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Proposed Zoning Ordinance
Comments of Supervisor Jack Sweeney
May 15, 2012

First, I do indeed recognize that this Board of Supervisors reviewed, received and made recommendations by consensus to the then 419 page draft document on October 18, 2010 legistar # 10-10869; therefore, please do not remind me that I had a chance to change the draft! Until the Board takes action to approve, it can always change any draft! The fear I have is that we will move along and then realize that changes suggested would be the wise path to follow and then we would need to restart and re-circulate!

Second, some philosophy. This County has always tried to write its planning rules so that an applicant can obtain the minimum number of documents yet still accomplish their project application. The ordinance currently in place is such; you can obtain a copy of the code for your particular designation and have almost all of what you need on which to base the preparation of your application. The proposed ordinance requires applicants to obtain nearly the total 462 pages in order to ascertain what to do with their property. And then there might be an inconsistency between the zoning and the general plan which might require a general plan amendment in order to obtain approval for the project. This is inappropriate when one reads the requirement for consistency set forth in State Law.

The proposed zoning ordinance is 462 pages and the General Plan when adopted was only 423 pages. It seems that this proposal spends a lot of space on hypothetical purpose. I believe a zoning ordinance should be a specific cook book directional document that is consistent with the General Plan and instructs and or informs the applicant how to implement the General Plan. The philosophy set in the proposed document will undoubtedly lead to more lawsuits due to its lack of specific instruction.

I begin my specific comments with the current Government Code Section requiring consistency of the zoning ordinance with the General Plan:

65860. (a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:

- (1) The city or county has officially adopted such a plan.
- (2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.

(b) Any resident or property owner within a city or a county, as the case may be, may bring an action or proceeding in the superior court to enforce compliance with subdivision (a). Any such action or proceeding shall be governed by Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the **Code** of Civil Procedure. No action or proceeding shall be maintained pursuant to this section by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance.

(c) In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element

of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.

There seems to be a disconnect as to consistency between 17-10-020 B & D!

17.10.020 Authority, Relationship to General Plan

B. This Title is hereby adopted and shall be maintained so as to be consistent with the ElDorado County General Plan. Any land use or development approved according to the requirements of this Title shall be consistent with the General Plan and any applicable specific plan.

D. Where an inconsistency exists between the General Plan and the zoning designation for a lot, the General Plan designation shall govern. (Reference GP Policy 2.2.5.20)

If an applicant submits a project and the application complies with the Zoning Ordinance are they compliant and consistent? Or might they be required to process a General Plan Amendment if an inconsistency is discovered? I believe it is the County's responsibility to have the Zoning Ordinance consistent with the General Plan! It should not be up to the applicant to glean out any inconsistencies from the voluminous General Plan.

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17.10.030 Responsibility for Administration C. Rules of Application

2. Conflicting Provisions. If conflicts occur between different requirements of this Title, or between provisions of this Title and requirements imposed by other provisions of the El Dorado County Ordinance Code or other laws, rules, and regulations, the more stringent development requirement or greater restriction on the use of land or buildings shall apply.

So, again the applicant is stuck to figure out what they can do; not the County.

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I propose the following minor changes to eliminate confusion.

17.10.040 Applicability of Zoning Ordinance (No prior code)

C. Effect of Zoning Ordinance Changes on Projects in Progress. The enactment of this Title or amendments hereto may have the effect of imposing different standards on development or new land uses from that which previously applied. Following the effective date of this Title the following provisions shall apply:

1. Pending Applications. Applications which have been determined by the Department to be complete in compliance with Government Code Section 65943 before the effective date of this Title, or any amendment hereto, shall comply with the provisions of ~~this Title~~ of the ordinance code in effect on the date that the application is deemed complete.

2. Approved Applications. Applications approved prior to the effective date of this Title, or any amendment hereto, may be constructed or used in accordance with the conditions of approval therefore and the ordinance code in affect at the time the application therefore was deemed complete; provided, however, approval of any extension shall be governed by the provisions of Subsection C. 3 below.

And, if the County is wrong and someone sues over the inconsistency, the applicant defends the County:

17.10.070 Indemnification and Hold Harmless Agreement Pg 17/462

A. Applicant's Agreement to Indemnify and Hold Harmless. As a condition of approval of a land use application, the applicant shall agree to defend, indemnify, and hold harmless the County or its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void, or annul an approval of the County, an advisory agency, appeal board or legislative body concerning the map or permit or any other action relating to or arising out of County approval.

17.20.020 General Requirements for Development and New Land Uses Pg23/462

C. Development Standards, Conditions of Approval. Each land use and structure shall comply with the development standards of this Chapter, applicable standards and requirements in Articles 3 (Site Planning and Project Design Standards) and 4 (Specific Use Regulations), and/or any applicable conditions imposed by a previously granted planning permit.

D. Legal Lot. The site of a proposed development or new land use shall be on a lot that was legally created in compliance with the Subdivision Map Act and the County Subdivision Ordinance, or that has been certified as legal by a Certificate of Compliance issued by the County in compliance with Chapter 16.76. or for which a county permit was previously issued.

Why make an applicant obtain a certificate of compliance when the county previously issued a permit?

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What does the following sentence from 17.21.10 C 2 mean? Does PA provide more? Nothing is said !

"The LA zone is distinguished from the PA zone in that it provides limited opportunities for ranch marketing and commercial winery uses."

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I have many other comments to make; such as some of the issues with Ranch Marketing (17.40.260 Pg 281) and Nonconforming Uses... (17.61 pg 366). On 17.61.010 Purpose, I simply cannot live with this statement! It will cause the "eventual elimination" of most existing ranch marketing operations in this county!

17.61.010 Purpose

Within the County there exist land uses and structures that were lawfully in existence before the adoption of this Title, but which would be prohibited, regulated, or restricted differently under the terms of this Title, as amended. The purpose of this Chapter is to allow such legal, but nonconforming land uses and structures to exist under the limited conditions identified in this Chapter and to provide for their eventual elimination in order to protect the public health, safety, and welfare. In addition, the purpose of this Chapter is to provide a means of determining the legal creation of existing lots in order to establish their nonconforming status and to provide standards for development on said lots.

I will stop here with this question: When we have our workshops on the zoning ordinance, will be allowed to revise the language (the project description) or will it cause a recirculation of the NOP?