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3 February 2009

To: El Dorado County Board of Supervisors  
John R. Knight, District 1  
Ray Nutting, District 2  
James R. Sweeney, District 3  
Ron Briggs, District 4  
Norma Santiago, District 5

Subject: Ordinance 4808

It is disappointing the Planning Commission approved the Z03-0005 / Draft Winery Ordinance without requiring specific and clear language to mitigate traffic impacts to rural residential subdivision roads by development and operation of commercial businesses. We are opposed to expansion of the easement of River Pines Estates Zone of Benefit. This Draft Winery Ordinance must not be adopted until clear specific action language that mitigates the traffic impacts is added. This Draft Winery Ordinance must be sent back to staff to address the deficiencies.

El Dorado County policies are referenced throughout the supporting documentation and reports that are presented with this Draft Winery Ordinance. Three of these policies deal with traffic and compatibility with surrounding and adjoining property.

**Policy 2.2.5.10;** it states;

*this policy will protect the permitted uses of such agricultural areas by only allowing the establishment of such support services with a **special use permit which will require a finding that the establishment of the use will have no significant adverse effect on surrounding property** or the permitted uses thereof.*

**Policy 2.2.5.21;** it states;

***Development projects shall be located and designed in a manner that avoids incompatibility with adjoining land uses***

**Policy TC-Xg;** It states;

***Each development project shall dedicate right-of-way and construct or fund improvements necessary to mitigate the effects of traffic from the project. The County shall require an analysis of impacts of traffic from the development project, including impacts from truck traffic.***

El Dorado County has not complied with these stated policy actions by encouraging commercial development and granting business traffic free use of River Pines Estates Rural Residential Subdivision access roads.

In the discussion section of this staff report it states:

*There are occasionally other traffic concerns from winery development cited as potentially significant environmental impact by neighboring residents. **However, perceptions of traffic increases are not significant unless there is a true physical environmental impact.***

It is troubling to think El Dorado County believes River Pines Estates parcel owners are hallucinating about the physical impact to their roads. To address the true physical environmental impact follow this process to obtain a factual assessment:

- 1) Have an engineer establish the load capacity (weight limit) and rate of deterioration from traffic on D'Agostini Drive.
- 2) Drive through Twin Rivers Property listing everything that was not put there by Mother Nature.
- 3) Factor for weight of those listed items and delivery trucks.
- 4) Factor for construction workers and construction equipment.
- 5) Factor for employees, their vehicles and business traffic.
- 6) Factor for customers, their vehicles and Greyhound size tour buses.
- 7) Document as fact the **SIGNIFICANT** impact from traffic and weight to River Pines Estates Zone of Benefit chip seal roads.

The staff report goes on and states:

*The implementation of the Fire Safe access Development Standard would require both on-site and off-site roads meet the minimum Fire Safe regulations, and that the impact would be less than significant.*

The secondary access roads across Twin Rivers Vineyard property crossing a non-rated bridge does not meet **California Fire Code, Appendix D, Fire Apparatus Access Roads** for road width or load rating.

***DI02.1 Access and loading.*** Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved **driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34 050 kg).**

Only one section has been cited here for road width. Every section in Appendix D cites road widths of at least 20 feet.

***DI03.6.1 Roads 20 to 26 feet in width.*** Fire apparatus access roads 20 to 26 feet wide (6096 to 7925 mm) shall be posted on both sides as a fire lane.

**In the environmental review section the staff report states that:**

*Based on the Initial Study, staff finds that the project could have a significant effect in areas of aesthetics, biological resources, cultural resources, and noise. Mitigation Measures are identified to reduce those impacts to less than significant. **All other impacts were determined to be less than significant.***

It is hard to comprehend why El Dorado County ignores the traffic and weight impact to River Pines Estates Zone of Benefit Rural Residential Subdivision chip seal roads from adjacent commercial businesses.

The California Environmental Quality Act (**CEQA**) **Guidelines** have sections on determining environmental effects such as:

**15064. Determining the Significance of the Environmental Effects Caused by a Project**

- a) *Determining whether a project may have a significant effect plays a critical role in the CEQA process*
- b) *The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, **based to the extent possible on scientific and factual data***
- c) *In determining whether an effect will be adverse or beneficial, the Lead Agency **shall consider the views held by members of the public***
- d) *In evaluating the significance of the environmental effect of a project, the Lead Agency **shall consider direct physical changes in the environment which may be caused by the project***

**(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project.**

Just for a quick refresher, here is a brief summary of how we got to this point today.

1. In 1987 El Dorado County Created Zones of Benefit and River Pines Estates was formed.
2. In 1996 new buyers were requesting assurances that the River Pines Estates Zone of Benefit would agree to their annexation but El Dorado County insisted they were not required to annex.
3. In 2000 El Dorado County Planning Department issued a letter stating; *Future Development - The one bright spot in this situation is that the County does have an ability to impose conditions on most future development. **Any commercial operation such as a winery with a tasting room would require either a special use permit or a change in the zoning, where there would be ample opportunity to address the road and access issues. Certainly a condition of approval of any discretionary approval could be to require annexation to the zone.***

El Dorado County did not follow through and nothing happened.

4. In 2006 we attended Agriculture Commission meetings and submitted written concerns about the Draft Winery Ordinance and that it needs to be specific about steps taken when Zone of Benefit access roads are used.

There was no response from the Agriculture Commission and they showed no interest in the issues surrounding Zone of Benefit access roads. It seems inappropriate that the Winery Ordinance, Section 5, Access Standards in an Ag District would state the Director of Planning Services will obtain

recommendations from the Agriculture Commission.

5. In the 26 June 2007 Board letter it states; *that Staff has researched the issues surrounding formation and annexation into Zones of Benefit and determined that **it is not possible to require a property to join/annex into a Zone of Benefit retroactively.***

This has disturbing ramifications. El Dorado County wants to grandfather existing commercial businesses and protect them from ever contributing toward repair and maintenance of access roads that run through the center of Rural Residential Subdivisions and where those roads are paid for by the subdivision parcel owners.

Even more disturbing, El Dorado County requires that to annex parcels into a Zone of Benefit they must be contiguous. C.G. DiArie is the first parcel entering Twin Rivers Vineyard properties. D'Agostini Drive crosses that parcel to access the other Twin Rivers Vineyard parcels which make the other parcels non-contiguous. The action of grandfathering removes annexation as an option to the remaining Twin Rivers Vineyard parcels.

There are some relevant facts that have been and are being completely ignored by El Dorado County.

First the Twin Rivers Vineyards Final Subdivision Report states:

*Currently access is only available by Upton Road using a non-rated bridge across the South Fork of the Cosumnes River.*

Second is River Pines Estates Zone of Benefit Rural Residential Subdivision has recorded Declaration of Covenants Conditions and Restrictions" (CC&Rs). Those (CC&Rs) state:

***Residential Use:*** *Each parcel shall be used for single family residential purposes by the owner, his lessees or guests and for no other purposes, ...*

***Vehicles:*** *It is the purpose of this Development to be residential in nature and therefore no vehicles other than those normally associated with residential property use shall be stored or operated within the Development.*

***Use and Occupancy of Lots and Residences:*** *Each residence shall be used solely for residential purposes. No other use is allowed ..*

It is totally objectionable that El Dorado County requires parcel owners in a Rural Residential Subdivision to pay for and maintain access roads for commercial businesses when their own (CC&Rs) limit traffic to residential use only. This objectionable position is reinforced when reviewing the 24 November 2008 County Counsel letter which has the following language;

*As you are aware, the roads within the River Pines Estates Zone of Benefit (the "Zone") are public roads. The residents of the Twin Rivers Vineyards*

*development ("Twin Rivers") adjacent to the Zone, like any other member of the public, have the right to use the roads within the Zone. Since their properties lie outside of the Zone's boundaries, those residents have no current obligation to participate in the maintenance of the public roads within the Zone.*

If you think things are changing, think again. 9 Oakes Vineyards with a listed address of 6261 Brinkwood has just posted a Department of Alcohol Beverage Control public notice of application to sell alcoholic beverages. Brinkwood runs into Flat Creek which is a River Pines Estates Zone of Benefit road. Brinkwood shows as the Combrink easement on River Pines Estates Rural Residential Subdivision maps. El Dorado County now is encouraging commercial businesses to freely access River Pines Estates Rural Residential Subdivision roads from the side opposite to Twin Rivers Vineyard property.

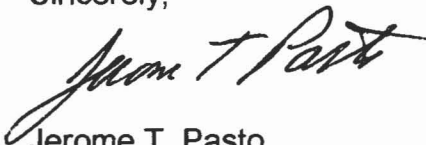
**The General Plan Policies (Policy 10.1.2.3);**

*Provide that a Zoning Ordinance amendment **should be written in a concise and easy to understand manner.***

The Access Standards in this Winery Ordinance are not written in a manner that enables one to understand the specific actions that will result. Adoption of this Winery Ordinance as written will be giving a green light to El Dorado County staff to continue business as usual. A green light to continue encouraging commercial business development and guaranteeing them free unrestricted use of rural residential subdivision access roads while demanding that those access roads be paid for and maintained by those Rural Residential Subdivision parcel owners in violation of their own CC&Rs.

This Draft Winery Ordinance must not be adopted and must be returned to staff to clarify the Access Standards with specific action language. We are opposed to actions taken by El Dorado County to expand the easement of River Pines Estates Zone of Benefit.

Sincerely,



Jerome T. Pasto  
River Pines Estates Zone of Benefit