

PUBLIC COMMENT
S. TAYLOR 8/26/14

Measure Y

Shall the current Meas. Y be amended and extended for ten years? #40
El Dorado County

Amendment to the 2004 El Dorado County General Plan - Majority Approval Required

Pass: 48333 / 71.47% Yes votes 19293 / 28.53% No votes

Results as of Nov 5 12:56am, 100.0% of Precincts Reporting (150/150)
50.7% Voter Turnout (67626/111325)

Shall the voter-enacted Measure Y General Plan policies be extended ten years and amended to provide: (1) Traffic from major single-family residential subdivisions shall not result in, or worsen, Level of Service F (gridlock) traffic congestion; (2) No additional county roadways may operate at Level of Service F without voter approval or 4/5ths vote of County Supervisors; (3) Developer-paid traffic fees, combined with any other funding source, shall pay to build necessary road improvements?

Impartial Analysis from the County Counsel

This measure, if adopted by a majority vote, would amend the original Measure Y policies and, as amended, extend them for ten years. The policies cannot be further amended or repealed except by a vote of the people.

In 1998, the voters enacted the "Control Traffic Congestion Initiative" (Measure Y), which added five policies to the 1996 General Plan. They included: (1) a prohibition of residential development projects of five or more units causing, or worsening, Level of Service (LOS) F traffic congestion during weekday, peak-hour periods; (2) a prohibition against adding roads to the list of roads allowed to operate at LOS F without voter approval; (3) a requirement that developers pay fees to mitigate traffic impacts of new development; and, (4) a prohibition against county tax revenues being used to mitigate such impacts without voter approval. Measure Y stated that the policies would remain in effect for ten years. It provided that they should be placed on the ballot prior to expiration for the voters to decide on a 10 year extension.

In 1999, the court invalidated the 1996 General Plan. In readopting a general plan in 2004, the Board of Supervisors incorporated the Measure Y policies, which were to remain in effect until 2008. They included alternative policies to take effect upon their expiration. But, it remains unclear whether Measure Y itself, including its provision to place it back on the ballot, remains legally enforceable. However, the Board of Supervisors decided to put the policies on the ballot for an extension, with certain modifications.

The amendments to the Measure Y policies made by this measure include: (1) clarification that the prohibition against residential projects of five or more units causing or worsening LOS F applies only to single-family subdivisions; (2) a provision that a road may be added to the list of roadways which can operate LOS F by a vote of the people or by a 4/5 vote of the Board of Supervisors; (3) clarification that non-tax sources of revenue such as federal and state grants can be used to fund road projects to serve new development; and, (4) deletion of the prohibition against using county tax revenues to fund road projects to serve new development. The amended policies still require that developer fees, together with other revenue sources, fully pay to mitigate the traffic impacts of new development.

If this measure fails, the alternative policies will go into effect. They could be amended by the Board of Supervisors at their discretion. The alternative policies generally follow the Measure Y policies, but include: (1) extension of the prohibition against causing or worsening LOS F to all residential projects (less than five units); (2) clarification that non-tax sources of revenue such as federal and state grants can be used to fund road projects to serve new development; and, (3) a provision that road segments can be added to the list of roads allowed to operate at LOS F by a 3/5 vote of the Board.

Louis B. Green - El Dorado County Counsel

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Arguments For Measure Y

To control traffic congestion, El Dorado County voters approved the original Measure Y in 1998 with 61% of the vote. Since then, the measure has been working to control congestion by requiring developers to pay for the road improvements needed to keep traffic flowing. Today's Measure Y simply extends the original Measure Y for another ten years as follows:

- Prohibits approval of any new single-family housing subdivision of five or more parcels if the development creates or worsens traffic congestion (known as "Level of Service F" gridlock).
- Prohibits "Level of Service F" gridlock on any additional county roads, unless approved by voters or a four-fifths vote of our county supervisors.
- Requires developers to pay for any road improvements that are needed to prevent new traffic from causing gridlock or exceeding acceptable traffic levels.

Measure Y is endorsed by local business, agriculture, slow-growth, taxpayer and environmental advocates, along with the El Dorado County Republican and Democratic Parties, the Chamber of Commerce and the League of Women Voters. All agree Measure Y will control traffic and protect our rural quality of life, while encouraging jobs creation and balanced economic growth. Police and firefighters support Measure Y because it will help prevent gridlock on our county roads during emergencies.

The original Measure Y has been working effectively for the past ten years. Your "YES" vote on today's Measure Y will keep these successful policies working for the next ten years to prevent traffic gridlock, protect our rural environment and require new development to pay its fair share for new roads.

Vote YES on Measure Y.

Michael Kobus - President, El Dorado County Chamber of Commerce; Jack Sweeney - District 3 Supervisor -- County of El Dorado; Bill Center - Author, Original Measure Y; John Stelzmilller - Chair, El Dorado County Republican Central Committee; Rich Meagher - Chair, El Dorado County Democratic Central Committee

Arguments Against Measure Y

No Argument Against This Measure Was Submitted

1998 Full Text of Measure Y with 2008 update

Shall Policy TC-Xa of the 2004 El Dorado County General Plan be amended to read as follows and, as amended, be extended for a period of ten years? Policy TC-Xa The following policies shall remain in effect until December 31, 2018:

1. Traffic from single family residential subdivision development projects of five or more units or parcels of land shall not result in, or worsen, Level of Service F (gridlock, stop-and-go) traffic congestion during weekday, peak-hour periods on any highway, road, interchange or intersection in the unincorporated areas of the county. *Reinstates original language*

2. The County shall not add any additional segments of U.S. Highway 50, or any other highways and roads, to the County's list of roads (~~shown in Table TC-2~~) that are allowed to operate at Level of Service F without first getting the voters' approval or by a 4/5ths vote of the Board of Supervisors. *Reinstates original language*

modified
3. Developer-paid traffic impact fees combined with any other available funds shall fully pay for building all necessary road capacity improvements to fully offset and mitigate all direct and cumulative traffic impacts from new development upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of the county. *open road provision*

modified
4. ~~County tax revenues shall not be used in any way to pay for building road capacity improvements to offset traffic impacts from new development projects. Exceptions are allowed if county voters first give their approval.~~ *Reinstates original language* *new provision*

new
5. ~~Before giving approval of any kind to a residential development project of five or more units or parcels of land, the County shall make a finding that the project complies with the policies above. If this finding cannot be made, then the County shall not approve the project in order to protect the public's health and safety as provided by state law to assure that safe and adequate roads and highways are in place as such development occurs.~~ *Reinstates original language*

If approved by the voters on November 4, 2008, this amended policy TC-Xa shall become effective on January 1, 2009, and shall expire in ten years. It may only be amended with voter approval during that term.

new 6 Policy 10.2.2.3 addition and maintenance discretion

Policy 10.2.1.8 Direct new development to land where infrastructure and service levels are adequate so as to minimize development costs.

OBJECTIVE 10.2.2: EQUITABLE FINANCING METHODS FOR PUBLIC IMPROVEMENTS

Utilize equitable financing methods that assure that service standards adopted in the General Plan are achieved.

Policy 10.2.2.1 When adopting, amending, and imposing impact fees and developer exactions, consider the effects of such fees and exactions upon project economics.

Program 10.2.2.1.1:

Review other County impact fees and consider adopting fees necessary to assure that new development pays its fair share of public facility and services costs.

Policy 10.2.2.2 Stress financing strategies that maximize the use of pay-as-you-go methods to gain the most benefit from available revenue without placing unreasonable burdens on new development.

Program 10.2.2.2.1:

When a project directly or indirectly impacts existing public services and/or infrastructure, it shall provide for and finance improvements consistent with the degree of impact to public services and/or infrastructure directly or indirectly attributed to the project. Cost to be borne by the project proponent shall be determined on the basis of the above described nexus and other pre-existing legally binding agreements such as development agreements.

#6

Policy 10.2.2.3 Fees and assessments collected shall be applied to the geographic zone from which they are originated.

Policy 10.2.2.4 Fees and assessments, with Board of Supervisor approval, can be deferred and/or paid through property tax increments if it can be demonstrated that a current or projected rate is serving as a location avoidance factor for targeted industries.

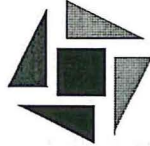
OBJECTIVE 10.2.3: COORDINATION OF PUBLIC IMPROVEMENTS

Cooperate with other jurisdictions to promote the most cost-effective methods of providing civic, public and community facilities, and basic infrastructure necessary for supporting the economic, social, and environmental well being of the County and its residents.

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Joel Ellinwood, AICP LEED AP
Lawyer-Planner

4054 New York Avenue #1906
Fair Oaks, California 95628
joel.ellinwood@lawyer-planner.com



California land use & environmental law; urban and regional
planning policy & advocacy for a just and sustainable future

August 26, 2014

Hon. Norma Santiago
Hon. Ron Mikulaco
Hon. Brian Veerkamp
Hon. Ron Briggs
El Dorado County Board of Supervisors
330 Fair Lane, Building A
Placerville, California 95667

Sent by email attachment

Re: Response to Critique by Bill Center and Jim Moore of the Initiative to Reinstate Measure Y's
Original Intent – No More Paper Roads

Honorable Members of the Board of Supervisors:

In unattributed written comments circulated by “Members of the Original Measure Y Committee¹” to the Board of Supervisors and the public at the Board meeting on July 29, 2014, various claims were made about the potential effect and impacts of the current “No More Paper Roads” initiative. The claims were asserted with the acknowledged purpose of preventing an initiative from being placed on the November 2014 General Election ballot even though it had been certified by the County’s Registrar of Voters as having been signed by 7,921 registered voters in El Dorado County.

Had the authors of the critique been acting in good faith, they could have taken their concerns to the proponents of the “No More Paper Roads” initiative months ago for discussion and possible resolution. Instead, for undisclosed reasons, they are attempting to sandbag the wishes of thousands of County voters, the proponents, and dozens of volunteers who circulated the initiative petition throughout the County. These citizens still expect that all the initiatives with sufficient signatures be placed before the voters on the November ballot by the Board of Supervisors, irrespective of the last-minute tactical ploy of Mr. Center and Mr. Moore to derail this initiative. While taking strong exception to Mr. Center and Mr. Moore’s behavior, my clients still support passage of all the local grass-roots citizen-sponsored initiatives, Measures M, O, and what they expect will be Measure P.

¹ The written comments were handed out at the meeting by Jim Moore. Both Bill Center and Jim Moore spoke to the written comments and in response to spoken comments by persons in support of the initiative in question. While neither Mr. Moore or Mr. Center were listed among the five proponents of the 1998 initiative measure ultimately adopted as Measure Y (Sam Bradley, Kathi Lishman, F.J. Leslie, Edward Tomasello, and Steve Armstrong) there is no dispute that they have played a leadership role in both the original Measure Y, and its revision and re-adoption in 2008. What is unclear is whether or not any other members of the original committee, or anyone else other than Mr. Center and Mr. Moore, were involved in drafting the critique.

The "No More Paper Roads" proponents came before the Board on multiple occasions in May and June seeking assurances from the Board that the measure would not be delayed by the Board exercising its discretion to order a report only after the measure was certified pursuant to its authority under Elections Code Sections 9111 and 9118 (c). They pointed out that the Board could order the report on any or all of the measures at any time during the circulation of the petitions pursuant to Section 9111 without waiting until the signatures on the petitions were certified. The members of the Board, individually and collectively, assured the proponents that the Board would not use its authority to order a report by waiting until it would be too late for the measures to be placed on the November ballot. Instead of keeping their repeated commitments, the Board allowed itself to be stamped at the eleventh hour into ordering a report for only one of the four petitions certified with sufficient signatures to be placed on the ballot, delaying its consideration by the voters for two years.

It is abundantly clear that all four of the initiative measures that have been certified, including Measure M put forward by Mr. Center and Mr. Moore and their associates, will have a significant effect on the future development of El Dorado County and its economy. There is no justification for singling out the "No More Paper Roads" initiative for special scrutiny. It should now be up to the voters to sort out the competing arguments for and against each of the initiatives and express their will concerning the County's future.

In their critique, Mr. Center and Mr. Moore, make two basic arguments. First they take issue with the proponents' title of their statement of intent to circulate the petition, "Measure to Reinstate Measure Y's original intent – no more paper roads." While they may claim to speak for the original Measure Y committee's intent, they cannot claim to speak for the intent of the many thousands of El Dorado County voters who overwhelmingly cast their ballots to adopt Measure Y in 1998.

Mr. Center and Mr. Moore's assert that the original Measure Y is limited in its effect on the approval of residential subdivisions of five or more units or parcels and does not affect "jobs projects." In fact the 1998 Measure Y states, "developers shall fully pay for building all necessary road capacity improvements to fully offset and mitigate all direct and cumulative traffic impacts from new development upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of the county," and "County tax revenues shall not be used to fund road improvements to mitigate traffic impacts of new development projects unless approved by the voters." These polices apply equally to commercial or industrial "jobs" projects, not just residential development projects. Given the broad exception in the current Measure M restrictions for development of commercial and industrial projects, it is perhaps understandable why Mr. Center and Mr. Moore might seek to whitewash history.

The proponents of the "No Paper Roads" initiative are among those voters who believe that Mr. Center and Mr. Moore sold out the intent of the original Measure Y in 2008 by making a back-room, behind-closed-doors deal with developers to extend Measure Y while adding loopholes that allow the Board to undercut Measure Y's effectiveness. They agreed to allow the Board to override Measure Y requirements by a 4/5th vote. Now they have openly stated that they want Measure Y to expire. It is disingenuous to now claim that they are still the keepers of the Measure Y flame.

It is true that the proponents of the “No More Paper Roads” initiative go beyond the limitations of the original Measure Y by toughening its provisions so that traffic impacts do not go unmitigated by allowing developers to pay fees that may not be used for road improvements for 10 years or more, if ever, so long as they are included in the County’s Capital Improvement Plan. It also restricts the County from diverting road mitigation fees collected from projects in one area for unrelated road improvements elsewhere. Experience teaches that these new provisions are needed to realize the promise that new development of all types will in fact fully mitigate its traffic impacts.

The second premise of Mr. Center and Mr. Moore’s critique is focused on the provision of the “No More Paper Roads Initiative” that, “All necessary road capacity improvements shall be fully completed . . . before any form of discretionary approval can be given to a project.” Their interpretation of the effect of this language is grossly overstated.

All limitations or exactions in land use regulations must be interpreted insofar as is possible and implemented in a manner that is in accord with constitutional legal principles that there must be a rational nexus between the impacts of a particular project and the limitations or exactions that are imposed. (*Dolan v. City of Tigard* (1994) 512 U.S. 687.) Thus, discretionary projects that have no cumulative traffic impacts may not be conditioned or denied because necessary road capacity improvements have not been completed. The claim that this initiative language would prohibit discretionary approvals of any kind no matter how small is therefore completely unfounded.

Furthermore, under the accepted principles of statutory construction, when differing sections of a law conflict, they must be interpreted in a manner insofar as possible to harmonize them to give the law its full, intended effect. The initiative’s amendments to Policy TC-Xf, leave in place the language, “At the time of approval of a tentative map for a single family residential subdivision of five or more parcels . . . the County shall . . . condition the project to construct all road improvements necessary to maintain or attain Level of Service standards . . . ,” and, “For all other discretionary projects that worsen . . . traffic on the County road system, the County shall condition the project to construct all road improvements necessary to maintain or attain Level of Service standards” Again under accepted principles of statutory construction, the more specific provision will prevail over the more general language in the same law or regulation. Because the initiative specifically contemplates that approvals of tentative subdivision maps and all other discretionary projects shall include conditions of approval that necessary road improvements be constructed, the more general provision for completion of all necessary road capacity improvements before any form of discretionary approval will be satisfied.

Discretionary approvals in the exercise of County’s land use authority include General Plan Amendments, Zoning Ordinance Amendments, Subdivision Map Approvals, Conditional Use Permit Approvals and approvals of variances². Land uses that are permitted as of right under the existing General

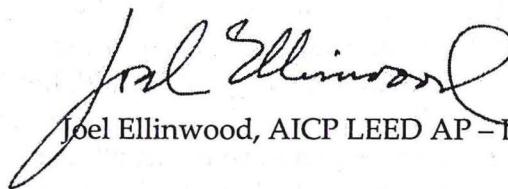
² Government Code § 65906 limits approval of variances to circumstances where the existing physical dimensions or topography of a particular parcel make compliance with general development

Plan and Zoning Ordinance, whether residential, commercial, agricultural or industrial, would not be affected. Discretionary approvals that will not contribute to cumulative traffic impacts, such as variances for set backs or fence heights or other exceptions to generally prevailing land use standards, would also not be affected.

There is an abundance of undeveloped or vacant residential, commercial, agricultural, and industrial zoned parcels that can currently be developed as-of-right sufficient to accommodate job growth significantly higher than the historical rates experienced in El Dorado County for many decades. Limiting discretionary approvals such as General Plan and Zoning Ordinance Amendments that will increase development until such time as the roads are constructed to accommodate such additional growth will help encourage development of existing underutilized parcels.

In conclusion, Mr. Center and Mr. Moore's calculated attempt to stifle the initiative process in furtherance of their own private political agenda by presenting trumped up claims without an opportunity by the proponents of the measure to formulate a response should be rejected. My clients respectfully request that the action of the Board to order a 30-day report on the economic effects of the "No More Paper Roads" initiative be reconsidered and rescinded. My clients further request that the Board adopt a resolution at its August 5, 2014 meeting, including a ballot question to be submitted to the voters concerning the "No More Paper Roads" initiative, and directing the Registrar of Voters for the conduct of an election on the measure on the November 2014 General Election ballot.

Respectfully submitted,



Joel Ellinwood, AICP LEED AP - Lawyer-Planner

Attorney for Shingle Springs Community Alliance and
Campaign Committee for Local Voter Control of Land
Use in El Dorado County

cc: Edward Knapp, County Counsel
James S. Mistrin, Clerk of the Board
Lori Parlin, Shingle Springs Community Alliance
Campaign Committee for Local Voter Control of Land Use in El Dorado County

standards for minimum parcel size, setbacks and the like impractical or unfeasible, but does not allow for changes in use.

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