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Suggested Revisions for Ballot Summaries for Measures N and O

2 messages

Joel Ellinwood, AICP <joel.ellinwood@lawyer-planner.com>

Sat, Aug 2, 2014 at 7:54 PM

To: edward.knapp@edcgov.us, ed.knapp@edcgov.us, edc.cob@edcgov.us, bosone@edcgov.us, bostwo@edcgov.us, bosthree@edcgov.us, bosfour@edcgov.us, bosfive@edcgov.us

Cc: Lori at Shingle Springs Community Alliance <info@shinglespringscommunityalliance.com>

Dear Mr. Knapp:

Please find attached my suggestions for revisions to the draft ballot summaries for Measures N (Region Builders) and O (Community Regions) for your consideration, submitted on behalf of my client, the Shingle Springs Community Alliance.

Respectfully,

Joel Ellinwood, ACIP LEED AP
Lawyer-Planner



Suggested revision to ballot question for Measures N and O.docx

144K

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Mon, Aug 4, 2014 at 8:15 AM

To: "Joel Ellinwood, AICP" <joel.ellinwood@lawyer-planner.com>

Thank you for your comments.

Office of the Clerk of the Board
El Dorado County
330 Fair Lane, Placerville, CA 95667
530-621-5390

[Quoted text hidden]

Suggested revision to ballot question for Measure N.

“Shall the ordinance be adopted amending the County of El Dorado General Plan to extend the Measure Y policies through 2025 and establish policies to (1) annually report on traffic volumes and allocation of traffic impact mitigation fees, (2) emphasize improvements to local roadways for expenditures in the Capital Improvement Program, (3) whenever possible rely first on state or federal funding for Highway 50 improvements, and (4) encourage planning and zoning in Community Regions?”

[74 words]

Original draft, with suggested revisions marked as ~~strikeouts~~ or underlines:

“Shall the ordinance, be adopted amending the County of El Dorado General Plan to extend the Measure & policies through 2025 and ~~require~~ establish policies to (1) ~~emphasize improvements to local roadways when specifying expenditures in the Capital Improvement Program~~ annually report on traffic volumes and allocation of traffic impact mitigation fees. (2) ~~rely first on state or federal funding for Highway 50 improvements~~ emphasize improvements to local roadways for expenditures in the Capital Improvement Program. (3) ~~provide an annual report detailing traffic volumes and allocation of traffic impact mitigation fees and~~ whenever possible rely first on state or federal funding for Highway 50 improvements, and (4) encourage planning and zoning in Community Regions, ~~be adopted?~~”

Reasoning in support of the suggested revisions.

The revisions improve clarity and readability, state the components of the measure in the order listed in the measure itself, and add a key qualifying phrase (“whenever possible”) quoted directly from the language of measure. The addition of the phrase is important in recognition of the fact that the measure itself allows for the use of TIM fees for matching funds for state and federal funding or grants for highway improvements or any other road projects.

The proposed initiative would establish directory policies rather than strict mandatory requirements*, hence the proposed substitution in the ballot summary of the phrase, “establish policies to,” in place of, “require the County to.” In each case that the proposed initiative uses what may otherwise be construed as mandatory imperative language (e.g., “shall”) of a legal requirement, it is qualified in such a manner that grants significant discretion in how the measure may be interpreted.

This interpretation is consistent with the frequently expressed view in case law that,

* with the exception of its proposal for an annual report on traffic volumes and allocation of traffic impact mitigation fees.

“ ‘General plans ordinarily do not state specific mandates or prohibitions. Rather, they state 'policies,' and set forth 'goals.'” (*Napa Citizens, supra*, 91 Cal.App.4th at p. 378.)” (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4th 807, ___, citing *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342.

In its proposed addition of paragraph D. to General Plan Policy TC-Xb, the initiative reads:

“D. In specifying expenditures in the CIP, ***emphasis shall be placed***[†] on providing improvements to local roadways serving existing communities which [sic.] are experiencing traffic congestion and areas designated Community Regions in the General Plan.” []

“Placing emphasis” is far from a mandate, but is instead an expression of a goal or policy that takes into account the existence of other considerations that may also be addressed.

In its proposed additions to General Plan Policy TX-Xi, the initiative is similarly flexible:

“The planning for the widening of Highway 50, and other improvements to State (Caltrans) facilities, consistent with policies of this General Plan, including to prevent level of service F as provided in Policy TC-Xa (Measure Y), shall be a priority of the County. The County shall coordinate with other affected agencies . . . , and whenever possible shall rely first on the use of State and/or federal funding for these projects, rather than County TIM fee revenues, in order to better utilize TIM funding for County road improvements. ***Notwithstanding the foregoing, TIM fee revenues may be utilized*** for Caltrans facilities as matching funds, for various grants or programs, for any purpose consistent with or required by Policy TC-Xa (Measure Y), or when no other means of financing is available.”

That road improvement planning for Highway 50 and other Caltrans facilities shall be “a” priority, clearly recognizes that the County has other priorities that it may also consider. The discretion for the County to make a determination of “whenever” it is or is not “possible” to rely first of State and/or funding for Highway 50 or other Caltrans facilities, is broad – particularly given the initiative’s provision that TIM fee revenues may also be used for a broad range of other purposes which may not involve utilizing TIM funding for County road improvements.

[†] Boldface type and underlining not in original.

The initiative's proposed addition to General Plan Policy 2.1.1.2 is also limited to what is, at best, a highly ambiguous policy to "**encourage** planning and zoning[‡] within the Community Regions where existing infrastructure, such as roads, water, sewers and power, are nearby."

In consideration of all of the above examples, the initiative is most accurately and objectively summarized as "establishing policies" rather than imposing "requirements".

[‡] The phraseology begs the question of what the planning and zoning should be for, because the County already exercises that authority throughout the County both in and out of Community Regions.

Suggested revision to ballot question for Measure O.

“Shall the ordinance be adopted amending the County of El Dorado General Plan to (1) convert the communities of Camino, Pollock Pines, and Shingle Springs from Community Regions to Rural Centers, establish Cedar Grove as a Rural Center, and place the Platted Lands overlay on certain areas contiguous to those communities and (2) remove the El Dorado Hills and Cameron Park Community Region designation from those Low Density Residential areas within one mile of Green Valley Road?”

[77 words – 5 for proper names of places counted as one word – 72 words]

The revisions improve clarity and readability.