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**From:** James Brunello <brunellolawoffice@yahoo.com>  
**Sent:** Monday, October 7, 2024 9:11 AM  
**To:** BOS-Clerk of the Board  
**Subject:** File No. P-A-24-0002 Appeal of Zonging P22-0009 Carson Creek R & D Map  
**Attachments:** SKM\_C550i24100708510.pdf

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Attached is a letter pertaining to Agenda Item 27 for the October 8, 2024 Board Meeting. Please distribute copies of this letter to the Board Members and appropriate County staff, and enter the information into the public record for the meeting.

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October 7, 2024

Hon. Wendy Thomas, Chair  
Hon. John Hidahl, First Vice Chair  
Hon. George Turnboo, Second Vice Chair  
Hon. Lori Parlin  
Hon. Brooke Laine  
El Dorado County Board of Supervisors  
330 Fair Lane, Building A  
Placerville, California 95667

Re: File No. P-A24-0002  
Appeal of Zoning Administrator Decision re: P22-0009  
Carson Creek R&D Parcel Map

Honorable Members of the Board of Supervisors:

My office represents Concerned Residents of Heritage Village ("CRHV") regarding the referenced appeal (P-A24-0002) involving approval of Tentative Parcel Map P22-0009 by the Zoning Administrator. This application, filed by Pacific Realty Associates ("Pac Realty"), requested approval of a tentative parcel map allowing the division of four existing parcels within the Carson Creek R&D Project in the El Dorado Hills Business Park into sixteen new parcels, including two open space parcels.

The Initial Consultation Letter distributed for the May 15, 2023 Technical Advisory Committee (TAC) Meeting (attached as Exhibit A) indicates the newly created parcels will be used for "Industrial Wholesale Distribution Buildings", a use not listed in the zoning code. This raises concerns among residents that the project will be a repeat of the Amazon Project Frontier fiasco, particularly because the County has not yet adopted guidelines and standards to govern development of e-commerce logistics uses, and has not codified the June 12, 2023 Director's Determination holding that such uses are not allowed in the R&D zone.

The appeal form submitted by CRHV provides a comprehensive summary of grounds for the appeal. This letter is intended to supplement that appeal form with additional relevant background data for the Board's consideration.

## **Background**

In early 2023, the ***County insisted that Project Frontier's application for a 4.8 million square foot e-commerce warehouse facility in the El Dorado Hills Business Park with 175 loading docks and over 850 truck and trailer parking stalls was a use allowed by right in the R&D zone***, subject only to a minor discretionary permit to address the excess building height. The applicant requested that the County find the huge project exempt under CEQA Guidelines Section 15183, applicable to projects consistent with adopted general plan and zoning ordinances which have been subject to previous CEQA review. Although the exemption was never decided, ***no CEQA analysis has ever considered such e-commerce logistics facilities of this magnitude within the R&D Zone, nor the intense volume of truck traffic and resulting traffic, safety, noise and air quality impacts***. The County's insistence that these uses were allowed "by right" in the R&D was simply unsupported.

My office advised a coalition of residents and community groups concerned about the impact of the proposed Amazon Project Frontier, as well as the proposed CEQA Section 15183 exemption. We assisted in the preparation of two detailed Land Use White Papers (attached as Exhibits B and C) analyzing Project Frontier in the context of the County's General Plan and Zoning Code and allowable land uses within the R&D Zone. Although Project Frontier was flawed on multiple levels, including exceeding the allowable building height and floor area ratios, the critical threshold factor was that the County's land use ordinances did not consider or analyze newer e-commerce logistics use types such as fulfillment centers, heavy distribution, or parcel hubs. ***Our analysis confirmed these e-commerce logistics uses are not allowed under the Wholesale Storage and Distribution use or any other use allowed within the R&D Zone.***

## **Temporary Moratorium Proposed for Adoption of Standards for E-Commerce Logistics Uses**

Because e-commerce logistic uses were not evaluated as a potential use in any previous land use plans, including the recent 2015 comprehensive update of the Zoning Code, there are no meaningful regulations or development standards for these uses in the zoning code to ensure consistency with the General Plan. The Project Frontier application exploited the absence of standards or guidelines, insisting that the use was allowed in R&D by right under the Wholesale Storage and Distribution use classification. ***We recommended that the County consider enacting a limited temporary moratorium for these logistics uses, to evaluate whether and in which zones the uses might be compatible, and to incorporate appropriate standards, conditions and permit requirements into the zoning code.***

Ultimately, we believe that Project Frontier's failure to satisfy the existing limited R&D development standards, including building height (both buildings were over the limit with the larger building more than double the allowable standard at over 103 feet high) and floor area ratio (the building area exceeded the allowable FAR by more than 850,000 square feet) led to

the project's demise. The project could not continue to assert it was a use allowed "by right" and the applicant would have needed to obtain discretionary approvals to proceed.

There is an important distinction between "uses" and "buildings or facilities". The zoning code may allow construction of a warehouse building meeting development standards including floor-area ratio, building height and setbacks, and may allow certain uses within that building "by right". However, there are a number of uses, such as bars, strip clubs, paint and body shops, or breweries and distilleries which are either prohibited entirely in the R&D zone or only allowed upon approval of a discretionary permit. Uses allowed "by right" include only those listed as "permitted" in the zoning code use matrix.

When the Project Frontier application was withdrawn in early May, 2023, community groups continued to urge the County to enact a moratorium to allow time to evaluate changes to the zoning code to incorporate appropriate standards that would preclude future applicants demanding "by right" approval of e-commerce logistics uses where buildings only conformed to the development standards for a basic warehouse structure. Withdrawal of the Project Frontier application spared the County the litigation that would have inevitably resulted had the project followed the path it was on to a ministerial approval as a use allowed by right.

#### **Planning Director "Interpretation"**

Rather than pursue a temporary moratorium, on June 12, 2023, the County Planning Director issued a "Director's Determination" pursuant to Zoning Code section 130.20.030, which allows the Director to adopt interpretations where necessary to resolve ambiguities in the code. ***The Director's Determination (attached as Exhibit D) contains a detailed factual analysis concluding that the use type "Wholesale Storage and Distribution" does not contemplate the unique needs of e-commerce logistics operations such as fulfillment centers, heavy distribution, or parcel hub uses, and that those uses are not allowed within the R&D Zone.*** Instead, the Director's Determination concludes that those uses should be classified as the *Industrial – Specialized* use type.

Fulfillment centers, heavy distribution and parcel hub uses were considered to have special safety or public health concerns, particularly related to the amount of truck traffic typically generated from such uses similar to the impacts contemplated for other Industrial – Specialized use types. The Industrial – Specialized use type is not allowed within the R&D Zone, but is allowed in the "Industrial – Light" or "Industrial – Heavy" (IL or IH) zones, subject to approval of a Conditional Use Permit (CUP). The IL and IH zones are allowed only within the General Plan Industrial (I) Land Use designation, which is very limited in area within the County and generally not located adjacent to residential uses. The requirement for approval of a CUP allows the County to determine if the proposed use is compatible with surrounding land uses, and to impose necessary conditions to avoid or mitigate impacts, or to deny the CUP altogether if the impacts cannot be mitigated.

Zoning Code section 130.20.030 which authorizes the Director to interpret zoning code sections to resolve ambiguities also provides that such interpretations "... shall be incorporated into the official text of the Ordinance within 12 months of the...determination through the County text amendment process." The text amendment process involves public hearings before the Planning Commission and the Board of Supervisors and an opportunity for residents, property owners and others to be heard. The hearing process for an issue with widespread implications has been stopped because the County has granted special privileges to a single property owner in the form of a Tolling Agreement.

### **Wynn Ridge Investments, LLC Appeal and Subsequent Tolling Agreement**

Wynn Ridge Investments, LLC ("Wynn"), owner of the Project Frontier site appealed the June 12, 2023 Director's Determination. After a closed session hearing before the Board of Supervisors, the County entered into a "tolling agreement" with Wynn (attached as Exhibit E). The tolling agreement indicates that Wynn plans to work on an alternative project with the goal of gaining support from the surrounding community and the County. Wynn has been working with community members, including CRHV, in an effort to achieve alternative uses acceptable to the residents. Should Wynn receive County approval of the revised project, the appeal of the Director's Determination would be moot and the tolling agreement would terminate.

During the term of the tolling agreement, Wynn agreed not to submit an application for e-commerce logistics uses such as fulfillment centers, heavy distribution and parcel hubs, and the County agreed not to amend the zoning code to incorporate the substance of the Director's Determination.

The tolling agreement, which was not published online before or after the hearing as are most County documents, expressly provides that it applies only to the parties under the agreement and does not convey any benefit or liability to third parties. The agreement provides for an initial term of 90 days and subsequently allows for amendment and termination by either party upon 60-days' notice. The tolling agreement did not revoke or otherwise modify the Director's Determination concerning e-commerce logistics uses nor did it toll the zoning code requirement that the interpretation shall be codified within 12 months of adoption.

In approving the Wynn tolling agreement and failing to codify the Director's Determination concerning e-commerce logistics uses within 12 months as required, the **County tied its own hands to prevent resolution of an obvious ambiguity in the zoning code.**

### **Effect of AB 98 –Statewide Standards for Warehouse E-Commerce "Logistics" Uses**

AB 98, passed by the Legislature on August 31 and signed into law by the Governor on September 29, 2024, prescribes various statewide warehouse design and build standards for any proposed new or expanded "logistics use" developments, including building design and

location, parking, and truck loading bays among others. “Logistics use” is defined in the statute to mean “. . . a building in which cargo, goods, or products are moved or stored for later distribution to business or retail customers, or both, that does not predominantly serve retail customers for onsite purchases, and heavy-duty trucks are primarily involved in the movement of the cargo, goods, or products.” These standards, effective January 1, 2026, are focused on avoiding or minimizing impacts to “sensitive receptors”, defined to include homes, schools, daycare facilities, parks and recreation facilities, nursing homes and hospitals.

***Passage of this legislation suggests the County is not alone in failing to analyze the impacts of e-commerce logistics facilities, which prompted the state to act.*** As a practical matter, the County will need to incorporate the new standards to protect sensitive receptors into the zoning code before January 1, 2026 to avoid confusion in the enforcement of the zoning code. This is the appropriate time to deal with state law changes as well as needed revisions to the existing code to incorporate required standards and guidelines.

#### **Failure to Correct R&D Zoning Deficiencies**

The Pacific Realty Associates tentative parcel map at issue in this appeal contains 16 parcels including two open space lots. The TAC meeting notice for May 15, 2023 states the intended use for the property is Industrial Wholesale Distribution Buildings (a use not described in the zoning code) raising concerns that the use will be e-commerce logistics uses similar to Project Frontier. A pending Pre-Application Review (PA24-0009) for this property proposes a specific plan which would incorporate land use types other than R&D. This process is conceptual in nature and non-binding on the County or applicant. The proposed specific plan suggests that a portion of the site would retain its R&D zoning subject to provisions of the current General Plan and zoning code.

By failing to more thoroughly define the scope of uses allowed within the R&D zone and to adopt development standards for e-commerce logistics uses, the County has created uncertainty in the land use process. Landowners should know what uses are permitted for their property and residents should know what uses are allowed in their neighborhood. Instead, the County is exposed to a repeat of the Project Frontier experience, and the potential litigation that will likely ensue. Although the tolling agreement prohibits Wynn’s application for e-commerce logistics uses in the R&D zone during the term of the tolling agreement, there is no limitation that would prohibit such an application from a third party, including one that satisfies basic R&D development standards such as building height, setbacks and floor-area ratio unlike Project Frontier.

#### **Summary and Conclusion**

Zoning Code section 130.20.030 authorizes the Director to interpret the code to resolve ambiguities (such as the interpretation of Wholesale Storage and Distribution dated June 12,

2023). The section requires any interpretation "... **shall** be incorporated into the official text of the Ordinance within 12 months of the...determination through the County text amendment process." The County ordinance required incorporation into the zoning code after public hearings before the Planning Commission and the Board of Supervisors by **June 12, 2024**.

Not only did the County fail to comply with the mandatory zoning code requirement that the Director's interpretation be incorporated into the zoning text within 12 months, the underlying reason for the ambiguity is that e-commerce logistics uses were never analyzed in previous El Dorado County and El Dorado Hills Business Park land use plans, including the most recent 2015 comprehensive update of the Zoning Code, and not considered as a use in the Wholesale Storage and Distribution use category. Potentially significant offsite and cumulative impacts were not discussed or analyzed in the EIRs for those plans because the use was unknown or evolving at the time and substantial new information is now available. Finally, there are no standards related to the e-commerce logistics uses to support a finding that a project is consistent with the General Plan or zoning.

Public Resources Code section 21083.3 and CEQA Guidelines section 15183 exempts from additional environmental review a project that is consistent with the development density and use characteristics established by an existing general plan, community plan, or zoning ordinance for which an EIR was previously certified. This project fails to meet the threshold for the section 15183 exemption, because e-commerce logistics uses are not considered in prior land use plans or the zoning code and were not analyzed in a previous EIR.

As regarding this appeal, the Project Description itself is ambiguous and does not adequately describe the intended use of the R&D parcels other than up to 1.1 million square feet of "Industrial Wholesale Distribution Buildings", a use not listed in the zoning code but which seems similar to the Wholesale Storage and Distribution use. The Wholesale Storage and Distribution definition and relationship to e-commerce logistics uses was the very problem that led to the Amazon Project Frontier conflict. Despite the Director's acknowledgement that the zoning code is ambiguous and in need of revision, that never occurred because of the Wynn tolling agreement, and now the community faces yet another ill-defined use that they fear may be a repeat of Project Frontier.

This lack of transparency, similar to the limitations under the Amazon non-disclosure agreement, breeds distrust. Residents are concerned that the parcels created under this map will be used for e-commerce facilities with the attendant traffic, safety, noise and air quality impacts, and that the County will insist, as with Project Frontier, that those uses are allowed "by right" subject only to issuance of a building permit with no opportunity for public input.

At the building permit stage, limited planning review takes place between the staff and developer usually with no opportunity for public input. The reasoning behind the Wynn tolling agreement may well have been to avoid litigation, a fair concern. However, the ambiguity that

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exists on this issue in the zoning code, the lack of analysis of these uses in prior CEQA review, and the absence of opportunity for public input are issues that spawn litigation in the first place.

The County should not be approving projects involving these use types until appropriate regulations and standards are adopted through the legislative process to ensure the uses are compatible with surrounding properties and compliant with the General Plan and zoning. We again strongly urge the Board to approve the appeal and direct staff to initiate the legislative process to amend the zoning code to correct the deficiencies related to e-commerce logistics uses to protect the County and its residents from a repeat of the Amazon debacle.

Very truly yours;

A handwritten signature in black ink that reads "James Brunello". The signature is written in a cursive, flowing style.

James L. Brunello  
Attorney at Law

JLB/rlk

Attachments



**EXHIBIT A**  
**INITIAL CONSULTATION LETTER FOR TAC MEETING**



# PLANNING AND BUILDING DEPARTMENT

## PLANNING DIVISION

<https://www.edcgov.us/Government/Planning>

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April 10, 2023

TO ALL CONCERNED AGENCIES:

Please find enclosed the Initial Consultation information for your review and comment regarding the following application:

**P22-0009 – CARSON CREEK R&D PROJECT (Pacific Realty Associates, LP/Morton & Pitalo, Inc.):** A Tentative Parcel Map to divide four parcels totaling 64.22 acres into fourteen Research and Development (R&D) parcels to be used for industrial wholesale distribution buildings and two open space and drainage parcels ranging from 0.73 acres to 13.07 acres in size. The properties, identified by Assessor's Parcel Numbers 117-210-048, 117-210-049, 117-210-050 and 117-210-060, consist of 64.22 acres, and are located on the east side of Latrobe Road, approximately 580 feet north of the intersection with Golden Foothill Parkway, **in the El Dorado Hills area, Supervisorial District 2.**

Pursuant to Section 15063 of the State CEQA Guidelines, this Initial Consultation is being conducted to determine if the project may have a significant effect on the environment and determine whether an environmental impact report or a negative declaration will be prepared.

Login or create an account to review DRAFT project documentation online:

<https://edc-trk.aspgov.com/etrakit/Search/project.aspx>

Review and comment by your agency is requested to identify your concerns to be considered by the County during our environmental review to mitigate impacts, develop conditions of approval, and/or modify the project. Your agency's written responses must be received by the Planning Services **no later than May 10, 2023.** If we do not receive written correspondence from your agency by that date, we will assume your agency has no comment and your agency's concerns may not be reflected in our recommendations.

**The Technical Advisory Committee (TAC) will meet on May 15, 2023,** to take one or more of the following actions; 1) Make an environmental determination, 2) Identify additional information needs; 3) Determine final project conditions and/or, 4) Confirm the public hearing date. TAC Meetings are currently being held remotely via Zoom and in person at 2850 Fairlane Court Building C, Placerville, CA 95667 in the TAC Conference Room. County Planners processing agendized applications organize individual TAC meetings. If you have questions about an item on the TAC agenda, please contact the County Planner listed below. **Please call this office or the County Planner listed below one week prior to the meeting for the scheduled time.** Technical Advisory Committee meetings are for agency discussion with the applicant and/or agent only. Other interested individuals may obtain project information by contacting the project planner.

If you have questions or need additional information, please call Planning Services office at (530) 621-5355.

EL DORADO COUNTY PLANNING SERVICES

County Planner: Timothy Pitt, (530) 621-6565

Email: [timothy.pitt@edcgov.us](mailto:timothy.pitt@edcgov.us)

TCP/emmm

cc: Kris Payne, Planning Commissioner District 2  
El Dorado County Building Division  
El Dorado County Department of Transportation  
El Dorado Hills Business Park  
Agriculture Department Commission  
El Dorado County Assessor's Office  
El Dorado County Sheriff's Office  
El Dorado County Surveyor's Office  
California Highway Patrol  
El Dorado Hills Fire Protection District  
El Dorado County Emergency Medical Services  
Buckeye Union School District  
Pacific Gas and Electric

George Turnboo, Supervisor District 2  
El Dorado County Environmental Management  
El Dorado County Department of Transportation Planning  
Pioneer Cemetery Commission  
Air Quality Management District  
Local Agency Formation Commission  
El Dorado County Stormwater  
California Department of Fish and Wildlife  
CAL Fire  
El Dorado County Recorder-Clerk's Office  
El Dorado County Emergency Services Authority  
CALTRANS District 3  
El Dorado Irrigation District

**EXHIBIT B**

**LAND USE ANALYSIS WHITE PAPER – APRIL 19, 2023**

## LAND USE ANALYSIS - PROJECT FRONTIER, EL DORADO HILLS

### Executive Summary

The controversial 4.8 million square foot Project Frontier “distribution and sortation” facility proposed for the El Dorado Hills Business Park raises complicated land use questions including:

- Is this project allowed by right, or does the County have the discretion to say “NO”?
- Does the permitting process now underway conform to requirements of the El Dorado County Zoning Code?
- What is the mandated permitting process?
- What factors should be evaluated in consideration of the -PD rezone and Development Plan permit?
- What standards should be incorporated into the zoning code Special Use Regulations to ensure the Wholesale Storage and Distribution use is consistent with the General Plan and the zones in which it is located?

As discussed in the analysis below, the County does have the discretion to say NO, the permitting process is inconsistent with mandatory requirements of the County Zoning Code, and Project Frontier must obtain approval of a rezone to add the -PD combining zone and approval of a Development Plan permit *after hearings before both the Planning Commission and Board of Supervisors. **Since the zoning code does not include any meaningful regulations for developments of this type and scale, the County should enact a temporary moratorium narrowly focused on this unanticipated use type, in order to adopt appropriate standards and guidelines.***

### I. Background and Introduction

California’s Planning and Zoning law requires each city and county to “adopt a comprehensive, long-term general plan for [its] physical development”.<sup>1</sup> A general plan is often described as the charter or “constitution” for development. The plan must be internally consistent, meaning that the goals, objectives, policies and implementation measures in each element must be consistent and cannot act to hinder or obstruct execution of the plan. A city or county’s zoning code, zoning maps and all subsequent land use approvals must also be consistent with the adopted general plan.

The zoning code implements the general plan by establishing a set of zone districts or “zones”, and identifying uses allowed within each zone. Uses may be allowed “by right” or may require further discretionary permits and planning approvals. The zoning code contains standards regulating development, such as parcel size, setbacks and building height for each zone. Uses allowed “by right” must satisfy these development standards (i.e., setbacks and building height), unless the zoning code allows a modification of the standards and the applicant obtains approval of a discretionary permit as required by the zoning code.

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<sup>1</sup> Government Code Section 65300

## II. Project Frontier – Land Use and Zoning

The proposed project site is designated in the El Dorado County General Plan as Research and Development (R&D), a land use designation applicable to less than .1% of the 1.1 million acres of land in the County. The General Plan defines the R&D land use as follows:

“Research & Development (R&D): The purpose of this land use designation is to ***provide areas for the location of high technology, non-polluting manufacturing plants, research and development facilities, corporate/industrial offices, and support service facilities in a rural or campus-like setting which ensures a high quality, aesthetic environment.*** This designation is highly appropriate for the business park/employment center concept...” (***emphasis added***) [General Plan Policy 2.2.1.2]

The only zone district considered consistent with the R&D land use is the Research and Development (R&D) zone, established to “...provide areas for the location of high technology, non-polluting manufacturing plants, research and development facilities, corporate and industrial offices, and support service facilities in a rural or campus-like setting, such as a business park environment.” [EDC Code section 130.23.010 B.3.<sup>2</sup>] The R&D zone allows various uses, including but not limited to Professional or Medical Offices, Banks, Restaurants, Light Manufacturing, **Wholesale Storage and Distribution**, Churches, Schools and Breweries. Some uses require additional discretionary permits; others can be established by right ***provided that the use complies with the development standards for the zone.***

### The Wholesale Storage and Distribution Use Type

Project Frontier is proposed under the Wholesale Storage and Distribution use, which first appeared in a 1999 draft update of the 1969 Zoning Code as “Wholesale Distribution” and was later revised without substantive change to Wholesale Storage and Distribution prior to adoption of the Zoning Ordinance Update (ZOU) in 2015. Addition of this use to the Zoning code did not contemplate or analyze a facility the size and scale of Project Frontier.

The zoning matrix allows Wholesale Storage and Distribution in several zones; the zones are in turn allowed within different general plan land use designations. For example, Heavy Industrial is a zone consistent with the Industrial land use designation, while R&D zoning is consistent with the Research & Development land use. Each of the zones and land use designations vary, with Heavy Industrial providing in part: “...The uses associated with this district are likely to generate significant levels of truck traffic, noise, pollution, vibration, dust, fumes, odors, radiation, radioactivity, poisons, pesticides, herbicides, or other hazardous materials, fire or explosion hazards, or other undesirable conditions...Heavy industrial districts are unsuitable adjacent to residential districts and some commercial uses... Activity at heavy industrial sites consists predominantly of trucks, rather than passenger vehicles, and the road system is built to support truck traffic...” [Sec. 130.23.010 B.2.] In contrast, the R&D zone provides: “...areas for ... high

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<sup>2</sup> All code references are to the El Dorado County Zoning Code, unless otherwise indicated.

technology, non-polluting manufacturing plants, research and development facilities, corporate and industrial offices... in a rural or campus-like setting, such as a business park environment.” [Sec. 130.23.010 B.3.]

### **III. The Project Frontier Application/Proposal**

#### **A. Project Frontier, as proposed, is NOT a use allowed by right.**

The project applicant proposes to construct a “distribution and sortation” facility consisting of two buildings totaling 4.8 million square feet – one containing just under 1.4 million square feet, **with a height of 54 feet**, and a five-story building containing about 3.4 million square feet, **with a height of about 103.5 feet, more than double the 50’ building height allowed under the zoning code.** [Q4/A; FAQ, April 12, 2023]

As a threshold issue, **since neither building complies with the 50’ maximum building height standard for the R&D zone, Project Frontier is not a use allowed “by right”.**

#### **B. The zoning code requires a rezone to add the Planned Development (-PD) Combining Zone and approval of a Development Plan Permit to modify building height standards.**

The zoning code clearly provides that this development in the R&D zone shall comply with established development standards unless the property is rezoned to include the Planned Development (-PD) Combining Zone [Sec. 130.52.040], and the building height standards are modified by a Development Plan Permit:

“Development Standards. **Allowed uses and associated structures shall comply with the following development standards** listed in Table 130.23.030 (Industrial/R&D Zone Development Standards) below, in addition to those under Section 130.23.040 (Design Standards) below in this Section, and any other applicable requirements of this Title **unless...standards are modified pursuant to a Development Plan permit in compliance with Section 130.52.040** ... of this Title.” [Sec. 130.23.030]

A Development Plan Permit “...provides flexibility from the strict application of the Ordinance standards...” [Sec. 130.52.040.A.] An approved PD may allow **“[v]ariations in zone development standards ... such as setbacks, lot size, lot width, floor area ratio (FAR), and height limits** for greater flexibility in project design.” [Sec. 130.52.040 D.1] Allowed **uses** of a development plan shall only be those allowed in the base zone, in this case R&D. [Sec. 130.28.030.C]

**Obtaining approval of a Development Plan requires both a rezone application to add the Planned Development (-PD) Combining Zone, and approval of the Development Plan permit.** [Ch. 130.28]. Both the rezone and Development Plan are discretionary projects subject to CEQA. **The Planning Commission is the review authority of original jurisdiction for a Development Plan permit.** [Sec. 130.52.040.C] If the rezone and Development Plan permit applications are

filed at the same time, they shall be processed concurrently [Sec. 130.28.040.A] For these concurrent applications, the Planning Commission makes an initial recommendation to the Board of Supervisors, and the Board has the final decision-making authority for both the rezone and Development Plan Permit.

***Rather than comply with plain language in the zoning code requiring a -PD rezone and Development Plan permit under original review by the Planning Commission to modify the building height standard in the R&D zone***, the developer has instead applied for a CUP to allow the increased building height. The County cites a general provision in the zoning code for the proposition that a CUP is the appropriate permit. [FAQ Q2/A; Sec. 130.30.060 *Height Limits and Exceptions*] This section states “All structures and buildings *shall conform to the maximum height requirements established for the zone...unless a Development Plan or Conditional Use Permit is approved allowing additional height...*” The zoning code identifies certain limited uses, such as cell towers and public utility infrastructure for which height standards may be modified by a CUP. The language found in all the major zone designations – R&D, Commercial, Industrial, Residential, and even Agricultural, Rural, and Resource Zones – mandating that modification of development standards requires a Development Plan Permit and accompanying -PD zoning is more specific and controls over the general provision cited by the County.

Whatever the purpose may be for seeking a CUP rather than following the specific requirements for a -PD rezone and Development Plan permit, the effect is to deny the Planning Commission its original jurisdiction over issuance of the permit for the project, and avoid public input on the important components of the development permit and the -PD rezone.

*The Project Frontier buildings in the R&D zone require a rezone to add the Planned Development zone overlay (to R&D-PD) and a Development Plan Permit.* The building height standards can only be modified by obtaining approval of a rezone to add the -PD combining zone and approval of a Development Plan permit ***after hearings before both the Planning Commission and Board of Supervisors.*** Those hearings require specific findings including that the project is consistent with the General Plan.

### **C. What factors should be considered for the Development Plan Permit and -PD rezone?**

The -PD rezone and Development Plan permit hearings should consider, among other factors, whether the proposed significant increase in building height and the resulting mass, scale, and intensity of use (including the addition of total building area of at least 1.8 to 2.0 million square feet) is consistent with the General Plan land use, the goals and objectives of the R&D/Business Park, minimizes use compatibility issues, and reflects the character, identity and scale of the local community. Specific standards and issues for consideration are found in the zoning code. [See Ch. 130.28 and Sec. 130.52.040.]

The massive size and scale of the proposed project raises substantial questions that must be addressed during the Planning Commission and Board of Supervisors hearings before making a final decision on the project. Does the proposed project, including the building height increase,



help to further the goals and objectives of the County's General Plan R&D land use? Is the proposed use consistent with the goals and objectives for the El Dorado Hills Business Park? What are the appropriate guidelines for establishing the Wholesale Storage and Distribution use type in the R&D zone?

***“Research & Development (R&D): The purpose of this land use designation is to provide areas for the location of high technology, non-polluting manufacturing plants, research and development facilities, corporate/industrial offices, and support service facilities in a rural or campus-like setting which ensures a high quality, aesthetic environment. This designation is highly appropriate for the business park/employment center concept...”*** [GP Policy 2.2.1.2]

This 2004 General Plan Policy for the EDH Business Park (EDHBP) land use was already being implemented by the Business Park management. In 1983, Covenants Conditions and Restrictions (CCRs), restated in 1993, required a development project obtain approval of the EDHBP Architectural Review Committee. The Committee could deny a project based on any reasonable ground, including being “inharmonious with the general plan for improvement of the El Dorado Hills Business Park”.

Actual development of the El Dorado Hills Business Park (“EDHBP”) for nearly 40 years has furthered the objectives and policies of the General Plan, including the jobs/housing ratio. The EDHBP consists of about 832 acres. A little over 1/3 of the land has been developed with over 200 businesses and over 5,300 employees. After taking into consideration potential environmental constraints, only about 400 acres within the EDHBP remains available for development<sup>3</sup>

In 2018, the Project Frontier project site of 207.89 of the roughly 400 acres of remaining developable land was de-annexed from the EDHBP CCRs at the request of a developer seeking to build a housing development, which has left the site without the historic protections put in place to ensure R&D development occurs consistent with the goals and objectives of the EDHBP.

In a November, 2021 a Community Transportation Study for the El Dorado Hills Business Park prepared by the El Dorado County Transportation Commission in cooperation with the County Planning Department, analyzed three development scenarios for the EDHBP to adapt to changing market conditions. One scenario would retain the existing amount of R&D development, a second would reduce the amount of R&D development and add residential uses, and a third would intensify the R&D development and add residential uses. None of these scenarios considered the massive warehouse and trucking facilities with the intensive operations contemplated by the Project Frontier proposal. To date, none of these alternatives have been implemented.

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<sup>3</sup> Source: EDCTC Community Transportation Study for El Dorado Hills Business Park, November 4, 2021

Project Frontier is not consistent with the General Plan Policy for the EDHBP, the actual development history of the EDHBP or even the 2021 EDC Transportation Study possible alternatives. Nor does it emulate a near-by example what the EDHBP has aspired to be. A high-technology, non-polluting manufacturing research and development campus is the Intel facility in Folsom, where employees create, test, and validate the next generation of chips and chipsets, including desktop, mobile, and server processor products. Totalling about 1.5 million square feet of office, test floor, and lab space in seven buildings, the facility employs more than 5,000 people with average salaries reportedly exceeding \$100,000 annually. The campus environment includes fitness centers, sports courts and fields, walking/jogging trails, cafes, convenience store, dry cleaning, ATMs, onsite healthcare for employees, social clubs and more.

**D. The County must adopt Specific Use Regulations for the Wholesale Storage and Distribution use type.**

The argument being advanced in support of Project Frontier is based on the fact the zoning code matrix lists the Wholesale Storage and Distribution as a permissible use type. This is a generic term, listed as permissible across a range of zones that Project Frontier argues encompasses a 4.8 million warehouse that should be allowed by right within the R&D/Business Park environment.

The zoning code includes many use types that are allowed in multiple zones, just as Wholesale Storage and Distribution may be established in Heavy Industrial, Light Industrial and R&D zones. The zoning code deals with compatibility conflicts by establishing Specific Use Regulations [Ch. 130.40] with appropriate standards for the design, location, and operation of the specific uses consistent with the General Plan for each use and each zone within which the use is allowed. At least 40 different use categories are identified, along with standards that often vary based on the zone, property size or other characteristics. Examples include Home Occupations [Sec. 130.40.160]; drive-through facilities at fast food restaurants [Sec. 130.40.140]; Ranch Marketing [Sec. 130.40.260] or Animal Keeping [Sec. 130.40.080]. In contrast, the Wholesale Storage and Distribution use type states only:

“Wholesale Storage and Distribution (Use Type). Establishments engaged in wholesaling, storage, warehousing, and bulk sale distribution. It does not include uses classified under "Equipment and Materials Storage Yard”.

If anything, the Project Frontier application makes clear that the *zoning code needs standards and guidance for the Wholesale Storage and Distribution use type, and that those standards must be compatible with the applicable zone and underlying land use*. Wholesale storage and distribution is a component of many businesses, such as a distillery storing whiskey in barrels before bottling for wholesale distribution, or a small business storing products manufactured onsite before shipping to retailers. It might also include a 4.8 million square foot facility if in compliance with standards and compatible with the General Plan land use and zone.

#### IV. CONCLUSION

The Project Frontier use as proposed, is not allowed by right. The CUP process underway is improper and inconsistent with the zoning code, and if this application is to move forward, the applicant must apply for a rezone to add the -PD combining zone and for a Development Plan Permit. The County has authority to deny the requested height increase as inconsistent with the General Plan and the historic implementation of the R&D Business Park, among other reasons.

It is clear that the existing zoning code as related to the Wholesale Storage and Distribution use suffers from inadequate standards and guidance to allow either staff or decision makers to evaluate proposals for compliance and consistency with the General Plan. The Project Frontier application is exploiting the absence of any meaningful standards for implementation of this use. ***The County should enact a temporary moratorium narrowly focused on this use type to address these issues and to incorporate appropriate standards, conditions and permit requirements into the zoning code.***

Issues with Project Frontier go well beyond those outlined here – questions of environmental impacts such as traffic, noise and air quality; the loss of anticipated high-paying local jobs for local residents and the impact on jobs-housing balance; and questionable suggestions that the project will generate significant tax benefits to the County. These issues deserve a meticulous and transparent analysis because the consequences of a bad decision are enormous for our county, our residents and future generations.

**EXHIBIT C**

**LAND USE ANALYSIS WHITE PAPER – PART 2 – MAY 9, 2023**

## PROJECT FRONTIER, EL DORADO HILLS – LAND USE ANALYSIS, PART 2

### I. Introduction

Recently, we provided a detailed analysis of land use issues related to the proposed Project Frontier development in El Dorado Hills. [Land Use Analysis, April 19, 2023]

We note the Planning Director has determined that the Planning Commission, rather than the Zoning Administrator, will be the original review authority for the project application. However, as of this writing, the County continues to process the wrong permit type to allow Project Frontier to deviate from the building height standards for the R&D zone. According to the County, *“The only part of this project which is subject to discretionary approval is the application for a Conditional Use Permit (CUP) to exceed the maximum height allowed in the R&D zone...”* [County Project Frontier FAQ, Updated April 19, 2023 (“FAQ”)]

The El Dorado County Zoning Code (Code) expressly provides that development in the R&D zone ***shall comply with established building standards such as maximum building height and floor area ratio, unless the standards are modified by a Development Plan Permit. The Project Frontier property must also be rezoned to add the -Planned Development (-PD) Combining Zone***, and the rezone must be approved to allow approval of the Development Plan Permit. This permitting question must be resolved before the Planning Commission hearing on Project Frontier. For more information, see our Land Use Analysis at [www.citizens4edh.org](http://www.citizens4edh.org).

The County compounds the error by improperly limiting the scope of the Planning Commission hearing, *“The reviewing body’s scope is limited to the discretionary request, in this case the CUP for height adjustments...”* [County Project Frontier FAQ, Updated April 19, 2023]

The Development Plan Permit is a discretionary permit and the PD Rezone is a legislative act. The two applications are processed concurrently, with the Planning Commission making a recommendation to the Board of Supervisors (Board), and the Board having final authority to approve or deny the request. (See Sec. 130.28.040; Sec. 130.52.040; Sec. 130.63.020 E) The review authority shall consider the zone change and development plan applications on their own merits and may consider approval of the zone change without approving the development plan.

Required findings for approval of the Development Plan Permit include that the proposed development plan is consistent with the General Plan’s R&D Land Use designation for the El Dorado Hills Business Park (EDHBP); the site is adequate to accommodate the proposed uses; any exceptions to the development standards of the zone are justified by the design or existing topography; adequate public services and facilities exist or will be provided to serve the proposed development; and the proposed development complies with the provisions of the -PD Combining Zone [Sec. 130.28.010] including to minimize impacts on natural resources; avoid cultural resources where feasible; promote more efficient utilization of land; reflect the character, identity and scale of local communities; and minimize use compatibility issues and

environmental impacts. As a legislative act, the Board of Supervisors has broad discretion in deciding whether to approve or deny the PD rezone. Legislative actions are political in nature.

## **II. Unlike Rancho Cordova, El Dorado County Can Just Say “NO”**

It has been suggested that denial of Project Frontier would expose the County to significant legal liability, similar to the recent situation in Rancho Cordova. There, Dermody Properties, the public face of Project Frontier, allegedly threatened to sue Rancho Cordova after the City denied its application for a 155,000 sq. ft. industrial building. That situation is distinguishable, however. ***Dermody alleged the City had breached a 2003 development agreement between the County of Sacramento and the former owner/developer, which conferred the right to develop the property in accordance with the adopted standards of a 2003 Special Planning Area development plan and the 2003 Sacramento County Zoning Code. Dermody asserted “vested, legal rights to develop the light industrial project”, and the City has withdrawn its denial of the project.***

The circumstances in Rancho Cordova are vastly different from Project Frontier, which has no development agreement, no adopted specific plan setting standards for development of the property, and requires both a zone change and discretionary permit to allow both buildings to exceed the height limit for the R&D zone, including one building that would be more than double the building height limit at 103.5 feet. The Nondisclosure Agreement between the County and Dermody does not obligate the County to approve the pending application, nor does it limit the Board’s exercise of its legislative discretion. **Project Frontier has no right, vested or otherwise, to approval of the project as submitted.**

## **III. Issues for Consideration During the Hearing Process**

The County suggests in the FAQ that discussion during the public hearing on the CUP is limited to the issue of building height. At a proper hearing to consider a Development Plan and PD zone change, there are a number of issues warranting discussion, including at least the following:

### ***A. The “Wholesale Storage and Distribution” Use Type***

Both the applicant and County staff insist that Project Frontier falls within the Wholesale Storage and Distribution Use type in the Zoning Code. The CUP application states the buildings will be used as “distribution and sortation” facilities, while the Transportation Impact Analysis describes one building as a “sortable fulfillment center where employees pick, pack and ship products like books, toys and housewares”, and the other as a “non-sortable fulfillment center where employees pick, pack and ship bulky or larger-sized products like patio furniture, outdoor equipment or rugs...”. The economic impact study states that one building will be a “multilevel logistics, distribution and warehousing facility”, but goes on to describe an E-Commerce Sales Tax Revenue Scenario estimated to generate between \$10.4 and \$24.3 million in annual sales taxes.

Whatever the description, the Applicant and County suggest the use is allowed “by right” under the Wholesale Storage and Distribution use type, ignoring the plain meaning of the language. “Wholesale” generally means the sale of products to retailers, industrial, commercial, institutional, or other professional business users. In general, it’s the sale of goods to anyone other than a standard consumer. Wholesale distributors purchase bulk quantities of goods from manufacturers or suppliers, break down and store the product, and ultimately sell in quantity at wholesale prices to retailers, hospitals, restaurants and other businesses.

In contrast, all the explanations of Project Frontier operations describe steps in the e-commerce retail sales chain, where products are sold to consumers and are picked, packaged and delivered to individuals. Regardless of whether Project Frontier performs an early stage of the operation or “last mile” fulfillment, these are **retail not wholesale** activities and do not meet the use type definition for the zone.

The economic impact study submitted by the applicant suggests that the project could generate substantial sales tax revenue from ecommerce operations onsite. Sales taxes are not generally collected on wholesale transactions, where the merchandise is intended for resale. While the economic impact study is believed to significantly overestimate the benefits to the County, it is clear the applicant contemplates a retail rather than a wholesale operation onsite.

E-commerce retailers such as Amazon, are considered *retailers not wholesalers*. The North American Industry Classification System (NAICS), developed under the direction and guidance of the U.S. Office of Management and Budget (OMB) is the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy. NAICS codes are used by the state to classify or define businesses, including a “warehouse distribution center” in a new law requiring disclosure of certain economic subsidies for such businesses and prohibiting non-disclosure agreements that would prohibit such disclosure. [Government Code §53083.1] Amazon.com has a primary NAICS classification of 459999 “All Other Miscellaneous Retailers”, and secondary classifications related to Electronic Shopping, and online Grocery Stores. Amazon is not a wholesaler, and the proposed Project Frontier use does not meet the criteria for the Wholesale Storage and Distribution use classification in the County Zoning Code.

Dermody advocating for Project Frontier tries to walk a fine line between fitting into a use category (Wholesale Storage and Distribution) they argue is allowed by right, and promoting economic benefits to the community in the form of sales tax revenue. Last week, County Auditor-Controller Joe Harn issued a letter retracting his earlier conclusion that Project Frontier would have a “dramatic positive effect” on the County. That analysis relied on an assumption that the project would operate as a fulfillment center, making deliveries directly to customers. Project Frontier has to decide whether it is a wholesale storage and distribution warehouse allowed in the R&D zone, producing relatively low-paying jobs and lots of truck traffic but no meaningful sales or use tax revenues, or they are a retail fulfillment center operation generating annual sales tax revenues, but thereby excluded from the Wholesale Storage and Distribution facility allowed by right in the R&D zone. ***They simply can’t have it both ways.***

## ***B. Project Boundary, Acreage and Floor Area Ratio Calculation Issues***

Our research has identified a further development standard deviation involving the project's Floor Area Ratio (FAR) based on a recent Lot Line Adjustment (LLA). The LLA was submitted by Winn Ridge Investments (Winn) the current owner of the Project Frontier land in November 2021, shortly after the nondisclosure agreement between the County and Dermody was approved by the Board of Supervisors, and County emails indicate that Dermody had contacted County staff about the project. The LLA Map was approved by County Planning staff in December 2021, approved by the County Surveyor on April 11, 2023, and ***was finalized and recorded on April 17, 2023.***

***The LLA divided the 207.89-acre parcel that listed in the Project Frontier application into one parcel of about 180.5 gross acres, and has transferred the remaining 27.39 acres to an adjacent parcel owned by Winn.*** The 180.5-acre land area conforms to descriptions contained in a couple of Project Frontier's documents, including the Economic Impact Analysis (EPS; March 30, 2023) and the Biological Resources Study (EPA; March 2022) which illustrates the land to the north of the 180.5 acres as "offsite" of the development. The distinctive northern boundary line for the new parcel is repeated throughout the exhibits from landscape plans to the development site plan, suggesting that Project Frontier has always been limited to 180.5 acres. The project applications do not disclose that the proposed development involves less than the entire original parcel.

***The acreage is significant because it affects the maximum building area allowed for the development.*** The General Plan and Zoning Code allows a .50 Floor Area Ratio, which translates to one square foot of gross building floor area for each two square feet of net lot area. Although the numbers have been a moving target for some time, the County's FAQ indicates a total gross floor area of 4,783,394 square feet for the project.

Since the actual project area appears to be only 180.5 acres, the maximum gross floor area for the project would be only ***3,931,290 sq. ft., and the proposed Project Frontier buildings exceed the maximum building area by more than 850,000 square feet.***<sup>1</sup>

In March 2021, Winn and the El Dorado Hills CSD signed a Purchase and Sale Agreement (PSA) whereby Winn would sell 58+/- acres of land to the CSD for a community park. The PSA appears to include the 27.39 acres that was added by the LLA to other property owned by Winn. After completion of the LLA, it appears Winn has about 58+/- acres to sell to the CSD, and a 180.5-acre parcel to sell for Project Frontier. The status of the PSA has not been disclosed.<sup>2</sup>

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<sup>1</sup> The precise calculation of allowable building area is based on NET lot area in square feet, excluding undevelopable land (i.e., roads, right of way, bodies of water, etc.) Lacking that information, our calculation uses gross lot area. The FAR based on gross lot area is .61. The NET lot area must be calculated and disclosed so that the actual FAR and allowable building area can be determined in compliance with the General Plan and Zoning Code.

<sup>2</sup> Although the PSA contains contingency provisions, there is nothing to suggest the PSA does not remain in effect.



Exclusion of facts related to the pending LLA, the true size of the project site and effect on allowable building size should be considered a material omission in the application.

### ***C. Other Considerations Requiring Discussion***

Despite assertions to the contrary in the County's FAQ document, consideration of the applications for this project (Development Plan Permit and the -PD rezone) will require discussion at a public hearing of a range of important issues ranging from general plan and zoning consistency, whether this development is an appropriate use to exhaust limited traffic capacity on major roadways and intersections in El Dorado Hills, whether the development would generate meaningful economic benefits for the County and its residents or if it would create a further drain on already limited resources. There will also be discussion of a full range of environmental considerations including traffic, noise, visual, light and glare and air quality impacts. It would be improper for the County to attempt to limit discussion to the question of the modification of the building height standard in light of all the issues raised by the applications and material issues that have not been disclosed by the proponents.

### **IV. Conclusion**

The public perception of the Project Frontier application is that this project is a foregone conclusion and the steps to final approval are perfunctory. The perception stems from the execution of the NDA, which has inhibited the ability of elected officials to answer questions from constituents. The NDA has done more than protect the identity of a potential tenant or owner, it has obscured the nature of the operation and frustrated a complete and accurate analysis of the project impacts. The problem has been compounded by inconsistent descriptions of the use, suggestions of an economic windfall that now seems unlikely to materialize and omission of facts material to the analysis of the project.

The Board has never considered whether E-Commerce projects of this magnitude are an appropriate use, specifically within the limited land available in the General Plan Research and Development land use. Efforts to fit this project into a generic matrix use category never intended or analyzed for this Project has created conflicts.

Our last report suggested ***the Board should enact a temporary moratorium narrowly focused on this use type to allow the Board, in its legislative capacity, to resolve these conflicts by considering and adopting appropriate standards, conditions and permit requirements*** for inclusion in the zoning code. We are more convinced than ever that such an action is necessary and warranted.

**EXHIBIT D**  
**DIRECTOR'S DETERMINATION – JUNE 12, 2023**

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## EL DORADO COUNTY PLANNING & BUILDING DEPARTMENT

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2850 Fairlane Court, Placerville, CA 95667  
Phone (530) 621-5355, Fax (530) 642-0508

Date: June 12, 2023  
To: Honorable Board of Supervisors  
From: Karen L. Garner, Director  
Subject: **Director's Determination - Fulfillment Center/Heavy Distribution/Parcel Hub Uses**

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### INTERPRETATION:

The Industrial/Research and Development Zones Use Matrix of the Zoning Ordinance (Table 130.23.020) lists uses for Industrial Low (IL), Industrial High (IH) and Research & Development (R&D) zoning. The matrix notes if a use is Permitted (P), not allowed, or if a special permit is required such as an Administrative (AP) or Conditional use Permit (CUP). Specific uses are further defined in the Definitions of Specialized Terms and Phrases (Section 130.80.020).

There is no use listed in the matrix or defined elsewhere in the zoning code for fulfillment centers, heavy distribution, or parcel hub uses. Although the Industrial / R&D Zones Use Matrix (Ord. Code § 130.23.020) includes a use type "Wholesale Storage and Distribution," that use type does not contemplate the unique needs of fulfillment centers, heavy distribution, or parcel hub uses described in the "Discussion" section below.

Section 130.20.030. of the County Zoning Code authorizes the Planning and Building Director to determine if a use not already listed in the Zoning Code is allowable and if so, what the use type is for determining proper zoning. The Planning and Building Director has determined that fulfillment centers, heavy distribution and parcel hub uses shall be classified as the *Industrial – Specialized* use type. To make this determination, Section 130.20.030.3(a) requires that certain findings are made.

1. *The characteristics of, and activities associated with the use are similar to one or more of the listed uses, and will not involve a greater intensity than the uses listed in the zone;*

The Industrial – Specialized use type is defined as follows: "Establishments engaged in activities that generate noise, vibration, odor, dust, or smoke that may extend beyond the confines of the property boundaries; that involve special safety or public health considerations; or that do not clearly fit within another industrial use classification. It includes, but is not limited to bulk storage of gasoline, propane, or other flammable fuel

sources, and material recovery facilities.” Fulfillment centers, heavy distribution, parcel hub uses could have special safety or public health concerns, particularly related to the amount of truck traffic typically generated from such uses similar to the impacts contemplated for the Industrial – Specialized use type. This use type is allowed with approval of a CUP in the IL and IH zones. It is not allowed in the R&D zone. A CUP is a process for reviewing uses and activities that may be appropriate in the applicable zone but the potential for effects on the site and surroundings cannot be determined without a site-specific review. This process will ensure that the characteristics and activities associated with the use are similar to other uses allowed in IL and IH zones and will not involve a greater intensity and is conditioned to address any safety or public health concerns.

*2. The use will be consistent with the purposes of the applicable zone;*

Industrial—Light (IL). The IL zone is applied to lands for manufacturing and associated retail or service activities, wholesaling, and other industrial uses, where the primary activity is conducted within a building or buildings, or in outdoor storage or activity areas. Conditional Use Permits shall be required for those uses which, by their nature, have the potential to produce or emit noise, odor, fumes, dust, smoke, vibrations, glare, heat, electrical interference or waste material beyond the confines of the property boundaries.

Industrial—Heavy (IH). The IH zone is applied to areas which may also be suitable for more intensive industrial uses, including manufacturing, assembling, fabrication and processing, bulk handling, storage, warehousing and trucking. The uses associated with this district are likely to generate significant levels of truck traffic, noise, pollution, vibration, dust, fumes, odors, radiation, radioactivity, poisons, pesticides, herbicides, or other hazardous materials, fire or explosion hazards, or other undesirable conditions. A Conditional Use permit is required for uses having the potential to pose a safety hazard or produce particulate matter. Heavy industrial districts are unsuitable adjacent to residential districts and some commercial uses. Dwellings, care centers, and certain commercial uses are not allowed. Uses allowed within IL (Light Industrial) districts are allowed, provided that the uses are subordinate to and do not restrict heavy industrial uses in the zone. Activity at heavy industrial sites consists predominantly of trucks, rather than passenger vehicles, and the road system is built to support truck traffic. Provisions for pedestrians are not required.

Fulfillment center, heavy distribution or parcel hub uses are consistent with the IL and IH zones. These uses typically conduct activities within buildings or outdoor storage or activity areas. They do not typically produce or emit noise, odor, fumes, dust, smoke, vibrations, glare, heat, electrical interference, or waste material beyond the confines of the property. These uses may generate truck traffic which is allowed in the IL and IH zones.

*3. The use will be consistent with the General Plan and any applicable specific plan;*

Review of any proposed fulfillment center, heavy distribution or parcel hub use will include a General Plan and specific plan consistency analysis. Generally, IL and IH zones are within Industrial Land Use designations which allow for processing, distribution, and storage.

4. *The use will be compatible with the other uses allowed in the zone.*

Fulfillment center, heavy distribution and parcel hub uses are compatible with other uses allowed in the IL and IH zones. The uses require a CUP and therefore, can be conditioned to include measures that address any potential compatibility issues.

**DISCUSSION:**

Table 130.23.020 does not currently include a use type for fulfillment centers, heavy distribution, or parcel hub. It is not uncommon for the market to present new types of uses that were not known or contemplated at the time the zoning ordinance was adopted. The last comprehensive update to the County's zoning ordinance was in 2015.

In recent years, the growth of e-commerce has created a use type characterized by facilities primarily involved with receiving and repackaging merchandise and are heavily reliant on logistics and advanced technology to move merchandise quickly and efficiently, typically with the use of automation. The facilities may be "middle mile" delivery that takes products from a factory, port or larger warehouse to a fulfillment center or "last mile" delivery taking products from a fulfillment center to a retail store or customer. The primary "end product" of such facilities are a large volume of parcels that fulfill orders of individual consumers. These facilities are also heavily reliant on vehicles ranging from semi-trucks to vans to move the products and parcels. This use has been determined to be substantially different from any current use types listed in the Industrial and Research and Development Chapter and shall be referred to as fulfillment center, heavy distribution, parcel hub uses. The use type Industrial – Specialized accommodates such uses and is the appropriate zone designation.

Section 130.80.020 defines Industrial – Specialized as:

Establishments engaged in activities that generate noise, vibration, odor, dust, or smoke that may extend beyond the confines of the property boundaries; that involved special safety or public health consideration; *or that do not clearly fit within another industrial use classification*. It includes, but is not limited to bulk storage of gasoline, propane, or other flammable fuel sources, and material recovery facilities.

Although most sections of the definition are likely not applicable to a fulfillment center/heavy distribution/parcel hub use type, this use classification provides for those uses that "do not clearly fit within another industrial use classification."

Section 130.20.030 also notes that the Zoning Ordinance shall be periodically amended to incorporate those uses not listed in this Article which are found to be similar and

compatible. Staff intends to include an update to Chapter 130.23. – Industrial and Research and Development Zones that incorporates this interpretation.

This decision may be appealed in compliance with Section 130.52.090 (Appeals) in Article 5 (Planning Permit Processing) of the Zoning Code.

Should you have any questions, you may contact me via phone or email.

cc: Planning Commission  
Tiffany Schmid, Interim CAO  
David Livingston, County Counsel  
Jefferson Billingsley, Deputy County Counsel

**EXHIBIT E**  
**WYNN TOLLING AGREEMENT**

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## **TOLLING AGREEMENT**

This Tolling Agreement (“Agreement”) is made and entered into by and between the County of El Dorado (“County”) and Winn Ridge Investments, LLC, a California limited liability company, (“Landowner”). In this Agreement, County and Landowner may be referred to separately herein as “Party” and collectively as the “Parties.”

### **RECITALS**

1. Landowner is the owner of undeveloped real property at the south end of the El Dorado Hills Business Park in the unincorporated area of County with approximately 180.49 acres on Assessor’s Parcel Number (“APN”) 117-010-032 and approximately 52.33 acres on APN 117-010-031 (collectively, “Property”) that is zoned and has a General Plan land use designation of Research and Development.
2. In 2020, Landowner submitted an application to rezone the Property to allow development of a residential housing subdivision.
3. In 2021, a third party obtained an option to purchase a significant portion of the Property and submitted an application for a large warehouse and distribution project at the Property, which the third party withdrew on May 11, 2023.
4. After the third party withdrew the large warehouse and distribution project, Landowner re-evaluated potential projects for the Property and began meeting with members of the surrounding community to better understand the type of development community members felt would be most compatible with the surrounding residential communities and school.
5. On June 12, 2023, the El Dorado County Planning and Building Department Director issued a Director’s Determination - Fulfillment Center/Heavy Distribution/Parcel Hub Uses (“Director’s Determination”), and Landowner timely appealed the Director’s Determination on June 23, 2023.
6. Landowner desires to continue to collaborate with members of the community as well as County to potentially advance a project that the County and surrounding community could support.
7. The Parties disagree about the enforceability of the Director’s Determination, but recognize that resolution of that disagreement is unnecessary if Landowner obtains approval of a project that would preclude any use identified in the Director’s Determination. The Parties further agree that allowing time for public outreach regarding future uses of the Property is beneficial for the Parties and community.



8. The Parties therefore enter into this Agreement to provide additional time for Landowner to work with the community and potentially advance a project that could preclude the future use of the Property for any use identified in the Director's Determination without impairing either Party's rights or remedies related to the Director's Determination during the additional time provided for in the Agreement.

## **AGREEMENT**

Now, therefore, in consideration of the following mutual promises and agreements, and in order to protect their best interests, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The Parties agree that the Recitals constitute the factual basis upon which the Parties have entered into this Agreement. The Parties acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.
2. **Tolling Period Defined.** The time within which Landowner may prosecute the appeal of or assert any claim or cause of action arising out of, or otherwise related to, the Director's Determination shall be tolled until the Termination Date of this Agreement ("Tolled Period").
  - a. The running of time during the Tolled Period shall not be raised by County to prejudice Landowner in the administrative appeal of the Director's Determination or by County as a defense or bar to claims or causes of action asserted by Landowner arising out of, or otherwise related to, the Director's Determination.
  - b. County shall not support any motion or argument by a third party asserting that the running of time during the Tolled Period is a defense or bar to Landowner's appeal, claims, or causes of action arising out of, or otherwise related to, the Director's Determination.
3. **Restrictions on Landowner.** During the Tolled Period, Landowner shall not submit an application with County for a use that County reasonably determines is "fulfillment center, heavy distribution, or parcel hub" under the Director's Determination for the Property.
4. **Restrictions on County.** During the Tolled Period, County shall not pursue any action to codify or amend the Zoning Code consistent with the Director's Determination, including but not limited to an amendment to the Zoning Code pursuant to Section 130.20.030(A)(3)(a) to incorporate the "fulfillment center, heavy distribution, or parcel hub" uses identified in the Director's Determination or uses substantially similar to those described in the Director's Determination. For purposes of this section, "pursuing any action" includes (1) an agendaized action before the Planning Commission or Board of Supervisors or (2) the commencement of public environmental review, by way of issuance of a Notice of

Preparation of an EIR (14 CCR 15082) or a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (14 CCR 15072), for any action covered by this Section 4.

5. **Notice to Landowner.** If the Director intends to issue a new determination or interpretation affecting allowed uses on Research and Development zoned property or an amendment to the Zoning Code affecting allowed uses on Research and Development zoned property is proposed, County agrees to give Landowner written notice at least ten (10) business days in advance of such potential action.
6. **Waiver of 30-day Appeal Hearing.** The Parties agree consistent with Zoning Code section 130.52.090(C) that Landowner's appeal will not be calendared before the Planning Commission during the Tolled Period and the 30-day time limitation therein for appeals is hereby extended by mutual consent during the Tolled Period.
7. **Termination by Either Party.** Following an initial period of 90 calendar days after execution of this Agreement, this Agreement shall terminate the earlier of (1) written agreement by both Parties to terminate the Agreement; (2) upon advance written 60-day notice by either Party of termination; or (3) upon County's approval of a development project that includes substantially all of the developable acreage of APN 117-010-032. In the event of termination, Landowner's appeal shall be set before the Planning Commission within 30 days of termination, unless the Parties mutually agree to extend the time to hear the appeal consistent with Zoning Code section 130.52.090(C) or Landowner's appeal is deemed withdrawn consistent with this Agreement.
8. **Automatic Termination.** In the event County approves a development project that includes substantially all of the developable acreage of APN 117-010-032, this Agreement shall automatically terminate, Landowner's appeal shall be deemed withdrawn, and Landowner shall waive any rights, claims, causes of action, and damages related to, or arising out of, the Director's Determination.
9. **No Admission.** With respect to any claim or cause of action arising out of, or otherwise related to, the Director's Determination: (a) neither the existence nor the terms of this Agreement shall constitute an admission of any kind by any Party, except with respect to the timeliness of a claim or cause of action subject to this Agreement or equitable principles; and (b) this Agreement shall be admitted into evidence solely for the purpose of determining such timeliness.
10. **Notice.** Any written notice required to be given by this Agreement shall be delivered (a) by hand, overnight delivery, or United States mail; and (b) email. Such notice shall be given as follows:

For County:

Karen L. Garner, Director  
El Dorado County  
Planning and Building Department  
2850 Fairlane Court, Building C  
Placerville, CA 95667  
karen.l.garner@edcgov.us

With a copy to:

David A. Livingston, County Counsel  
County Counsel's Office  
El Dorado County  
330 Fair Lane  
Placerville, CA 95667

For Landowner:

Winn Ridge Investments, LLC  
Attn: George M. Carpenter, Jr., Vice  
President  
555 University Avenue, Suite 180  
Sacramento, CA 95825  
georgemcarpenter@comcast.net

With a copy to:

Breann M. Moebius  
Hefner Law  
2150 River Plaza Drive, Suite 450  
Sacramento, CA 95833  
bmoebius@hsmlaw.com

Any Party may change its address for notice purposes by sending a written notice of address change to the other Party pursuant to the notice procedures in this paragraph.

#### 11. Miscellaneous.

- a. **Contract Administrator.** The County officer or employee with the responsibility for administering this Agreement is David A. Livingston, County Counsel, or successor.
- b. **Good Faith.** The Parties agree to cooperate in good faith to carry out the provisions and intent of this Agreement. The Parties agree to meet and confer in good faith to try to resolve any conflicts arising under this Agreement prior to bringing any actions in court to enforce the Agreement.
- c. **Governing Law; Choice of Forum.** This Agreement shall be governed by the law of the State of California and any action to enforce this Agreement shall be brought in the Superior Court in and for the County of El Dorado.
- d. **Headings.** The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.
- e. **Counterpart Execution.** This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Facsimile or e-mailed PDF signatures to this Agreement shall be binding upon the Parties.

- f. **Severability**. If any provision, part, sentence, or word of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, parts, sentences, or words will continue in full force and effect without being impaired or invalidated in any way unless enforcement of this Agreement without the invalidated provision, part, sentence, or word would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. If any provision, part, sentence, or word of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereof of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.
- g. **Third Party Liability**. This Agreement is limited to the Parties to the Agreement and no third party may claim any rights or benefits under this Agreement.
- h. **Drafted by All Parties**. This Agreement shall be interpreted as if drafted by all Parties. No provision of this Agreement shall be interpreted or construed against any Party because such Party or its counsel was the sole or principal drafter of the Agreement or any provision thereof.
- i. **Entire Agreement; Amendments**. This Agreement sets forth all of the promises, covenants, agreements, conditions, and undertakings between the Parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by the Parties.
- j. **Binding on Successors**. This Agreement shall be binding upon and shall operate in favor of the successors and assigns of each Party.
- k. **Attorneys' Fees**. If there is any legal action or proceeding between the Parties hereto arising from or related to this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements incurred by the prevailing party in such action or proceeding and in any appeal in connection therewith, and such costs, expenses, attorneys' fees, and disbursements shall be included in and as part of such judgment.
- l. **Waiver**. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

m. **Authority.** Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the applicable Party to this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized.

**IN WITNESS WHEREOF**, the Parties do affix their signatures as follows:

FOR COUNTY:

**COUNTY OF EL DORADO  
AND ITS BOARD OF SUPERVISORS**

By: Wendy Thomas  
Wendy Thomas, Chair

Dated: 9-7-23

FOR LANDOWNER:

**WINN RIDGE INVESTMENTS, LLC,**  
a California limited liability company

By: George M. Carpenter, Jr.  
George M. Carpenter, Jr., Vice President

Dated: 8/30/2023

ATTEST:

By: Kim Dawson  
Kim Dawson, Clerk of the Board

Dated: 9-7-23

APPROVED AS TO FORM:

By: David A. Livingston  
David A. Livingston, County Counsel

Dated: 9/5/23