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TO: Board of Supervisors

FROM: Lillian MacLeod, Senior Planner

DATE: July 21, 2011

RE: Update on Comprehensive Public Review Draft Zoning Ordinance

Background:

The comprehensive draft Zoning Ordinance was presented to the Board of Supervisors (“Board”) at public hearing on October 18, 2010 and, after review, was released as the 2010 Public Review Draft Ordinance (PRD). This is available on the County website at www.edcgov.us/planning. In the interim, staff has attended weekly meetings held by the Economic Development Advisory Committee (EDAC) regarding the PRD and the General Plan five-year review and focused update to gain feedback and see where economic development within the county may be enhanced and encouraged in the PRD. Two areas in particular have been raised in discussions: adding more commercial zones than what are currently being proposed and creating more rural/agricultural commercial uses. Staff has also been meeting with subcommittees of the EDAC regulatory group relating to agriculture, home occupations, industrial and research and development (R&D) uses. The resulting issues pertaining to EDAC and subcommittee input that may affect the project description and require additional CEQA analysis are itemized and discussed below.

Issues:

1. **Commercial zones.** The commercial and mixed-use development subcommittees of EDAC have proposed up to ten new commercial zones based on intensity and scope of development. Their rationale is that by more specifically defining and limiting the uses allowed within them, clarity will be provided to developers in what they can and cannot do with their property. The EIR could analyze the impacts from each new zone and streamline the development process for the property owner.

The PRD is continuing with the current zones of Commercial, General Commercial, and Commercial-Professional Office, indicated as C, CG, and CPO respectively. The Planned Commercial zone (CP), constituting 53 parcels within the county, has been incorporated into the C zone due to its similarity of uses. The Neighborhood Service zone (NS) has been added to provide small-scale commercial and support services in the residentially designated areas pursuant to General Plan policy. Though listed under Industrial zones, the Research and

Development zone (R&D) is considered to be more commercial in nature, as clean, technology-based industries and administrative and educational support services are the defined uses.

Staff is proposing the above zones as a result of research that indicates “an excessive number of zoning districts invites zoning changes and legal challenges, needlessly complicates the zoning code, and makes their differences hard to justify and explain (*Preparing a Conventional Zoning Ordinance*, Charles Lerable, APA/PAS, 1995). The five proposed commercial zones provide a gradation of intensities described in each of their purpose sections that can be used to direct their location to buffer any impacts to adjacent zones and uses. There is some overlap between the uses in order to blend the development pattern from high to low intensity.

The following are options to address the commercial zone issues:

- A. Allow for the number of commercial and R&D zones being proposed in the PRD.
- B. Increase the number of commercial zones as proposed by EDAC, in order to apply them now through the mapping process.

2. Agricultural and Rural Commercial. In order to maintain economic viability of land in the Rural Regions, the agricultural and rural commerce subcommittees of EDAC have requested more opportunities for commercial uses that bridge the gap between home occupations and ranch marketing/winery uses. The methods being discussed at this time consist of adding more uses into the permitted use matrix and/or creating new zones within the Agricultural and Resource zones (Chapter 17.21). Distinguishing between agricultural and grazing operations and their specific support uses is also being discussed.

There are numerous General Plan policies that address the need to support and maintain economic viability on agricultural, grazing, and rural lands. In response to the subcommittees’ previous requests, staff has drafted both an update to the ranch marketing ordinance that allows for more flexibility and uses on qualifying cropland and an ordinance that allows for agricultural homestays on both horticultural and grazing lands.

The current discussion centers on types of uses that the agricultural communities would like to have versus, or in addition to, an agricultural commercial zone. In compliance with Policy 2.2.5.10, ‘agricultural support services’ have been added into the use matrix for Agricultural and Resource zones (17.21.020), as both a general defined use (Article 8: Glossary) and as individual uses, such as “processing and/or sale of agriculture products”. However, Policies 2.2.5.10 and 8.2.4.2 require a special use permit for any agriculturally supportive use so that findings can be made of no significant impact to surrounding areas. The agriculturally support use types currently in the PRD would be allowed based on intensity of use, either by right, with an Administrative Permit subject to standards that would reduce impacts to the surrounding area, or by discretionary permit. However, consistency with the General Plan would require Policy 2.2.5.10 to be amended to eliminate the requirement for a special use permit.

The subcommittees are also proposing specific commercial zones in the agricultural and rural lands, either as Agricultural Support or Rural Commercial zones that would allow a number of uses of greater intensity than those allowed by right or with an administrative permit. While the Agricultural Support zone would allow uses compatible with agriculture and grazing, the Rural

Commercial zone would allow uses and amenities that accommodate property owners in the Rural Region, such as gas stations and food markets. Agriculturally and rurally zoned property owners would be required to obtain a rezone and General Plan amendment before being allowed to conduct such uses on their land.

The following are options to address the agricultural and rural commercial uses and/or zone issues:

- A. Amend Policies 2.2.5.10 and 8.2.4.2 to create more flexibility and provide opportunities in the Agricultural and Resource zones for retail commerce and agricultural support.
- B. Create an Agricultural Support zone that would be permitted in the Rural Residential, Agricultural Lands, and Natural Resource land use designations, thereby permitting land owners to apply for a zone change in the future, and amend Table 2-4 to provide for that zone.
- C. Amend Policy 2.2.1.2 to permit Commercial/Industrial uses in the Rural Regions, thereby permitting land owners to apply for a General Plan amendment and zone change in the future to provide for rural commercial uses, and amend Table 2-4 to provide for that zone.
- D. Expand or create new Rural Centers to provide for additional opportunities for agricultural and tourism support, and commercial ventures to support the rural population.

3. Planned Development Ordinance. On October 7, 2008, Resolution of Intention 274-2008 was adopted by the Board authorizing staff to proceed with a hearing “to consider amending the Land Use Element of the General Plan to modify Policies 2.2.3.1 and 2.2.5.4 to provide greater flexibility for planned developments in urban areas, to provide options for public benefits other than open space, to clarify terms used in said policies, and to direct growth to the Community Regions and Rural Centers. Specifically to review and propose changes to 2.2.3.1 as to the percentage open space requirement and 2.2.5.4 as to the baseline number of lots and affect on developments over 50 lots and to be able to place the open space offsite to the project.”

The ongoing problems with the existing General Plan policies regarding planned development (PD) open space can be summarized, as follows:

- 1. They do not offer flexibility, especially in more urban areas.
- 2. Thirty percent open space is required to be located on site, only.
- 3. Growth is directed away from the Community Regions and Rural Centers due to the need for larger lots to accommodate on site open space.
- 4. The 50 lot threshold requiring a PD applies to residential, commercial, R&D, and industrial development projects.
- 5. “Public” versus “common” benefits are not clearly defined.

On October 23, 2008, staff presented the results of several workgroup meetings previously held on the PD open space requirement to the Planning Commission to ask for further direction and recommendations. The Commission indicated they would like to see community space remain a requirement, but with greater opportunities for creativity and flexibility in the design process that could include alternatives, such as in lieu fees.

As directed in the Resolution and in order to provide solutions to the problems defined above, staff is proposing to amend Policy 2.2.3.1 so that the purpose and intent is clarified, uses within the common open space requirement are more clearly defined, and alternatives in lieu of the on site open space requirement is addressed and applicable to the Community Regions and Rural Centers. Rural Regions would still be required to provide open space on site in order to maintain a rural development pattern.

Policy 2.2.5.4 is proposed to be amended to specify the application of the –PD zone to subdivisions of 50 or more *residential* lots only, consistent with the implied intent of this policy, and to direct infill development and higher densities to HDR areas. Under Resolution 274-2008, the Board directed staff to review the requirement of the 50 lot threshold. The Planning Commission and members of the workgroup expressed the importance of providing usable open space either on site or available nearby for high density subdivisions. Staff is proposing to keep the 50 lot requirement in the policy; however, the Board can decide to reduce it, increase it, or eliminate it altogether.

In order to provide internal consistency with the proposed amendment to Policy 2.2.5.4, staff is also proposing to amend Policy 2.2.1.2 to allow flexibility in designing residential development within the density parameters.

The following are options to the Planned Development policy amendments:

- A. Amend PD policies and prepare a draft –PD Combining Zone ordinance to implement the proposed General Plan amendments, providing alternatives in lieu of on site open space dedication, either in the form of fee payments or off site land or easement dedication.
- B. Have this go forward as a stand-alone ordinance subject to further review and later CEQA analysis.
- C. Eliminate the Planned Development policies as a whole in lieu of subsequent development of community identity guidelines, form based codes, or other methods of land design patterns.

4. General Plan Table 2-4. In order to accommodate the proposed zones and eliminate the archaic zones in the PRD, Table 2-4 must be amended. Staff discussed the proposed amendments to the table at the previous Zoning Ordinance Update hearing on October 18, 2010 (Legistar Item 10-1086). The Board directed staff to proceed.

Subsequently, staff has proposed modifications to the agricultural zones that eliminate Exclusive Agriculture (AE) and Agricultural Preserve (AP) and create a new Limited Agriculture (LA)

zone. This has been reviewed by the Agricultural and Planning Commissions and by the agricultural subcommittee of EDAC with positive feedback. However, this would necessitate an amendment to Policy 8.1.1.6, since it refers specifically to the AE zone. The recommended policy amendment is included in Attachment A.

5. Home Occupations. The EDAC subcommittee has been meeting on an ongoing basis with staff to refine the proposed home occupation ordinance in the PRD. While this ordinance does not require a General Plan policy amendment, it does require the Board's direction on the subject of employees at the site of a home occupation. Current and longstanding practice has been to prohibit employees who come to the home to assist the property/business owner on a regular basis. The PRD allows for subcontracted workers who are not under the direct payroll of the home business owner, such as accountants or clerical support, to come to the home to confer with and provide support to the owner on an as-needed basis. EDAC subcommittee members are requesting that two employees under direct payroll be allowed with a home occupation. Limitations on the type of home businesses that would be allowed to have employees are generally real estate, surveying, and office-type businesses.

The Board has previously denied projects that have been proposed for home occupations that included employees to the site. Recently in denying the appeal of one such project, the Board again clearly indicated to staff that allowing on site employees other than family members residing on the premises is inconsistent with maintaining the residential character of the surrounding neighborhood.

The following are options to the home occupation issues:

- A. Include employees as part of the project description.
- B. Consider employees in a home occupation to be an option reviewed in the EIR.
- C. Maintain the existing policy of no employees in a home occupation.

6. Residential and Recreational Uses in TPZ. Cedric Twight from Sierra Pacific Industries chaired a discussion last year with EDAC on allowing residential uses by right when not part of a timber management plan. He also proposed allowing other non-timber related commercial uses, such as lodging facilities, bed and breakfast inns, campgrounds, horse boarding and riding stables, off-highway vehicle recreation areas, ski areas, snow play areas, trailhead parking and staging areas, and temporary special events, all subject to a conditional use permit and footprint limitations.

The Agricultural Commission considered this in February 2011 and did not recommend that the residential component be considered. Since the goal of this Zoning Ordinance update was to make changes only where necessary to conform to the General Plan or to fix existing problems, staff had not included this as part of the project description.

The following are options to the TPZ residential and commercial issues:

- A. Include the suggested changes as part of the project description.

- B. Consider them to be options reviewed in the EIR.
- C. Maintain the residential provisions in TPZ at this time.

7. **Mixed-use Development (MUD) II.** Much discussion has been had at EDAC meetings regarding the development of the next phase of mixed use development requirements and policies. When the Board adopted the MUD ordinance on December 10, 2009, it gave direction that a second phase (MUD II) would be developed that would incorporate community design criteria into a more by-right type of development process, rather than the mandated planned development process required by the current ordinance. It was understood that this would follow adoption of the comprehensive Zoning Ordinance update, due to the need for significant community involvement

Members of EDAC have suggested that the draft ordinance can include some standard design criteria for different types of mixed use or traditional neighborhood design (TND) products. Staff supports the concept of developing such plans, but they cannot be developed in a vacuum, without larger scale, community design components necessary to make them work.

As originally planned, this task was intended to be taken up after adoption of the comprehensive update. No changes are proposed to the current code, which permits mixed use developments through a PD as an interim step. The targeted General Plan amendment addresses some of the policy issues that would also simplify and facilitate mixed use and TND development. Having the time to work with different communities to craft design guidelines to meet specific community needs and desires will take time and effort. Deferral until after the comprehensive update is completed will allow the County to dedicate the resources necessary to develop a MUD II ordinance that will be effective in promoting the type of development desired by existing residents of the various unique communities of the County and future residents who will move into those projects.

The following are options to consider regarding MUD II:

- A. Include in the project description for the targeted General Plan amendment the necessary policy amendments identified in Attachment A to facilitate greater flexibility for mixed use development, but defer development of the necessary Zoning Ordinance amendments until after the comprehensive Zoning Ordinance update.
- B. Include the proposed policy amendments and consider as an option some level of design standards to address MUD and TND in the Zoning Ordinance update. The option would be included as part of the RFP for the EIR.
- C. Include the full development of MUD II provisions in the comprehensive Zoning Ordinance update and have it analyzed in the EIR.

8. **Animal Keeping.** When the draft ordinance was presented to the Board in October, 2010, included in the list of deferred items was provisions for animal keeping on residential lots. The reason that staff recommended that this issue be deferred was the controversial nature of the

issue and the concern that this relatively minor issue could sidetrack the entire comprehensive update. The Board concurred with that assessment, so no further work has been done on it since that time. The present draft retains the existing code provisions, and clarifies the practices of the County over the past years. To emphasize how controversial this issue is, many years ago the County proposed to amend the regulations. A packed house before the Board showed that residents of the County had very differing opinions of how animals should be regulated. Many people wanted to have unlimited ability to raise animals, while the other side expressed concerns about dust, noise, smells and other impacts on the enjoyment of their property. No compromise was readily available, and the Board tabled the draft ordinance indefinitely.

Recently, the agricultural subcommittee members of EDAC have suggested that the issue be brought back as a part of the update. Staff maintains the concern that this issue needs to have a more detailed review and that it has the potential to take over the primary focus of the ordinance, which is to bring the Zoning Ordinance into conformance with the General Plan.

The following are options to consider regarding animal keeping:

- A. Defer updating the animal keeping provisions until after adoption of the comprehensive Zoning Ordinance update, consistent with the Board's direction of October 18, 2010.
- B. Include updated provisions for animal keeping as an optional component of the draft ordinance, to be analyzed in the EIR.
- C. Direct staff to include updated provisions for animal keeping in the PRD.

Recommendations:

Staff recommends that the Board provide the following direction to staff regarding issues associated with the comprehensive Zoning Ordinance update:

1. **Commercial Zones.** Maintain as the project description the existing proposed commercial zones contained in the Public Review Draft Zoning Ordinance, but include an analysis of the multiple commercial zones recommended by EDAC Regulatory Reform Subcommittee as an option for analysis in the EIR.
2. **Agricultural and Rural Commercial.** Include the targeted General Plan amendments identified in Attachment A that provide greater flexibility to provide agriculture support and rural commerce. Maintain the existing zones, but provide for a wider range of uses in the agriculture and resource zones as uses permitted by right, by administrative permit, or by conditional use permit. Consideration of an Agricultural Support Zone could be considered as an option for analysis in the EIR.
3. **Planned Development Ordinance.** Include in the project description the targeted General Plan amendments identified in Attachment A that provide greater flexibility for meeting the 30 percent open space requirement and that reduce other mandatory planned development provisions. Include provisions in the Zoning Ordinance update to allow off site open space dedications and easements, in lieu fees, and other options.

4. **Amendment to Table 2-4.** Include modifications to Table 2-4 in the General Plan to reflect the current draft proposal for new zones, including the elimination of Exclusive Agricultural (AE) and Agricultural Preserve (AP) zones and the addition of a Limited Agriculture (LA) zone.
5. **Home Occupations.** Provide as an option for analysis in the EIR the inclusion of up to two employees as a component of home occupations.
6. **Residential and Recreational Uses in TPZ.** Provide the inclusion of residential uses by right in TPZ and an expanded list of recreational uses that could be considered by CUP as options for analysis in the EIR.
7. **Mixed Use Development (MUD) II.** Defer work on provisions for MUD II until after adoption of the comprehensive Zoning Ordinance update, in order to focus on the needs and desires of individual communities in the county through community input and the development of community design guidelines.
8. **Animal Keeping.** Defer updating provisions for animal keeping on residential lots until after adoption of the comprehensive Zoning Ordinance update and consider it as a separate ordinance amendment.