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August 22, 2018

El Dorado County Planning Commissioners
2850 Fairlane Court
Placerville, CA 95667

Submitted via email

Re: Planning Commission 8/23/18 Agenda Item #8, General Plan Policy TC-Xa3

Dear Commissioners,

I ask that you recommend to the Board of Supervisors that they reject staff's recommendation regarding the extension of General Plan Policy TC-Xa3 into perpetuity. Instead, please recommend that the Board follow the will of the voters and implement Measure E using Resolution 149-2016 as discussed at the August 30, 2016 Board of Supervisors hearing. Excerpts from the hearing are included at the end of this letter for your convenience.

Soon after Measure E's passage, the Board directed staff to work with interested parties to create Implementation Guidelines for Measure E. Similar to what happened with the original passage of Measure Y in 1998, staff worked diligently with interested parties to create Implementation Guidelines for Measure E for the County to use for project approvals, resulting in Resolution 149-2016.

After the Board's rejection of Resolution 149-2016 on August 30, 2016, Measure E was brought into litigation. The County's Opposition Brief explained that it is the Board's duty to interpret its own general plan and that the court must allow the Board to do so if it is at all possible. Here is an excerpt from the County's brief in the lawsuit:

2. Interpretation of Measure E in this Litigation Is Premature and Would Infringe on the Board's Right to Interpret and Implement Its General Plan
a. The United States and California Supreme Courts Instruct This Court to Exercise Judicial Restraint

Not only is interpreting Measure E unnecessary to resolve the facial challenge, this Court should refrain from interpreting the Measure before the Board has the opportunity to implement Measure E through application of its General Plan to concrete projects. In *Washington State Grange*, the United States Supreme Court cautioned that prematurely interpreting a voter-approved initiative to resolve a facial challenge "threaten[s] to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." (*Washington State Grange, supra*,

We know that it *is* possible for the Board to legally and lawfully implement Measure E because staff worked with interested parties to create the Interpretive Implementation Guidelines for Measure E, which were presented to the Board on August 30, 2016, and staff found the guidelines to be consistent with state law, with the constitution, and with other general plan policies (see statement below by County Counsel). Therefore, the judge should have allowed the Board to fulfill its duty to implement the measure. That is why the County has joined with Save Our County to appeal the judge's ruling against Measure E.

I regret that I cannot be there in person on August 23, 2018. At a July 12, 2018 meeting with staff regarding this issue, we were told by staff that they would get back in touch with us after they meet with County Council regarding what impact the appeal had on TC-Xa3. According to the California Civil Appellate Practice Guide § 11.24, 3.) "Stay on Appeal a)."Appeal Automatically Stays Execution of Writ of Mandate, ...". "An order or judgment granting a writ of mandate is stayed on appeal unless the superior court or the court of appeal orders otherwise." At the meeting we mentioned with Section § 11.24 3.a. (above) that the County could actually implement Measure E as the voters had intended and we would be open to them using the implementation guide that had already been prepared by staff. We also reminded them that we were joint parties in defending Measure E. However, staff did not follow up with us and our calendars filled up before I saw the GovDelivery email notice from the County.

It would be more appropriate that the Planning Commission hold off on any decision until the County in good faith continues meeting with the proponents of Measure E. This hearing should be continued until those discussions can continue.

I ask on behalf of the voters of El Dorado County that you do not fall for the political positioning regarding Measure E and General Plan Policy TC-Xa3. It is very clear from the County's own Opposition Brief that the judge was premature in his ruling and should have allowed the Board of Supervisors to fulfill their duty to interpret their own General Plan.

Help the voters of El Dorado County know that their voices are heard and that their government is working on their behalf, not that of special interests.

If the Planning Commission will not consider continuing this item, then please recommend that the Board follow the will of the people and to perform their duties by rejecting staff's recommendation and adopting Resolution 149-2016.

Thank you,

Sue Taylor
Measure E Committee

3:32:00 County Counsel, Michael Ciccozzi,

"Measure E is now part of our General Plan. It is this board's charge to interpret its general plan and the courts give great deference to the county's, the board's interpretation of its own general plan. What we did as staff is we looked at the measure as written and, the measure as written, became part of our general plan, not a word was changed. In interpreting the measure, we looked at the entire measure. No voter voted on one particular passage, they voted on the entire measure. So however this board determines to interpret its general plan, we stand ready to defend that interpretation. But make no mistake, it is this board that will be interpreting its general plan when any project comes forward these issues will be brought to the board and you will be asked to interpret your general plan. So it's not, it's not staff rewriting anything. What we are doing is bringing to the board a proposed interpretation that is consistent with the entirety of the measure with state law, with the constitution, and with other general plan policies. Now, the board is free to disagree, that you guys are the decision makers. It is your general plan. So, all we've done is we've gone through it, we've spoken to interested parties, not to negotiate, there were no negotiations. We sat down as staff and did our job. We have brought that to you. It is now the board's job to tell us how you want this thing, this general plan interpreted. And then we'll go out and we'll do it."

3:34:08 Director of Planning, Roger Trout

"I really had nothing more to [garbled audience]. I just like standing and sitting in these uncomfortable chairs. Again, it was draft resolution purportedly to help you make decisions on how you want us to implement Measure E. I think as the planning director I have to be honest with you, we are currently processing applications with Measure E. And, just to let you know, I am interpreting it somewhat consistent with the resolution that you have seen before you. Now, that becomes a problem if you disagree with that and don't let me know because we'll be bringing projects to you eventually that you will have some heartburn over because the traffic analysis conclusions, conditioning, mitigations, will not be consistent with your expectations. So that was the benefit of having a resolution, and maybe it's not ready for finalization today, I completely accept that. Maybe we need to look at the CEQA companion idea there, that's great."

