



COMMUNITY DEVELOPMENT SERVICES

PLANNING & BUILDING DEPARTMENT

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Date: December 4, 2018
To: Board of Supervisors
From: Anne Novotny, Deputy Director of Planning
Re: Certification of the CEQA Addendum to the TGPA-ZOU Final Program EIR

TITLE / DEPARTMENT RECOMMENDATION

Community Development Services, Planning and Building Department, recommending the Board:

1. Certify the California Environmental Quality Act (CEQA) Addendum to the El Dorado County Targeted General Plan Amendment/Zoning Ordinance Update (TGPA/ZOU) Final Program Environmental Impact Report (EIR) that (a) revises responses to comments O-1-54 to O-1-58, O-1-62, O-1-70, I-37-14, I-37-16, I-37-23, and I-37-24; and, (b) revises the Executive Summary Section ES.5 (Potential Areas of Controversy/ Issues to be Resolved) to fairly present the disagreement between the County and the California State Board of Forestry and Fire Protection (Exhibit A); and
2. Adopt and authorize the Chair to sign Resolution XXX-2018, which certifies the CEQA Addendum to the Final Program EIR (FEIR) for the Targeted General Plan Amendment and Zoning Ordinance Update (Exhibit B).

FUNDING: General Fund

DISCUSSION / BACKGROUND

On December 15, 2015, the Board of Supervisors adopted Resolution 195-2015, certifying the Final Program EIR for the TGPA/ZOU.

On April 25, 2018, the El Dorado County Superior Court held a hearing in Department 9 on the case entitled Rural Communities United v. El Dorado County Board of Supervisors (Case No. PC-20160024). The Honorable Judge Stracener made a tentative ruling in which the Court ordered partial decertification of the Final Program EIR for the TGPA/ZOU only to the responses to comments O-1-54 to O-1-58, O-1-62, O-1-70, I-37-14, I-37-16, I-37-23, and I-37-24 (in the FEIR Chapter 9, Responses to Comments), and the portion of the FEIR [Executive Summary Section ES.5 (Potential Areas of Controversy/Issues to be Resolved)] related to the disagreement between the California State Board of Forestry and Fire Protection and the County concerning the project and the requirements to comply with Government Code, Sections 65302(G)(1) and 65302(G)(3)(C); and otherwise rejected all of Petitioner's claims.

On May 16, 2018, the El Dorado County Superior Court signed, filed and served on the parties its final Ruling Following Oral Argument that adopted its tentative ruling as the final ruling with minor modifications and corrections and a few additional comments/rulings on some of the oral arguments made at the hearing.

On July 25, 2018, the Court signed and filed a formal judgment that did not change any of the provisions of the final Ruling Following Oral Argument and issued a writ of mandamus. The writ directs the County to (a) partially decertify the EIR only as it relates to the specific responses to comment numbers O-1-54 to O-1-58, O-1-62, O-1-70, I-37-14, I-37-16, I-37-23, and I-37-24, and, (b) partially decertify the portion of the EIR [Executive Summary Section ES.5 (Potential Areas of Controversy/Issues to be Resolved)] related to the disagreement between the California State Board of Forestry and Fire Protection and the County concerning the project and the requirements to comply with Government Code Sections 65302(g)(1) and 65302(g)(3)(c).

On September 18, 2018, as directed by the writ of mandate, the Board of Supervisors adopted Resolution 197-2018 which decertified specific limited components of the TGPA/ZOU Final Program EIR as follows: only as to (a) the specific responses to comments O-1-54 to O-1-58, O-1-62, O-1-70, I-37-14, I-37-16, I-37-23, and I-37-24; and, (b) Executive Summary Section ES.5 (Potential Areas of Controversy/Issues to be Resolved). All remaining portions of the FEIR remain certified and all TGPA/ZOU project approvals remain valid.

To comply with the directions of the writ of mandate, the County drafted a CEQA Addendum to the El Dorado County TGPA/ZOU Final Program EIR which includes clarified and revised responses to comments O-1-54 to O-1-58, O-1-62, O-1-70, I-37-14, I-37-16, I-37-23, and I-37-24 and a revised Executive Summary Section ES.5 (Potential Areas of Controversy/Issues to be Resolved). Although CEQA provides that the failure to include a summary in an EIR is not a cause of action (Public Resources Code Section 21061), the County is amending the Executive Summary to include the disagreement with the California State Board of Forestry and Fire Protection as directed by the Court.

The Addendum consists of clarifications and minor revisions and additions that do not rise to the level of significance that would require recirculation under CEQA statutes and guidelines; however, in the interest of transparency, the County released the CEQA Addendum for public review and comment.

On September 27, 2018, the County released a Notice of Availability (NOA) of an Addendum to the El Dorado County TGPA/ZOU Final Program EIR for public and agency review and comment for a 14-day period ending at 5:00 PM on Thursday, October 11, 2018. The County received letters with written comments submitted by one agency, the California State Board of Forestry and Fire Protection, and one organization, Rural Communities United (RCU).

The proposed action today is in response to the directions in the writ. Staff is requesting the Board of Supervisors certify new responses to the specific comment numbers identified in the writ and the explanation of the disagreement between the California State Board of Forestry and Fire Protection and the County. The County will return to the Court with the new responses to demonstrate compliance with the writ.

The remaining portions of the EIR are and remain certified. All other actions the Board of Supervisors took on December 15, 2015 are and remain in effect.

Responses to Comments Received during the Public Review Period of the CEQA Addendum

Response to the October 9, 2018 letter from the California State Board of Forestry and Fire Protection

The California State Board of Forestry and Fire Protection's letter of October 9, 2018 (see Exhibit C) discusses the review authority of the Board of Forestry when local governments amend their safety elements. The TGPA/ZOU did not amend the County's Public Health, Safety, and Noise Element, and as a result there was no amendment for the Board of Forestry to review. As the trial court noted, the Board of Forestry review was not required (Decision, page 227). The trial court also concluded that the County's safety element complied with state law (Decision, page 231). Accordingly, the trial court did not require any modification of the County's Public Health, Safety, and Noise Element and consideration now of additional amendments is beyond the scope of the trial court writ. In terms of the County's overall planning efforts, the County is in the process of updating its Housing Element for 2021 – 2029. By statute, this housing element update requires the County to also review and update its safety element and to submit its safety element to the Board of Forestry for review. The County will comply with these statutory requirements.

The Board of Forestry also expressed confusion over the effect of the TGPA/ZOU on land use densities and intensities. The TGPA/ZOU did not amend the maximum land use densities or intensities previously established in the 2004 General Plan with the limited exception of the Mixed Use Development Density (General Plan Policies 2.1.1.3 and 2.1.2.5). Changes to these policies would increase the maximum density for the residential portion of mixed use projects in Community Regions from 16 to 20 dwelling units per acre to be consistent with 2009 amendments to State planning law (Government Code Section 65583.2(c)(B)(3)) and from four (4) to 10 units per acre in Rural Centers. As part of the environmental analysis in the TGPA/ZOU Environmental Impact Report (EIR), County staff evaluated the potential for increased residential development of mixed use projects at 257 units, approximately one percent (1%) more growth than what would occur without the TGPA/ZOU. (FEIR Section 8.5, Master Response 4: Scope of the Project; Legistar File 11-0356: Staff Report 18K, page 93 of 169). As stated in the TGPA/ZOU EIR, "...the amended General Plan would not substantially increase the residential development potential that presently exists under the General Plan."

The reasoning for the limited additional development potential was disclosed in the EIR, and while outside the scope of the trial court writ, can be summarized as follows. Although the TGPA/ZOU does allow a maximum of 20 residential units per acre for mixed use development in Community Regions and 10 residential units per acre for mixed use development in Rural Centers, all mixed use development is subject to a Design Review Permit and to the Mixed Use Design Manual standards (Zoning Code Section 130.40.180 Mixed Use Development). This density of mixed use is limited to lands with commercial or multi-family General Plan land use designations within Community Regions that can be served with water, sewer, and roadway infrastructure (General Plan Policy 2.1.1.3). Under the mixed use development provisions, it is foreseeable that some eligible parcels in Community Regions and Rural Regions might be developed at densities of up to 20 and 10 units per acre, respectively, by employing the mixed use design standards. However, as discussed in the Final EIR Master Response 4: Scope of the Project and Master Response 5: Practical Constraints on Future Development Under the TGPA/ZOU, this would result in only a small incremental increase in residential units even in the unlikely event that all available parcels were to develop at full density. Such an outcome is unlikely because, as noted in Master Response 4, past use of the mixed use development option has been limited. Between 2005 and 2015, the County received

only two or three applications for mixed use development for a total of 15 residential units. In the interest of disclosure, the environmental analysis assumed that anticipated development would occur at the maximum density allowable under the General Plan.

Policy 7.1.2.1 changes the prohibition on development on slopes over 30 percent to a restriction on development on such slopes. However, no change is being made to the underlying General Plan land use designations that determine development density and intensity. Under the changed Policy 7.1.2.1, development may be allowed where it meets the requirements of Zoning Code Section 130.30.080 (Hillside Development Standards; 30 Percent Slope Restriction), including grading, erosion control, and alternative wastewater system design. Changes to restrictions on development on slopes will, under some circumstances, enable development that would not have been allowed under the prior General Plan and Zoning Ordinance. However, because of the practical constraints on development on slopes, as discussed in Final EIR Master Response 5, the changed restrictions are not expected to result in a substantial amount of new development on slopes. Most development will continue to occur on flatter lands where such additional restrictions do not apply. In any case, the development projections on which the environmental analysis relied presented a worst-case scenario that assumed most existing parcels would be developed in the future, including those containing slopes in excess of 30 percent.

The Final EIR is clear regarding the impacts of the TGPA/ZOU. The analysis in the Final EIR is based on projected build-out to the horizon date. In fact, because of the practical limitations on development described in Final EIR Master Response 5, the Final EIR may actually overstate the impacts of the TGPA/ZOU.

The Board of Forestry also expressed concern as to whether sufficient wildfire safety requirements are in place given the Board of Forestry's perceived regulatory changes and density and intensity changes. As already noted above, the TGPA/ZOU left in place the pre-existing General Plan land use densities and intensities with the limited exception of the Mixed Use districts. While further debate over the County's fire safety requirements is beyond the scope of the trial court writ, the County provides the following information as to existing wildfire planning and regulatory requirements. First, the trial court determined that the County's safety element lawfully addressed the requirements of state planning law ("to address in the safety element evacuation routes, minimum road widths, structural clearance standards, and emergency water supply requirements." (Decision, page 231).

More to the point, the County General Plan contains numerous policies relating to reducing fire hazard. They are set out in the Addendum and repeated here for the reader's convenience.

- Policy 6.1.1: The El Dorado County Multi-jurisdictional Local Hazard Mitigation Plan (LHMP) shall serve as the implementation program for the coordination of hazard planning and disaster response efforts with the County and is incorporated by reference in this [Public Health, Safety, and Noise] Element.
- Policy 6.2.1.1: Implement Fire Safe ordinance to attain and maintain defensible space through condition of tentative maps and in new development at the final map and/or building permit stage.
- Policy 6.2.1.2: Coordinate with the local Fire Safe Councils, California Department of Forestry and Fire Protection, and federal and state agencies having land use jurisdiction in El Dorado County in the development of a countywide fuels management strategy.

- Policy 6.2.2.1: Fire Hazard Severity Zone Maps shall be consulted in the review of all projects so that standards and mitigation measures appropriate to each hazard classification can be applied. Land use densities and intensities shall be determined by mitigation measures in areas designated as high or very high fire hazard.
- Policy 6.2.2.2: The County shall preclude development in areas of high and very high wildland fire hazard or in areas identified as “urban wildland interface communities within the vicinity of Federal lands that are a high risk for wildfire,” as listed in the Federal Register of August 17, 2001, unless such development can be adequately protected from wildland fire hazard, as demonstrated in a Fire Safe Plan prepared by a Registered Professional Forester (RPF) and approved by the local Fire Protection District and/or California Department of Forestry and Fire Protection.
- 6.2.3.1: As a requirement for approving new development, the County must find, based on information provided by the applicant and the responsible fire protection district that, concurrent with the development, adequate emergency water flow, fire access, and fire fighting personnel and equipment will be available in accordance with applicable State and local fire district standards.
- 6.2.3.2: As a requirement of new development, the applicant must demonstrate that adequate access exists, or can be provided to ensure that emergency vehicles can access the site and private vehicles can evacuate the area.
- 6.2.3.4: All new development and public works projects shall be consistent with applicable State Wildland Fire Standards and other relevant State and federal fire requirements.
- 6.2.4.1: Discretionary development within high and very high fire hazard areas shall be conditioned to designate fuel break zones that comply with fire safe requirements to benefit the new and, where possible, existing development.
- 6.2.4.2: The County shall cooperate with the California Department of Forestry and Fire Protection and local fire protection districts to identify opportunities for fuel breaks in zones of high and very high fire hazard either prior to or as a component of project review.
- 6.2.5.1: The County shall cooperate with the U.S. Forest Service, California Department of Forestry and Fire Protection, and local fire districts in fire prevention education programs.
- General Plan Implementation Measure HS-B states that the County will “[w]ork with the local FireSafe Councils, fire protection districts, U.S. Forest Service, and California Department of Forestry and Fire Protection to develop and implement a countywide Wildfire Safety Plan.”

Under Government Code Section 65302.6, “[a] county may adopt with its safety element pursuant to subdivision (g) of Section 65302 a local hazard mitigation plan (HMP) specified in the federal Disaster Mitigation Act of 2000 (Public Law 106-390).” General Plan Policy 6.1.1 adopts the County’s Multi-jurisdictional Local Hazard Mitigation Plan (LHMP) to, among other things, address ingress and egress. Policy 6.1.1 states that the LHMP “shall serve as the implementation program for the coordination of hazard planning and disaster response efforts with the County and is incorporated by reference in this

[Public Health, Safety, and Noise] Element.” The LHMP sets goals and implementation strategies to coordinate multi-agency evacuation route planning, as well as tracking the status of evacuation route planning and maintenance efforts within individual jurisdictions in the County. The LHMP also addresses minimum road widths, structural clearance standards, and emergency water supply requirements when it cites the State's Fire Safe Regulations, established pursuant to Public Resources Code sections 4290 and 4291, as the County's method of implementing fire safety regulations in the County since 1993. Pursuant to Public Resources Code sections 4290 and 4291, CalFire adopted the Fire Safe Regulations which set standards for: (1) road design and signage to allow for fire equipment access and road identification; (2) minimum water supply for emergency fire use; (3) fuel breaks and greenbelts; and (4) minimum defensible space around habitable structures. The County respectfully disagrees with the Board of Forestry to the extent the Board believes that the County lacks sufficient policies, regulations and standards as required by law or to address safety considerations in areas at risk for wildland fires.

Response to Comments by Rural Communities United (Thomas Infusino), October 11, 2018

The comments submitted by Rural Communities United (RCU) (see Exhibit E) address a variety of concerns and questions, many of which do not pertain to the specific responses to comment numbers O-1-54 to O-1-58, O-1-62, O-1-70, I-37-14, I-37-16, I-37-23, and I-37-24, or the EIR [Executive Summary Section ES.5 (Potential Areas of Controversy/Issues to be Resolved)] related to the disagreement between the California State Board of Forestry and Fire Protection and the County. In response to the El Dorado County Superior Court writ, the County has prepared additional and augmented responses to these specific comments and has augmented the Executive Summary. The Addendum containing these changes is not intended to present substantive impact analyses and mitigation. The Addendum does not contain any new mitigation measures, and no new General Plan policies are proposed. Many of RCU comments on the Addendum relating to CEQA mitigation and how an existing policy (unmodified by the TGPA/ZOU Project) may function to reduce or avoid Project impacts are not within the scope of either the Project, the EIR, the litigation, or the writ, and for these reasons are not addressed in the Addendum.

Comments regarding the content and timeline of the notice for the Addendum (RCU letter, page 1):

The County issued the Notice of Availability (NOA) for this Addendum as a service to the public. CEQA Guidelines Section 15164 (Addendum to an EIR) does not require the County to issue any notice, other than what might be reflected in a posted agenda, prior to consideration of an addendum. Therefore, there is no required content or timeframe for such notice. The NOA issued by the County contains sufficient information to advise the public in advance that the Board of Supervisors will consider this Addendum to the Final EIR, and to provide the public the opportunity to review and provide written comments on the Addendum. The County's efforts went beyond the requirements of CEQA. The commenter states that it would be better to have done a Supplement to the EIR. The County's reasons for doing an Addendum and not a Supplement are detailed in the Introduction to and on page 7 of the Addendum. No new impacts or mitigation measures are identified in this Addendum, which solely addresses the Court's direction on the responses to a limited number of comments on the EIR.

Public Notification of the NOA: The commenter states that “the standard for adequacy of an EIR is that it be a good faith effort at full disclosure. (CEQA Guidelines, sec. 15151.)” (RCU letter, page 2). The County released an Addendum to the TGPA/ZOU Final EIR. According to state law, “an addendum need not be circulated for public review but can be included in or attached to the Final EIR or adopted negative

declaration.” (CEQA Guidelines Section 15164(c)). The County’s public release of the FEIR Addendum exceeds this legal requirement. Nevertheless, in the public interest, the County chose to release the FEIR Addendum for public review to provide an opportunity for the public to review and comment on the document. Even though the County was not required to circulate the Addendum for public review, the County used the following methods to circulate the NOA (See Exhibit F):

- Posted on the County website on the Planning Services home page; Long Range Planning home page; TGPA-ZOU project webpage
- GovDelivery Notice sent via email to the Long Range Planning News/Updates (1,429 subscribers)
- Posted at the public entrances to County Buildings A, B & C in Placerville
- Filed and posted at the County Clerk’s Office
- Distributed to the County’s main library in Placerville and branches in Cameron Park, El Dorado Hills, Georgetown, Pollock Pines, and South Lake Tahoe
- Certified mail and email to Thomas P. Infusino and Edith Hannigan at the California State Board of Forestry and Fire Protection
- Emails to Board appointed committees, agencies, interested parties including: TGPA/ZOU project database email list (over 300); El Dorado County Community and Economic Development Advisory Committee; Community and Economic Development Advisory Committee of Pollock Pines; Diamond Springs/El Dorado Community Advisory Committee; Cameron Park Design Review Committee; Pollock Pines Design Review Committee; Chambers of Commerce (El Dorado County, El Dorado Hills, Georgetown Divide, Shingle Springs/Cameron Park); Cameron Park Community Services District; El Dorado Hills Community Services District; El Dorado Hills Area Planning Advisory Committee; El Dorado County Transportation Commission; El Dorado County Transit Authority; El Dorado County Farm Bureau; El Dorado County Office of Education
- Emails to Board of Supervisors, Planning Commissioners, and County departments including: Chief Administrative Office; Board Clerk’s Office; Agriculture; and Planning and Building
- Press Release distributed to news media/social media (Facebook, Twitter); posted on County website (home page, County News); emailed to Board of Supervisors

Wildfire Policies and Risks: The commenter identified a number of questions and concerns with respect to pre-existing County safety policies (RCU letter, page 2). These policies were not amended by the TGPA and are not subjects of the writ in terms of required changes to County documents. Thus, the commenter’s questions, criticisms and suggestions for new policies or implementation measures are outside the scope of the County’s return to the writ and were outside the scope of the TGPA from its outset. These pre-existing policies were identified as part of the basis for the County’s decision to take no further action in light of the Board of Forestry’s earlier comment letter dated July 17, 2014 (see Exhibit D).

County Fire Safety Planning: The commenter makes reference to 11 fire safety policies under the goal to “minimize fire hazards and risks.” (RCU letter, page 2). These 11 policies are under General Plan Goal 6.2: FIRE HAZARDS and are listed below. These policies were part of the General Plan prior to the TGPA and were not modified as a part of the TGPA/ZOU Project.

- Policy 6.1.1: The El Dorado County Multi-jurisdictional Local Hazard Mitigation Plan (LHMP) shall serve as the implementation program for the coordination of hazard planning and disaster

response efforts with the County and is incorporated by reference in this [Public Health, Safety, and Noise] Element.

- Policy 6.2.1.1: Implement Fire Safe ordinance to attain and maintain defensible space through condition of tentative maps and in new development at the final map and/or building permit stage.
- Policy 6.2.1.2: Coordinate with the local Fire Safe Councils, California Department of Forestry and Fire Protection, and federal and state agencies having land use jurisdiction in El Dorado County in the development of a countywide fuels management strategy.
- Policy 6.2.2.1: Fire Hazard Severity Zone Maps shall be consulted in the review of all projects so that standards and mitigation measures appropriate to each hazard classification can be applied. Land use densities and intensities shall be determined by mitigation measures in areas designated as high or very high fire hazard.
- Policy 6.2.2.2: The County shall preclude development in areas of high and very high wildland fire hazard or in areas identified as “urban wildland interface communities within the vicinity of Federal lands that are a high risk for wildfire,” as listed in the Federal Register of August 17, 2001, unless such development can be adequately protected from wildland fire hazard, as demonstrated in a Fire Safe Plan prepared by a Registered Professional Forester (RPF) and approved by the local Fire Protection District and/or California Department of Forestry and Fire Protection.
- 6.2.3.1: As a requirement for approving new development, the County must find, based on information provided by the applicant and the responsible fire protection district that, concurrent with the development, adequate emergency water flow, fire access, and fire fighting personnel and equipment will be available in accordance with applicable State and local fire district standards.
- 6.2.3.2: As a requirement of new development, the applicant must demonstrate that adequate access exists, or can be provided to ensure that emergency vehicles can access the site and private vehicles can evacuate the area.
- 6.2.3.4: All new development and public works projects shall be consistent with applicable State Wildland Fire Standards and other relevant State and federal fire requirements.
- 6.2.4.1: Discretionary development within high and very high fire hazard areas shall be conditioned to designate fuel break zones that comply with fire safe requirements to benefit the new and, where possible, existing development.
- 6.2.4.2: The County shall cooperate with the California Department of Forestry and Fire Protection and local fire protection districts to identify opportunities for fuel breaks in zones of high and very high fire hazard either prior to or as a component of project review.
- 6.2.5.1: The County shall cooperate with the U.S. Forest Service, California Department of Forestry and Fire Protection, and local fire districts in fire prevention education programs.

General Plan Implementation Measure HS-B states that the County will “[w]ork with the local FireSafe Councils, fire protection districts, U.S. Forest Service, and California Department of Forestry and Fire Protection to develop and implement a countywide Wildfire Safety Plan.”

The LHMP sets goals and implementation strategies to coordinate multi-agency evacuation route planning, as well as tracking the status of evacuation route planning and maintenance efforts within individual jurisdictions in the County. The LHMP also addresses minimum road widths, structural clearance standards, and emergency water supply requirements when it cites the State's Fire Safe Regulations, established pursuant to Public Resources Code Sections 4290 and 4291, as the County's method of implementing fire safety regulations in the County since 1993. Pursuant to Public Resources Code Sections 4290 and 4291, CalFire adopted the Fire Safe Regulations which set standards for: (1) road design and signage to allow for fire equipment access and road identification; (2) minimum water supply for emergency fire use; (3) fuel breaks and greenbelts; and (4) minimum defensible space around habitable structures.

These policies and implementation actions, as noted above, are existing General Plan policies and development requirements. None of these policies were amended or adopted as part of the project or as mitigation measures identified in the TGPA/ZOU Final EIR.

Land Use Densities/Intensities in High Fire Risk Areas: The commenter along with the Board of Forestry questioned the assumed increase in densities and land use intensities in the high fire risk areas within the County (RCU letter, page 11). The TGPA/ZOU did not amend the maximum land use densities or intensities previously established in the 2004 General Plan with the limited exception of the Mixed Use districts. As part of the EIR, County staff evaluated the potential for increased residential development of mixed use projects at 257 units, approximately one percent (1%) more growth than what would occur without the TGPA/ZOU. (FEIR Section 8.5, Master Response 4: Scope of the Project; Legistar File 11-0356: Staff Report 18K, page 93 of 169). As stated in the TGPA/ZOU EIR, “...the amended General Plan would not substantially increase the residential development potential that presently exists under the General Plan.”

The reasoning for the limited additional development potential was disclosed in the EIR, and while outside the scope of the trial court writ, can be summarized as follows. The statement in the Addendum that “The TGPA/ZOU does not alter land use density or intensity under the General Plan” should read: “The TGPA/ZOU does not substantially alter land use density or intensity under the General Plan.”

Although the TGPA/ZOU does allow a maximum of 20 residential units per acre (increased from a maximum of 16 units per acre) for mixed use development in Community Regions and 10 residential units per acre (increased from a maximum of 4 units per acre) for mixed use development in Rural Centers, all mixed use development is subject to a Design Review Permit and to the Mixed Use Design Manual standards (Zoning Code Section 130.40.180 Mixed Use Development). This density of mixed use is limited to lands with commercial or multi-family General Plan designations within Community Regions that can be served with water, sewer, and roadway infrastructure (General Plan Policy 2.1.1.3). Under the mixed use development provisions, it is foreseeable that some eligible parcels in Community Regions and Rural Regions might be developed at densities of up to 20 and 10 units per acre, respectively, by employing the mixed use design standards. However, as part of the EIR, County staff evaluated the potential for increased residential development of mixed use projects at 257 units, approximately one percent (1%) more growth than what would occur without the TGPA/ZOU. (FEIR Section 8.5, Master Response 4: Scope of the Project). Such an outcome is unlikely because, as noted in Master Response 4, past use of the mixed use development option has been limited. Between 2005 and

2015 the County received only two or three applications for mixed use development for a total of 15 residential units. In the interest of disclosure, the environmental analysis assumed that anticipated development would occur at the maximum density allowable under the General Plan.

Biological Corridors: No changes were made to General Plan policies affecting Biological Corridors. The TGPA/ZOU provisions on streamside setbacks reflect prior County administrative practice. Most of the additional, intensive uses authorized under the ZOU that vary from standard agricultural rural resource, commercial, or residential development (e.g., health resort and retreat center, off-road vehicle recreation area, ski resort, and campground) require prior approval of a conditional use permit. This is a discretionary action with a public hearing that would be subject to site-specific CEQA analysis. (See Zoning Ordinance Tables 130.22.020, 130.24.020, and 130.21.020). Therefore, there were no substantial increases in the types of dense/intense uses allowable by right. In any event, the discussion or reconsideration of Biological Corridors is outside the scope of the trial court writ.

Rezoning under the 2015 ZOU: General Plan Policy 2.2.5.3 does not apply to the zone changes undertaken by the ZOU. The purpose of those rezonings was to bring the County's zoning map into consistency with its General Plan, as required by State Planning Law (Government Code Section 65860). This argument was considered by the trial court and rejected. (Decision, pages 148 and 164).

As discussed above, any increases in zoned density were the result of the County's legal obligation to bring its zoning map into conformity with the General Plan "within a reasonable time." (Government Code Section 65860[c]). Therefore, the changes in zoning would not substantially differ from the General Plan land use map.

The TGPA/ZOU does not substantially change the County General Plan's growth potential or build-out assumptions estimated by staff as part of the EIR process at approximately one percent (1%) over the development anticipated by the General Plan prior to the adoption of the TPGA/ZOU. (See the County's response to the October 9, 2018 Board of Forestry letter). In addition, new development would continue to be subject to the General Plan policies and implementation measures listed above that reduce risks within high and very high wildfire areas. The commenter's remaining questions and recommendations go beyond the scope of the trial court's writ.

Traffic Impact Mitigation Fees: The County has an established Traffic Impact Mitigation (TIM) Fee Program to ensure that major roads will have adequate capacity to accommodate future growth. Fees collected from new development projects are used to finance road improvements that serve the increased traffic resulting from those projects. During emergencies such as wildfires, the Sheriff, local police departments, and California Highway Patrol will provide traffic controls as necessary to evacuate residents along county roads.

California State Board of Forestry and Fire Protection: The Addendum has been revised to correctly state that the California State Board of Forestry and Fire Protection (originally identified as Calfire in the Addendum) did not respond to the Notice of Preparation. As a result, the County was not aware at the time of public release of the Draft EIR that there was an area of controversy with the Board of Forestry and therefore could not have included the Board of Forestry's concerns in the Draft EIR. The Addendum includes this information not for the purpose of "blame-shifting" in the words of the commenter, but to explain the timing of the comment and the County's response within the continuum of the EIR process. The Addendum now identifies this as an area of controversy and includes a discussion of the County policies addressing wildfire safety. Certification of the Addendum will amend the Final EIR's Executive Summary to include a discussion of this area of controversy. (CEQA Guidelines Section 15164[d]).

The Board of Forestry has not suggested a project alternative or mitigation measure that would trigger recirculation of the Final EIR. Even if that had been the case, the trial court rejected all arguments that the Board of Supervisors failed to adequately consider alternatives and mitigation measures, so by the terms of the writ, the County is not required to consider additional alternatives or mitigation measures for purposes of the Addendum. The comments from the Board of Forestry stated in their letter dated July 17, 2014 largely reiterate the requirements of Planning Law regarding the contents of a general plan's safety element relating to wildfire safety considerations. The trial court concluded that the County had not violated the safety element referral statute and that the County's safety element meets the requirements of state law. The Board of Forestry's October 9, 2018 comments refer to the 2014 comments, assert that amendments must be sent to the Board for review prior to adoption, and expresses some confusion over statements in the Addendum. Neither of these comment letters suggests any alternative or new mitigation measures. (See the County's response to the Board of Forestry's October 9, 2018 comments for a discussion of how the County General Plan already includes the policies and implementation measures required by Planning Law).

The Board of Forestry's comment that development be curtailed in wildland fire risk areas is not a mitigation measure. It is a quotation from Government Code Section 65302(g)(3) regarding the contents of the wildfire risk reduction implementation measures set out in that statute. The County General Plan policies listed above and the implementation measures adopted by reference to the County LHMP (as allowed under Section 65302[g][4][D]) meet those requirements. The trial court found that the County's safety policies satisfied state planning law. (Decision, page 231).

The Board of Forestry commented (in their letter dated July 17, 2014) that the expansion of Commercial uses into Community Regions and Rural Centers, the increase in density in residential or mix-use land use designations, and the overall emphasis on expanded development and more intense residential use in the TGPA will put more residents into high or very high fire hazard severity zones. The TGPA/ZOU did not amend the maximum land use densities or intensities previously established in the 2004 General Plan with the limited exception of the Mixed Use districts. As part of the EIR, County staff evaluated the potential for increased development at 257 units, approximately one percent (1%) more growth than what would occur without the TGPA/ZOU. (FEIR Section 8.5, Master Response 4: Scope of the Project; Legistar File 11-0356: staff report 18K, p. 93 of 169). As stated in the TGPA/ZOU EIR, "...the amended General Plan would not substantially increase the residential development potential that presently exists under the General Plan."

EIR Recirculation: Recirculation of an EIR is required when "significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification." (CEQA Guidelines Section 15088.5[a]). The CEQA Guidelines define significant new information as follows:

"Significant new information" requiring recirculation include, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043)”

The Addendum and the response to the Board of Forestry’s October 9, 2018 letter explain that, with consideration of the County’s policies for wildland fire safety (including implementation of its LHMP), no new or substantially increased significant impact would occur as a result of adoption of the TGPA/ZOU. Therefore, no recirculation is warranted.

The Addendum has been prepared in response to the El Dorado County Superior Court writ in *Rural Communities United v. El Dorado County Board of Supervisors*. It contains the required revisions to the Final EIR set out by the court which were very specific and very limited. A supplemental EIR, as described in CEQA Guidelines Section 15163 was not prepared because the revisions did not trigger the need for a supplement to an EIR pursuant to the criteria in CEQA Guidelines Section 15162. The criteria in Section 15162 are as follows:

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

As discussed above and in the response to the Board of Forestry letter of October 9, 2018, there are no new or substantially more severe significant effects than those addressed in the Final EIR. Nor is there new information of substantial importance regarding significant impacts, mitigation measures, or alternatives.

The trial court has held that the scope of the TGPA/ZOU EIR is adequate. As stated on page 176 of the court's Decision:

Petitioner has not established that the County's and Board of Forestry and Fire Protection's disagreement as to the scope of the project and the significance of the purported rezoning of some parcels for more intense development in wildfire areas required an analysis of the existing General Plan's compliance with the applicable statutes and the Public Health, Safety, and Noise Element already set forth in the existing general plan. (See Reply, page 18, lines 8-17.)

Hazardous Materials: In the RCU letter (page 12), RCU requests that the TGPA/ZOU be amended to include a mitigation measure to develop a process/procedure/program for periodically testing wells near home occupation facilities using toxic substances, and for preventing ongoing contamination. There is no evidence that hazardous wastes will be discharged from home occupations into on-site wastewater treatment systems and that such wastes would contaminate local groundwater. (See the revised response to comment O-1-70 in the Addendum). No mitigation is necessary because no impact has been identified. This is not one of the topics required to be addressed by the El Dorado County Superior Court writ. Speculation regarding potential impacts does not constitute substantial evidence of an impact and does not require mitigation.

Existing General Plan policies regarding fire hazards: In the RCU letter (pages 3-6), the commenter poses several comments and questions regarding General Plan policies concerning fire hazards. These comments constitute an untimely challenge to the 2004 General Plan. The General Plan policies referenced in this comment were not challenged as part of the current litigation and were not part of the trial court writ.

Requests for new policies, regulations and/or maps related to the County's Local Hazard Mitigation Plan (LHMP): In the RCU letter (page 7), RCU requests the following additional information be included in the Final Addendum: identify evacuation routes that have been planned; provide a map of the planned evacuation routes; identify the level of service (LOS) expected on those roadways in 2035 and at General Plan buildout; display these items in the Final Addendum, if the LHMP is the "program for coordination of hazard planning and disaster response" and (if) it has done an adequate job of evacuation route planning; consider amending the General Plan to set a date for the County to complete an evacuation route map of essential roadways, and to ensure that sufficient road capacity is reserved thereon to allow for emergency evacuation; and for purposes of "a good faith effort at full disclosure", the County should disclose additional information the commenter asserts is related to the reader's understanding of the LHMP (e.g., age of the LHMP, LHMP definition of "maintenance efforts", a map identifying roads essential to successful evacuation of the County, etc.). These items were outside the scope of the TGPA-ZOU Project and are also outside the scope of the trial court writ. Therefore, there is no legal requirement to address these items further at this time. However, the Board of Supervisors has the option to consider these requests in the future.

Questions/comments regarding General Plan Implementation Measure HS-B: (Work with the local Fire Safe Councils, fire protection districts, U. S. Forest Service, and California Department of Forestry and Fire Protection to develop and implement a countywide Wildfire Safety Plan...). The commenter poses questions regarding General Plan Implementation Measure HS-B and suggests a proposed amendment to this measure (RCU letter, page 7). The question and implementation suggestion are outside the scope of the TGPA-ZOU Project and are also outside the scope of the trial court writ. Therefore, there is no legal

requirement to further address this item. However, the Board of Supervisors has the option to consider this item in the future.

Request to amend the Zoning Ordinance for some limitations on commercial uses and some home occupations in high and very high wildfire areas: The commenter states that amending the ZOU to create limitations on certain commercial and home occupation uses in high or very high wildfire areas would mitigate some fire hazard risk (RCU letter, page 9). No specific amendments were suggested. This item was outside the scope of the TGPA-ZOU and also outside the scope of the writ, no further action is required. Therefore, there is no legal requirement to further address this item. However, the Board of Supervisors has the option to consider this item in the future.

Request to modify the Zoning Ordinance to protect residents living and working in high and very high wildfire areas: The commenter expresses an opinion that the Board of Supervisors should modify policies in the ZOU to protect increasingly vulnerable residents living and working in high or very high wildfire hazard areas (RCU letter, page 11). These suggestions are outside the scope of the trial court writ. No specific policy or code references were cited. As with all requirements of the Zoning Ordinance or General Plan policy, the Board of Supervisors has the option to consider possible revisions at a later time.

Request to add a map of parcels on slopes over 30% and impact evaluation in the Final Addendum: The commenter states that issues related to development on slopes over 30% should be evaluated and mitigated (RCU letter, page 12). The issue of development on slopes over 30% was addressed in the litigation and the trial court did not require slope mapping as part of the writ. Therefore, there is no legal requirement to further address this item. However, the Board of Supervisors has the option to consider this item in the future.

Request for agency and public notice, and public participation of the Board of Supervisor's decision on the Addendum (RCU letter, page 13): As stated previously, CEQA does not require that an Addendum be circulated for public review (CEQA Guidelines, Section 15164(c)). The Addendum was prepared in response to the trial court's writ. The Addendum does not need to be presented to the Planning Commission. It is being presented to the Board of Supervisors for final action. The meeting of the Board of Supervisors has been publicly noticed accordingly.

ALTERNATIVES

The Board could decide to not adopt the Resolution to certify the CEQA Addendum to the TGPA-ZOU Final Program EIR; however, such action would delay some development projects from advancing through the project review and approval process.

PRIOR BOARD ACTION

On December 15, 2015, the Board of Supervisors adopted Resolution 195-2015 which certified the Final Program EIR for the TGPA/ZOU.

On September 18, 2018, the Board of Supervisors adopted Resolution 197-2018 which decertified specific limited components of the TGPA/ZOU Final Program EIR only as to (a) the responses to comments 0-1-54 to 0-1-58, 0-1-62, 0-1-70, I-37-14, I-37-16, I-37-23, and I-37-24; and, (b) Executive Summary Section ES.5 (Potential Areas of Controversy/Issues to be Resolved).

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Chief Administrative Office, County Counsel

FINANCIAL IMPACT

There is no financial impact associated with this agenda item.

CLERK OF THE BOARD FOLLOW UP ACTIONS

1) Provide one fully executed copy of the Resolution to the Planning and Building Department.

STRATEGIC PLAN COMPONENT

Good Governance

CONTACT

Anne Novotny, Deputy Director of Planning
Community Development Services, Planning and Building Department

ATTACHMENTS

Exhibit A – Addendum to the TGPA/ZOU Final Program EIR

Exhibit B – Resolution XXX-2018, which recertifies the Final Program EIR for the TGPA/ZOU

Exhibit C – Letter dated October 9, 2018 from the California State Board of Forestry and Fire Protection

Exhibit D – Letter dated July 17, 2014 from the California State Board of Forestry and Fire Protection

Exhibit E – Letter dated October 11, 2018 from Thomas P. Infusino on behalf of Rural Communities United

Exhibit F – Notice of Availability of an Addendum to the Final EIR for the TGPA/ZOU dated September 27, 2018

Note: The Decision by the El Dorado County Superior Court is available on the County website at:
https://www.edcgov.us/Government/longrangeplanning/LandUse/Pages/tgpa-zou_main_page.aspx