34

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

September 11, 2007

Subject: Item 34 Sept. 11, 2007 – Validity of RE-10 Zones for High Intensity Commercial Agricultural activity and conversion to Agricultural Preserves

Dear Supervisors,

These are additional comments for consideration during the September 11, 2007 hearing on the Winery Ordinance. There is great relevance to address these issues as part of the hearing process as the RE Zones have been traditionally used for "holding zones" for Residential (1970's and 80's) and now Agricultural, specifically for Viticultural purposes. There is a bypass of process that needs to be resolved. Adopting a permissive winery ordinance fuels an already intense fire and will result in potentially significant cumulative impacts as RE zones rush to convert to agriculture.

There are some serious 5th Amendment property rights issues for the neighbors of each and every proposed winery, as well as the numerous vineyards that are popping up on so called Estate Residential (or RE) zones on parcels of 20+ acres (that can then later become commercial wineries under virtually all conditions of the proposed ordinance). These "20+ acre future winery parcels" are often surrounded by previously developed and occupied 5 and 10 acre (or less) parcels adjacent to these future High Intensity Commercial Agriculture (HICA) activities. Even if these 20+ acre "Agricultural Parcels" are in recently designated "Agricultural Districts," they still have existing and established neighbors on relatively smaller parcels who must suffer from the significant impacts of adjacent commercial agriculture.

Currently HICA (primarily viticultural) land uses are being allowed in existing RE zones "by right" according the Planning Department even if there is no existing residential or "primary" land use. This appears to be in direct conflict with "Purpose Statement" of the RE-10 Zone District (Section 17.70 of the El Dorado County Code):

> 17.70.070 Purpose. The purpose of Sections 17.70.070 through 17.70.110 is to provide for the orderly development of land having sufficient space and natural conditions compatible to residential and ACCESSORY *(emphasis added)* agricultural and horticultural pursuits and to provide for the protection from encroachment of unrelated uses tending to have adverse effects on the development of the areas so designated.

This clearly states that agriculture is accessory to a primary residential use and not the primary use of the property. This means there is no purpose or intent to allow the property to be developed as an agricultural use PRIOR to establishment of a primary residential use. It also questions whether a HICA is consistent with this purpose.

Unfortunately, Section 17.70.090 Uses permitted by right is inconsistent with this purpose statement as Section 17.70.090 B. appears to allow "Barns, agricultural structures, etc." without a primary residential use. Section 17.70.090 E. and F. allow "Raising and grazing of domestic farm animals and the cultivation of tree and field crops and the sale of such good when produced on the premises and when in conformity with Chapters 17.14 (Misc.) 17.16 (Signs) and 17.18 (Parking);"

Submitted by Ken Greenwood

at Board Hearing of 9/11/07

#34

and 17.70.090 F. that allows "Packing and processing of agricultural products produced on the premises without changing the nature of the products;".

The question remains: How can these "allowed" uses be consistent with the purpose statement that clearly states agriculture and other uses are ACCESORRY to a primary residential use? There is a disconnect here due to an internal inconsistency in this ordinance. Is the intent to allow unlimited HICA in these zones with or without a primary residential use? Or is it to allow agriculture uses accessory to the primary residential use? One way or another, this must be rectified as it is crucial to the future development allowed, accommodated and perhaps induced by the IPWO.

My recollection was the original intent of RE-10 Zones was for a primary residential use and Agricultural pursuits as a sideline. This was for "Gentleman Farmers" who often have other jobs and tend their crops without the assistance of farm workers who report for work every day for extended lengths of time. This was to maintain the "rural residential" nature of the property without the traffic, noise and myriad of other negative impacts associated with HICA, especially modern viticulture. Granted many of our RE and agriculturally zoned vineyard owners are living on their land and actually out there tending their crops. That is a good thing and appears to be the intent of the RE-10 zoning and leaves the existing neighbors able to enjoy their RE status in relative peace and quiet.

However, the trend and the reality is more towards utilization of off site workers for initial conversion and ongoing vineyard maintenance as most of the "Gentleman Farmers" are actually full time wine businesspeople looking to grow a commercial crop and perhaps ultimately expand to an on site commercial winery. The next step is to rezone the parcel to some sort of Agricultural Zoning (AZ) that accommodates a Williamson Act Contract (WAC) so the land is taxed at a lower rate and be dedicated to agricultural for 10 years and "preserved" until the owner decides to "Roll Out" of the WAC at some time in the future.

The question is, at what point is this "Agriculture" no longer accessory to a primary residential use (if it even exists on a property) and equivalent to a home occupation with an outside work force? If I have workers come to my RE-10 parcel daily or even infrequently to work for my consulting business, I am required by Section 17.70.090 C. and 17.70.100 G. obtain a Special Use Permit (SUP) as I have "changed the residential nature of the premises." If not an SUP, I will at least be subject to some review, restrictions and mitigation as an "Expanded Home Occupation" for my one or two employees that do books or draw maps. All this on a parcel with the same zoning as one that can conduct a HICA with impunity. Somehow this treats one "Home Occupation" activity (agriculture or HICA) differently over another (consulting) that has far fewer impacts, environmental and otherwise. This is a violation of property rights without due process.

By allowing these uses by right, the set up for the numerous rezone applications to AE or AP has been justified as "the improvements are already in place" and the Williamson Act Contract (WAC) requirements for initial investment and future income has been achieved. Fine, but the damage has already been done to the neighbors, public and private access roads and the oak trees that have been removed with (or without) permits. Deep, high production wells have been drilled and water use on that parcel is significantly higher than all the rest. All because the Planning Department tells people commercial vineyards (and other HICA land uses) are allowed in the RE districts regardless of scale and regardless of whether there is a primary residential use.

Please direct staff to analyze this inconsistency as part of their impact analysis of the IPWO as the high number of WAC/AE/AP rezones over the past three to five years tends to bear this out. The current winery ordinance started this "Grape Rush" without any environmental analysis at all. The IPWO will certainly induce it in Ag Districts and accommodate it outside Ag Districts. These impacts and the wholesale conversion of Oak Woodlands to grapes cannot be consistent with the exemptions in the General Plan policies. At a minimum, these impacts to Oak Woodlands must be analyzed and mitigated.

Finally, the repeated suggestion that a rezone to AE/AP and entering into a WAC is exempt from analysis under the California Environmental Quality Act (CEQA) is not fully correct. There is a significant intensification of land use that should be analyzed and mitigated by a review of the rezone application. Entering into a WAC to "preserve" farmland and provide a tax break to the owner is a noble and good thing (if we want to pay increased taxes and/or suffer from reduced services to do so as the State of California will no longer reimburse El Dorado County for WAC revenue losses), and is perhaps appropriately Exempt from CEQA review.

However, the Rezone that allows increased HICA activity over the previous RE zoning is not. Why? The AE/AP zones guarantee the "Right to Farm" that allows all the dirty, dusty and smelly activities associated with "legitimate agricultural activities" to occur right up to the property line with little or no recourse from the adjacent neighbors once the rezone is in place. There is also the matter of 200 foot setbacks to be absorbed by the neighbors (Yes, there is finally a program in place to provide analysis and relief of this infringement during the hearing process, but the 200 foot requirement is not waived unless you are aware of it and ask for same, or it will cost you $200 to request such a waiver in the future). Regardless, what about the existing house with a lawful 30 foot setback that can only be expanded by a Special Use Permit? These impacts are real and must be analyzed. The Rezone to AE/AP also allows packing and processing of agricultural products from OFF SITE locations (increased noise, dust and traffic from deliveries and employees and the impacts of the processing itself). This is clearly an intensification of use by approval of the rezone and those impacts must be analyzed under CEQA. This process has been seriously and repeatedly abused in recent years and it is not consistent with basic planning law and 5th Amendment property rights.

By approving a change to AE (not AP), the zoning is in place for a commercial winery, either by right or with a Special Use Permit and that is an increase in impacts to be analyzed and mitigated. This is all initially enabled by the HICA "allowed by right" in the RE-10 zones. Not sure it is all consistent with the original intent of the Zone, the newly adopted General Plan and the exemptions allowed in CEQA.

Thank you for your consideration of these comments to the record.

Sincerely,

Ken R. Greenwood
Straight Shot Consulting