

January 28, 2008

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El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

SENT TO BOARD MEMBERS
FOR THEIR INFORMATION

DATE 2/6/08

RE: **Addendum 2 to December 17, 2007 Request for Denial of
Serrano Village M Phase 4; Z07-0048/PD05-0006/TM05-1393**

*W. Clark
2/26/08 Hrng*

Dear Members of the Board:

This is the second addendum to our December 17, 2007 correspondence. On Friday, January 11, 2008, we met very briefly with Planning staff, and were able to view the tentative map project file and Attachment 3 of the staff report. While Attachment 3 is now available on the Board of Supervisors website, it was not previously available on the Planning Commission website. The items listed here are a result of our brief meeting with Planning staff, and this newly received information.

- 1. Development Agreement:** Where the proposed project is found to be inconsistent with the Specific Plan, Planning staff has asserted that project approval is possible because the Development Agreement (DA) takes precedence over the Specific Plan. However, section 17.85.021 of the County Zoning Code and section 65867.5 of the California Government Code, do not allow the Board of Supervisors to approve a DA if it is in conflict with the Specific Plan. These code sections are referenced as applicable on page 1 of the DA. Additionally, County Zoning Code section 17.22.675, Conformance with Specific Plan Required, reads "*After adoption of a specific plan, no local public works project, development plan, tentative map or parcel map may be approved, and no zoning ordinance may be adopted or amended within the area covered by the plan unless it is consistent with the adopted specific plan*". Clearly the DA cannot be utilized to approve the project where the project is not consistent with the Specific Plan.
- 2. Development Agreement and Density Transfer:** Planning staff has told us that the Development Agreement (DA) is what allows density transfer to apply to rezone of the open space to R1-PD. However, as discussed in item 1, the DA cannot authorize the approval of a land use which is inconsistent with the Specific Plan. The Specific Plan designates, unequivocally, that Village M is a variation from all the other Villages. It is reserved for minimum sized lots of 4-7 acres, and natural open space which is to be preserved in perpetuity. The change to minimum .5 acre lots, and the conversion of natural open space into residential use, is clearly not consistent with the land use as specified in the Specific Plan for Village M.
- 3. Development Agreement and Open Space Boundaries:** Planning staff has interpreted the Development Agreement (DA) to allow delay of the review and analysis of the current open space boundaries until the final map is done for development of the last Village (page 10, staff report). While ownership of the open space lands will not be conveyed until later, the analysis of the open space must occur now in order to confirm that consistency with the Specific Plan is maintained. Planning staff's interpretation does not allow any confirmation that consistency with the Specific Plan has been achieved. Again, the DA has been granted greater authority than it actually has. The Specific Plan requires that this review and analysis be completed at the tentative map stage (now), and this work has yet to be done.

4. **State Noticing Requirements:** This issue was discussed in item 1 of our addendum dated 1/7/08. State code for noticing requirements allows for an exemption from the direct mailing requirement if the number of properties bordering the project exceeds 1,000. Planning staff has interpreted this exception to apply to the number of property owners within the Specific Plan. This is not correct, as direct mail notification is not required for each property owner within the Specific Plan, but only to the owners of bordering parcels. The Board of Supervisor's notification to bordering property owners was mailed to less than 50 people. While the continuation granted on 1/15/08 has afforded us a bit of much appreciated extra review time, the fact that this project jumped directly to the Board level without our input during the Planning Commission review puts it one step closer to final approval without having had our comments heard or considered.

5. **Staff Report, Attachment 3:** This attachment to the staff report is a memo from the applicant to Planning staff for the stated purpose of addressing staff's concerns regarding the quality and connectivity of the open space.

The first pages of the memo address the total number of open space acres proposed versus the total acreage required by the Specific Plan. It does not address the location or configuration of that open space, or the type of topography or environment the acreage consists of. The next page addresses individual Villages, specifically those with the highest density of oak woodland. The conclusion here is that the preserved oaks in these Villages will be scattered along the common parcel boundaries. This does not demonstrate connectivity or quality of open space. The final two pages are tables with an accounting of the acreage of open space throughout the plan. Without a map there is just no way to determine the connections between these spaces or the connectivity to offsite open space. The entire point of this memo was to address staff's concern regarding the *quality and connectivity* of the open space. It is unclear why this memo is being used as a supporting document, as neither of these things has been demonstrated.

Additionally, an overview of oak woodland retention is included in Exhibit A of the attachment. The mitigation measure from page 12-44 of the Draft EIR is given here, which states that a minimum of 50 percent of the blue oak woodland (BOW) is to be retained in contiguous open space, and a minimum of 50 percent of the live oak forest (LOF) is to be retained in the open space. The exhibit includes a table summarizing the overall oak woodland acreage. The pre-project acreage of BOW is shown as 714 acres, while the acreage retained in open space is 214 acres (30%). The pre-project acreage of LOF is listed as 577, while the acreage retained in open space is 129 acres (22%). And yet, the response listed is "YES", that the mitigation measure has been met. Again, it is not clear why this memo is being used as a supporting document.

With such a small percentage of oak woodland being retained in open space, is there some reason why the open space that does NOT contain dense oak woodland isn't being reviewed for possible residential zoning instead? The abandoned golf course open space makes much more sense to convert to residential lots than the natural open space, from an environmental standpoint. This does not appear to have been considered.

The bottom line here is that the information given in this attachment is misleading, does not address the posed question, and shows that the EIR mitigation measures have not been fully met.

6. **Construction Hours:** Item 5 of Addendum 1 (dated 1/7/07) pointed out that the allowable construction hours have been left out of the conditions of approval. We have since then found that the construction hours were included under DOT condition no.50, and that the condition incorrectly included weekend hours. This condition should be revised to allow construction only Monday through Friday, 7am to 7pm or sunset, whichever is earlier, as set forth in the Specific Plan.

7. **Area Plan Advisory Committee (APAC) Denial Letter:** A letter from APAC dated July 17, 2005 recommends denial of Village M2/3 and is included in the tentative map file for M4. The August 26, 2005 response to this letter from Serrano shows how the subject of trees and open space has been danced around and avoided over the course of several projects. For example:

- Item 2 from the APAC letter states that no Tree Removal Plan was submitted. The applicant response letter states that a Tree Removal Plan is not necessary because "related mitigation measures have

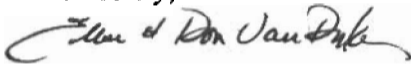
already been contemplated by the EDH Specific Plan EIR". However, the changes to the Specific Plan which are proposed by this project were not addressed by the EIR and thus were not mitigated. The mitigation measures which ARE required by the EIR have not been fully met. This item was not evidenced in the file to have been discussed any further.

- Item 6 of the APAC letter states that according to the Specific Plan, Village M is to contain a maximum of 37 units with lot sizes of 4-7 acres. The applicant response letter indicates that the Planning commission had already approved a density increase for Villages M1/M2, therefore Village M phase 2 and 3 should be approved as well based on this previous approval. The background section from the M1/2 project is attached to the response, and indicates that the approval was based in part on the interpretation that the Development Agreement (DA) has authority over the Specific Plan and the EIR. This is NOT a valid argument, yet it has been used for every project within Village M.

A subsequent APAC approval letter was included as an attachment to the staff report. It was apparent that no further direction was given by Planning staff regarding the inconsistencies between the M4 proposal and the Specific Plan EIR. The approval of previous Village M submittals was used to justify the approval of the current M4 proposal.

The Board of Supervisors cannot approve this project without knowingly doing so in violation of state and county code. Redesignation of the open space and increasing the density within Village M requires a supplemental environmental review to the EIR to be done in accordance with CEQA guidelines. Further review of any proposal for Village M must include the submittal of a current open space map as requested multiple times by Planning Services, and which was apparently never received. Maps and aerial photo documentation should accompany the accounting of the oak woodlands retained as well as the actual acreage replaced to date. Our research repeatedly shows that previous approvals of projects within Village M were also inconsistent with the Specific Plan and EIR. The approval of any previous projects does not in and of itself allow approval of the current project. Please send this project back for a more thorough review and do not make legal action our only recourse.

Sincerely,



Ellen and Don Van Dyke
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cc: Mel Pabalinas, Planning Services

Enclosures: None!