors  
175 Fulweiler Ave  
Auburn, CA 95603  
Email:

Re: Tiny Houses Zoning Text Amendment, PLN18-00286

Dear Chairman Holmes and Honorable Supervisors:

I write to you on behalf of the Granite Bay Community Association (“GBCA”), a non-profit association of Placer County residents that works to inform the community about upcoming development projects and to defend the integrity of the Granite Bay Community Plan. The GBCA is concerned that Placer County’s proposed Tiny House Zoning Text Amendment (“ZTA”), PLN18-00286, will result in significant and unaccounted-for impacts throughout unincorporated Placer County. The County must appropriately analyze these impacts *prior to* considering the ZTA in order to comply with the California Environmental Quality Act (“CEQA”).

As a lead agency under CEQA, the County has three routes to compliance: (1) an exemption, (2) a negative declaration, or (3) an environmental impact report (“EIR”). As discussed below, the County has mistakenly relied on a statutory exemption that does not actually apply to the proposed ZTA. Because no exemptions apply, the County must prepare a CEQA document. Furthermore, because the facts and reasonable assumptions detailed below support a “fair argument” that the ZTA “may have a significant effect on the environment,” a negative declaration would not be appropriate.<sup>1</sup>

Consequently, the Board must pause its review of the Tiny House ZTA until appropriate environmental review is completed. Additionally, because the Tiny House ZTA would likely result in significant impacts throughout unincorporated Placer County, the GBCA requests that the environmental review process include a full EIR.

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<sup>1</sup> *Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903, 927-28 (2004).

**1. The CEQA Exemption Cited by the County Does Not Apply to the Tiny House ZTA.**

The Development Review Committee asserts that the proposed ZTA “is exempt from CEQA pursuant to CEQA Guidelines Section 15282(h),” which exempts the “adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code.”<sup>2</sup> In order to determine whether an exemption applies, however, lead agencies “must rely on the actual statutory language that creates the exemption.”<sup>3</sup>

As a threshold matter, only Section 65852.2 of the Government Code is relevant here.<sup>4</sup> By its own terms, Section 65852.2 only applies to “accessory dwelling units” (“ADUs”)—“attached or detached residential dwelling unit[s] which . . . include *permanent provisions* for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.”<sup>5</sup> The tiny houses contemplated by the ZTA, however, are by their very design and definition *impermanent*. Tiny houses are mounted on “wheeled trailer chassis” and are “titled and registered to tow legally under the California Department of Motor Vehicles.”<sup>6</sup> Thus, even if their owners move them infrequently, tiny houses on wheels do not provide “permanent [living] provisions” and do not fall under the purview of Section 65852.2.

Courts are directed to construe exemptions narrowly. “Since a determination that a project falls within a[n ] exemption excuses any further compliance with CEQA whatsoever, we must construe the exemptions narrowly in order to afford the fullest possible environmental protection . . . . These rules ensure that in all but the clearest cases . . . , a project will be subject to some level of environmental review.”<sup>7</sup> Because the Tiny House ZTA clearly does not implement provisions of Section 65852.2, the ZTA cannot avail itself of that section’s CEQA exemption.

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<sup>2</sup> Development Review Committee Memorandum (October 25, 2018) (“DRC Memo”) at 1.

<sup>3</sup> CEQA Guidelines § 15282.

<sup>4</sup> See Gov. Code §§ 65852.1, 65852.2.

<sup>5</sup> Gov. Code § 65852.2 (emphasis added).

<sup>6</sup> DRC Memo at 3.

<sup>7</sup> *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.

**2. Because Tiny Houses on Wheels Are Not Required to Comply with County Building Codes, Their Impacts Would Go Unregulated.**

As discussed above, the County is attempting to treat tiny houses on wheels as ADUs in order to exempt the proposed ZTA from CEQA review.<sup>8</sup> Such an exemption would be improper, however, because tiny houses on wheels have the potential to impact surrounding neighborhoods in ways that ADUs do not. For example, State law requires ADUs to comply with all relevant local building code requirements.<sup>9</sup> As tiny houses on wheels are not ADUs, however, they escape this mandate.

Indeed, one of the primary reasons tiny homes are built on wheeled trailers and registered with the DMV is to allow their owners to bypass minimum housing standards.<sup>10</sup> Without building codes, however, there is no way to guarantee that tiny houses on wheels will not threaten public health and safety or dramatically alter the character of the communities they occupy. There would be no meaningful oversight of the houses' electrical systems, plumbing systems, or structural design, and affected neighbors would have few avenues of redress.<sup>11</sup>

Critically, the potential for these negative impacts is only made more significant by the scope of the proposed ZTA. The County zoning code by definition does not apply to incorporated portions of Placer County, and the ZTA would further exclude the Tahoe Basin from its reach.<sup>12</sup> Thus, if the ZTA were to pass, it would funnel all tiny homes on wheels in Placer County to just 22 percent of the County's landmass. Communities such as Granite Bay would become hotspots of development for largely unregulated tiny homes, and would therefore bear the brunt of the health and safety impacts that come with unregulated development. Additionally, if the County expands the ZTA to include other types of trailers (as the Planning Commission discussed at its most recent hearing), it would threaten to upend the entire character of rural, single-family residential neighborhoods by turning them into de facto trailer parks.

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<sup>8</sup> See DRC Memo at 1.

<sup>9</sup> Gov. Code § 65852.2(a)(1)(D)(viii).

<sup>10</sup> See, e.g., *Lots and Parking for Tiny Homes*, Tiny House Media, LLC, available at <https://tinyhousetalk.com/parking-for-tiny-homes/>; see also DRC Memo at 3 ("The California Department of Housing and Community Development classifies tiny houses as park trailers or recreational vehicles.")

<sup>11</sup> See, e.g., DRC Memo at 6 (admitting that neighbors would need to rely on zoning code enforcement if tiny houses become a problem); see also Placer County Code Ch. 15.

<sup>12</sup> See DRC Memo.

**3. Substantial Evidence Supports a Fair Argument That Insufficient Code Enforcement Would Allow Significant Impacts to Go Unaddressed.**

The County assumes that potential environmental impacts will be addressed through code requirements for tiny houses. For instance, the County claims that aesthetics will not be an issue because the code requires tiny houses to look like standard homes and to comply with setbacks. The County also claims that potential hazards, such as electrical fires or inadequate sewage disposal, will be addressed by requiring utility hook-ups. While CEQA generally permits agencies to assume compliance with rules and regulations, this assumption is not valid here, as described below. For this reason, the aesthetic and public safety impacts from tiny homes on wheels are potentially significant and must be addressed in an EIR.

Specifically, the County Planning Commission admitted in its October 25 memorandum to this Board that zoning code enforcement would be the lone avenue of redress if Placer County homeowners are negatively impacted by tiny houses on wheels.<sup>13</sup> The County's Code Enforcement Division, however, is already overburdened; it is simply unequipped to deal with the additional potentially significant impacts to neighborhood aesthetics, health, and safety that a flurry of tiny houses on wheels could induce.

A 2016 Grand Jury report found that the Code Enforcement Division had been "neglected by its parent department, the Placer County Community Development Resources Agency," and that as a result, officers faced a growing backlog of cases (as high as 80 to 100 in any given month), the office was left "unattended during regular business hours," and citizen complaints were met with slow responses.<sup>14</sup> The situation was so dire that the Grand Jury was forced to recommend interim solutions—such as implementing a "simple spreadsheet" to track complaints—until better and more permanent management practices could be implemented.<sup>15</sup> It is not at all clear that these issues have been remedied.

It is simply unfathomable that the County could funnel potentially significant impacts into a very small subset of the entire county and provide no means of redress except for an already-overburdened system of citizen-driven complaints. Such an approach could not only allow significant impacts to develop in the first place, but would

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<sup>13</sup> DRC Memo at 6.

<sup>14</sup> *Placer County Code Enforcement Complaint Feedback and Tracking: Inconsistency and Confusion*, Placer County Grand Jury, June 23, 2016 at 1, 4.

<sup>15</sup> *Id.* at 6.

also allow them to fester. In order to avoid burdening communities like Granite Bay with the potentially significant impacts of tiny houses on wheels, the County needs to conduct complete and thorough environmental review to determine which impacts are likely to be significant and to develop appropriate mitigation measures.

**4. The County Must Analyze the ZTA's Consistency with the Granite Bay Community Plan.**

In February 2012, this Board of Supervisors adopted the current Community Plan for the unincorporated community of Granite Bay.<sup>16</sup> The Granite Bay Community Plan is one of sixteen similar Community Plans that serve as local extensions of the Placer County General Plan, establishing the long-range land-use planning goals of their respective communities and developing specific policies to ensure that each community attains those goals.<sup>17</sup>

Under California law, zoning ordinances must be consistent with all applicable general and specific plans.<sup>18</sup> To date, however, the County has neglected the Granite Bay Community Plan, and has failed to analyze the proposed ZTA's consistency therewith. Instead, the County appears to have assumed consistency with relevant Community Plans, even as the proposed ZTA threatens to funnel siting of tiny homes on wheels away from certain communities and into others, potentially altering the character of those neighborhoods.

The GBCA is concerned that Granite Bay would become a hotspot for tiny houses on wheels if the proposed ZTA passes without further review or modification. In order to preserve the character of Placer County's unique communities and to ensure that those communities can attain the land use goals they have collaboratively developed with the County, the GBCA urges the County to exempt the Granite Bay area from the ZTA's scope, just like the Tahoe Basin. And to the extent the County denies this request, it must prepare an EIR to study the potentially significant inconsistencies between the ZTA and the Community Plan.

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<sup>16</sup> Granite Bay Community Plan (February 2012), available at <https://www.placer.ca.gov/departments/communitydevelopment/planning/documentlibrary/commpplans/granitebaycp>.

<sup>17</sup> Placer County General Plan and Community Plans, County of Placer, <https://www.placer.ca.gov/departments/communitydevelopment/planning/documentlibrary/commpplans>; see also Granite Bay Community Plan at 1-3.

<sup>18</sup> Gov. Code § 65850.

**Conclusion**

Placer County's proposed Tiny House Zoning Text Amendment mistakenly relies on a statutory exemption to the California Environmental Quality Act, and as a result the County has not yet considered the potentially significant impacts that the ZTA may have on affected communities. In light of the foregoing, the Board must pause its review of the Tiny House ZTA until appropriate environmental review is completed. Additionally, because the Tiny House ZTA would likely result in significant impacts throughout unincorporated Placer County, the GBCA requests that the environmental review process include a full EIR.

Please feel free to contact me should you have any questions.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Sara A. Clark