

COUNTY OF EL DORADO

330 Fair Lane
Placerville, CA 95667
(530) 621-5390
(530) 622-3645 Fax

TERRI DALY
Acting Clerk of the Board



BOARD OF SUPERVISORS

JAMES R. SWEENEY
District III

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TO: Board of Supervisors

Supervisor Sweeney requests that the Board of Supervisors consider the testimony we will be receiving in these hearings and continue any action for a long enough period to complete any analysis of that testimony; perhaps until our August 20, 2012 workshop.

In making our decision at the conclusion of this week's hearings we need to ask ourselves several questions before we move on with this process.

- Is this proposed ordinance consistent with the General Plan?
- Is it consistent with State law:
- Who has responsibility for making the Zoning Ordinance consistent, the County or the Applicant?

BACKGROUND

In 2010, we initiated a required 5-year review of the General Plan [Policy 2.9.1.2]. That process determined that, while the base assumptions remained valid, we had fallen short of our objectives in terms of Jobs and Housing for Moderate Income Households. In addition, we identified reducing sales tax leakage, promotion of agriculture, and compliance with certain State regulations as a priority for a targeted General Plan Update. During the course of that review, we solicited input from the Planning Commission, Ag Commission, EDAC Regulatory Reform [GP 10.1] and other members of the public regarding issues of concern.

Part of the General Plan implementation process was to update the Zoning Ordinance to be consistent with the General Plan [GP LU-1]. The Board has conducted multiple hearings on the Zoning Update, and has concurred with a long list of recommendations for changes to be considered. I do not believe that this input has been woven into the document at hand. One could compare the currently proposed document to that which was on the CD provided to this Board on November 14, 2011 and see the differences; especially in the Agricultural section 17.40. Many changes were proposed and we wonder what has come of them. Were they considered?

I have asked a group of individuals to volunteer their time to help me look at the proposed zoning ordinance (PRD-ZO) and to incorporate the work of EDAC as directed by the Board. Our committee has a number of general comments, listed below, and is attaching samples of our work product for consideration.

SPECIFIC EXAMPLES

1. **Purpose and Intent Statements.** The General Plan sets forth the “Purpose and Intent” at length; therefore it does not need to be restated throughout the Zoning Ordinance. In fact, if restated in the Zoning Ordinance, it could well provide the basis for legal challenges. Zoning should be specific and factual. However, we agree that a discussion of the contents and application of the zone is appropriate in some circumstances, in part to allow for unstated but similar activities to be included when appropriate. Several examples of our suggested revisions are included in Attachment “A”.

2. **Difficulty navigating document.** The document format requires the reader to refer to multiple code sections to understand the full scope of the regulations. The “Use Tables” in Article 2 refer to Special Use Regulations (Article 4) and Glossary (Article 8). Some Use Types are discussed in the Special Use Regulations but not defined or referenced in the Glossary. In other cases, definitions are not found in the Glossary, but are embedded in the text of the section (see Landscape Standards, Article 3, Section 17.30.040). Also, it is necessary to refer to Site Planning Standards (Article 3) for design, parking, landscape, or lighting standards or to Planning Permit Procedures (Article 5) for information as to application and permit processing requirements.

We suggest that any defined term should be shown in the PRD-ZO in *Italicized Text*. Additionally, all “Use Types” (such as “Agricultural Support Services”) described in Article 4 should be listed in the Glossary; the “definition” may refer the reader back to the appropriate Specific Use Regulation.

3. **Board direction from prior hearings not addressed or incomplete.** Many of the zoning issues discussed at the November 2011 hearing have not been fully addressed in the draft ZO language. Although most of these issues are addressed as “Optional Consideration” items, the Board may want to incorporate some or all of these into the PRD-ZO for consideration in the CEQA review rather than to continue to treat them as “options”. A list of these issues is included as Attachment “B”.

4. **New ZO regulations are more stringent than required by General Plan, State or Federal law, or adopted Zoning.** Our committee has identified a large number of provisions in the PRD-ZO that expand regulations or impose more restrictions on an individual’s use of property. We believe the Board has tried to clearly explain that the County’s objective is to streamline, simplify and reduce unnecessary regulations. A few examples follow:

A. Platted Lands (GP 2.2.2.3) was created for the General Plan to allow an area to be designated for the appropriate land use designation, yet contain smaller: existing parcels than might otherwise be allowed in such an area. GP 2.2.2.3 (A) states “*Parcels within the –PL overlay designation shall not be permitted to subdivide to a size smaller than the minimum parcel size allowed by the base land use designation.*”

An example of inconsistency is PRD-ZO (Section 17.27.110-C 3) “*Subdivision of lots within the –PL Combining Zone shall be prohibited*”. This section would not allow further subdivision of parcels in PL; even though such parcels could be many times larger than the land use designation for the area. (Our committee suggests that the Platted Lands Combining Zone in the PRD-ZO may be redundant in light of the “Platted Lands” overlay in the General Plan. Do we need *both* a –PL Overlay in the GP and a –PL Combining Zone in the PRD-ZO?)

B. Before issuing a Conditional Use Permit for a residence in the TPZ zone, the PRD-ZO requires the County to make a finding that the house must be necessary for the growing of timber. This requirement is inconsistent with the extensive findings listed in the General Plan that the residence shall not “interfere” with the production of timber.

C. Planned Development (GP 2.2.3) was intended to ***“Provide for innovative planning and development techniques and further fulfill the Plan Strategy by encouraging balanced growth to better reflect the character and scale of the community in which it occurs while minimizing impacts on the surrounding areas, to provide more efficient utilization of land, and to allow for flexibility of development while providing for general public benefits”*** (GP page25).

The PRD-ZO (17.28) would create such onerous requirements as to make use of this section by any property owner fruitless. The section was intended to allow some creative uses of the property and provide for general public benefits as a tradeoff. Additionally, the –PD combining zone should only be used or affixed to a property upon submittal of a plan showing what use would be made of the PD.

The Planned Development (PD) language in the PRD-ZO is much more restrictive than the current GP Policies. The Board had discussed opportunities to make the policy more flexible within some of the higher density residential land uses to encourage production of more moderate housing. The only “alternatives” to the 30% open space requirement in the PRD-ZO are fees for off-site land acquisition, which does nothing for the residents of the planned development or the neighboring properties. Not only is the 30% open space requirement retained, but the Chapter 17.33 - Landscape Standards now requires a landscape buffer around the perimeter of the property *but that buffer is not counted as part of the 30% open space*. In addition, the density bonus calculation has been modified to exclude any portion of the site that cannot be developed with a building, even though those areas are routinely included in the density calculations for standard subdivisions. Our committee believes the cumulative effect of the proposed language eliminates the incentive to use the planned development concept.

After all, the purpose of the Planned Development is to “Provide for innovative planning and development techniques...”.

D. Maximum “Lot Coverage” concept is introduced in many residential zones not now subject to lot coverage requirements. Lot widths have been increased for some zones and building heights have been reduced from 50’ to 45’ in the residential multi-family zone.

E. Wetland and Riparian setbacks as described in the PRD-ZO are more expansive than the GP policies and Interim Interpretive Guidelines. In addition, the proposed language uses a more subjective standard from which the setbacks are measured. The PRD-ZO would prohibit activities that might be allowed under State or Federal Regulations with an appropriate permit.

F. The Flood Damage Prevention provisions [17.32.050 A 3] require the elevation of the finished floor of a building to be two feet above the flood elevation, when FEMA regulations require only one foot.

5. The Zoning Ordinance includes items that are really “Design Standards” for new subdivisions. These design standards are better suited for the Land Development Manual and not the Zoning Ordinance. The Land Development Manual is more adaptable to changing criteria and allows for the exercise of professional judgment by the project designer. It also provides greater flexibility for the variable site conditions that exist throughout the County, such as hillside communities. Our committee believes these design standards should be removed from the Zoning Ordinance and considered for inclusion in the LDM. This would be consistent with the Board’s direction of October 18, 2010 [Legistar 10-1086].

CONCLUSION

With the Zoning Ordinance revisions, we must be certain that existing property rights are protected. Existing parcels and uses previously allowed must not be made non-conforming by these provisions.

The Board should also be reminded that we are operating in tenuous economic conditions where we must be more alert than ever to the harmful effects of excessive regulations. Our residents, businesses and our way of life in this County depend on our ability to achieve our primary objectives with the help and cooperation of local government.

When we look at 17.10.020 D *"Where an inconsistency exists between the General Plan and the zoning designation for a lot, the General Plan designation shall govern"*, we ask again: "Who has the responsibility for a consistent Zoning Ordinance, the County or the applicant?"

Before closing, we should not forget that issues which seem to be minor can have a cumulatively significant impact. A single seemingly "minor issue" is often a major impediment to an individual.

ATTACHMENT “A”
EXAMPLES OF REVISIONS TO PURPOSE AND INTENT STATEMENTS

CHAPTER 17.21 – AGRICULTURAL, RURAL, AND RESOURCE ZONES

Sections:

- 17.21.010 ~~Purpose and Intent~~Zones Established; Application of Zones
- 17.21.020 Matrix of Permitted Uses
- 17.21.030 Development Standards

17.21.010 ~~Purpose and Intent~~Zones Established; Application of Zones

- A. ~~A number of~~The purpose of the agricultural, rural and resource zones ~~is to achieve the following:~~are established in this Ordinance to implement the land uses described in the General Plan, and to provide for, promote and regulate the range of uses applicable to those lands.
- ~~1. To identify, conserve and protect important agricultural lands and those lands having suitable space and natural conditions for horticulture, animal husbandry, and other agricultural uses, as well as those lands containing timber and other natural resources.~~
 - ~~2. To promote and encourage agriculture and timber harvesting uses, and to increase their economic viability by providing opportunities for sale, packaging, processing, and other related activities.~~
 - ~~3. To protect agriculture, grazing, timber harvesting, or other resource based uses from the encroachment of unrelated and incompatible uses in order to provide a healthy, stable, and competitive environment necessary to sustain them.~~
 - ~~4. To protect the viability of the rural lands by providing economic opportunities that support and complement the rural lifestyle and promote tourism based on the historical, cultural, agricultural, and natural scenic resources of the county.~~

CHAPTER 17.22 – COMMERCIAL ZONES

Sections:

- 17.22.010 ~~Purpose and Intent~~Zones Established; Applicability
- 17.22.020 Matrix of Permitted Uses
- 17.22.030 Commercial Zone Development Standards

ATTACHMENT “A”
EXAMPLES OF REVISIONS TO PURPOSE AND INTENT STATEMENTS

17.22.010 ~~Purpose and Intent~~Zones Established; Applicability

- A. ~~As provided in the General Plan, this Chapter establishes numerous commercial zones to direct specific categories of commercial uses to appropriate areas of the County. The purpose of the commercial zones is to achieve the following:~~
- ~~1. Provide a full range of retail, office, and service uses for the residents, businesses and visitors of the County.~~
 - ~~2. Provide lands suitable for commercial development to enhance economic growth, expand the local tax base, and provide employment opportunities in the County.~~
 - ~~3. Provide a clear and concise set of procedures and requirements for commercial development.~~
 - ~~4. Maintain and improve the character of existing commercial centers and core areas while providing for the expansion and full utilization of underdeveloped and undeveloped properties within those areas.~~
 - ~~5. Ensure that adequate infrastructure and services are available to serve the~~

CHAPTER 17.23 – INDUSTRIAL AND RESEARCH AND DEVELOPMENT ZONES

Sections:

- 17.23.010 ~~Purpose and Intent~~Zones Established; Applicability
- 17.23.020 Matrix of Permitted Uses
- 17.23.030 Development Standards
- 17.23.040 Design Standards

17.23.010 ~~Purpose and Intent~~Zones Established; Applicability

- A. ~~The purpose of t~~This Chapter is to achieve the following: establishes several Industrial zones to provide for a full range of light and heavy manufacturing, including manufacturing, processing, distribution and storage. Industrial uses in the Rural Regions are limited to those which support agricultural uses or resource-based industries such as mineral extraction or timber production. In addition, a Research and Development Zone is established to provide areas for high technology, non-polluting manufacturing plants, research and development facilities, corporate/industrial offices, and support service facilities in a rural or campus-like setting, such as a business park environment [General Plan Policy 2.2.1.2]

ATTACHMENT “A”
EXAMPLES OF REVISIONS TO PURPOSE AND INTENT STATEMENTS

- ~~1. Provide a full range of zones that will encourage high technology, manufacturing and other industrial development within the county in order to enhance economic growth, expand the local tax base, and provide employment opportunities for its residents;~~
- ~~2. Provide lands suitable for industrial development while protecting the labor force on adjacent property by restricting activities which have the potential to produce objectionable influences, such as odor, gas fumes, dust, smoke, noise, vibrations, glare, heat, electrical interference, and radioactive or other waste material beyond the confines of the industrially zoned site;~~
- ~~3. Protect residential, agricultural and other nonindustrial uses by separating them from industrial activities, and by prohibiting the use of such industrially zoned land for residential or other related nonindustrial activities;~~
- ~~4. Provide a clear and concise set of procedures, standards and requirements for industrial development.~~
- ~~5. Provide lands suitable for research and development facilities such as high technology, non-polluting manufacturing plants and related uses, while ensuring a high quality, aesthetic environment through design standards, procedures and requirements.commercial needs of business owners and customers.~~
- ~~6. Promote stable and attractive commercial development which will be compatible with the neighboring residential uses.~~

CHAPTER 17.24 — RESIDENTIAL ZONES

Sections:

- ~~17.24.010 Purpose and Intent Zones Established; Applicability~~
- 17.24.020 Matrix of Permitted Uses
- 17.24.030 Residential Zone Development Standards

17.24.010 Purpose and Intent Zones Established; Applicability

- A. ~~The purpose of t~~This Chapter is to achieve the following:establishes residential zones as provided in the General Plan to accommodate a range of housing types, including single-family and multi-family housing for households of various income levels.

- ~~1. Provide a set of residential zones that will distribute residential growth and development in a manner that utilizes infrastructure in an efficient, cost-effective manner, and furthers the implementation of the General Plan’s Community Region, Rural Center, and Rural Region concept areas (GP Objective 2.2.1)~~

ATTACHMENT "A"
EXAMPLES OF REVISIONS TO PURPOSE AND INTENT STATEMENTS

- ~~2. Identify neighborhood areas suitable for residential living and residential population ranges consistent with the General Plan (Policy 2.2.1.3).~~
- ~~3. Provide development standards that maintain and enhance the existing community identity and the scale and character of rural and suburban communities, by emphasizing both the natural setting and built design elements which contribute to the quality of life, economic health, and community pride of County residents. (GP Goal 2.4)~~
- ~~4. Identify and meet County standards for public health, safety, welfare, and aesthetics by ensuring minimum standards for light, air, privacy, and open space for each dwelling are met, and by protecting residential neighborhoods from excessive noise, illumination, unsightliness, odor, smoke, and other nuisances.~~
- ~~5. Provide lands to accommodate housing to meet the diverse economic and social needs of all County residents and to meet the housing needs of targeted income levels as identified in the Housing Element of the General Plan.~~
- ~~6. Provide lands for the development of neighborhood service centers that provide direct benefits to the residential neighborhood while reducing vehicular traffic, thereby contributing to more vibrant communities.~~

ATTACHMENT “B”
LIST OF SPECIFIC ZONING ISSUES ADDRESSED BY BOARD

#	ZONING ISSUE	SUMMARY OF ISSUE	ROI
1	Multiple Commercial Zones	Create specific Zones for specific areas per GP. ID MUD II	x
2	Commercial/Industrial/Ag Support	Expands commercial/industrial uses in Rural Regions	x
3	Planned Development Review	PD Requirements including 30% OS in Community Regions	x
4	Table 2-4	Revise Table 2-4 to reflect new zones	x
5	Home Occupations	Consider expanded home occupations, including employees	x
6	Residence in TPZ	Analyze effect of residency by right and expanded uses	x
7	MUD II	Include MUD II in specific zones along with standard plans	x
8*	Animal Keeping	Originally deferred to separate ordinance; not in ROI. Added back in?	Deferred
9	Wetland/Riparian Setbacks	Setbacks to be evaluated from edge of bank/ordinary high water mark vs. riparian vegetation	x
10	Zoning Map Update	Draft Map v. Proposed Map (Separate Criteria)	x
11	Ranch Marketing	Revised Ranch Marketing (including grazing and other issues)	x
12	Ag Zoning Opt-In	Give landowners option in RR and Ag Districts to opt-in to ag zoning	x
13	Ag Homestays	Clarify ag homestays allowed	x
14	Rural Lands/Rural Commerce	Expanded uses of Rural Lands for working landscapes and rural commerce opportunities; Analyze RL-10 Zone	x
15*	30% Slope Language	TGPA is proposes to move 30% slope policies to Zoning Ordinance/Grading Ordinance, but language in ZO is incomplete.	

*These two items were not in the ROI, but have been addressed by the Board at subsequent hearings.