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Planning Commission
Planning Services
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Walter Mathews, Chair, District 4
Rich Stewart, First Vice-Chair, District 1
Dave Pratt, Second Vice-Chair, District 2
Tom Heflin, District 3
Brian Shinault, District 5

Subject: TGPA/ZOU Recommendation to the Board of Supervisors

Planning Commission Members:

I have the following comments regarding the Planning Commission's Targeted General Plan Amendments/Zoning Ordinance Update (TGPA/ZOU) tentative recommendations to the Board of Supervisors (BOS).

- **Tentative recommendations should not be forwarded to the BOS for their discussion and/or approval prior to a Planning Commission review of all comments received from the public and stakeholders** (e.g., Caltrans, etc.) To do otherwise is inappropriate—it means you are approving/dismissing policies without a full evaluation of their potential impact on the County. It devalues the comments made by the public and interested parties/agencies, and makes County management appear to be “pursuing an agenda” regardless of “fact.” Such behavior undermines the spirit of the California Environmental Quality Act, which requires a thoughtful, complete review of potential impacts.
- Prior to submitting recommendations to the BOS, **the Planning Commission should complete a list of all proposed policies, coupled with the Planning Commission position on each policy.** This document should be written in a manner easily understood by the public, and released for public review well in advance of the initial BOS meeting (two week minimum?) to allow the public time to prepare comments for a discussion with the BOS. (If you have evaluated all the proposed policies—as you no doubt have—why not share your thoughts/conclusions with the public, and why not facilitate public participation?) The TGPA/ZOU is an important project that, when implemented, will impact the lives of all County residents for years to come.
- Instead of submitting tentative recommendations to the BOS at this time, **recommend that the BOS withdraw the TGPA/ZOU draft Environmental Impact Report (dEIR) and reissue it as a draft** after pertinent information has been added to the document (including biological resources, water quality, a reassessment of water supply, etc.)

In addition, I have the following comments on flagged items, items not included in the dEIR, and a news item that has come to my attention (regarding water supply).

Biological Resources

- **Please recommend to the BOS that a comprehensive biological resources section be incorporated into a reissue of the dEIR.** This biological resources section must include a complete evaluation of the County’s biological resources, the mitigation measures that will protect those resources, and documentation that supports the efficacy of proposed mitigation. **All mitigation measures need to be in place prior to implementing development-inducing polices.**
- **Flagged Item 3: BIO-1 and BIO-2** are a start, but are too limited. In the case of BIO-1 (restricts events to areas without special-species habitat), it neglects other important habitats and other species of importance. BIO-2—while I commend its goal—sounds like an impossible deed. How do you return a site to its pre-event condition? If it needs to be “returned,” perhaps it was not the best choice for events in the first place. **Please recommend a site review by a qualified biologist from a State agency with expertise in the area of riparian habitat preservation/restoration prior to opening sites up for events.**
- **Flagged Item 5: Protection of Wetlands and Sensitive Riparian Habitat.** This prescribed mitigation is wholly inadequate. Allowing riparian habitat to be degraded under a “Minor Use Permit” is unacceptable, unless a Minor Use Permit requires: 1) a biological evaluation by a qualified biologist from a State agency with expertise in riparian habitat preservation/restoration; 2) assurances that the property *absolutely* cannot be utilized without impact to riparian habitat; and 3) if there are impacts, payment of a mitigation fee that will be applied to the purchase of habitat elsewhere in the County (that will be protected in perpetuity). **Please recommend a revision of riparian habitat protections.**
- The riparian habitat buffer distances for ministerial and discretionary projects identified in the dEIR are arbitrary—unsupported by scientific study. As a starting point, County planning staff needs to become familiar with the study performed by Jones & Stokes, 2005.¹ **Once again, please recommend a revision of riparian habitat protections.**

Water Quality

- The BOS needs to be made aware that the issue of water quality is critical and needs to be evaluated in the dEIR. **Please recommend that an assessment of proposed policy impacts on water quality be included in a reissue of the dEIR.**
- **Please recommend to the BOS that a groundwater management plan be established.** If the County is intending for new development to be supported by groundwater resources, it needs to prepare a plan. **A groundwater management plan needs to be in place prior to the implementation of proposed development-based TGPA/ZOU proposals if it is to be a viable planning document.** The recently enacted Assembly Bill 3030 enables and encourages local agencies to develop and implement groundwater management plans.

¹ Jones & Stokes. *Setback Recommendations to Conserve Riparian Areas and Streams in Western Placer County*. 2005. February, 2005.

I must qualify my comments by saying that I have worked in the field of water quality for many years. I have worked for the Department of Fish and Game (Suction Dredge Mining Study; Peripheral Canal Study), the Bureau of Reclamation (Kesterson Reservoir Study), and now work for a department within the California Environmental Protection Agency (CalEPA) in their Ground Water Protection Program. And, while I want to make it clear my comments on the dEIR are submitted purely as an interested County resident—not as a representative of CalEPA—I nonetheless want to convey that I have a work history that helps me understand the potential impact that the proposed TGPA/ZOU policies will have on water quality, and am aware of some of the pitfalls that await the County if development is allowed to proceed minus adequate planning.

Because many of the proposed policies will enable high-density residential, commercial, industrial, agricultural, recreational, and research and development uses in rural areas of the County—and because such development projects will rely on groundwater and septic tanks, or waste pond systems, etc.—it is clear that this development will have a significant impact on water quality. The consultant ICF International stated at the July 10, 2014, Planning Commission meeting that they, too, were aware that new allowable uses will have the potential to impact water quality, yet this issue was not covered in the dEIR. This is a major oversight that will likely have severe consequences for the County in the future.

Not only will *water quality* issues loom large as septic systems contaminate wells originating from fractured rock aquifers, but management of *groundwater supply* will quickly become an issue fraught with difficulties—including legal challenges—when too many wells tap aquifers that subsequently lapse into “overdraft.”

Water law will come into play as groundwater becomes depleted and neighbors vie for the resource to keep their wells viable. Water law is complex, and dictated by a procession of cases: **Katz v. Walkinshaw** (141 Cal 116) (1903); **Peabody v City of Vallejo** (2 Cal. 2d 908) (1949) **City of Pasadena v. City of Alhambra** (33 Cal.2d 908) (1949); **Niles Sand and Gravel Company v. Alameda County Water District** (37 Cal. App. 3d 924) (1974); **Techachapi-Cummings County Water District v. Armstrong** (49 Cal. App. 3d 992) (1975); **City of Los Angeles v. City of San Fernando** (14 Cal. 3d 199) (1975); **Wright v. Goleta Water District** (174 Cal. App. 3d 74) (1985); **Hi-Desert County Water District v. Blue Skies Country Club** (23 Cal. App. 4th 1723) (1994); **Baldwin v. Tehama County** (31 Cal. App. 4th 166) (1994); and **City of Barstow v. Mojave Water Agency** (23 Cal. 4th 1224) (2000).² Predictably, the recent drought will bring many new cases due to the unprecedented pumping of groundwater.³ The County needs to be aware of this body of law, and prepare to facilitate the outcome of legal challenges that will be decided.

Planning is critical. While California is one of the few states that does not regulate groundwater resources, this is about to change. Two new bills moving through the California Legislature will impact how California’s groundwater resources are utilized—Senate Bill 1168 (Pavley) and Assembly Bill 1739 (Dickinson). This legislation will require local entities (such as El Dorado Irrigation District [EID], Georgetown Divide Public Utility District, Grizzly Flats Community Services District, South Lake Tahoe Public Utility District, Tahoe City Public Utility District, etc.) to manage groundwater resources—or—if they do not, the State could step in and regulate groundwater use. This legislation is moving forward

² Department of Water Resources. 2003. *California’s Groundwater*. Bulletin 118, update 2003; Appendix B.

³ Sawyers, G.W. XXXX. *A Primer on California Water Rights*. Available at: http://aic.ucdavis.edu/events/outlook05/Sawyer_primer.pdf

because it is believed “We keep building our economy in California on deficit-spending water.”⁴ Arguably, this County is headed down this path with the TGPA/ZOU project. While using groundwater *can* enable communities to survive (even during periods of drought), it comes at the cost of drawing down aquifers—thus the need for legislation.⁵ Specifically, SB 1168 will enact the Sustainable Groundwater Management Act, the intent of which is to make certain all groundwater basins and sub-basins are managed sustainably by local entities pursuant to an adopted sustainable groundwater management plan.⁶

Groundwater management planning can also be accomplished through the establishment of a **groundwater management ordinance**. An example of such an ordinance is provided by the Department of Water Resources.⁷

Water Supply

- The Planning Commission needs to withhold recommendations to the BOS until a careful evaluation of water supply has been conducted. **Please recommend that an assessment of water supply (surface and groundwater) be conducted and included in a reissue of the dEIR.**

The topic of groundwater management has already been discussed in the section above, but surface water supply is an issue that deserves careful scrutiny as well.

A recent article in the Sacramento Bee stated:

“The state of California has handed out five times more water rights than nature can deliver... California’s total freshwater runoff in an average year is about 70 million acre-feet...but the state has handed out junior water rights totaling 370 million acre-feet.”⁸

Aside from the fact that the water supply section of the TGPA/ZOU presented an “optimistic” view of the County’s water supply (the calculation of which was questioned by Commissioner Stewart in an earlier Planning Commission meeting), it is possible—even likely—that EID will **not** be able to acquire water rights to support additional growth in the County because of need elsewhere in the State (especially in light of drought conditions that may persist, and the likelihood of over-allocation).

An example of the need for additional water rights to support growth in the County is presented in the Village of Marble Valley water assessment. The consultant on this project indicated EID “*should*” have sufficient water available to meet its needs—in addition to the other demands in its service area through 2035—**but only if**:

*“EID, the El Dorado County Water Agency and the El Dorado Water and Power successfully execute the contracts and obtain the water right permit approvals for currently unsecured water supplies discussed in **Section 4**. Absent these steps, **the water supplies currently held by EID and recognized to be diverted under existing contracts and agreements would be insufficient in***

⁴ Skelton, G. 2014. *The Cup’s Half Full Without Groundwater Regulation*. . Los Angeles Times, August 18, 2014.

⁵ Nagel, T. 2014. *Stanford’s Water in the West Program Offers New Way to View Groundwater Resources*. Stanford Report, July 31, 2014.

⁶ Senate Rules Committee. 2014. Senate Bill 1168. Bill analysis, third reading. July 31, 2014.

⁷ Department of Water Resources. 2003. *California’s Groundwater*. Bulletin 118, update 2003; Appendix D.

⁸ Weiser, M. 2014. *Water is Way Below Allotments*. Sacramento Bee, August 20, 2014, pages B1 & B3.

2035 to meet the Proposed Project demands along with all other existing and planned future uses.”⁹

Section 4 descriptions of these unsecured water rights include pre-1914 water rights. However, pre-1914 appropriative rights—while relatively common—are also difficult to establish, and require evidence of *original use* prior to 1914 and *continued use* thereafter.¹⁰ The appropriative right is lost by non-use; continuity of use is as important as the origin of the right.

What are the odds EID will be successful in its bid to acquire additional water rights in the face of competing interests within the State, especially in light of the over-allocation identified in the news article? Is EID likely to win its bid to support rooftops over other needs/interests—especially during times of drought? We need a **realistic assessment** of water supply before implementing the development-inducing policies presented in the TGPA/ZOU.

In closing, thank you for providing the opportunity to comment on the TGPA/ZOU.

Cheryl Langley

cc: Board of Supervisors
Ellen Van Dyke
Tom Infusino

⁹ Tully & Young. 2013. *SB 610 Water Supply Assessment for the Village of Marble Valley Specific Plan*, Final Report. August, 2014, Page 5.5.

¹⁰ Sawyers, G.W. XXXX. *A Primer on California Water Rights*. Available at: http://aic.ucdavis.edu/events/outlook05/Sawyer_primer.pdf