

#29



EDC COB <edc.cob@edcgov.us>

Fwd: Please attach to TGPA/ZOU item #29, File #11-0356 for November 10th

1 message

Jim Mitrison - El Dorado County <jim.mitrison@edcgov.us>
To: EDC COB <edc.cob@edcgov.us>

Tue, Nov 10, 2015 at 8:10 AM

Please add to public comment accordingly.

Jim Mitrison
Clerk of the Board of Supervisors
County of El Dorado
Ph. 530.621.5390 Main
Ph. 530.621.5592 Direct
Email jim.mitrison@edcgov.us

----- Forwarded message -----

From: <sue-taylor@comcast.net>
Date: Tue, Nov 10, 2015 at 4:53 AM
Subject: Please attach to TGPA/ZOU item #29, File #11-0356 for November 10th
To: Jim Mitrison <jim.mitrison@edcgov.us>

LATE DISTRIBUTION
DATE 11/10/15
BOS 11/10/15

Jim,

I would like this information below and the original CPRA that is attached submitted into the County's record by attaching this to the TGPA/ZOU item #29, File #11-0356 for November 10th Board of Supervisor's meeting.

Thank you,
Sue Taylor

I have followed the TGPA/ZOU process over the years that was initially brought forward by a group of developers. The reason for this process has evolved over the years and now the County and these developers are stating that this must be done to be compliant with State Law, mainly stating to bring the zoning districts into consistency with the General Plan Land Use Map.

By the County doing a blanket overhaul, without notification to property owners or neighboring property owners, the County is not allowing the public the right of grievance if that zone change is incompatible with either the property owners intent or a neighbors state of health, safety and happiness due to expectation of existing use.

I spent many hours questioning Roger Trout, in the Planning Department, regarding the land use maps when I first learned of them. I was told that when the land use was originally laid out, the County did the best they could to match the zoning with the land use, but being such an enormous job they knew that they could not cover all of the issues, thus they would analyze those parcels for consistency which were in question when and if a property owner applied for a zone change. Peter Maury, also in Planning, when questioned by a Board of Supervisor member if our General Plan was compliant, stated publicly that yes our General Plan is compliant and for the parcels that are inconsistent there are policies in the General Plan that cover that inconsistency.

Below are the map notes from the Proposed Mapping Criteria for Analysis, May 25, 2012.

I have highlighted the criteria from the County that shows that the zoning can remain inconsistent with the land use or the County can change the land use.

Map Notes:

1. Zone the roads whatever the underlying land use designation is.
- 2. Fix General Plan map if the designation is dramatically different from any of the adjacent land use designations.**
3. Where zoning is consistent with the General Plan Land Use Designation, retain the existing zoning.
4. Where zoning is inconsistent and below the acceptable density range, analysis new consistent zone at or near the low end of the density range.
- 5. Where zoning is inconsistent but above the acceptable density range, retain existing zoning and flag for review for factors including Platted Lands (PL) overlay or possible General Plan map corrections.**
- 6. Generally, retain existing zone designations where lands is subject to contract (TPZ, WAC) or has been the subject of a previous rezone application.**
7. Review all PDs to confirm that GIS database is correctly identifying various zones within PD. Two types of PDs were found...PD zones and PD Overlay. All need review...issues include OS designation and verification of mapping.
8. In Tahoe Basin developed areas or less than 5 acres **leave as zoned**. Undeveloped over 5 acres zone for purpose of analysis FR-160
9. Allow exceptions to criteria where it is appropriate for zone to be made consistent with surrounding zoning and land use designations.
10. Use current version of mapping in General Plan until OFR2000-03 is reviewed against it.
11. Avalanche Hazard Combining Zone (-AV) to be mapped.

On April 14, 2015 I proceeded to question staff for their legal justification for the TGPA/ZOU project. The question and responses are below. It should be noted that my last question was never answered.

In conclusion the County has done a very poor job of justifying the expense and method of process that has basically left the public in the dust. No where in the election for the 2004 General Plan was it expected that the County would completely change the existing zoning ordinance, redefine the zoning districts and policies in the General Plan or override and ignore the mitigation measures that were expected and promised by the same people that are now pushing this overhaul. What has been created by this "process" looks nothing like the original "2004 voter approved General Plan".

I'm expecting the Board to adopt this mess stating that the public has had plenty of opportunity to comment, but what good is a comment when there is no discussion? I would ask this Board one last time to stop this very unnecessary project and simply pull out those things that were mutually beneficial to the retention of our rural nature.

From: sue-taylor@comcast.net
Sent: Tuesday, July 14, 2015 6:25 PM
To: David Defanti
Cc: Mitrison, Jim ; Steve Pedretti ; Robyn Drivon ; Kathleen Markham
Subject: Re: California Public Records Act Request from 4-14-15

Dave,

So to summarize, in response to the request for the list of laws that our current General Plan and Ordinance are non-compliant with, you are saying that there isn't one?

My question was, "If our Supervisors were to choose to implement just those policies that were required by State or Federal law, what might they be? There

11/10/2015

Edcgov.us Mail - Fwd: Please attach to TGPA/ZOU item #29, File #11-0356 for November 10th

should be a list readily available since it is basically the foundation of the TGPA/ZOU."

You answered that, "The Community Development Agency does not have any documents responsive to your requests."

Therefore, it appears that the County's claim that the update is required by State law is untrue, or are you saying that making the General Plan 'compliant' has not been documented?

Sue

From: "David Defanti" <david.defanti@edcgov.us>

To: "sue-taylor" <sue-taylor@comcast.net>

Cc: "Jim Mitrisin" <jim.mitrisin@edcgov.us>, "Steve Pedretti" <steve.pedretti@edcgov.us>, "Robyn Drivon" <robyn.drivon@edcgov.us>, "Kathleen Markham" <kathleen.markham@edcgov.us>

Sent: Monday, July 6, 2015 1:11:45 PM

Subject: RE: California Public Records Act Request from 4-14-15

Ms. Taylor:

The Community Development Agency does not have any documents responsive to your requests.

Dave Defanti

Assistant Director

County of El Dorado

Community Development Agency

2850 Fairlane Court

Placerville, CA 95667

(530) 621-5342 / FAX (530) 642-0508

david.defanti@edcgov.us

From: sue-taylor@comcast.net [mailto:sue-taylor@comcast.net]

Sent: Friday, June 26, 2015 11:21 AM

To: Ron Mikulaco; Shiva Frentzen; Brian Veerkamp; Mike Ranalli; Sue Novasel; david defanti

Cc: Jim Mitrisin

<https://mail.google.com/mail/u/1/?ui=2&ik=35d558a9e7&view=pt&search=trash&th=150f22a8f1dc45f9&siml=150f22a8f1dc45f9>

Subject: California Public Records Act Request from 4-14-15

Due to not getting a response to the, May 7, 2015 clarification email that I sent to David Defanti, I am resubmitting the following PRA:

June 26, 2015

To El Dorado County Board of Supervisors

Clerk of the Board/CAO

David Defanti

CA PUBLIC RECORDS ACT REQUEST

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain answers to the following questions and copies to the documents that might apply:

- The County of El Dorado Planning staff and CAO's office has stated over the years, that the TGPA/ZOU is required by State law. If this is in fact true, then I would like to know specifically what law is being broken. In the information provided below, David Defanti, Assistant Director, County of El Dorado Community Development Agency, mentions Government Code §65860 and Assembly Bill 1358. In regards to these 2 laws, what specifically is being violated by the County and what specific policies in the TGPA/ZOU addresses these violations in order for the County to be compliant? I am looking for the correlation between the revisions to our General Plan and Zoning Ordinance, and the state or federal laws requiring those revisions.
- On the other hand, if the County's General Plan and zoning ordinance is currently in compliance with State law then I'm seeking information for the basis of the County's response to the TGPA/ZOU goal to "*ensure ongoing consistency with state planning law*", as there has been no supporting documentation provided for that specific goal. If this is the case, then I am looking for the correlation between the revisions to our General Plan and Zoning Ordinance, and the state or federal laws that the County is desiring to adhere to and for what purpose.
- If there are other policies, aside from AB 1358 and Government Code §65860, requiring a change in the County of El Dorado's Zoning Ordinance or General Plan to either conform with State law or be consistent with State law then I am also requesting the information for what those other State required policy changes might be.

If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you provide a signed notification citing the legal authorities on whom you rely.

To avoid unnecessary cost of duplication, electronic copies are acceptable and may be emailed to sue-taylor@comcast.net. It is requested that your determination be made within 10 days as stipulated within the California Public Records act, Government Code 6253(c). As it is you are in violation of responding to my original request from April 14, 2015.

Thank you,

Sue Taylor

From: "sue-taylor" <sue-taylor@comcast.net>
To: "david defanti" <david.defanti@edcgov.us>
Sent: Thursday, May 7, 2015 1:38:40 PM
Subject: Fwd: Response to 4.14.15 California Public Records Act Request

Mr. Defanti,

My request made no implications nor accusations regarding the validity of our General Plan.

If anything county Staff has made that implication due to stating at public meetings that implementing the TGPA/ZOU is required to conform to State law, leading the public to believe that currently the County is non-compliant. There is a big difference between conforming with State Law and being told that the TGPA/ZOU is being required by State Law. If in fact the TGPA/ZOU is required by State law, then I would like to know specifically what law is being broken, Is it Government Code §65860 and perhaps Assembly Bill 1358 as you have mentioned? If this is so then what is specifically being done in order for the County to comply with those 2 laws. I am looking for the correlation between the revisions to our General Plan and Zoning Ordinance, and the state or federal laws requiring those revisions. Sending the entire legislative file did not specifically answer that question.

On the other hand, if the County's General Plan and zoning ordinance is currently in compliance with State law then I'm seeking information for the basis of the County's response to the TGPA/ZOU goal to "*ensure ongoing consistency with state planning law*", as there has been no supporting documentation provided for that specific goal. If this is the case then I am looking for the correlation between the revisions to our General Plan and Zoning Ordinance, and the state or federal laws that the County is desiring to adhere to and for what purpose.

If our Supervisors were to choose to implement just those policies that were required by State or Federal law, what might they be? There should be a list readily available since it is basically the foundation of the TGPA/ZOU. This list should be a known quantity, and one of the few easily ascertained 'givens' in this process.

I saw from the attached list, a single reference citing Assembly Bill 1358. What is the new policy in the TGPA that is recommended in response to bring the County's General Plan into compliance?

Thank you for helping me clarify my request. As it stands, I would like to know the policy changes proposed relative to AB 1358 and Government Code §65860 . I would assume there are other similar conformity changes, but am requesting the information from you to understand what those might be. Perhaps it is safe to assume there are no others.

Thank you for your assistance.

Sue Taylor

	Targeted General Plan Amendment	Zoning Ordinance Update	Requires Amendment to Base Map	Fulfills GP Implementation Measure	Fulfills GP EIR Mitigation Measures (If Any)	2004 EIR Mitigation Text*	Jobs	Moderate Housing	Sales Tax Capture	Ag Promotion	State and Federal Conformance	Clean Up Internal Consistency
38 Add New Policy to support the development of new or substantially improved roadways to accommodate all users, including bicyclists, pedestrians, transit riders, children, older people, and disabled people, as well as motorists, to comply with Assembly Bill 1358, the Complete Streets Act of 2008. Add implementation measure to update the applicable manuals and standard plans to incorporate elements in support of all users.	X										X	

From: "David Defanti" <david.defanti@edcgov.us>
To: "sue-taylor" <sue-taylor@comcast.net>
Cc: "Steve Pedretti" <steve.pedretti@edcgov.us>
Sent: Thursday, April 30, 2015 3:17:47 PM
Subject: Response to 4.14.15 California Public Records Act Request

Ms. Taylor:

We received your letter dated April 14, 2015 (attached). The Community Development Agency does not have any documents responsive to your requests and disagrees with your letter's implications regarding the validity of the County's General Plan. However, under the California Public Records Act, we have an obligation to help you formulate your request in a manner that could produce responsive documents. Read broadly, your request could be interpreted to seek documents that address one of the County's goals for the Targeted General Plan Amendment and Zoning Ordinance Update (TGPA-ZOU) process: ensure ongoing consistency with state planning law (including Government Code §65860, discussed below). If that information is indeed what you sought, the following documents may be of use to you.

First, attached is Government Code §65860 which requires that county and city zoning ordinances be consistent with the general plan of the county or city. Specifically, Government Code §65860(c) requires that if a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.

Second, please find attached a staff report from July 25, 2011 that discusses key issues for the TGPA, including compliance with state regulations. Numerous other staff reports have also addressed this issue - please see Legistar item 11-0356 and related files as shown here: <https://eldorado.legistar.com/LegislationDetail.aspx?ID=1876651&GUID=8A8EEFA4-9516-4188-91FA-22E226171042>.

Finally, attached is the TGPA-ZOU "Project Checklist" presented to the Planning Commission in August 2014. This checklist lists general plan and zoning ordinance amendments proposed via the TGPA-ZOU project as denoted in the November 14, 2011 Resolutions of Intent (ROI). The checklist shows project goals and objectives addressed by each proposed amendment, one of which is conformance with state and federal law. Since the adoption of these ROIs, the Board has modified the project description, electing to remove some of the items initially considered in the ROIs. For a current list of proposed amendments being considered, please see the project description within the Draft Environmental Impact Report (DEIR) and Recirculated DEIR on the project web site at: http://www.edcgov.us/Government/LongRangePlanning/LandUse/TGPA-ZOU_Main.aspx

Dave Defanti

Assistant Director

County of El Dorado

Community Development Agency

2850 Fairlane Court

Placerville, CA 95667

(530) 621-5342 / FAX (530) 642-0508

david.defanti@edcgov.us

11/10/2015

Edcgov.us Mail - Fwd: Please attach to TGPA/ZOU item #29, File #11-0356 for November 10th



LUPPU State Laws CPRA.docx

18K

April 14, 2015

To: El Dorado County Board of Supervisors
EDC Clerk to the Board/CAO

CA PUBLIC RECORDS ACT REQUEST

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain copies of the following:

- A listing of the exact policies in the El Dorado County 2004 General Plan that are noncompliant or inconsistent with State Law in which California State Law requires a change in the El Dorado County 2004 General Plan.
- A listing of the exact State laws being violated in the El Dorado County 2004 General Plan which requires an amendment or change within the Land Use Programmatic Plan Update.

If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you provide a signed notification citing the legal authorities on whom you rely.

To avoid unnecessary costs of duplication, electronic copies are acceptable and may be emailed to sue-taylor@comcast.net. It is requested that your determination be made within **10 days** as stipulated within the California Public Records Act, **Government Code 6253(c)**.

Thank you,

Sue Taylor

D. Van Dyke #29 Bos 11/10/15

The TGPA/ZOU is Bad for County Residents

- People move and live here for the quality of life and scenic beauty
- The EIR specifically states the Project will cause the following Significant and Unavoidable impacts:
 - More traffic congestion
 - Incompatible uses adjacent to each other
 - Air quality impacts
 - Water quality and supply impacts
 - Aesthetic impacts
 - Wildlife impacts
 - Open space reduction
 - More noise sources

How Can This be Justified?

1 of 6

Overview of "Project" Issues

- This update has been **misrepresented** to the public and board
 - "required by law"
 - "just implementing the General Plan"
 - "minimum changes" and "mostly formatting changes"
- 38 Significant and unavoidable impacts to the environment
 - All of which must be **accepted by the board** to approve the project
- Most 2004 GP mitigation measures required by the court are not implemented
 - In fact, the opposite of mitigation is being done in many cases
- Traffic study in FEIR is incomplete, inadequate, and does not match reality
 - It projects the same traffic on Hwy 50 20 years from now after building 20,000 homes
- 100's of parcels being up-zoned "for free"
 - Without notification of owners or neighbors
 - Without proper CEQA review
 - "special deals" for insiders included in these up-zones

Overview of Issues (cont)

- Claim of “no land use changes” is false, since most of the zones allow greatly expanded uses by right
- Project description is inadequate and has changed during CEQA
- EIR responses from the County are inadequate and inconsistent. Many questions were not answered at all.
- Project components requested by residents have been deferred, yet are greatly impacted by the Project. The interaction is not analyzed.
 - Community regions
 - Biologicals
 - Scenic Corridors
 - Cultural Resources

The FEIR Must **Not** be Certified

- If the FEIR is certified by the Board ...
 - Options to avoid court are limited
 - Project will be tied up in the courts for years, cost \$M in taxpayer money, THEN be forced to start over again.

The Board has Options

4 of 6

Alternatives

1. Reject the Project in its entirety
 - Based on 38 Significant and Unavoidable Impacts
 - Based on a faulty EIR--substantial evidence of this has been provided to the County
2. Direct Staff to evaluate the minimum legally required Project
 - This should have been one of the Project alternatives, but was not presented as one
 - EIR would need to be revised but not discarded
3. Try to Salvage pieces of the Project
 - Break up the Project into three portions:
 1. Portions that can be passed without controversy or significant environmental impact
 2. Portions that can be modified to be unobjectionable and with reduced impact (Negative Declaration may be required) *These can be prioritized*
 3. Remaining portions that can either be rejected or litigated

5 of 6

Summary

- The Board must NOT certify the Final EIR
- We have presented several alternatives to avoid legal action

We want to avoid legal action
but certification of the FEIR leaves The Court as
our only option

Co of Co

Testimony of Tom Infusino, Regarding the TGPA/ZOU, Before the Board of Supervisors,

11/10/15

My name is Tom Infusino, and I am making these comments on behalf of Rural Communities United.

For those of you who do not know me, I am one of the attorneys who successfully challenged in court the 1995 Cinnabar Project, the 1996 General Plan, and the 1997 Carson Creek Project. I am also one of the attorneys who settled the 2006 TIM Fee Case. Then County Counsel Lou Green was a wise man.

There is a baseless rumor going around that Rural Communities United is not prepared to mount a legal challenge against the TGPA/ZOU. I am here today to assure you that RCU is, without a doubt, prepared to challenge the TGPA/ZOU in court.

After enduring years of meetings, and submitting hundreds of pages of testimony and evidence, RCU has exhausted its administrative remedies, and demonstrated its standing. RCU has hired counsel to represent them with a track record of success in litigation against El Dorado County. Finally, I present to you today a first draft of the petition for writ of mandate that RCU is prepared to file, should you Supervisors follow the bad advice you got from the Planning Commission, and approve the TGPA/ZOU this week. You should have no doubt left in your mind that if you certify the woefully inadequate EIR, and adopt any part of the misguided TGPA/ZOU, and issue a notice of determination, your actions will be challenged in Superior Court within the 30-day statute of limitations for CEQA claims.

What happens after that, no one can say for certain. However, if the past is any indication, the case will be in Superior Court for two or three years. It could take another couple of years to move through the Court of Appeal. The uncertainty regarding the status of the general plan will chill some project applications; not the goal of your economic development efforts. The major projects that do go forward, relying on the new general plan and zoning, will likely be swept up in legal challenges as well; again not the goal of your economic development efforts.

Your three options are before you.

The easiest political route is to look out at your good friends and hopeful staff in the audience, and approve the TGPA/ZOU. The bad news from the court will not hit for 2-5 years when somebody else will be sitting in your Supervisor's chair, and all this land use controversy will be their problem.

The next option, one less travelled, is to deny the TGPA/ZOU. It was not your idea to begin with. You can't be blamed for it, if you don't put your name on it. The county is competing well economically relative to the State of California and its regional neighbors, so there is no reason to fix what is not broken.

The most courageous option, and the road least traveled, is to roll up your sleeves and try to resolve your differences with RCU. As somebody who just spent 2-years of monthly meetings, with water agency and government officials, who I do not like and do not respect, hammering out a collaborative agreement on water projects and studies for the Mokelumne River, I can tell you from first hand experience that this work is how you move your agenda forward.

Today the roads fork. If you have the guts, take one of the road less traveled. Thank you, and may God bless.

DRAFT

ITEM 29 11/10/15
PUBLIC COMMENT

1 Thomas P. Infusino
2 P.O. Box 792
3 Pine Grove, CA 95665
4 (209) 295-8866
5 State Bar # 137598

6 Attorney for Petitioner
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF EL DORADO
11
12
13

14 RURAL COMMUNITIES UNITED)

15 Petitioner and Plaintiff,)

16 vs.)

17 EL DORADO COUNTY)
18 BOARD OF SUPERVISORS,)
19 COUNTY OF EL DORADO,)
20 AND DOES I THROUGH XX,)

21 Respondents and Defendants,)
22)

23 AND DOES XXI - XL)
24)

25 Real Parties in Interest)
26)
27)
28)

Case No. _____

PETITION FOR WRIT
OF MANDATE; COMPLANT
FOR INJUNCTIVE,
AND DECLARATORY
RELIEF.

INTRODUCTION

1. On November 12, 2015, the Board of Supervisors violated the California Environmental Quality Act (CEQA) by approving the Targeted General Plan Amendment/Zoning Code Update (TGPA/ZOU) under a substandard EIR, and based upon findings of fact and a statement of overriding considerations that are inadequate. As a result, the TGPA/ZOU will have additional adverse environmental impacts that can and should have been further reduced by the adoption of feasible mitigation measures.

2. Furthermore, the TGPA/ZOU renders the general plan land use and circulation elements internally inconsistent. In addition, the zoning code amendment is not consistent with provisions of the general plan and the Bass Lake Specific Plan.

3. Also, the TGPA/ZOU fails to reflect a reasonable accommodation of competing regional interests, resulting in harm to regional, state and federal efforts to reduce traffic congestion, reduce greenhouse gas emissions, reduce fire danger, and to protect critical wildlife habitat. These planning blunders have transformed El Dorado County's general plan and zoning ordinance into the antithesis of orderly planning, to the detriment of the health, safety, and wellbeing of the good people of El Dorado County.

4. Finally, the County denied the petitioner the right to

1 appeal the Planning Commission's general plan amendment
2 recommendations to the Board of Supervisors, in violation of the
3 Government Code. As a result, the petitioner was forced to incur
4 the expense of seeking precious court resources to get serious
5 government review of these important local planning issues,
6 which should have been initially, efficiently, properly
7 addressed by the Board of Supervisors.
8

9 5. The petitioner, RURAL COMMUNITIES UNITED, asks that the
10 Court void the Respondent EL DORADO COUNTY BOARD OF SUPERVISORS'
11 November 12, 2015 approval of the TGPA/ZOU due to violations of
12 zoning law, general plan law, the California Environmental
13 Quality Act (CEQA), and Constitutional protections for
14 substantive due process and equal protection. In addition,
15 RURAL COMMUNITIES UNITED seeks remedies mandating that the
16 Respondents faithfully execute their duties under the law. In
17 particular, RURAL COMMUNITIES UNITED asks that: the Respondents
18 comply with CEQA prior to making any subsequent approval of the
19 general plan amendments and zoning code updates; provide the
20 required appeal hearing prior to any subsequent approval of
21 general plan amendments; make a finding based upon substantial
22 evidence in the record that the project is consistent with the
23 County General Plan; adopt only general plan amendments that
24 enhance or maintain the internal consistency of the general
25
26
27
28

1 plan; and adopt only those zoning code provisions that reflect a
2 reasonable accommodation of competing regional, state and
3 national interests.

4 PARTIES

5
6 6. Petitioner, RURAL COMMUNITIES UNITED, is an
7 unincorporated association fiscally sponsored by the Planning
8 and Conservation League Foundation, a 501-c-3 non-profit
9 corporation. The members of RCU and their families live in the
10 Sierran foothills of El Dorado County. Members of RCU want to
11 maintain the quality of their neighborhoods, and to pass that on
12 to newcomers and future generations.

14 7. Respondent, EL DORADO COUNTY BOARD OF SUPERVISORS
15 (hereinafter, "the Board") is the governing body of respondent,
16 El Dorado County ("County"), a political subdivision created
17 under the laws of the State of California to provide municipal
18 governance over private lands south of Placer County, north of
19 Amador County, east of Sacramento County, and west of Lake
20 Tahoe. (Gov. Code, sec. 23109.) The Board is responsible for
21 maintaining a legally adequate general plan and zoning
22 ordinance, for complying with CEQA and land use law procedures,
23 for protecting public trust resources, and respecting citizens'
24 constitutional rights of equal protection and substantive due
25 process.

1 8. The petitioner is unaware of the true names and
2 capacities of respondents DOES I through XX, and sues such
3 Respondents herein by fictitious names. The petitioner is
4 informed and believes, and based on such information and belief
5 alleges that the fictitiously named respondents are also
6 responsible for the hereinafter-described threatened injuries to
7 the petitioner and other members of the public. When the true
8 identities and capacities of these respondents have been
9 determined, the petitioner will, with the leave of the court if
10 necessary, amend this petition to insert such identities and
11 capacities.
12

14 9. The petitioner is unaware of the true names and
15 capacities of real parties in interest DOES XXI through XL, and
16 sues such real parties in interest herein by fictitious names.
17 The petitioner is informed and believes, and based on such
18 information and belief alleges that the fictitiously named real
19 parties in interest are also responsible for the hereinafter-
20 described threatened injuries to the petitioner and other
21 members of the public. When the true identities and capacities
22 of these real parties in interest have been determined, the
23 petitioner will, with the leave of the court if necessary, amend
24 this petition to insert such identities and capacities.
25
26
27
28

JURISDICTION & VENUE

10. This court has jurisdiction over this action in mandamus pursuant to California Code of Civil Procedure, Sections 1085, et seq., and 1094.5, that require that a County's action be set aside if the County has prejudicially abused its discretion. This action is timely, having been filed within 30 days of the County's CEQA decision, and within 90 days of the adoption of the TGPA/ZOU. This court is the proper venue pursuant to California Code of Civil Procedure, Sections 395 and 393, that identify the defendant/respondents' location as the appropriate venue for both civil actions in general, and civil actions against public officials.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. Despite the County's denial of the petitioner's right to appeal the Planning Commission's general plan recommendations, the petitioner has met the requirement that it exhaust administrative remedies prior to filing this action. (Public Resources Code, sec. 21177.)

12. On November 10, 2015, having been denied the meaningful opportunity to be heard inherent in an appeal hearing, the petitioner was forced to make their case to the Board of Supervisors through truncated presentations, by multiple amateurs, with frequent interruptions, over the course of a

1 disjointed legislative hearing. During this hearing, over 15
2 speakers rose on behalf of the petitioner to present these
3 arguments. In addition, the petitioners submitted additional
4 evidence to support their claims. Also, the petitioners
5 provided a list of issues in controversy, and proposed solutions
6 to resolve these issues. Finally, the petitioner's counsel
7 submitted a draft writ of mandate to the Board of Supervisors,
8 so that there could be no mistaking that the petitioner met its
9 obligation to exhaust its administrative remedies.
10

11
12 13. In September 2015, the petitioner filed a request for
13 an appeal of the Planning Commission's general plan
14 recommendations to the Board of Supervisors. This appeal request
15 provided a list of legal violation. The County refused to
16 provide an appeal hearing.
17

18 14. In August of 2015, the petitioner reviewed the County's
19 responses to the petitioner's comments on the draft
20 environmental impact report, and identified the inadequacies of
21 the responses for the Planning Commission. The petitioner also
22 identified the problems with the proposed findings of fact and
23 statement of overriding considerations. The Planning Commission
24 ignored these comments and recommended that the Board of
25 Supervisors certify the EIR and adopt the TGPA/ZOU.
26

27 15. In August of 2014, the petitioner participated in the
28

1 Planning Commission's review of the TGPA/ZOU, in hopes of
2 getting the commission to address the harmful legal shortcomings
3 of the TGPA/ZOU.

4 16. Also during 2014, during public review of the Draft
5 EIR, the petitioner provided over 100 pages of detailed
6 allegations of legal violations, complete with legal citations
7 and additional attached evidence. In addition, the petitioner's
8 comments suggested feasible mitigation measure to reduce impacts
9 the county claimed could not be further mitigated. In 2015, the
10 petitioner additional detailed comments on the revised DEIR. (C
11
12

13 17. Finally, members of the petitioner also raised their
14 issues of concern in many of the staff administered meetings and
15 Board of Supervisors workshops during the early stages of the
16 TGPA/ZOU process.
17

18 18. Members of RURAL COMMUNITIES UNITED have participated
19 actively and diligently to provide testimony in formal public
20 hearings and written public comments regarding the TGPA/ZOU.
21 Nevertheless, their concerns regarding the legal adequacy of the
22 TGPA/ZOU, and the harm it would do, were ignored by the Board of
23 Supervisors, who approved the TGPA/ZOU in a fashion contrary to
24 the law.
25
26
27
28

1 STANDING: BENEFICIAL INTEREST & PUBLIC INTEREST

2 19. A petitioner must have a private or public beneficial
3 interest at stake in order to have standing. (Code of Civil
4 Procedure, sec. 1086; People ex rel Younger v. County of El
5 Dorado (1971) 5 Cal.3d 480, 491 [96 Cal.Rptr. 553.]; Citizens
6 for Sensible Development of Bishop Area v. County of Inyo (4th
7 Dist. 1985) 172 Cal.App.3d 151, 158 [217 Cal.Rptr 893].) The
8 petitioners has private interests at stake, and the petitioner
9 shares in the public interests that are at stake.
10

11
12 20. Members of RCU and the public, rely upon El Dorado
13 County's roads as the arteries of commerce, public service,
14 community relations, and family life. It is on these roads that
15 they run a broad spectrum of life's errands. RCU members are
16 suffering, along with other members of the public, from
17 declining levels of service on their roads, due to the County's
18 repeated failures to mitigate the impacts of its land use
19 actions. RCU members use now congested and often unsafe County
20 roads. RCU members are disturbed by noise from increased
21 traffic. RCU members breathe unhealthy air, polluted by motor
22 vehicles stuck in traffic. The ills identified above will be
23 exacerbated by the approval of a TGPA/ZOU, and it's FEIR that
24 mask and underestimate the significant traffic impacts of the
25 project.
26
27
28

1 21. Approval of the TGPA, the ZOU, and the TGPA/ZOU FEIR
2 will cause irreparable harm by causing significant impacts to
3 the human environment that should have been reduced or avoided,
4 pursuant to CEQA and the 2004 General Plan. Also, RCU and the
5 public would be harmed by the County's failure to provide an
6 environmental document that fully informs interested persons of
7 the program's potential impacts. Such a document would enable
8 County residents to better understand the environmental and
9 economic values of their elected officials, and would
10 demonstrate to an apprehensive citizenry that the County has
11 considered the environmental implications of its actions.

14 22. In addition, the petitioner has been directly and
15 particularly harmed by the County's denial of its right to
16 appeal the Planning Commission's general plan amendment
17 recommendations to the Board of Supervisors.

19 23. Also, the petitioner is harmed by the County's failure
20 to reasonably accommodate competing regional interests, and
21 thereby placing at risk the road safety, mobility, fire safety,
22 water quality, wildlife, and other public trust resources
23 greatly valued by the petitioner.

25 24. The California Environmental Quality Act is designed to
26 help local governments identify and mitigate the potentially
27 significant impacts of their actions. Land use law is designed
28

1 to promote the balanced development of a community, and to spare
2 it the ills associated with uncoordinated development.

3 Constitutionally protected substantive due process and equal
4 protection are designed to ensure that no level of government
5 can deny the fruits of liberty to any Americans and to any
6 Californians. The Government Code confers upon parties
7 aggrieved by the ill-conceived general plan recommendations of a
8 Planning Commission, the opportunity for a fair hearing of their
9 grievances before the Board of Supervisors.
10

11
12 25. By approving the TGPA, the ZOU, and the TGPA/ZOU FEIR,
13 the Board of Supervisors has failed to conform to CEQA, to land
14 use law, and to the constitutional protections for equal
15 protection and substantive due process. The County's failures
16 not only delay the day when it will begin to solve the problems
17 suffered by the petitioner as a result of rapid and poorly
18 coordinated urbanization, but also exacerbate the magnitude and
19 intensity of those ills.
20

21 26. Thus, as described above, RCU members have particular
22 beneficial interests at stake in the County's compliance with
23 CEQA and land use law. The public has similar beneficial
24 interests. The petitioner's interests in this matter fall
25 squarely within the zone of interests protected by the statutes
26 and the constitutions. The petitioner is precisely the class of
27
28

1 party that this body of law was designed to protect.

2 IRREPARABLE HARM

3 27. Respondents' actions will result in irreparable harm
4 to the petitioner and the public at large. First, the
5 respondents' TGPA/ZOU will cause irreparable harm by making
6 environmentally harmful land uses allowed by right, or by
7 ministerial approvals. Second, the respondents' actions will
8 cause irreparable harm by promoting development at densities and
9 intensities that fail to protect public health, public safety,
10 public wellbeing, and the environment; and that fail to
11 reasonably accommodate competing regional interest in traffic
12 circulation, air pollution, groundwater quality, fire safety,
13 and riparian resources. Third, the respondents have caused
14 irreparable harm by approving a TGPA/ZOU that will cause
15 significant impacts to the human environment that should have
16 been reduced or avoided pursuant to CEQA and the General Plan.
17 Fourth, the petitioner and the public have been harmed by the
18 County's failure to provide an environmental document that fully
19 informs interested persons of the TGPA/ZOU's potential impacts.
20 Such a document would enable County residents to better
21 understand the environmental and economic values of their
22 elected officials, and would demonstrate to an apprehensive
23 citizenry that the County has considered the environmental
24

1 implications of its actions. Finally, by approving a project
2 that is so contrary to the voter-approved provisions at the
3 heart of the 2004 General Plan, that undermines the factual
4 basis for the judicial validation of the 2004 General Plan, and
5 that procedurally undermines the ability of property owners to
6 receive notice and a fair hearing to protect their property
7 interests, the respondents have irreparably harmed the
8 petitioner, and have caused good people to question their faith
9 in the integrity of their government.
10

11
12 ATTORNEY'S FEES

13 28. In pursuing this action that involves the
14 enforcement of important rights affecting the public interest,
15 the Petitioner will confer a substantial benefit on the citizens
16 of El Dorado County, and therefore will be entitled to an award
17 of reasonable attorney's fees, pursuant to California law,
18 including Code of Civil Procedure, Section 1021.5.
19

20 FACTS AND ALLEGATIONS

21 FIRST CAUSE OF ACTION: VIOLATION OF CEQA (Public
22 Resources Code, secs. 21000, et seq.)
23

24 29. The Petitioner re-alleges the facts set forth in
25 paragraphs 1 - 28 of this petition.

26 A) THE TGPA/ZOU EIR DOES NOT ADEQUATELY DESCRIBE THE
27 TGPA/ZOU.
28

1 30. As explained in the petitioners comments on the Draft
2 EIR, and the Final EIR, and in testimony before the Planning
3 Commission and the Board of Supervisors; the TGPA/ZOU's project
4 description is legally substandard in the following ways:

5
6 - The project description includes policies that are unclear and
7 not yet written.

8 -The project includes conflicting policies.

9 -The project allows new uses with potentially significant
10 impacts in riparian zones without describing these new uses as
11 part of the project description.
12

13 -The project description divides general plan implementation
14 into the TGPA/ZOU, the Biological Resources Policy changes,
15 establishing Scenic Corridors, and a sign ordinance; thereby
16 fragmenting environmental review, and failing to inform the
17 decisionmakers and the public about synergistic cumulative
18 effects prior to project approval.
19

20 -The project description does not provide a way for the public
21 to follow the changes to the zoning ordinance, and verify that
22 all those changes and their significant impacts have been
23 addressed.
24

25 -The project description misleads the public by claiming that
26 the Zoning Ordinance Update is the minimum required by law, when
27 in fact it goes far beyond what was required for conformity to
28

1 the 2004 General Plan, and in many cases is contrary to general
2 plan goals, policies and objectives.

3 -The project objectives are unnecessarily too narrow to allow
4 for reasonable alternatives.

5
6 Therefore, the TGPA/ZOU EIR's project description is incorrect,
7 in violation of CEQA Guidelines Section 15124, and El Dorado
8 County Code Sections 130.72.090.

9 B) THE ENVIRONMENTAL SETTING IS IMPROPERLY DESCRIBED IN THE
10 GENERAL PLAN EIR AND SUPPLEMENT.
11

12 32. CEQA Guidelines Section 15125 state in part that:

13 “(a) An EIR must include a description of the physical
14 environmental conditions in the vicinity of the project, as
15 they exist at the time the notice of preparation is
16 published, or if no notice of preparation is published, at
17 the time environmental analysis is commenced, from both a
18 local and regional perspective.”
19

20 “(c) Knowledge of the regional setting is critical to the
21 assessment of environmental impacts. Special emphasis
22 should be placed on environmental resources that are rare
23 or unique to that region and would be affected by the
24 project. The EIR must demonstrate that the significant
25 environmental impacts of the proposed project were
26 adequately investigated and discussed and it must permit
27
28

1 the significant effects of the project to be considered in
2 the full environmental context."

3
4 33. El Dorado County Code Section 130.72.100 confirms that
5 "Knowledge of the regional setting is critical to the assessment
6 of environmental impacts."
7

8 34. As noted in the petitioner's comments on the draft
9 EIR, on the final EIR, to the Planning Commission and to the
10 Board of Supervisors; the TGPA/ZOU EIR's environmental setting
11 incorrectly states the current level of service on U.S. Highway
12 50, and thereby under-reports the current level of traffic
13 congestion. This error in the baseline invalidates all the
14 Highway 50 traffic impact evaluations in the EIR.
15
16

17 C) THE TGPA/ZOU EIR DOES NOT PROPERLY ANALYZE IMPACTS.

18 35. Given that the TGPA/ZOU EIR's project description is
19 flawed, and its traffic congestion baseline for Highway 50 is
20 wrong, it is not surprising that some of the impact analyses are
21 also wrong.
22

23 36. The EIR's impact analyses fail to meet these standards
24 in the following ways:

25 37. The EIR evaluated the impacts of the TGPA/ZOU on scenic
26 corridors as if the protections inherent in the old sign
27 ordinance would still be in place. However, that sign ordinance
28

1 is being replaced by one with far less protection for scenic
2 resources.

3 38. The traffic impact analysis in the EIR fails to provide
4 the level of traffic congestion in each directions for roadways,
5 and instead averages them. Thus, commuters have no way of
6 determining the impacts of the TGPA/ZOU on their trips to work
7 and back home. Furthermore, excessive congestion in one
8 direction (e.g. toward Sacramento in the morning) is masked and
9 under-reported due to lack of congestion in the other direction
10 (e.g. away from Sacramento in the morning.)
11

12 39. The groundwater quality analysis fails to note that
13 compliance with the new and less restrictive onsite wastewater
14 treatment standards being set by the county would result in
15 violation of the state standards.
16
17

18 40. The groundwater supply analysis jumps to the conclusion
19 that impacts are significant and unavoidable without considering
20 feasible mitigation measures.
21

22 41. The EIR avoids feasible site specific reviews of
23 parcels being rezoned for more intensive development, including
24 agriculture and timber lands.

25 42. The EIR incorrectly claims that rezoning parcels is not
26 granting entitlements, when in fact the ZOU is granting new uses
27 by right to these parcels.
28

1 43. The EIR does not provide impact details when it is
2 feasible to do so.

3 44. The impact analyses repeatedly claim that the Zoning
4 Ordinance Update is the minimum required by law, when in fact it
5 goes far beyond what was required for conformity to the 2004
6 General Plan, and in many cases is contrary to general plan
7 goals, policies and objectives.
8

9 45. The impact analyses repeatedly claim that the TGPA is
10 not a change in policies, when in many cases the TGPA provisions
11 are contrary to the goals, policies and objectives of the 2004
12 General Plan.
13

14 D) INADEQUATE ANALYSIS, ADOPTION, AND IMPLEMENTATION OF
15 MITIGATION MEASURES.

16 46. CEQA requires that mitigation measures actually be
17 implemented, not merely adopted and then neglected or
18 disregarded. (Anderson First Coalition v. City of Anderson
19 (2005) 130 Cal.App.4th 1173.)
20

21 47. "Because an EIR cannot be meaningfully considered in a
22 vacuum devoid of reality, a project proponent's prior
23 environmental record is properly a subject of close
24 consideration in determining the sufficiency of the proponent's
25 promises in an EIR." (Laurel Heights Improvement Association of
26 San Francisco v. Regents of the University of California (1988)
27
28

1 47 Cal.3d 376, 420 [253 Cal.Rptr. 426].)

2 48. The respondents have failed to meet the aforementioned
3 standards by relying on mitigation that has already proven
4 ineffective; by refusing to adopt proven, effective, and
5 feasible mitigation; and by not implementing mitigation measures
6 in the 2004 General Plan.
7

8 E) INADEQUATE ANALYSIS OF ALTERNATIVES.

9 49. The TGPA/EIR used specious assumptions and
10 unnecessarily narrow project objectives to avoid evaluating the
11 comparative merits of feasible alternatives.
12

13 F) INADEQUATE ANALYSIS OF CUMULATIVE IMPACTS.

14 50. The project description divides general plan
15 implementation into the TGPA/ZOU, the Biological Resources
16 Policy changes, establishing Scenic Corridors, and a sign
17 ordinance thereby fragmenting environmental review; and failing
18 to inform the decisionmakers and the public about synergistic
19 and cumulative effects prior to project approval.
20

21 G) THE TGPA/ZOU EIR IS A CONFUSING DOCUMENTS WRITTEN TO
22 PROMOTE A PROJECT RATHER THAN TO INFORM THE DECISIONMAKING
23 PROCESS.
24

25 51. CEQA Guidelines Section 15140 indicates that "EIRs
26 shall be written in plain language and may use appropriate
27 graphics so that decision-makers and the public can rapidly
28

1 understand the documents." In addition, local rules indicate
2 that "An EIR may not be used as an instrument to rationalize
3 approval of a project." (El Dorado County Code, sec. 130.72.060.)
4

5 52. As noted in comments on the DEIR and the Final EIR,
6 the TGPA/ZOU EIR confused the public.
7

8 H) THE COUNTY'S RESPONSE TO COMMENTS IS INADEQUATE.
9

10 53. CEQA Guidelines Section 15088 requires the agency to
11 respond in writing to comments on the draft EIR. That section
12 states in part that,
13

14 "The written response shall describe the disposition of
15 significant environmental issues raised (e.g., revisions to
16 the proposed project to mitigate anticipated impacts or
17 objections). In particular, the major environmental issues
18 raised when the Lead Agency's position is at variance with
19 recommendations and objections raised in the comments must
20 be addressed in detail giving reasons why specific comments
21 and suggestions were not accepted. There must be good
22 faith, reasoned analysis in response. Conclusory statements
23 unsupported by factual information will not suffice."
24
25

26
27 El Dorado County Code Section 130.72.140 embodies a very similar
28 requirement.

1 54. As detailed in written testimony to the Planning
2 Commission in August 2015, the petitioner alleges that the Board
3 failed to meet these standards in their response to the several
4 comments on the draft EIR and the revised draft EIR.
5

6 I) THE COUNTY'S FINDINGS OF FACT ARE INADEQUATE.

7 55. CEQA Guidelines Section 15091 requires that an agency
8 make specific findings of fact. Those findings must be
9 supported by substantial evidence in the record, and they must
10 bridge the analytical gap between the evidence in the record and
11 the ultimate conclusion of the agency.
12

13 56. As detailed in written testimony to the Planning
14 Commission in August 2015, the petitioner alleges that the CEQA
15 findings and the statement of overriding considerations made by
16 the Board fail to meet the aforementioned legal standards.
17

18 J) Improper use of tiering to avoid environmental review
19 entirely.

20 57. Tiering is a procedure that allows different levels of
21 environmental review at the program level and the project level.
22

23 58. The TGPA?ZOU EIR claimed that many general plan and
24 zoning changes were too unspecified to be evaluated in the
25 program EIR, but that they will be subject to CEQA review at the
26 project-level. However, many of these zoning changes allow for
27 environmentally harmful uses by right or by ministerial
28

1 approvals that will not receive CEQA review. It is not lawful to
2 use tiering to avoid environmental review at both the program
3 level and the project level.

4 K) THE COUNTY'S CEQA VIOLATIONS CONSTITUTE ACTIONS THAT
5 ARE ARBITRARY, CAPRICIOUS, AND A PREJUDICIAL ABUSE OF
6 DISCRETION.

7
8 59. By failing to prepare an adequate EIR that properly
9 describes the TGPA/ZOU, describes its environmental setting,
10 analyzes its impacts, and evaluates alternatives and mitigation
11 measures; by basing the approval of the TGPA/ZOU on CEQA
12 findings that lack a substantial evidence basis in the record;
13 by failing to make a good faith effort at full disclosure; and
14 by failing to implement mitigation measure adopted as part of
15 the 2004 General Plan the Board has acted arbitrarily, ca-
16 priciously, and abused its discretion by failing to proceed in a
17 manner required by law, and by making decisions not supported by
18 substantial evidence in the whole record.
19
20
21

22 SECOND CAUSE OF ACTION AGAINST RESPONDENTS: UNLAWFUL APPROVAL OF
23 THE TGPA/ZOU IN VIOLATION OF LAND USE LAW.
24

25
26 60. The Petitioner re-alleges the facts set forth in
27 paragraphs 1 - 28 of this petition.
28

1 61. All local decisions involving future growth must
2 be consistent with the local general plan, including decisions
3 regarding public works programs. (Friends of "B" Street v. City
4 of Hayward (1980) 106 Cal.App.3d 988, 998.) A county cannot
5 articulate a policy in its general plan, and then approve a
6 conflicting program. (Napa Citizens for Honest Government v.
7 Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 379-
8 380.) In addition, the Government Code confers upon aggrieved
9 parties the right to appeal a planning commission's general plan
10 recommendations to the Board of Supervisors.
11

12
13 62. As detailed in written comments and in testimony to the
14 Planning Commission in August of 2015, the consistency findings
15 for the TGPA/ZOU violates land use law.
16

17 63. The TGPA/ZOU creates internal inconsistencies in the
18 general plan; specifically between the land use element and the
19 circulation element.
20

21 64. The zone change in the parcels around Bass Lake conflict
22 with the Bass Lake Specific Plan.
23

24 65. The rezoning of parcels makes the zoning map inconsistent
25 with the provisions of the general plan.
26

27 66. As detailed in the petitioner's appeal request of
28 September 2009, it is unlawful for the respondents to refuse the
petitioner's request for an appeal.

1 THIRD CAUSE OF ACTION AGAINST RESPONDENTS: THE TGPA/ZOU DOES NOT
2 REFLECT A REASONABLE ACCOMMODATION OF COMPETING REGIONAL
3 INTERESTS.
4

5 65. The Petitioner re-alleges the facts set forth in
6 paragraphs 1 - 28 of this petition.

7 65. State and federal constitutional provisions ensuring
8 substantive due process and equal protection require that land
9 use regulations reflect a reasonable accommodation of competing
10 regional interests.
11

12 66. As detailed in the petitioner's comments on the DEIR,
13 the revised DEIR, the Final EIR, and in testimony to the
14 Planning Commission in August 2015, and to the Board of
15 Supervisors in November 2015, many aspects of the TGPA/ZOU seem
16 too insensitive to environmental effects that will have impacts
17 on a regional level beyond the borders of El Dorado County. In
18 addition, the TGPA/ZOU has abandoned the balanced approach of
19 the 2004 general plan.
20

21 67. For example, the TGPA/ZOU removes zoning ordinance
22 provisions that reduced the impacts of the 2004 general plan,
23 and adds provisions that increase impacts. Furthermore, the
24 TGPA/ZOU is removing the impact mitigation provisions from the
25 2004 general plan, when it was the very existence of such
26 measures that the court used as the basis for its decision to
27
28

1 validate the 2004 general plan. In addition, some TGPA/ZOU
2 provisions (such as the ones relating to on-site wastewater
3 treatment, uses in streamside zones, traffic congestion, fire
4 safety, and greenhouse gas reduction) conflict with the state
5 and federal requirements designed to protect health, safety,
6 welfare, and the environment. As explained herein to the Board
7 on November 10, 2015, these aspects of the TGPA/ZOU suggest that
8 the TGPA/ZOU does not conform to constitutional requirements for
9 substantive due process and equal protection.
10
11

12
13 PRAYER FOR RELIEF

14 Wherefore, the Petitioner respectfully prays that:

15 This court declare that the EIR for the TGPA is legally
16 inadequate.

17 This court declare that the Board's General Plan
18 consistency finding, CEQA findings, and statement of overriding
19 considerations for the TGPA/ZOU are legally inadequate.
20

21 This court declare that the TGPA/ZOU renders the general
22 plan internally inconsistent.

23 This court declare that the TGPA/ZOU is not a reasonable
24 accommodation of competing regional interests.
25

26 This court declare that the Respondent failed to proceed in
27 accordance with the law when it refused to provide an appeal of
28 the Planning Commission's general plan recommendation to the

1 Petitioner.

2 This court void the Respondents' approval of the TGPA/ZOU,
3 and enjoin any actions from being taken based upon the authority
4 of that approval.
5

6 This court void the Respondents' certification of the
7 TGPA/ZOU and the Notice of Determination regarding the TGPA/ZOU,
8 and enjoin any actions from being taken based upon their
9 authority.
10

11 This court issue a writ of mandate, or other appropriate
12 writ, compelling the Respondents to make logical findings
13 supported by substantial evidence in the record as a whole prior
14 to any subsequent approval of any general plan amendment and any
15 zoning ordinance update.
16

17 This court issue a writ of mandate, or other appropriate
18 writ, compelling Respondents to complete adequate CEQA documents
19 prior to any subsequent approval of any general plan amendment
20 and zoning ordinance update.
21

22 This court issue a writ of mandate, or other appropriate
23 writ, compelling Respondents to reasonably accommodate competing
24 regional interests when approving any subsequent any general
25 plan amendment and any zoning ordinance update.
26

27 This court issue a writ of mandate, or other appropriate
28 writ, compelling Respondents to develop and follow procedures to

1 provide appeal hearings for Planning Commission general plan
2 amendment recommendations to the Board of Supervisors.

3 This Court award Petitioner reasonable attorney's fees
4 and costs of this action.
5

6 This court award such other relief as may be just and
7 proper.

8 Dated: 12/##/15

Respectfully submitted:

10
11 _____
12 Thomas P. Infusino

13 Attorney for Petitioner
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I am a member of the Petitioner, RURAL COMMUNITIES UNITED,
and am authorized to execute this verification on behalf of the
petitioner. I have read the foregoing petition and complaint
and am familiar with its contents. The facts recited in the
petition and complaint are true of my personal knowledge. I
declare, under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

Date: _____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

#29 PUBLIC COMMENT
J. GILES

- 1) My name is John Giles.
- 2) I live at [REDACTED], Cameron Park.
- 3) I am retired from a career in Silicon Valley.
- 4) I am making these comments on behalf of myself and Rural Communities United.
- 5) One of the reasons that people are so upset with this process is that the County is putting the cart before the horse. In this instance, the County is putting the rezoning cart before the general plan implementation horse. Here are two examples.
- 6) First, the 2004 General Plan recognized that its land use designation maps represented the highest range of potential land use densities and intensities for each area. The 2004 General Plan explicitly and lawfully postponed the need to rezone areas to that highest range of densities and intensities until the necessary infrastructure was in place to support that level of development. The TGPA/ZOU changes all that by increasing the land use density and intensity on parcels countywide, without regard to the availability of infrastructure.

Bad outcomes are likely from this process. One is that investors will be disappointed when their subdivision proposals are denied, despite their consistency with the zoning, because the necessary infrastructure does not yet exist. This is likely to result in litigation. Another likely result is that neighboring residents will be disappointed when subdivisions are approved, despite the fact that the site is not suitable for the density or intensity of development. This too is likely to result in litigation. This is far from the "orderly development" that is the goal of general plans and zoning.
- 7) Second, rezones were supposed to happen after programs to mitigate their impacts were implemented. The TGPA/ZOU has changed that. Many of the programs called for by the General Plan to reduce the impacts of increased density and intensity of use, have not yet been implemented. Instead of completing that process first, the TGPA/ZOU grants the rezones without the necessary mitigation called for by the general plan. This results in even worse unmitigated impacts than the 2004 General Plan, and calls for the Board to approve a Statement of Overriding Considerations.
- 8) Stop putting the cart before the horse. Establish the infrastructure needed to support the more intense development proposed, and complete the mitigation programs identified in the 2004 General Plan. Then, apply those programs to projects as they come forward for re-zoning or subdividing. This will ensure that the environment will be protected and that development approvals will be valid.

Thank you.

1 of 1

TGPA/ZOU
Mitigation Requests

Mitigation Element 1:

El Dorado County needs to develop a Groundwater Management Plan (GWMP).

Even though El Dorado County's (EDC) fractured rock aquifer ("hard rock") groundwater is deemed an unreliable source of water by El Dorado Irrigation District, the El Dorado County Water Agency, and the Department of Water Resources, it is anticipated much of the development facilitated by TGPA/ZOU land use policies/zoning will be supported by groundwater. And yet, the TGPA/ZOU Environmental Impact Report (EIR) concedes: *"groundwater is not a reliable source of water in areas that are not served by a public water system..."* (Recirculated Draft EIR, page 3.10-18).

The availability and reliability of groundwater supply in various EDC planning areas needs to be assessed in the context of land use planning. But EDC has thus far refused to develop a **Groundwater Management Plan (GWMP)**, even though adoption of such a plan is a proven, effective, and feasible mitigation for the project's impact to groundwater.

Basis for Development of a GWMP

While EDC argues GWMPs are difficult to develop in areas dependent upon fractured rock aquifers (areas lacking groundwater *basins*), many counties have developed—or are in the process of developing—plans to assess and manage hard rock aquifer groundwater in support of their land use planning efforts (e.g., **Shasta, Tulare, Nevada, Calaveras, Monterey, Santa Barbara: see Attachment A**) Some counties began this process of investigation in the 1980s; EDC has yet to perform such an analysis, despite 2004 General Plan objectives and policies that commit to groundwater evaluation (availability/reliability) in the context of land use planning (these policies have yet to be implemented). EDC needs to assess groundwater availability/reliability, or county residents' investments in homes and businesses are jeopardized.

Well data has been collected and is available in County files, the collection and purpose of which is specified under **Policy 5.2.3.6**, but this data has not been applied to land use planning efforts:

- **Policy 5.2.3.6:** "The County shall assess and analyze the well data gained since the permit process started in 1990. Such data should be used to identify areas of likely groundwater supply limitations. At the completion of this analysis period, the County should determine if the General Plan uses within the areas of water supply limitation are compatible with identifiable supply limitations and modify the General Plan uses, if necessary."

Objectives and additional policies that apply to this union of groundwater availability/land use planning are as follows:

- **Objective 5.2.1:** County-Wide Water Resources Program. "Establish a County-wide water resources development and management program to include the activities necessary to ensure adequate future water supplies consistent with the General Plan."

1 of 10

- **Objective 5.2.3: Groundwater Systems.** "Demonstrate that water supply is available for proposed groundwater dependent development and protect against degradation of well water supplies for existing residents."
- **Policy 5.2.1.1:** "The El Dorado County Water Agency shall support a County-wide water resources development and management program which is coordinated with water purveyors and is consistent with the demands generated by the General Plan land use map."
- **Policy 5.1.2.2:** "Provision of public services to new discretionary development **shall not result in a reduction of service below minimum established standards to current users...**"

The need for such planning is underscored in the TGPA/ZOU EIR, which describes the impact on groundwater as "significant and unavoidable":

- The TGPA/ZOU will **deplete groundwater supplies to the extent that** "the production rate of pre-existing nearby wells would drop to a level that would not support existing land uses or planned uses for which permits have been granted." (Recirculated Draft EIR, page 3.10-27.)
- The project will have a significant impact on groundwater due to **"Increases in the number of wells...without accounting for total available water supply** in the affected aquifers and their ability to meet cumulative demands..." (Recirculated Draft EIR, page 5-29.)
- Project impact **"...would be significant and unavoidable due to the increased demands for groundwater supplies associated with the ZOU update, the lack of information regarding groundwater capacity and supply, and the general information indicating that groundwater supplies are not reliable."** (Recirculated Draft EIR, page 3.10-29.)

Finally, the EIR concludes: **"There are no feasible mitigation measures that would reduce this impact to a less-than-significant level"** (Recirculated Draft EIR, page 3.10-29). In stark contradiction to this statement is the following excerpt from the EIR that indicates development of a GWMP would be feasible:

Developing a baseline estimate of groundwater supplies would require a comprehensive and multiyear effort of collecting private well information and modeling both recharge characteristics and future demand that is beyond the scope of this General Plan.
(Recirculated Draft EIR, page 3.10-29.)

In addition, the Department of Water Resources (DWR) not only supports the development of GWMPs in counties without defined groundwater basins ("non-basin areas"), DWR has provided assistance to such counties (Shasta County, for instance). DWR also provides a groundwater management model ordinance for counties with hard rock groundwater sources. The goal of the ordinance is described below:

In developing this model ordinance, the California Department of Water Resources recognizes that the goal of a groundwater management plan and the goal of an ordinance to manage groundwater should be the same—assurance of a long-term, sustainable, reliable, good quality groundwater supply. (DWR Bulletin 118; Appendix D, page 232.)

Thus, the statement that there are "no feasible mitigation measures" is false—adoption of GWMPs by other California counties that rely on fractured rock aquifers reveals that this statement of non-feasibility is simply a declaration of refusal to adopt proven, effective, and feasible mitigation.

Mitigation Element 2:

EDC needs to institute zoning/land use policies that:

- comply with SWRCB onsite wastewater treatment systems (OWTS) regulations; and
- reject land use policies/zoning that jeopardize groundwater quality via septic tank use and hazardous waste disposal from industrial, commercial, and recreational facilities in areas without treatment facilities.

Because water flows relatively rapidly through hard rock aquifers—as opposed to percolating through sand and gravel as it does in alluvial aquifers—hard rock aquifers are highly susceptible to contamination from septic systems. But the TGPA/ZOU land use policies/zoning will allow the **expansion of industrial, commercial, and recreational development into rural areas** dependent upon groundwater wells/septic tanks/private septic systems. This failure to limit hazardous groundwater polluting uses where there are no treatment facilities ensures groundwater contamination.

Instituting appropriate land use/zoning designations in **rural areas** dependent on wells/septic tanks/septic pond systems is crucial: the **quality** of available water will to a significant degree define the **quantity** and **sustainability** of groundwater in any given area.

Basis for Development of Groundwater Quality Protections

The following TGPA/ZOU policies jeopardize groundwater quality and quantity:

- **Policy 2.2.1.2: Industrial.** “The requirement that industrial lands be restricted to areas within, or in close proximity to Community Regions and Rural Centers would be deleted. The requirement that industrial lands in rural regions have more limited industrial uses—for support of agriculture and natural resource uses—would be deleted.” (Draft EIR, page ES-2.)
- “The list of allowable uses in rural regions will be increased to provide **additional agricultural support, recreation, home occupation, and other rural residential, tourist-serving, and commercial uses**” (e.g., Bed & Breakfast, health resorts, retreat centers, and an unspecified category identified only as “general”). (Draft EIR, page ES-6.)
- Low and high-intensity recreation will be allowed in Rural Regions and Rural Centers. This includes **campgrounds, golf courses, off-highway vehicle recreation areas, ski areas, health and resort centers, large amusement complexes, outdoor entertainment, hotel/motel**. (Draft EIR, page 3.4-24.)
- **Home occupation businesses** will be allowed to expand into rural regions, and these may include **commercial and industrial activities**. (Draft EIR, page E-6.)

County planning is especially important because **no federal, state, or local entities oversee or regulate water quality in EDC’s private, domestic wells**. And—according to a U.S. EPA 2012 study, groundwater quality in EDC’s western slope is already deemed “marginal.” A 2003 - 2004 study by the SWRCB of 398 private domestic wells in EDC revealed 30 percent failed primary drinking water standards. Because homeowners are responsible for testing their own wells, it is likely many wells will go untested for long periods of time, or will not be retested post-construction.

And, EDC groundwater contamination events are not rare:

- Approximately 63,404 residents of EDC are 100 percent reliant on public well water systems that received California Department of Public Health Maximum Contaminant Level (MCL) violations on two or more occasions during a 2002-2010 compliance cycle. (SWRCB, 2013.)
- A review of U.S. EPA's *Safe Drinking Water Information System* reveals numerous groundwater-based systems violated monitoring/reporting requirements, including groundwater systems in Latrobe, El Dorado Tahoe, Rescue, and so forth. Numerous EDC campgrounds were issued MCL violations as well. (U.S. EPA, 2014.)
- There are approximately 175 community water systems in EDC. Many small water system operators fail to comply with monitoring requirements. (EDC Environmental Health.)

SWRCB/RWQCB Onsite Wastewater Treatment Standards (OWTS)^{1,2}

The following table presents a comparison of SWRCB/RWQCB and EDC policies regarding the siting (minimum setback) of septic systems and leach lines from water sources. **Many EDC standards are out of compliance with State law.**

Setback requirements for any portion of a septic system (tank and leach field) from water sources as presented in SWRCB/RWQCB and EDC policy documents (distance in feet)

Water Feature	SWRCB/RWQCB	El Dorado County	
		Leach Lines	Septic Tank
Wells	100'	100' 50' sewer line	100' 150' for cesspool or seepage pit
Springs	100' (use unspecified)	100' (use unspecified)	50' (use unspecified) 100' if used for "domestic purposes"
Flowing surface water (creeks, rivers)	100'	100' from "flowing stream"	50' from streams
Vernal pools, wetlands, lakes, ponds, or other surface water bodies	200'	50' from ephemeral (seasonal) stream/swale 100' from lakes/ponds	50' from lakes or reservoir

¹ State Water Resources Control Board/Regional Water Quality Control Boards. 2012. *OWTS Policy: Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems*. June 19, 2012. Available at: http://www.waterboards.ca.gov/water_issues/programs/owts/docs/owts_policy.pdf

² El Dorado County. 2015. *Septic System Minimum Setback Requirements*. Available at: https://www.edcgov.us/Government/EMD/EnvironmentalHealth/Septic_System_Minimum_Setback_Requirements.aspx

of 10

Public Water Well	150' where effluent dispersal system does not exceed 10'	----	----
OWTS within 1200 feet of a Public Water System surface water intake	400' from high water mark of the reservoir, lake, or flowing water body	200' from lake or reservoir " <u>used for drinking water</u> "	50' from lake or reservoir (use unspecified)
OWTS more than 1200 feet, but less than 2500 feet from a Public Water System surface water intake	200' from high water mark of the reservoir, lake, or flowing water body		

EDC not only needs to meet State standards, but it is possible EDC may need to exceed State setback standards to be protective of groundwater resources. State standards are largely predicated upon performance in areas with groundwater *basins* (alluvial aquifers)—areas where wastewater percolates through sand, gravel, and clay soils before entering groundwater. In EDC's hard rock aquifers, this "pretreatment" is largely absent.

Feasibility of Zoning/Land Use Planning to Reduce/Eliminate Groundwater Contamination

EDC currently has data on septic system locations and percolation rates. An evaluation of existing septic tank performance in areas of differing soil type/geology could be accomplished, and would yield important information upon which land use planning could be based. (For instance, planning areas with average percolation rates that are very low or very high [by State/industry standards] could be flagged for specific zoning designations/land uses.) Evaluation of this data could provide realistic, achievable contamination mitigation, especially when combined with a GWMP.

Mitigation Element 3:

Require development in Community Regions to connect to El Dorado Irrigation District (EID) surface water supply lines and sewer service.

Eliminate the following provisions (which are allowed under the TGPA/ZOU):

- (RE: Policy 5.2.1.3) Eliminate connections to "*public water systems*" (which can be small community water systems that serve only 15 connections—or 25 individuals for 60 days out of the year); **require connection to EID water service in Community Regions.**
- (RE: Policy 5.3.1.1) Eliminate "optional" connection to "*public wastewater collection facilities*" for "*high-density and multifamily residential, commercial and industrial projects*"; **require connection to EID sewer service.**

Basis for Need

The TGPA/ZOU proposes to change 2004 General Plan language in the following manner:

Policy 5.2.1.3 "...would be revised such that medium-density residential, high-density residential, multifamily residential, commercial, industrial and research and development projects may be required to connect to public water systems if reasonably available when located within Community Regions, and to either a public water system or to approved private water systems in Rural Centers."

This change means that not only will groundwater supplies potentially be relied upon in the areas proposed for the highest density development, but that septic systems could also be utilized. This combination—in what is presumed to be relative close proximity—sets the stage for likely groundwater contamination.

2004 General Plan policy sought to avoid just such a circumstance:

- **Policy 5.2.1.4:** "Rezoning and subdivision approvals in Community Regions or other areas dependent on public water supply shall be subject to the availability of a permanent and reliable water supply."

In an effort to modify the proposed language of Policy 5.2.1.3, the Planning Commission proposed the following revision:

16. Connecting to Public Water Systems within Community Regions

Planning Commission vote: 5-0

Planning Commission recommends the following changes:

General Plan Policy 5.2.1.3

All new medium-density residential, high-density residential, multifamily residential, commercial, industrial and research and development projects shall ~~may~~ be required to connect to public water systems when if reasonably available when located within Community Regions and to either a public water system or to an approved private water systems in Rural Centers.

General Plan Policy 5.2.1.11

The County shall direct new development to areas where public water service already exists. ~~In Community Regions, all new development shall connect to a public water system. In Rural Centers, all new development shall connect either to a public water system or to an approved private water system.~~

Source: Planning Commission Recommendation on TGPA-ZOU Project, September 2, 2015—Item 18B.

But this language does not go far enough, for two important reasons:

- Retention of the term "public water system," weakens the intent of the Planning Commission recommendation which was to ensure a reliable water supply. Because "public water systems" —as currently defined—includes small systems that serve only 15 connections—or 25 individuals for 60 days out of the year, a "public water system" may be based on unreliable groundwater resources. (I believe the Planning Commission interprets "public water system" to mean EID water service, but it does not, necessarily); and

- Retention of “when reasonably available” opens the door to the use of small public water systems, or private water systems—possibly indefinitely.

The TGPA/ZOU revised language also weakens General Plan Policy 5.2.1.11 which directs urban-intensity development to areas “where public water service already exists.” Elimination of both of these caveats would restore policy to its original 2004 General Plan intent.

The TGPA/ZOU also proposes a change to requirements for connection to public wastewater collection facilities:

Policy 5.3.1.1 “...would be revised such to state that high-density and multifamily residential, commercial, and industrial projects may be required to connect to public wastewater collection facilities if reasonably available as a condition of approval. The current policy requires such development to be connected to public collection facilities.” (Draft EIR, page 3.6-5.)

This policy needs to require that the types of development specified in the policy connect to a public wastewater collection service (specifically, EID sewer service).

Mitigation Element 4:

Eliminate development on slopes that exceed 25 percent.

Development on slopes $\geq 30\%$ will mean the County will be in violation of SWRCB onsite wastewater treatment systems (OWTS) policy. Because EDC has not adopted its own conforming policy under OWTS Tier 2, it is bound by Tier 1 standards. Therefore, under Tier 1, if EDC allows development on slopes ≥ 30 percent, any septic system tank or leach field located on the same slope will be in violation of OWTS standards. In fact, EDC will be in violation of the OWTS if it allows septic systems to be located on any part of a property where slopes exceed 25 percent (see policy below).

SWRCB/RWQCB policy:

Tier 1 – Low Risk New or Replacement OWTS:

7.7 Natural ground slope in all areas used for effluent disposal shall not be greater than 25 percent.

Source: State Water Resources Control Board/Regional Water Quality Control Boards. 2012. *OWTS Policy: Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems.* June 19, 2012. Page 22. Available at:

http://www.waterboards.ca.gov/water_issues/programs/owts/docs/owts_policy.pdf

Attachment A

Fractured Rock Aquifer Groundwater Management Plan (GWMP) Studies by County

Several California counties have taken steps to develop Groundwater Management Plans (GWMPs) based on groundwater sourced from fractured rock aquifers. Examples of these efforts are described below.

Shasta County¹

The Shasta County Board of Supervisors recognized the potential for trouble when development pressures increased in areas of the eastern county that are *"not underlain by ground water basins, but instead generally overlie fractured rock aquifers."* In 1982, the county approved a cooperative two-year study by the California Department of Water Resources (DWR) and the Shasta County Water Agency (SCWA). The objective of the study is described as follows:

Page 1:

Purpose and Scope

DWR prepared this report to help Shasta County make land-use decisions for its General Plan that reflect the land's ability to provide reliable sources of water for its inhabitants. The report presents findings of the study and gives estimates of ground water availability and development potential for each area investigated.

The study was undertaken to provide information on the ground water resources and hydrogeology in the upland areas of Eastern Shasta County. It was done at reconnaissance level and in greater detail where possible. This report discusses surface and subsurface geology, ground water hydrology, and estimated ground water availability and development potential for each area of concern.

Ultimately, DWR and SCWA developed suggested *"development densities that would be appropriate for each area, based on the area's estimated ground water resources."*

DWR and SCWA also made the following findings/recommendations:

- **Page 10:** *"...future development should not be based solely on the availability of ground water, but on the potential for ground water impairment. A plentiful supply of ground water becomes useless if it becomes contaminated by the people who develop it."*
- **Page 12:** *"Preserve existing natural drainage areas such as swales, dry washes, etc., rather than covering them over, filling them in or otherwise destroying them. This would aid in ground water recharge."* (Studies should include an evaluation of aquifer recharge areas.)

¹ Department of Water Resources. 1984. *Eastern Shasta County Ground Water Study*. State of California, Resources Agency, Department of Water Resources, Northern District. June, 1984. Available at: http://www.water.ca.gov/pubs/groundwater/eastern_shasta_county_groundwater_study/easternshastacountygroundwaterstudydwrndjune84.pdf

- **Page 12:** Studies in areas proposed for development should include *"The impacts of waste disposal on ground water quality, including sewage effluent, septic tank effluent, and suburban storm runoff."*

Tulare County^{2 & 3}

The Sierra Resource Conservation District submitted a grant proposal to DWR's Groundwater Assistance Program to obtain funds to conduct a **fractured rock groundwater study** for the watershed and community of Three Rivers, California (on behalf of the Southern Sierra Integrated Water Management [SSIRWM] region).

This groundwater study was deemed necessary because **"County general plans call for development in the foothill and mountain communities yet sustainable use rates have yet to be established for existing communities who rely almost exclusively on fractured-rock aquifers."**

Approximately 34,000 residents live in the Three Rivers region and rely primarily on **"the limited and variable supplies of groundwater pumped from fractured rock aquifers."** The county believed **"because they, like most other communities in the SSIRWM region, rely on fractured-rock groundwater, it is critical to conduct this study in order to plan for and sustainably manage their groundwater supplies."**

Nevada County⁴

In 1980, the United States Geological Survey—in cooperation with Nevada County and Nevada Irrigation District—planned and implemented an **investigation** designed to provide information on **the availability of groundwater in the fractured rocks in the southwestern part of Nevada County.**

From 1970 to 1980, the population of the county increased 96 percent; the majority of this new development relied upon groundwater. But because groundwater in the southwestern portion of the county occurs chiefly in **fractured rock aquifers**, *"water systems in much of the area...are having difficulty in meeting the increased demand for water."*

The study identified a method of evaluation that could assist the county with planning efforts:

[Controlled pump tests] could be evaluated for common factors of rock type, structure, and topography, for possible **establishment of general guidelines for other well sites**. Such testing procedure increased the probability of selecting sites of maximum yields in other hard-rock areas (C.W. Cressler, written communication, 1983).

² Southern Sierra Regional Water Management Group & Kamansky's Ecological Consulting. 2013. *Draft Southern Sierra Integrated Regional Water Management Plan*. February 25, 2013. Available at: <http://www.sequoiariverlands.org/conservation/SSIRWM/IRWMP-Draft%203-18-13.pdf>

³ Sierra Resource Conservation District. Undated. *Project Description: Improving Groundwater Management in the Southern Sierra Fractured Bedrock Aquifer*. Available at: [http://www.water.ca.gov/lgagrnt/docs/applications/Sierra%20Resource%20Conservation%20District%20\(201209870073\)/Att04_LGA12_SRCD_ProjD_1of1.pdf](http://www.water.ca.gov/lgagrnt/docs/applications/Sierra%20Resource%20Conservation%20District%20(201209870073)/Att04_LGA12_SRCD_ProjD_1of1.pdf)

⁴ Page, R.W., et al. 1984. *Ground-water Conditions and Well Yields in Fractured Rocks, Southwestern Nevada County, California*. United States Geological Survey, Water Resources Investigations Report 83-4262, Sacramento, California. Prepared in cooperation with Nevada County and Nevada Irrigation District. Available at: <http://pubs.usgs.gov/wri/1983/4262/report.pdf>

Calaveras County⁵

In 2005, Calaveras County contracted for a study of groundwater availability in the western portion of the county because "increased groundwater use is occurring in the areas just outside of the alluvial groundwater basin in the hard rock areas of the Sierra Nevada foothills." In addition, it was anticipated that these areas would "experience significant growth in the next 20 years, much of it dependent upon groundwater for a water supply."

This study was designed to "identify additional information needed to understand the relationship between the hard rock and alluvial aquifer systems," and to "develop a better understanding of the available groundwater resources in western Calaveras County and their impact on water supply conditions to support the current and future land use in the Study Area."

Monterey County⁶

Monterey County performed a fractured rock aquifer sustainability study. The study was motivated by the fact that many landowners/developers had begun drilling wells in support of new or planned developments. And, while well permits were being issued based upon performance of a well following drilling, it became clear that a "permit does not guarantee water for the life of the development." Thus, a fractured rock aquifer sustainability study was launched.

Santa Barbara County⁷

In Santa Barbara County, geochemical tracers were used to understand residence times and flow paths of groundwater in fractured rock aquifers surrounding the Mission Tunnel, Santa Barbara.

Foothill Conservancy Publication RE: Groundwater Use in Amador & Calaveras Counties⁸

A publication by the Foothill Conservancy titled "Groundwater Mapping Could Help Inform Land Use Planning" states that a new technology now enables scientists to use "forensic hydrology" to date and determine the source of water in fractured rock aquifers, and map the cracks in foothill bedrock to create a three-dimensional picture of the aquifer. "The map shows not only where the fractures are located, but how they interconnect."

Dr. Joh Suen, chief of hydrogeology at California State University, Fresno's California Water Institute, is one of the leading experts in "fingerprinting" underground water supplies. It is believed this new technology could "help our counties determine where future development should and should not occur."

⁵ RIME Water Resources and Information Management Engineering, Inc. 2005. *Phase II Groundwater Management Study* Prepared for Calaveras County Water District, June 2005. Available at: <http://www.ccwmd.org/pdf/pub/watermanagement/Phase%20II%20GW%20Mgmt%20Study%20062105.pdf>

⁶ Monterey Peninsula Water Management District. 2012. *Fractured Rock Aquifer Sustainability: Progress Report to the Water Demand Committee*. February, 2012. Available at: <http://www.mpwmd.dst.ca.us/programs/river/crac/meetings/2012/20120802/Fractured%20Rock%20Aquifer%20Sustainability022012.pdf>

⁷ Rademacher, L., et al. 2003. *Groundwater Residence Times and Flow Paths in Fractured Rock Determined using Environmental Tracers in the Mission Tunnel; Santa Barbara County, California, USA*. Springer Link, February 2003, Volume 43, Issue 5. Available at: <http://link.springer.com/article/10.1007%2Fs00254-002-0680-2#/page-1>

⁸ Foothill Conservancy. 2009. *Groundwater Mapping Could Help Inform Land Use Planning*. Winter, 2009. http://www.foothillconservancy.org/pages/latest_focus.cgi?magcatid=&magid=32&magi_detail=463

W. Haug, #29 BLS 11/10/15



Wayne H. Haug

El Dorado Hills, CA 95762-4524

Er

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

My name is Wayne Haug. I live in El Dorado Hills where I have been a property owner, resident and local taxpayer since 1963 making my living as an attorney from my home office.

I am making these comments on behalf of myself and Rural Communities United.

One of the reasons that people like myself are upset with this process is that you are changing the rules upon which we based our decisions to live and invest here. Let me give your three examples

First, current property owners are upset now because so many new uses will be allowed, with so many disruptive impacts to their neighborhoods, which were not allowed when they bought their homes. Many of the uses will be allowed by right, without a properly conditioned use permit, and without impact mitigation. Many of these uses are allowed in the residential parts of the community regions, even though there are other lands available in those regions that are properly zoned for commercial, office, and industrial development.

Second, current residents are upset now because so many mitigation promises made in the General Plan are being changed in ways that will harm them. As in the Serrano Specific Plan, what happened to no houses built on the ridge lines, oak tree mitigation, and the second golf course with its open space?

Third, in the future, investors will be upset when the land you rezoned for more dense future development fails to meet the requirements for subdivision, because the infrastructure needed is not there.

Please restore balance to the proposed zoning ordinance so that current residents and investors alike will be protected from the harm of these changes on the rules.

As your are all aware the recent vote on Measure E in El Dorado Hills was over 90% against rezoning the old golf course from open space to high density development. There has never been a higher turn out of voters in an off year election in El Dorado County since I've been here. Nor has there ever been over 90% of the voters in agreement on an issue or a candidate in El Dorado County election history. We don't want the further reduction of open space in El Dorado Hills or the county. The Findings of Fact and the Statement of Overriding Considerations do not adequately address these issues. This proposed update is lining the pockets of the developers to the detriment of existing and future residents. To approve it, as proposed, will be another employment plan for attorneys at our taxpayer's expense. I already have enough work.

Thank you.

Wayne H. Haug 10/1

Attorney and Counselor at Law

R. Boylan # 29 BGS 11/10/15
2

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

- 1) My name is Dr. Richard Boylan.
- 2) I live in Diamond Springs. My family has lived here since 2006.
- 3) I make my living as a educator.
- 4) I am making these comments on behalf of myself, and Rural Communities United.
- 5) One of the reasons that people are so upset with this process is that the County is ignoring problems that people face on a regular basis. Let me give you *two examples*.
- 6) **First**, the *County's* Department of Transportation continues to deny that Highway 50 is at Level of Service F, and ignores that Highway 50 will not be expanded in the future to the degree anticipated in the 2004 General Plan.

Caltrans, the state agency in charge of Highway 50 maintenance and expansion, acknowledges that Highway 50 will not be expanded as anticipated in the 2004 General Plan. Caltrans, acknowledges that Highway 50 is at LOS F. Everybody who commutes during rush hour five days per week knows that to be true. Nevertheless, the County refuses to acknowledge that Highway 50 is at Level of Service F. It upsets people like myself that the County refuses to accept reality and to take reasonable steps to limit future development to address this problem that has such damaging local and regional impacts.

- 7) **Second**, throughout the TGPA/ZOU process, we have heard complaints that existing code enforcement efforts have been ineffective. Yet the EIR for the TGPA/ZOU relies on that same code enforcement officers to mitigate development impacts; for example, of odor emissions from a broad spectrum of home occupations. While the planning staff and consultants attended many public hearings, they did not do a lot of constructive listening to the public.

Staff and consultants have repeatedly postponed addressing these and other policy issues. They have deferred to the Board to address these issues. We encourage the Board to take the time now, and in the weeks ahead, to constructively address and resolve the many issues that remain in controversy. RCU has provided a list of these issues for your consideration.

The people count! Billionaire developers were not elected, and are not in charge of our county. We the people *demand* a complete rewrite and de-urbanization of the TGPA/ZOU blueprint for sprawl. **Now!**

Thank you

1 of 1

J. Hidahl #29 BBS 11/10/15

7

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

- 1) My name is **John Hidahl**.
- 2) I am a resident of El Dorado Hills (EDH). My family has lived in El Dorado Hills for 37 years. I have served as a member of the El Dorado Hills Area Planning Advisory Committee (APAC) for 34 years and as a Director of the EDH Fire Department for 32 years.
- 3) I am recently retired after working in the Aerospace Industry for 41 years as a Chief Systems Engineer, Program Manager and Engineering Director.
- 4) I am making these comments on behalf of myself and Rural Communities United.
- 5) One of the reasons that people like myself are so upset with this process is that the County refused to thoughtfully analyze and consider other options than the staff proposed TGPA/ZOU.
- 6) People offered other less disruptive approaches to rezoning, other less harmful approaches to promoting economic development, and other proposals for changing community region boundaries. Rather than thoughtfully and quantitatively evaluating the comparative environmental merits of these proposals, the EIR instead dismisses them as inconsistent with unnecessarily narrow project objectives. This makes people feel that the TGPA/ZOU process was not designed to inform the public or you decision makers regarding their options. This makes us feel like the TGPA/ZOU process was not a fair competition of ideas.
- 7) Please direct your consultants to work with the community to identify and analyze better options.
- 8) El Dorado Hills having been identified as a Community Region has witnessed significant growth over the past 4 decades. In 1981, there were 1,443 homes in the EDH Fire District. Today there are over 15,000 homes, over a ten fold increase in 34 years. The average growth rate for EDH has therefore been 7% per year. Our County officials claim that the historical average growth rate across the whole County is about 1% in comparison? One must conclude that EDH has experienced 7 times the growth when compared to what the average County region has experienced. Responsible growth requires meaningful mitigation measures to minimize the significant impacts to the community.
- 9) Is it any wonder why EDH is concerned about the additional traffic and other infrastructure and service deficiencies will mean to our Quality of Life if the currently proposed zoning changes are approved. This TGPA/ZOU update must be revisited and must stress the inclusion of reasonable impact mitigation measures. We are relying on you our elected representatives to do what is right for the taxpayers, instead of favoring the special interest groups.

Thank you.

John Hidahl 11/10/15
1 of 1

J. Larner #29 BOS 11/10/15

9

Testimony Before the El Dorado County Board of Supervisors Re the TGPA/ZOU, November 10, 2015

- 1) My name is Jill Larner, I live in eastern Shingle Springs [REDACTED]
- 2) I am making these comments on behalf of myself and Rural Communities United.
- 3) Let me share why I became involved. A 62 acre parcel adjacent to my neighborhood is being rezoned from RE-5 to a R&D zone in this process (APN 319-260-01)
 - a. My neighborhood is comprised of 45 3 acre parcels surrounding a private lake. It is quiet and serene.
 - b. As you can imagine the allowed uses for R&D are a far cry from compatible with our neighborhood.
 - c. Think Wholesale Storage and Distribution with trucks and lights coming and going at all hours, Outdoor Sports and Rec Facility with Noise, Lights, and parking lots, Airports, airstrips, heliports, and Hazardous materials handling facilities.
 - d. These are all allowed uses by right with R&D zoning. Allowed uses do not require notices to the public or hearings.
 - e. **I formally request that you change the land use designation of the 62-acre parcel #31926001 to Medium Density Residential as suggested in the Response to Diane Lehr's DEIR comment and as allowed in the Zoning Map Criteria dated May 25, 2012 (attached).**
- 4) One of the reasons that people like myself are so upset with this process, is that their rights to notice and a hearing by the Board of Supervisors are under attack.
- 5) Many harmful new uses in the proposed zoning code are allowed by right, with no notice to neighbors, and no conditional use permit hearing to resolve conflicts.
- 6) Second, many uses are now allowed by the Zoning Administrator, also without notice to neighbors for a hearing to resolve conflicts. While there will be a right to appeal these decisions to the Planning Commission, if there is no notice to neighbors, they are unlikely to find out about the decision in time to file an appeal.
- 7) Third, currently, each site-specific rezone request is the subject of notification to neighbors and public hearings before the Planning Commissions. Detailed staff reports and public testimony focus on potential conflicts with general plan policies, and head off potential land use conflicts. By way of contrast, this county-wide rezone of thousands of parcels has had no such notice to neighbors, no such site specific review, and no such hearings to focus on the site specific issues.
 - a. When people figure out the implications of the new zoning map and the new zoning ordinance, you will hear legitimate complaints about the lack of notice. I know legitimate complaints will come from my neighbors regarding the 62 acre parcel rezone from RE-5 to R&D.
- 8) Finally, the Government Code affords aggrieved citizens the right to an appeal hearing before the Board of Supervisors regarding Planning Commission recommendations on general plan amendments. However, rather than granting the appeal request from RCU, County Counsel and planning staff denied the request, and apparently would rather argue the statutory interpretation issue in court. The County has failed to proceed in accordance with the law.
 - a. You must cure this defect by directing staff to grant the appeal hearing, to protect our property rights. Or preferably, do not certify an EIR that claims this all to be ok, and do not adopt the blanket zoning changes and expansion of harmful uses.

Thank You. Jill Larner, 4590 Fawn Street, Shingle Springs, jalarner@comcast.net

1 of 5

Proposed Mapping Criteria for Analysis

May 25, 2012

A Land Use Designation	B Current Zone	C Parcel Size & Criteria	D <u>Analyzed</u> for the propose of the EIR at this Zone
C		Commercial Planned Office	CPO
C		Mainstreet areas for downtown Camino, Georgetown, El Dorado, Diamond Springs	CM
General Plan Policy 2.2.1.2 Industria (I); No residential allowed, appropriate only within Community Regions and Rural Centers and subject to limitations in Rural Regions			
I	All Zones	CR/RC	I
I	All Zones	rural region	I-PL
General Plan Policy 2.2.1.2 Research & Development (R&D); No residential allowed, applicable only within Community Regions and Rural Centers			
R&D	All Zones		R&D
<p>*Based on predominant lot size</p> <p><u>Map Notes:</u></p> <ol style="list-style-type: none"> 1. Zone the roads whatever the underlying land use designation is. 2. Fix General Plan map if the designation is dramatically different from any of the adjacent land use designations. 3. Where zoning is consistent with the General Plan Land Use Designation, retain the existing zoning. 4. Where zoning is inconsistent and below the acceptable density range, analysis new consistent zone at or near the low end of the density range. 5. Where zoning is inconsistent but above the acceptable density range, retain existing zoning and flag for review for factors including Platted Lands (PL) overlay or possible General Plan map corrections. 6. Generally, retain existing zone designations where lands is subject to contract (TPZ, WAC) or has been the subject of a previous rezone application. 7. Review all PDs to confirm that GIS database is correctly identifying various zones within PD. Two types of PDs were found...PD zones and PD Overlay. All need review...issues include OS designation and verification of mapping. 8. In Tahoe Basin developed areas or less than 5 acres leave as zoned. Undeveloped over 5 acres zone for purpose of analysis FR-160 9. Allow exceptions to criteria where it is appropriate for zone to be made consistent with surrounding zoning and land use designations. 10. <u>Use current version of mapping in General Plan until OFR2000-03 is reviewed against it</u> 11. Avalanche Hazard Combining Zone (-AV) to be mapped. 			

2 of 5

September 1, 2015

County of El Dorado Planning Commission
2850 Fairlane Court
Placerville, CA 95667

Subject: Comments on TGPA-ZOU and Final EIR for September 2, 2015 Planning Commission Meeting

Dear Planning Commission Members:

My comments on the DEIR submitted on 7/21/14 regarding the TGPA/ZOU were not adequately addressed by the County in the FEIR. Not only did I have to seek out the County's response to my comments, the response submitted as the "Master Comments" were entirely unhelpful in regards to my concerns surrounding a specific 62 acre parcel adjacent to our residential neighborhood slated to be rezoned to R&D (Please see my comments dated 7/21/14 to DEIR). I understand this process is a programmatic EIR, but the fact remains that this "program" is making significant and concerning zoning changes to 62 acres next to my neighborhood and the affect of those changes have not been properly analyzed.

There are very specific General Plan Policies in place that state that parcels should not be rezoned without proper analysis of 19 specific criteria (Policy 2.2.5.3), and when the General Plan has created inconsistencies with existing zoning, *lower intensity zoning*, may remain in effect (Policy 2.2.5.6). Both of these existing General Plan Policies are being violated with the rezoning of this particular parcel during the "programmatic EIR" process without adequate analysis.

Two of my neighbors also submitted comments on the same concern of the rezoning of the 62 acre parcel adjacent to our neighborhood. Diane Lehr's comment (I-15-1) was provided the response that, "The County will consider the request to change the land use rather than the zoning." Can you please tell me when this consideration will take place?

I respectfully request that the Planning Commission reject the FEIR because it does not adequately analyze the impacts of implementing the Zoning Ordinance Update (e.g., rezoning this particular parcel and probably many others), nor does it clearly convey those impacts and analysis to the public.

Sincerely,



Jill Larner

[Redacted Address]
Shingie Springs, CA 95682

3 of 5

July 21, 2014

El Dorado County Community Development Agency, Long Range Planning
Attn: Shawna Purvines

Re: Comment on Targeted General Plan Amendment and Zoning Ordinance Update Draft EIR

Dear Ms. Purvines,

We are writing to provide comment on the Targeted General Plan Amendment and Zoning Ordinance Update (TGPA-ZOU), specifically in regards to how it will impact property located adjacent to our neighborhood. Parcel APN 319-260-01 is a 62 acre parcel located at the northwest corner of Mother Lode and Greenstone Road. This parcel is currently zoned RE-5, but is proposed to be rezoned to Research and Development (R&D).

The 62 Acre Parcel borders our neighborhood, known as Deer Hills, located just west of Greenstone and north of Motherlode Drive (Fawn, Doe and Buck Streets). Deer Hills is zoned Medium Density Residential (MDR) with 45 three acre parcels and a beautiful seven acre private lake.

In response to the Draft Environmental Impact Report, we oppose the rezoning of the 62 Acre Parcel to R & D because it would allow potential land uses that are a huge leap from the zoning of Deer Hills. Also, there are too many allowable uses under the R&D zoning that could have significant negative impacts that have not been fully analyzed in the TGPA-ZOU process for their impact on Deer Hills

If the 62 Acre Parcel adjacent to Deer Hills is rezoned to R&D, many, if not most, of the allowed uses could have significant undesirable consequences for our rural neighborhood. The DEIR does not provide any detailed analysis on the impacts of the following allowed uses on Deer Hills (these are just a few examples):

1. Wholesale Storage and Distribution (R&D Allowed Use). Potential impacts include Noise from delivery trucks at all hours, Light pollution from security systems, Transportation and Traffic from increased traffic at an already dangerous intersection, Aesthetics without clear design guidelines*, Air Quality from increased truck traffic, and Land Use incompatibility and lack of buffers.
2. Light Manufacturing (R&D Allowed Use): Potential impacts include Noise from delivery trucks, Light pollution from security systems, Transportation and Traffic from increased traffic at an already dangerous intersection, Aesthetics without clear design guidelines*, Air Quality from emissions, Odor, Water Contamination into our small lake, and Land Use incompatibility and lack of buffers.
3. Restaurant (R&D Allowed Use): Potential impacts include Noise from delivery trucks at all hours, Light pollution from security systems, Transportation and Traffic from increased traffic at an already dangerous intersection, Aesthetics without clear design guidelines*, Air Quality from the smells that are associated with a restaurant and its waste, and Land Use incompatibility and lack of buffers.
4. Outdoor Sports and Recreation facility (R&D Allowed Use): Potential impacts include Noise from delivery trucks and high occupancy uses, Transportation and Traffic from increased traffic at an already dangerous intersection, Aesthetics without clear design

4 of 5

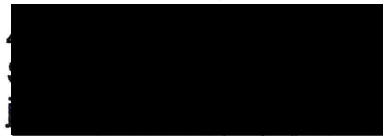
guidelines, Light Pollution from possible night time activities, and Land Use incompatibility and lack of buffers.

5. Airports, Airstrips and Heliports (R&D allowed use with CUP): Potential impacts include Noise from aircraft, Light pollution from security systems, Transportation and Traffic from increased traffic at an already dangerous intersection, Aesthetics without clear design guidelines, and Land Use incompatibility and lack of buffers.
6. Hazardous Materials Handling Facility (R&D allowed use with CUP): Potential impacts include Noise from delivery trucks, Transportation and Traffic from increased traffic at an already dangerous intersection, Aesthetics without clear design guidelines*, Air Quality from emissions, Odor, Water Contamination into our small lake, and Land Use incompatibility and lack of buffers.

We do not believe that the impacts have been fully analyzed for this particular parcel rezone and that the proposed zoning is incompatible with the adjacent MDR zoning. For these reasons, we oppose the rezoning of the 62 Acre Parcel (APN 319-260-01) to R&D in this ZOU. We suggest the County consider a General Plan Amendment to change the Land Use Designation of the 62 Acre Parcel to RE-5, or other Residential Use which is a *gradual land use change from MDR*.

Sincerely,

Greg and Jill Lamer
Deer Hills Homeowners



*Design Guidelines adopted by the County are outdated (adopted in 1981) and cannot be relied upon to provide adequate protection between R&D and Residential Zones.

Cc: Board of Supervisors

11. W1VW #21 BOS 11/10/18

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

- 1) My name is Monique Wilber.
- 2) I live in Shingle Springs; my family has lived here since 2001.
- 3) I make my living as a Senior Environmental Scientist for State government. I am the prior project manager and Senior Planner for El Dorado County on the Oak Woodland Management Plan and Integrated Natural Resources Management Plan. I worked as a long-range planner on the General Plan implementation team. I am taking a vacation day from work today to speak to you on this very important issue.
- 4) I am making these comments on behalf of myself and Rural Communities United.
- 5) One of the reasons that people like myself are so upset with the TGPA/ZOU, is that it is another county effort to disable CEQA's environmental protections that we have the right to benefit from as citizens of California. The County is systematically taking the environmental alarm bells apart, and pulling the wheels off the first responder's vehicles.
- 6) First, the TGPA allows many impacting projects to avoid environmental impact review entirely. It does so by expanding the scope of land uses that are by right or subject merely to ministerial approval.
- 7) Second, the County is not imposing feasible mitigation measures. The County is rejecting feasible mitigation proposals from the public on invalid bases while continuing to rely on mitigations that have proven ineffective in the past. Additionally, misconceptions about the complex requirements and vague standards in the TGPA/ZOU lead the market to make investments without accurately accounting for mitigation costs, thereby making mitigation financially infeasible.
- 8) Third, even when environmental review is done, and mitigation is adopted, the county is not ensuring that these mitigation measures are successfully implemented. They do so by making these efforts to protect health, safety, and the environment cash poor; while expanding efforts to promote impactful development.

For example, the County is delaying the implementation of impact mitigation programs called for in the 2004 General Plan, while investing planning staff time, energy, and funding in the TGPA/ZOU to expand the scope of development with significant and unavoidable impacts. There is no dedicated planning staff or funding for mitigation monitoring and reporting, and code enforcement for the entire county rests on the shoulders of one employee; while the county collects hundreds of millions for infrastructure to support new development with adverse impacts.

Personally, I know that a Mitigation, Monitoring, & Reporting Program (MM&RP) was not in place for the General Plan mitigation policies while I worked here. Remember that the General Plan Policies are actually mitigation measures for development. El Dorado County has not implemented many of those policies, and some, particularly for the biological resources and oak trees, are being gutted. Read Staff Report #4 for the General Plan adoption and read the General Plan EIR. I would like to see how many projects in the past decade removed oak trees, and what their mitigation was. Further, I'd

1 of 2

like to see the reporting required by the Oak Interim Guidelines by the project developers who removed the oak trees. Finally, I'd like to see what the monitoring was of any oak acorns or seedlings were, and the success rates as required by the Oak Interim Guidelines. If the County has failed to do this, then the County has failed to mitigate as required under CEQA.

9) You supervisors can and must stop the TGPA/ZOU from further undermining CEQA implementation in El Dorado County. Thank you.

2 of 2

S. Wiley # 29 BOS 11/10/15
13

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

1) My name is **Shelley Wiley**

2) I live in **Shingle Springs**

4) I am making these comments on behalf of myself and Rural Communities United.

5) One of the reasons that people like myself are so upset with the TGPA/ZOU, is that many important County regulations were improperly eliminated because the proper questions were not asked *prior* to engaging in the deregulation of our General Plan. And to date, this deregulation is still not really even being acknowledged.

6) There are times when deregulation has a legitimate use. For example, sometimes regulations are obsolete, have no beneficial purpose, cost more than they benefit, or mis-allocate costs thereby compromising resource allocation.

7) To ensure that deregulation does more good than harm, the proper questions must be asked: Does the regulation serve a legitimate purpose? Is it a mitigation measure that is still feasible? Will removing it cause harm? Is there a better way to achieve the same benefit? Is there a way to reduce the burden of the regulation without creating harm? Would de-regulation violate CEQA? Does deregulation misallocate costs? Is deregulation equitable?

Unfortunately, as people have noted in their written comments and testimony, many important County regulations were improperly eliminated in the TGPA/ZOU because these questions were not asked. The result: *feasible mitigations that serve legitimate purposes are being removed and causing harm, when there are better ways to achieve the same benefit.*

8) But it is not too late to ask these questions. The TGPA/ZOU is not law yet, merely because staff and the Planning Commission have recommended it to be law. You supervisors can ask the right questions before you, as a body, approve each provision of the TGPA/ZOU. It is imperative that you do.

Thank you.

| OK |

E. Robertson #29 BOS 11/10/15

Statement re EIR and Gen Plan & Zoning Amendments

11/10/15

My name is Eva Robertson. I've lived in Cameron Park for five years. I have a solo law practice in Placerville.

I'm also a member of the CEDAC board. CEDAC recently voted to recommend certifying the EIR, approving the Gen Plan & Zoning Amendments and endorsing a "white paper" written by the Alliance for Responsible Planning. I was the only board member who voted against all three recommendations.

I voted against certifying the EIR because I don't think it adequately discloses all of the impacts of this project as required by CEQA. Certifying a deficient EIR leaves the county open to a viable legal challenge. My understanding is that the county has been successfully sued for CEQA violations more than once already. I'd like to know if the county has obtained an independent legal opinion from a CEQA litigation specialist on the sufficiency of this EIR. I think it would be money well-spent to get a qualified opinion given how much taxpayer money the county has already spent on this EIR.

I voted against approving the General Plan & Zoning Amendments because I think some of them will not accomplish what they claim to and instead will have irreversible negative consequences on our environment. The EIR justifies certain significant impacts as necessary to meet state-mandated affordable housing requirements. But, as I read the proposed amendments, they do not guarantee that affordable housing units will, in fact, be built. In my opinion, the proposed changes remove development restrictions that are much more likely to encourage the construction of homes that will exceed the prices of state-defined affordable housing.

I think a smarter approach to increasing affordable housing would be to implement an Affordable Housing Ordinance. In the last two years, Sacramento County implemented such an ordinance. Full details about it are available online. By ordinance, you can give financial incentives and relax general plan and zoning requirements to encourage the construction of affordable homes without having to significantly modify the general plan.

I voted against endorsing the "white paper" produced by the Alliance for Responsible Planning because I think such an act by a public agency may be an improper use of public resources to disseminate advocacy materials. I am not familiar at all with this Alliance group but on their website, they definitely take positions on recent ballot measures. The "white paper" they produced makes at least one statement of opinion which is not purely fact-based and which clearly aligns with positions to vote for or against recent ballot measures. That statement, on page 14 of the "white paper" is:

"Several major residential projects are proposed in El Dorado Hills and Shingle Springs; these are not affected or helped by the TGPA/ZOU."

I disagree completely with that statement. And, I think many residents of this county would also disagree.

1 of 1

E. Vee Kamp # 29 BOS 11/10/15



RESOLUTION No. 447-74

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

WHEREAS, the Board of Supervisors of El Dorado County has consistently upheld the principle of local elective government, elected by popular vote of the citizens involved; and

WHEREAS, essential to such elective procedures is an informed electorate, basing their decisions freely on accurate information, openly debated; and

WHEREAS, inherent in this process is the right of the citizens not to be misled, coerced, or otherwise inhibited in the free exercise of the elective franchise; and

WHEREAS, any effort to nullify these rights is in direct conflict with the intent of the Constitution of the United States and the State of California; and

WHEREAS, it has been brought to the attention of this Board that a report has been issued by the Institute for Local Self Government, asserting the authority of the Governor's office, the Office of Intergovernment Management, and the Council on Intergovernmental Relations, which presents prima facie evidence of a deliberate, calculated attempt to mislead, coerce, and inhibit the rights of citizens to determine the need for, the desirability of, and the method to bring about changes in the structure of their local governments; and

WHEREAS, the "Summary of Conclusions" in this report states:

"There must be a CLIMATE FOR CHANGE in order for the restructuring of local government to occur, whether this restructuring involves drastic reform, reorganization, modernization, or a minor administrative realignment. While the following does not represent an exclusive list, the factors mentioned here are those which most often create such a climate:

1 of 3

- a. COLLAPSE of government's ability to provide such needed services;
- b. a CRISIS of major magnitude;
- c. a CATASTROPHE that has a physical effect on the community;
- d. the CORRUPTION of local officials;
- e. the high COST of government and the desire for higher level of services."

(emphasis in the original); and,

WHEREAS, it would appear from this document which is entitled "The Politics of Change in Local Government Reform" that it was received by the Council on Intergovernment Relations; and

WHEREAS, the techniques described in this report have apparently been used in San Diego County Government reorganization, in the consolidation of the Contra Costa Fire Department, and the current effort to consolidate Sacramento City and County; and

WHEREAS, the cited report actually states that LOCAL GOVERNMENT IS MEETING THE PROBLEMS OF TODAY, and that no pressure is building up to cause the citizens to wish the desired reforms, then recommends the use of "change agents" to DEVELOP a climate for change, using diversion-are tactics to confuse and disorient the citizens and to deceive them about the need for reform; and

WHEREAS, this Board of Supervisors is at a loss to understand any legitimate function served by such proposals as these;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of El Dorado, in the State of California, on this 17th day of September, 1974, that all persons by whom this present Resolution is received be informed that this Board herewith goes on record in strong opposition to any such attempt to deprive the citizens of the State of California, and particularly of El Dorado County, of their right to

determine for themselves the forms and functions of their government;
and

BE IT FURTHER RESOLVED that this Board notify the Governor of the State of California, the Institute for Local Self Government, the Office of Intergovernment Management, the Council of Inter-governmental Relations, the League of California Cities, the California Supervisors Association, and the Board of Supervisors of the several counties of the State, that such political abuse as is disclosed in this document is intolerable, and

BE IT FURTHER RESOLVED that the Board of Supervisors of El Dorado County hereby calls on all responsible citizens and officials to be on guard against any such attempt to usurp their rights and privileges.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 17th day of September, 19 74, by the following vote of said Board:

ATTEST;

CARL A. KELLY, County Clerk and ex-officio
Clerk of the Board of Supervisors

By Thomas L. Stewart
Deputy Clerk

Ayes: Franklin K. Lane, William V. D. Johnson
W. P. Walker, Raymond E. Laywer,

Noes: Thomas L. Stewart
None

Absent: None

Thomas L. Stewart
Chairman, Board of Supervisors

I CERTIFY THAT:

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

DATE _____

ATTEST: CARL A. KELLY, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of El Dorado, State of California.

By _____
Deputy Clerk

3 of 3

K. Mulvany #29 BOS 11/10/15

November 10-12, 2015 TGPA-ZOU Board of Supervisors meetings, El Dorado County

Public Comment

1. I would like to thank county staff and the Planning Commission for recommending against the proposal to change Policy 6.4.1.4 and 6.4.1.5 of the General Plan (as noted in its recommendation #17, exhibit 18B.) The proposed changes would have 1) eliminated Dam Failure Inundation (DFI) Maps, which would in turn have violate California law (section 8589.5 of the California Government Code). The proposed changes also would have lifted existing General Plan prohibitions against parcel splits (new parcel formation) within Dam Failure Inundation areas, which in turn would have exposed the county to litigation risk per State law (California Water Code Section 8307). These proposed changes would have been especially challenging as the county was taking the position that in order to comply with a Homeland Security request, it was going to allow increased development in areas subject to Dam Failure inundation – defying common sense and logic.
 - a. Request for BOS Action: Accept Staff and Planning Commission recommendations to reject proposed changes and to leave current language unchanged in Policies 6.4.1.4 and 6.4.1.5 of the General Plan.
2. The BOS should note that the Zoning Ordinance Update (ZOU) proposes to ^{up}downzone numerous parcels located entirely within DFI areas. One of the BOS' mandates for this ZOU was that any zoning changes be compatible with the General Plan. Accordingly, ^{up}~~down~~ zoning a parcel that the General Plan states cannot be split fails this test.
 - a. Request for BOS Action: Direct staff to a) identify all parcels proposed for ^{up}~~down~~ zoning that lie within DFI areas and b) maintain current zoning for such parcels.
3. The ZOU proposes to ^{up}downzone numerous parcels with a General Plan overlay designation of Important Biological Corridor (IBC). Such parcels have been deemed by the county to contain sensitive habitat and trails important for plants and wildlife. When a residential parcel is split into two, the number of allowed buildings on the parcel is doubled, as is disturbance of habitat. Thus it cannot be presumed that these parcels are appropriate for ^{up}~~down~~ zoning. For these reasons, the ^{up}~~down~~ zoning such IBC parcels fails the test of compatibility with the General Plan.
 - a. Request for BOS Action: Direct staff to a) identify all IBC parcels proposed for ^{up}~~down~~ zoning and b) maintain current zoning for such parcels.

Respectfully submitted,

Karen Mulvany



Lotus, CA 95651

global change made
down zoning → up zoning
Karen Mulvany

1 of 1

In reviewing a few parcels to determine the County's decision in rezoning parcels, I decided to look at 2 projects that I, in past years, had assisted community members in reviewing.

The first one was Creekside Plaza. This approval of this project was challenged because of major issues with transportation, biological resources, and overall health, safety and incompatibility with surrounding uses. To develop this project the owner was going to have to bring in 28.9 acre feet of dirt and pile it over the existing creek, which feeds into Weber Creek.

The biggest harm was the impact this project would have on the Herbert Green Middle School (HGMS) children. Attached is a letter of concern from the Superintendent of HGMS and other letters and documents related to that project.

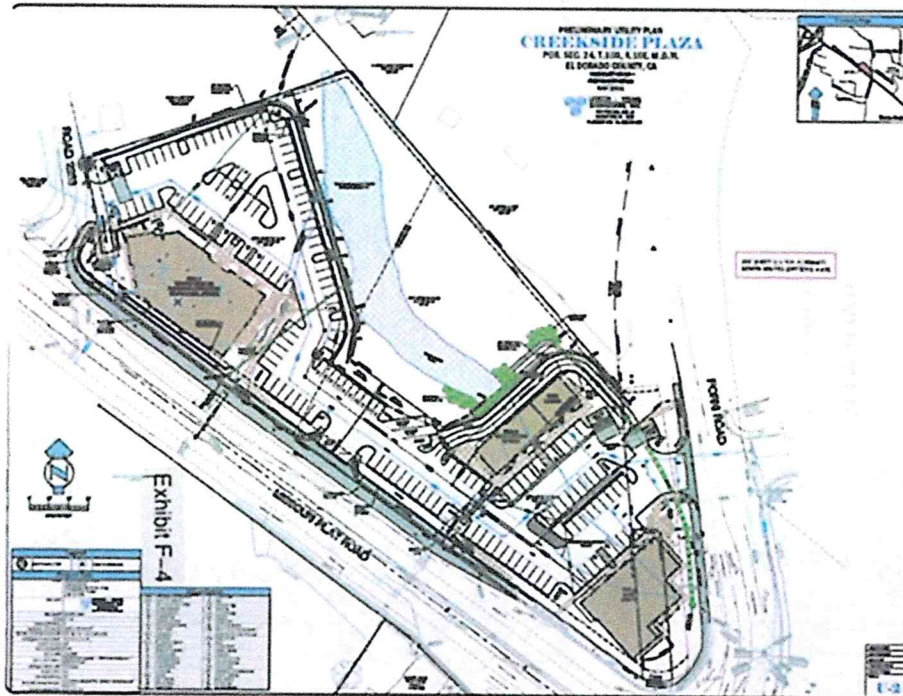
One of the parcels was going to be left as a hole below at least a 30 foot high exposed retaining wall creating a public hazard with no mitigation for safety. Also since the applicant had no way to mitigate the already over congested traffic on Forni Road, he just left out the transportation mitigation. The Board of Supervisors ended up rescinding the approval of the rezone. Now it is being rezoned as the developer wanted with this ZOU. This violates #6 of the mapping notes in the "Proposed Mapping Criteria for Analysis May 25, 2012" which states:

6. Generally, retain existing zone designations where lands is subject to contract (TPZ, WAC) or has been the subject of a previous rezone application.

By automatically converting the zoning on these parcels from R1A to Community Commercial, the County is giving the property owner by right privileges to negatively impact the surrounding properties and Herbert Green Middle School. The County is not providing the original petitioners appeal hearings for land owner's with grievances against the rezones of these parcels. This project also required the County to give as a gift, 50 feet of road right-of-way in order to make the parcel buildable. Is the County also going to give the property owner that gift?

The project was on 3 parcels and was approved for rezone from R1A to C, Friends of the Herbert Green Middle School Neighborhood filed a lawsuit, soon after the County rescinded the Commercial zoning. Now the ZOU proposes to rezone it automatically back to Commercial.

- Z10-0009/PD10-0005/P10-0012/Creekside Plaza submitted by GRADO EQUITIES VII, LLC to request the following:
- (1) Rezone from One-Acre Residential (R1A) to General Commercial-Planned Development (CG-PD) and Open Space-Planned Development (OS-PD);
- (2) Development Plan to construct three commercial buildings totaling 30,572 square feet maximum;
- (3) Tentative Parcel Map to create three commercial parcels and one open space parcel;
- (4) Finding of Consistency with General Plan Policy 7.1.2.1 to allow development and disturbance on slopes of 30 percent or greater gradient; and
- (5) Finding of Consistency with General Plan Policy 7.3.3.4 to allow a reduction of the wetland setback from 50 feet to zero, with portions of the development area within the required setback.



The property, identified by Assessor's Parcel Numbers 327-211-14, 327-211-16, and 327-211-25, consisting of 4.32 acres (includes 0.22 acre of Forni Road Right-of-Way), is located on the northwest corner of the intersection of Forni Road and Missouri Flat Road, in the Placerville area, Supervisorial District 3. (Project Planner: Tom Dougherty) (Mitigated negative declaration prepared)*
Staff Recommendation: Recommend approval to the Board of Supervisors

Board of Supervisors

Minutes

October 16, 2012

45. [12-0224](#)

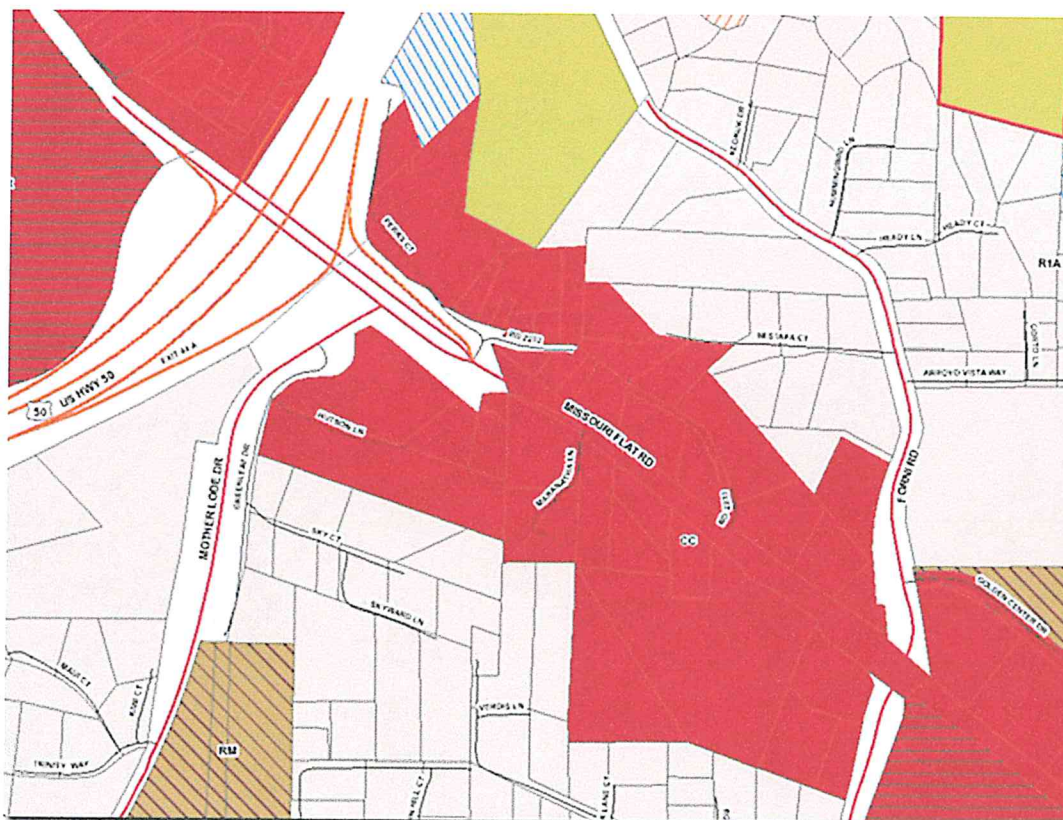
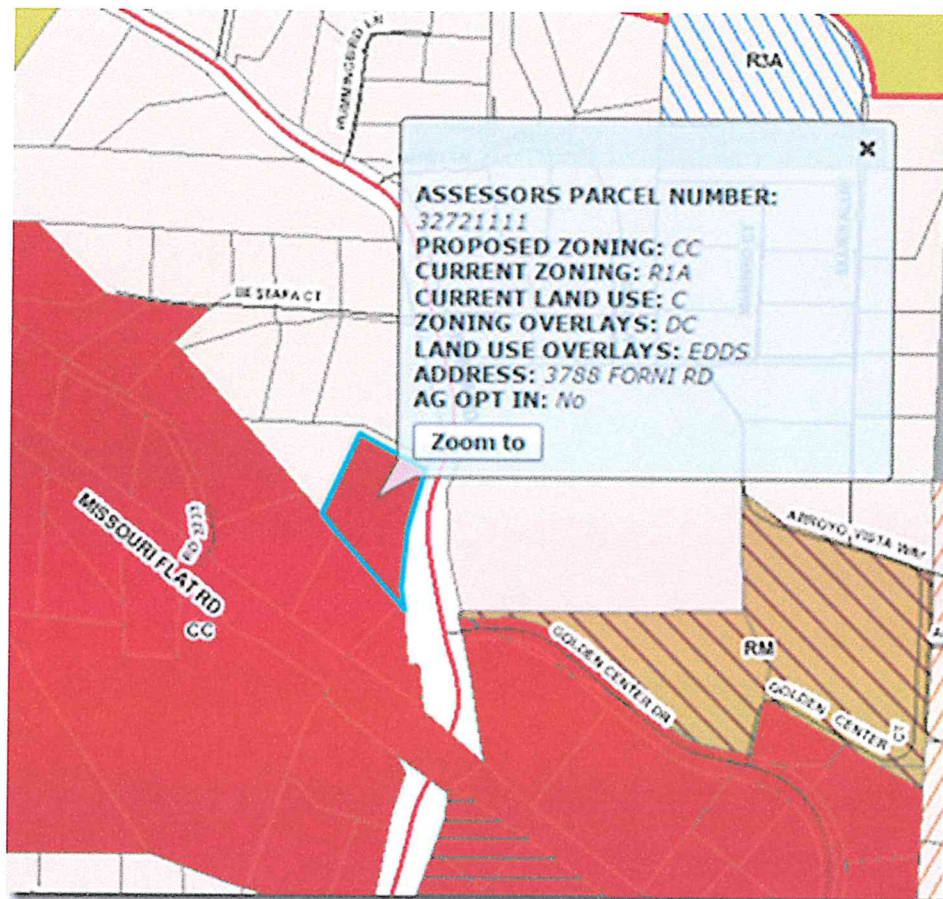
Hearing to consider **rescinding all actions** the Board took on April 3, 2012 on Creekside Plaza (Rezone Z10-0009/Planned Development PD10-0005/Parcel Map P10-0012), on property identified by APNs 327-211-14, 327-211-16, and 327-211-25, consisting of 4.1 acres, in the Placerville area, submitted by Grado Equities VII, LLC; and Development Services and County Counsel recommending the Board take the following actions without prejudice:

- 1) Adopt Resolution 149-2012 rescinding actions taken by the Board on April 3, 2012, agenda item 19, approving Creekside Plaza project (Rezone Z10-0009/Planned Development PD10-0005/Parcel Map P10-0012); and
- 2) Consider the Introduction (First Reading) of Ordinance 4985 rescinding Ordinance 4977 rezoning APNs 327-211-14, 327-211-16, and 327-211-25 from One-Acre Residential (R1A) to General Commercial-Planned Development (CG-PD) and Open Space-Planned Development (OS-PD). (Supervisorial District 3) (Refer, 4/3/12, Item 19) (Est. Time 20 Min.)

A motion was made by Supervisor Sweeney, seconded by Supervisor Santiago, as follows:

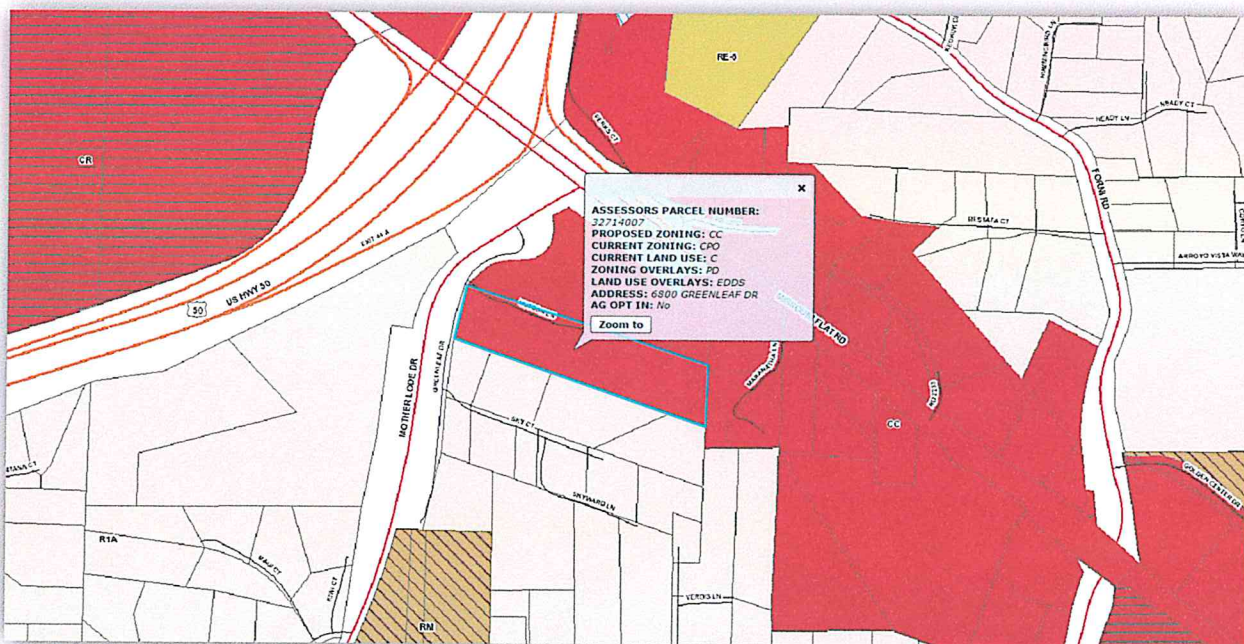
- 1) Adopt Resolution 149-2012; and
- 2) Approve the Introduction of Ordinance 4985 rescinding Ordinance 4977, waived reading and read by title only; and
- 3) Set adoption (Second Reading) of said Ordinance for Tuesday, October 23, 2012.

Yes: 5- Knight, Nutting, Sweeney, Briggs and Santiago



My second example is Parcel #327-140-07. In 2010 it was rezoned from R1A to Commercial, Professional Office (CPO) and the land use was changed from Medium Density Residential to Commercial. There was quite a debate on this between the neighbors, adjacent property owners and the Planning Commission. The project was originally denied but was allowed to come back to the Planning Commission and after much debate was rezoned to CPO. CPO was chosen so that the property owners could develop their property as a commercial venture and also create minimal impact to the adjacent residential property owners.

Here is the same parcel on the LUPPU map:



With the ZOU this parcel is now being rezoned to Commercial, Community (CC). CC allows much more than CPO. The original CPO was “intended to provide for an environment which will be in harmony with adjacent existing and proposed developments and shall provide a transition or buffer zone between residential and more intensive land uses”. Later in the same year the Board of Supervisors added Mixed Use to CPO requiring a planned development.

The new definition of CPO allows, hotels, motels, high intensity of residential and other more impacting uses than the existing CPO. If this is not contrary enough to the expected allowed zoning of this parcel with CC the allowed uses are even more impacting, from retail to hotels, hospitals and body shops.

Mixed use was adopted without design standards using a negative mitigated declaration. The new policy for Mixed Use allows zero lot line setbacks, reduction of

^{on site}
required open space and reduced parking standards. A mixed use project can span over multiple parcels, commercial only has to be 30% of the project and high density residential of 20 units per acre will be allowed on top of the allowed commercial. There was no mitigation for the loss of allotted commercial land when this was adopted. It seems contrary to balance of jobs to housing. Since Mixed Use will be allowed on Commercial with very vague guidelines and the possibility of zero line setbacks, the impact that this new unanalyzed zoning change on this parcel will have on the surrounding neighbors will be severe. Again the County is not providing the original petitioners appeal hearings for land owner's with grievances against the rezone of this parcel.

There is no reason for this parcel to be rezoned in the TGPA/ZOU. Specifically, the Proposed Mapping Criteria for Analysis of May 25, 2012 states:

3. Where zoning is consistent with the General Plan Land Use Designation, retain the existing zoning.

The zoning of this parcel IS consistent with the General Plan Land Use Designation, therefore its existing zoning must be retained.

It is interesting to note that the Applicant's agent on this project was Kathye Russell. Kathye Russell has also been involved with LUPPU since it's inception.

When this project was at the Planning Commission Kathy commented that she wanted to see this parcel be allowed to accommodate Mixed Use. This narrow parcel sets high above the Casa Robles Parking lot. The surrounding parcels are developed residential parcels in which many have also been rezoned to CC with this ZOU, I'm sure without their knowledge.

The more that we have looked into this "project" the more we have found suspicious conflicts of interest. Given how poorly this process has been handled, as a member of this Board I would be very careful in approving anything in this "project" given the possibility of one of you benefitting personally and creating your own conflict of interest.

Yours Truly,



Sue Taylor
Camino Resident

December 10, 2011

Planning Commission
County of El Dorado
Building C Hearing Room
2850 Fairlane Court
Placerville, CA 95667

Re Comments on Mitigated Negative Declaration (MND) for the Creekside Plaza (Project), Rezone Z10-0009/Planned Development PD10-0005/Parcel Map, P10-0012 Creekside Plaza

Dear Commissioners,

The California Environmental Quality Act (CEQA) is intended to alert the public and its responsible officials to the environmental changes a project will bring. The use of CEQA is also intended to demonstrate to an apprehensive citizenry that the agency responsible for review has analyzed and considered the ecological implications of the proposed project. Because the Mitigated Negative Declaration must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. The environmental report process protects not only the environment but also informed self-government. The lead agency owes a mandatory, procedural duty to use its best efforts to find out and disclose all it reasonably can. Omission of relevant information from an environmental report that precludes informed public participation or decision making constitutes a failure to proceed in the manner required by law.

At the October 13, 2011 Planning Commission meeting my comments addressed the following concerns:

- Current traffic is already horrendous in this area.

According to the Draft Traffic Impact Analysis prepared for this project it was determined that at Forni Road and Golden Center Drive, as shown on Table 8 of the report, the addition of the proposed project causes this intersection to change from LOS D to LOS F. According to the report, *"This is a significant impact"*. The Mitigation for this impact was to install a traffic signal at the intersection of Forni and Golden Center Drive. With this mitigation the impact would be reduced to less than significant. Due to the inability to stack traffic at the short distance between the new signal and the signal at Missouri Flat, this mitigation was disregarded and no mitigation has been brought forward to reduce the traffic impact. **Therefore Transportation/Traffic remains a significant impact.**

Also DOT has required the applicant to make improvements to Forni Road and Golden Center Parkway incorporating several turn lanes pockets and lanes. These have not been shown on the applicants plans and if these requirements were shown they would alter the project. Not having an actual depiction of the project is misleading to public review.

- The El Dorado County Transportation Commission is in the middle of a \$250,000 project, looking at the transportation issues for the Missouri Flat Corridor. This project should be placed on hold until this project can be completed.
- At the heart of CEQA is the statutory requirement that a “project description” being both complete and completely accurate, and that the project description not be changed over the course of or in different parts of the environmental analysis represented by the MND. Guideline 15124 requires, among other requirements, that a project description needs to set forth project objectives, which in the present case, are wholly lacking insofar as its environmental results, that will occur at projected build-out.

On page 3 of the Environmental Checklist/Discussion of Impacts the Introduction of the project discusses the impacts resulting from the “proposed park project. The project would allow the construction of an aquatic center, classroom/recreational building, paths, amphitheater, and pedestrian bridge in an existing park.” Then on page 6 under Aesthetics, c. Visual Character there is a discussion regarding “the aquatic center area is proposed for an area of the parcel that is currently asphalted.” Apparently a boiler plate was used for the discussion of impacts and it is in question if the actual project was studied for Aesthetics. This is a violation of CEQA’s requirement for an accurate project description and analysis.

- 22% of the development has over 30% slopes which violates requirements in the General Plan.
- The project allows zero setback from wetlands, which violates requirements in the General Plan.
- This project will create LOS F which violates Measure Y.
- This project will require 46,738 cubic yards of fill to be brought in to cover the creek.

This equates to 28.9 acre feet of dirt. This is a massive amount of dirt to be moved and the environmental review should include the impact being created by removing this amount of dirt from inside a 10 mile radius of this project. Another issue created is that the foundations of the proposed buildings must be on native soil or compacted/engineered fill. The existing fill is not clean soil. It will have to both be removed and replaced or the foundations of the proposed structures will need to reach native soil.

- From the aerial map it appears that the Oak Canopy is more than the stated 13%.
- There was not time to comments on the applicant’s letter requesting removal of conditions due to the late submittal.

This falls in the realm of omission of relevant information from an environmental report that precludes informed public participation or decision making, constituting a failure to proceed in the manner required by law.

- This is an oversized urban project in a rural environment. It is not a good fit for the community.
- More study needs to go into the traffic impacts, especially in regards to school safety.

Last minute engineering by unqualified laymen should not be used to push this project forward.

- There has not been enough mitigation measures put into place to deal with the severe impacts of this project to reduce it to a ruling requiring only a Mitigated Negative Declaration.
- Cross-lot drainage should not be allowed since it very likely this developer will split the lots after development.
- Travelers will be coming from off the freeway, turning onto Forni Road to enter the fast food restaurant. They will not understand how to navigate the school flow therefore increasing the danger to children.
- This project has over extended its coverage for development, leaving no room for necessary mitigation measures.

The developer stated that he has the right to the “Highest best use” of the property. I’m not sure where that right is published but the developer does have the right to develop his property. When the current General Plan was adopted it was known that not all land designations created would be compatible with the zoning. This parcel is presently zoned residential. The existing zoning is more compatible with the nature of the land and with adjacent residential zoning. It also creates a natural buffer and transition between the existing commercial and residential zoning. The highest and best use might be to develop residential parcels with an office component. General Plan Policy 2.2.5.7 allows the County to determine compatibility on parcels that are discretionary such as this one.

- \$188,000 in Tim fees may not be enough to mitigation the traffic situation due to the size of this project.
- Sewer and water impacts have been conditioned based on future conditions.
- This will not be a financial benefit to the county since the sales tax will go to fund past and future road improvements on Missouri Flat Road due to the Missouri Flat Financing Plan.
- The applicant is the same developer of Golden Center which is a nightmare for traffic flows due to McDonalds and no loading zone provided.
- The applicant should be required to hold to the 15’ standard for light height due to the close proximity to residential parcels.
- With the close proximity of the parking lot to the creek, pollution will be flowing into the creek below which distributes into Weber Creek. Mitigation has not been provided for this impact.
- There is also a safety issue with a 27’ retaining wall and only a 4’ fence to protect the public, and particularly children from falling over the bank. This could become a hazardous attractive nuisance.
- I would ask that this Mitigated Negative Declaration be rejected and the project be rejected until a properly written environmental impact document can be composed that will comply with CEQA and the El Dorado County General Plan.

After the Planning Commission meeting on 10-13-11, I visited the project site. I was standing on the road as parents started to arrive to pick up their children around 2:05 p.m. The traffic became very congested and cars were driving on the wrong side of the road to get around the traffic. At the same time cars were trying to get through this traffic from Golden Circle onto Forni Road. Around 2:15 p.m. the school children started to flood onto this mangled mess of cars in order to cross Golden Circle Drive to meet parents waiting in the nearby

parking lot. I was shocked by the potential danger these children have been subject to by these poorly planned development projects. It was obvious to me that adding a retail/restaurant to this mix would only add to this dangerous traffic/pedestrian situation. I have been surprised by the lack of concern by county staff, the Community Advisory Committee and Planning Commission in blaming the school for the situation, rather than requiring the developers that have created the increased impact to mitigate the problem. This enforces the fact that Transportation/Traffic remains a significant impact.

The majority of these comments made on 10/13/11 have not been addressed.

Other issues that have not been addressed:

The Environmental Checklist regarding Mining Resources states, *"Review of the mapped areas of the County indicates that this site does not contain any mineral resources of know local or statewide economic value. No impacts would be anticipated to occur". "For the Mineral Resources category, the project would not be anticipated to exceed the identified thresholds of significance."* Yet the description of the property states that, *"According to the soils map, portions of the area were placer mined at one time and tailing piles are present along the creek."* More research should be explored, due to the evidence of existing tailings and the fact that this area is historically rich in mining resources, in order to determine true significance to loss of a mining resource. This could be a potentially significant impact.

The Environmental Checklist regarding Hydrology and Water Quality Resources states, *"No significant hydrological impacts are expected with the development of the project either directly or indirectly". For this Hydrology category, impacts would be anticipated to be less than significant."* The project is being placed directly on and against the creek. With the proposed project and commercial development there will be an enormous amount of increased impermeable surfaces collecting pollutants related to commercial and road uses which runoff will greatly alter the quantity and quality of the adjacent creek. By merely paying a fee to Fish and Game and dedicating an undevelopable piece of land to Army Corp of Engineers is inadequate in addressing the cumulative effect to hydrology and water quality. Not addressing lot development and runoff is **a potentially significant impact** to the Hydrology and Water Quality in the area above ground, to the creek, to existing residents, structures and properties downstream and surrounding this development.

General Plan Policy 2.2.5.7 states, "Where a zoning district applied to given land is consistent with the General Plan land use designation, the County reserves the right to deny development plans providing for permitted uses where adequate findings for approval (including adequate public facilitates and services) cannot be made." The County has the right to deny this zone change based upon the following issues:

- Slopes over 30%
- Wetlands without the required 50 foot setbacks
- No buffers between the existing residential and new commercial parcels
- Inadequate infrastructure for the size of development
- Parking requirements not meet

- Over surplus of existing commercial parcels and buildings in the county at this time
- Right-of-way needs to be used for the safety concerns of Herbert Green

Policy 2.2.5.7 states, “Where approval of this General Plan has created inconsistencies with existing zoning, lower intensity zoning, in accordance with Table 2-4, may remain in effect until such time as adequate infrastructure is available to accommodate a higher density/intensity land use.”

The following measures were to be completed one to three years after the adoption of the General Plan and have yet to have been completed in this area:

Measure LU-D: Revise the Zoning Ordinance to ensure that all uses permitted by right in a zoning district are compatible. Allow potentially incompatible uses subject to a discretionary review process with performance standards designed to ensure appropriate separation of incompatible uses. Include in the Zoning Ordinance a requirement that any project located adjacent to an existing sensitive land use shall be required to avoid impacts on the existing use. (Policy 2.2.5.21)

Measure LU-F: Create and adopt Community Design Review standards and guidelines and identify new Community Design Review Districts. This would include working with community groups to develop standards. (Policies 2.4.2.2, 2.4.1.2, and 2.4.1.4)

Measure LU-H: Develop and implement a program that addresses preservation of community separation, as outlined in Policy 2.5.1.3. The program shall address provisions for a parcel analysis and parcel consolidation/transfer of development rights.

GP Policy 7.3.3.4 requires a 50 foot setback from intermittent streams and wetlands. Allowing a reduction to zero sets a future precedent undermining the intent of the El Dorado County General Plan. **This is a significant impact** not only to this project but also in considering the cumulative effect of future projects.

GP Objective 2.1.1 in regards to Community Regions is to provide opportunities that allow the continued population growth and economic expansion **while preserving the character and extent of existing rural centers and urban communities, emphasizing both the natural setting and built design elements which contribute to the quality of life and economic health of the County.** This project is not in keeping with this objective.

California planning law and policy 2.2.5.2 requires this Project to conform to the enumerated County General Plan policies, and clearly this project as drafted does not.

Mitigation Measures neither Adequate nor Related to the Impact

As part of the CEQA process, CEQA allows a lead agency, such as the County in this case, to make a determination that even though a Project will engender adverse environmental consequences, the lead agency can still determine that consequences are “less than significant” if the lead agency imposes conditions on the

project that will reduce those impacts to a nonexistent or miniscule status. Such conditions are referred to as “mitigations”.

However, a lead agency may not determine that a particular environmental impact—for example, the Project’s impact on water quality---has been reduced to a level of insignificance -- by imposing a condition that itself has yet to be developed, is not a simple cut and dried formula that everyone can look at and determine that the mitigation will work, and where the mitigation itself involves discretionary judgments as to how it will be developed or constructed. These types of “mitigations” are “future mitigations” and are not permitted under CEQA. *Sundstrom v. County of Mendocino* (1988), 202 Cal. App. 3d 296.

They are not permitted for two reasons. First, the environmental review process is hidden from the public and CEQA is a public participation process first and foremost. Secondly, a future mitigation to be imposed later in the Project’s processing, unless it refers to an exact standard---such as for example a pipe size for a domestic leach field contained in a publicly available manual covering such matters—represents a development of a discretionarily approved mitigation which may or may not be adequate. Since it is developed in private neither the public nor the scientific or technical consultants who might review the mitigation on behalf of the public, ever get to see the proposed mitigation or challenge its adequacy.

On page 4 of the Environmental Checklist/Discussion of Impacts, under Evaluation of Environmental Impacts #3, it states, “Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. “Potentially Significant Impact” is appropriate if there is a fair argument that an effect may be significant. If there are one or more “Potentially Significant Impact” entries when the determination is made, an EIR is required.

Due to the potentially significant impacts to several environmental factors I would ask that this Mitigated Negative Declaration be rejected and the project be rejected until a properly written environmental impact report can be composed that will comply with CEQA and the El Dorado County General Plan.

Respectfully,

Sue Taylor
El Dorado County Resident

MARSHA A. BURCH
ATTORNEY AT LAW

LATE DISTRIBUTION

Date 8:17 pm, Feb 27, 2012

131 South Auburn Street
GRASS VALLEY, CA 95945

Telephone:
(530) 272-8411
Facsimile:
(530) 272-9411

mburchlaw@gmail.com

February 27, 2012

Via electronic mail
edc.cob@edcgov.us

El Dorado County Board of Supervisors
Suzanne Allen de Sanchez, Clerk
330 Fairlane Court
Placerville, CA 95667

Re: Mitigated Negative Declaration for the Creekside Plaza Project
Rezone Z10-0009/Planned Development PD10-0005/Parcel Map,
P10-0012 Creekside Plaza
State Clearinghouse # 2011092017

Dear Supervisors:

We appreciate the opportunity to provide the following comments on behalf of Friends of the Herbert Green Middle School Neighborhood ("Friends") regarding the above-reference project. These comments are intended to supplement comments submitted previously by other concerned citizens and agencies.

As explained below, the Initial Study and Mitigated Negative Declaration (referred to together herein as "MND") for the Project does not comply with the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*) in certain essential respects. An Environmental Impact Report ("EIR") must be prepared for the Project.

An overarching concern in this case is the fact that the MND ignores potentially significant adverse impacts with little justification and almost no documentation. After review of the MND, we firmly believe that the environmental review has been truncated by avoiding full disclosure of the Project's impacts, and also relying upon future regulatory action to fully "mitigate" impacts, with little or no analysis.

It is especially surprising that the MND does not include traffic as a potentially significant effect on the environment. (MND, p. 3.) Information in the record, including the traffic analyses done for the Project show that the Project will indeed have

significant impacts, and the County pretends that this is not an issue, relying heavily on impact fees that may or may not ever result in the necessary improvements being constructed. This fatal flaw in the MND is set forth in the traffic section of this letter.

The Project also deviates from various General Plan ("GP") policies, and County staff is recommending that these deviations be allowed, based upon conclusory analyses. The Project will violate the prohibition of development on slopes greater than 30% and will also violate the 50-foot wetland setback requirements, and these deviations alone are evidence that the Project may have a significant environmental impact. The County may be able to satisfy itself with respect to the criteria used to determine whether a waiver should be granted, but this does not satisfy CEQA.

There are several areas of impact where substantial evidence in the record supports a fair argument that the Project may have a significant environmental impact and that a full EIR is required.

In a recent development in the administrative process, the applicant is now seeking a reasonable use determination in order to avoid mitigating impacts to oak woodlands. This issue is discussed in some detail below. In summary, if the County determines that mitigation for impacts to the oak canopy is infeasible, it may only do so after preparation of an EIR and a finding of overriding considerations. This simply drives home the fact that this Project may not be approved with a MND.

I. Standard for use of a Negative Declaration

The standard in reviewing an agency's decision not to prepare an EIR for a project is subject to the "fair argument test" and is *not* reviewed under the substantial evidence test that governs review of agency determinations under Public Resources Code sections 21168 and 21168.5. The "substantial evidence test" that generally applies to review of an agency's compliance with CEQA provides that if any substantial evidence in the record supports the agency's determination, then the determination will remain undisturbed.

In stark contrast, an agency's decision to omit the preparation of an EIR will not stand if *any* substantial evidence in the record would support a fair argument that the Project *may* have a significant effect on the environment. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003; Pub. Resources Code § 21151.)

There is substantial evidence to support a fair argument that each of the Project impacts discussed below *may* be significant. A full EIR should be prepared for other reasons as well. The cumulative impacts of the Project are significant. Where a project's impacts are cumulatively considerable, adoption of a mitigated negative declaration is inappropriate unless the evidence in the record demonstrates that the mitigation measures will reduce all impacts to a level of insignificance. (See *San Bernardino Valley Audubon Society v. Metropolitan Water District* (1999) 71 Cal.App.4th 382, 391.) In this case it does not. Finally, the Initial Study simply does not contain enough information to fulfill its purpose as an informational document.

II. The Project Description is Insufficient

"An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) A complete project description is necessary to ensure that all of the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450.)

The MND does not provide a complete, consistent project description sufficient to support environmental analysis.

The Project description in the MND describes the surrounding land uses, and omits any mention of the Herbert Green Middle School ("School"). (MND, p. 4.) The Staff Report lists the "Project Issues" and there is no mention of the School, nor any reference to the traffic congestion and safety issues resulting from heavy traffic during times of the day when students are coming to and leaving the School. (December 8, 2011 Revised Staff Report, p. 5.) The maps and diagrams associated with the Project do not include the School. The environmental analysis avoids the issue of the School directly across the road from the Project, and does so because the traffic and safety impacts around the School will be tremendous, and there is no way for the County to justify its decision to certify the MND when a full EIR is so obviously required.

During a public Board meeting on May 10, 2010, Supervisor Jack Sweeney addressed the terrible traffic problems in front of the School, and made an argument that children should be walking to school to alleviate the problem. The fact is, children will not be walking to school, and this may be due in part to the obvious danger to pedestrians in the area. We request that the relevant portion of the tape and/or transcript of the May 10, 2010, meeting be included in the record of proceedings for the Project. (Public Res. Code § 21167.6(e).)

III. The Direct Impacts of the Project are Not Adequately Addressed

The MND does not adequately address the Project's potential significant impacts, attempting to avoid the analysis by pointing to various regulatory programs, or by simply ignoring the facts.

A. Air Quality

The MND concludes that the Project's air quality impacts will be less than significant. The MND offers two bases for this conclusion: (1) so long as all of the air quality regulations are followed, impacts will be insignificant; and (2) the 2004 General Plan EIR ("GP EIR") considered air quality impacts and "mitigation in the form of General Plan policies have been developed to mitigate impacts to less than significant levels." (MND, p. 11.)

1. MND is inappropriately "tiered" from the 2004 GP EIR

Where a lead agency intends to rely on an earlier environmental document for its analysis of a project's impact, the Initial Study, at the very least, should summarize,

with supporting citations, the specific relevant conclusions of the existing documents. Only then can the public determine whether the agency's reliance on extant data is in fact proper. (See *Emmington v. Solano County Redevelopment Agency* (1987) 195 Cal.App.3rd 491, 501-503.)

Public Resources Code section 21068.5 defines "tiering" as:

[T]he coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific **environmental impact reports** which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are *capable of being mitigated*, or (b) were *not analyzed as significant effects on the environment in the prior environmental impact report*. (Emphasis added.)

The 2004 GP EIR was adopted with a statement of overriding considerations because there were multiple areas of impact found to be significant and unavoidable, including impacts to air quality. Where a programmatic or master EIR is approved with a statement of overriding considerations, a lead agency **may not** tier from that document with a negative declaration or a mitigated negative declaration. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 124-125.)

Accordingly, the County's attempt to tier a mitigated negative declaration from an EIR that was approved with a statement of overriding considerations is a violation of CEQA.

2. Impact analyses and mitigation measures are insufficient

The El Dorado County Air Quality Management District ("AQMD") CEQA Guide¹ covers the issue of cumulative impacts, and a Project that proposes to change zoning to a use that will increase pollutant emissions is considered by the AQMD to have a significant impact. (AQMD CEQA Guide, Chapt. 8, p. 2.) The AQMD recently commented on the proposed Tilden Park Project and described this aspect of their CEQA Guide. (We request that all of the comment letters submitted to the County on the Tilden Park project be included in the record of proceedings for this Project, including the September 3, 2010, letter from the AQMD. These comment letters are relevant to this Project because it will also involve a zoning change and the issues raised are similar [Pub. Res. Code § 21167.6(e)(10)].)

The County claims that if the Project is held to various AQMD requirements, then the impacts will be mitigated to a level of insignificance. (MND, pp. 10-12.) There is no evidence whatsoever to support this conclusion. And, "[i]f there is a disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and prepare an EIR." (CEQA Guidelines § 15064(g).) The experts at the AQMD have developed standards that conclude that the Project will have a significant impact, and the MND does not

1 http://www.edcgov.us/Government/AirQualityManagement/Guide_to_Air_Quality_Assessment.aspx

even discuss those standards.

Despite the potentially significant impacts, the MND concludes that if future development in the Project area is held to compliance with requirements of the AQMD, then any air quality impacts will have been reduced to a level of insignificance. (MND, p. 12.) There is no evidence that the County went through any of the analyses required by the AQMD in order to make this finding.

It bears noting here that the County did not do any modeling or develop any data with respect to the pollution emissions that the Project will generate. The El Dorado County AQMD CEQA Guide describes the level of analysis necessary with respect to various types of emissions. With respect to ROG and NO_x, the AQMD indicates that if the Project can demonstrate consistency with the AQAP for ROG and NO_x emissions, the Project may be categorized as not having a cumulative air quality impact with respect to ozone. This requires being able to say that the Project does not require a change in the existing land use designation and projected emissions. That is a statement that *cannot* be made with respect to the Project.

For other pollutants, including CO, PM₁₀, SO₂, NO₂ and TACs, there is no applicable air quality plan containing growth elements. (AQMD CEQA Guide, Chapter 8, p. 2.) For CO, if there exists the possibility of CO "hotspots" caused by the proposed project in conjunction with other nearby projects, "for example, modeling will ordinarily be required if the proposed project and one or more other large projects jointly change traffic density levels to service level E or lower on the same roadway links..." (*Id.* at 2.) The Project *does* lower the level of service to E at area intersections. (December 8, 2011, Revised Staff Report, p. 12.) There was no modeling done for the Project. There is simply not enough analysis of this impact to support the conclusion that it has been mitigated to a level of insignificance.

For PM₁₀, SO₂ and NO₂, the Mountain Counties are in non-attainment for state standards. The impacts of PM₁₀ emissions can be significant cumulatively even where the project-specific emissions are not. The AQMD requires, at a minimum, dispersion modeling in order to determine whether a project will result in significant emissions of these constituents. (AQMD CEQA Guide, Chapter 8, p. 3.) There is no evidence of any dispersion modeling or other data collected for the Project.

The AQMD describes in detail what is required for an adequate CEQA analysis of air quality impacts. (AQMD CEQA Guide, Chapter 8, pp. 3-6.) The adequate cumulative impacts analysis begins as follows:

1. Either one of the following two elements:
 - a. A list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including those projects outside the control of the agency, or
 - b. A summary of projections contained in an adopted general plan or related planning document that is designed to evaluate regional or area-wide conditions;
2. A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that

information is available; and

3. An analysis of the cumulative impacts of the relevant projects. (AQMD CEQA Guide, Chapter 8, p. 4.)

The County did not even begin to meet these requirements for the air quality cumulative impacts analysis. The MND simply acknowledges that this is a potentially significant impact, but fails to follow through by concluding that compliance with standard regulations will mitigate the impacts to a less than significant level.

The conclusion is not based on substantial evidence, and also defers the development and adoption of mitigation measures to the future. The deferral of analysis and development of mitigation measures for air quality impacts is a violation of CEQA, as the MND does not meet the standards for any exception to the rule. In *Gentry v. City of Murrieta* the court of appeal explained that CEQA's normal requirement that mitigation be adopted prior to project approval may be met if an agency prepares a draft EIR that (1) analyzes the "whole" of the project; (2) identifies and disclosed with particularity the project's potentially significant impacts; (3) establishes measurable performance standards that will clearly reduce all of the identified impacts to less-than-significant levels; and (4) describes a range of particularized mitigation measures that, when taken in combination, are able to meet the specified performance standards. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394-1395, comparing and contrasting *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011 with *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.) The *Gentry* court further explained that promises by a lead agency to implement future recommendations that other agencies might make after project approval is not sufficient to find that a proposed project's potentially significant effects have been mitigated to less-than-significant levels. (*Id.*)

The MND's air quality section is insufficient under all applicable legal authority.

B. Biological Resources

The MND concludes that the Project's impacts to biological resources will be less than significant with mitigation measures, and does so in the face of the fact that the Project will destroy 300 feet of stream channel and will be excused from the required 50-foot setbacks, in addition to developing on a greater than 30% slope and removing oak woodlands.

The evidence in the record is clear; the Project will have significant impacts to wetlands and oak woodland. These potentially significant impacts require the preparation of an EIR.

1. Impacts to wetlands

Despite the County's attempt to bury its head in the sand, there is substantial evidence showing that the Project may have significant impacts on biological resources. The MND acknowledges that the Project will "affect the bed, bank, and channel of a stream, including the adjacent riparian habitat. The project as proposed will affect 0.5 acre of riparian habitat, including nearly 300 linear feet of stream channel. This impact

is considered significant.” (MND, p. 14.) The “mitigation” for these impacts is compliance with a “permit” to be issued from the California Department of Fish and Game (“CDFG”). (*Id.*) It is illegal to rely upon conditions that may or may not be imposed by another agency to support a conclusion that an impact will be insignificant. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394-1395.)

The potentially significant impacts to wetlands and riparian habitat trigger the requirement for a full EIR. The threshold for requiring an EIR is extremely low because to end the environmental inquiry at this point precludes evaluating alternatives to the Project that could avoid some or all of the impacts. Additionally, relying on another agency to enforce terms of a permit or agreement is improper.

Similarly, the MND acknowledges that the Project will impact wetlands, and concludes the impact will be insignificant by claiming “[t]he area of Corps jurisdiction is much less than the area covered by Department of Fish and Game Jurisdiction. Consequently, the mitigation measures for impacts to streams and riparian impacts would compensate for impacts to waters of the United States.” (MND, p. 16.) The MND goes on to suggest mitigation requiring the “Applicant to *strive to avoid* adverse [sic] and minimize impacts to waters of the United States, and to achieve a goal of no net loss of wetlands functions and values.” (*Id.*, emphasis added.) This “mitigation measure” is unenforceable and improperly defers development of an actual measure for mitigation, not to mention having no performance criteria.

The MND continues on the path of attempting to foist development and enforcement of mitigation measures onto other agencies by claiming that the California Regional Water Quality Control Board (“RWQCB”) will handle any issues of water quality impacts. (MND, p. 16.)

The evidence in the record shows that the Project will have tremendous impacts to the stream, wetlands and riparian habitat, and yet analysis of these impacts, as well as development of mitigation measures, is deferred to the future and assumed to be the responsibility of other agencies. Additionally, the Project will include waivers of the 50-foot setback requirement as well as a waiver of the prohibition on development on slopes greater than 30% (and possibly oak woodland mitigation). These waivers effectively gut the GP requirements that would go some distance toward mitigating impacts to wetlands as well as water quality. This approach fails to fulfill the requirements of CEQA and an EIR must be prepared in order to fully evaluate the impacts to biological resources and consider alternatives and mitigation measures.

2. Impacts to oak canopy

With respect to oak canopy, the Project was found to require removal of more than 10% of the oak canopy on site, and so Option B of Policy 7.4.4.4 was determined to be the method of mitigation. The Third District Court of Appeal recently struck down Option B as violating CEQA, and so the MND now makes the impossible switch to Option A, claiming that despite the removal of more than half of the oak canopy, the Project proponent will be able to retain 90% of the oak canopy. (MND, p. 18.)

There is no analysis of how the Project proponent will achieve this, which is astonishing in light of the fact that the development takes up nearly all of the area on the site.

There is nothing in the analysis or discussion in the MND or the staff reports that would support a conclusion that it is feasible for 90% of the oak canopy to be retained on the site. The impact will go unmitigated, and so it will not be possible to certify the MND.

C. Greenhouse Gas Emissions

Based upon a finding that the greenhouse gases generated by the project would be small relative to the global emissions, the MND concludes that the Project's impacts would be less than significant. (MND, p. 23.) This conclusory analysis falls short of CEQA's requirements.

The MND discusses interim guidance on the issue of evaluating climate change impacts, issued in 2008 by the Office of Planning and Research. This area of the law has evolved since 2008, and the MND does not comply. The CEQA Guidelines (effective on March 18, 2010) clarified how greenhouse gas ("GHG") emissions should be analyzed and mitigated under CEQA. These Guideline requirements are *not optional*. The adopted changes to the CEQA Guidelines include the following:

- A lead agency should make a good-faith effort to calculate or estimate the amount of GHG emissions resulting from a project. Although a lead agency retains discretion to determine the model or methodology used for such analysis, the lead agency is required to support its decision to employ a particular model or methodology with substantial evidence (14 CCR § 15064.4(a));
- The following factors should be considered when assessing the potential significant impacts from GHG emissions on the environment: (i) the extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting; (ii) whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and (iii) the extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (14 CCR § 15064.4(b));
- When adopting thresholds of significance, a lead agency may adopt thresholds previously adopted or recommended by other public agencies or recommended by experts, provided the decision to adopt such thresholds is supported by substantial evidence (14 CCR § 15064.7(c));
- Lead agencies must consider feasible means, supported by substantial evidence and subject to monitoring and reporting, of mitigating the significant effects of GHG emissions related to a project (14 CCR § 15126.4(c));
- If an Environmental Impact Report is required, then the EIR should evaluate any potentially significant impacts of locating development in areas susceptible to hazardous conditions such as floodplains, coastlines and wildfire risk areas, in addition to considering any significant environmental effects the project might cause by bringing development and people into the area affected (14 CCR § 15126.2(a)); and Appendix G (the sample form with questions a lead agency

should consider in its Initial Study) has been modified to include analysis related to whether the project will generate GHG emissions and whether the project would conflict with any applicable plan, policy or regulation adopted for the purpose of reducing GHG emissions.

The County has not evaluated any of the areas required under CEQA. None of the Project's emissions have been quantified, and none of the required analysis has been done. At this time, the County has the opportunity and the obligation to evaluate the GHG emission impacts of the Project and develop and adopt feasible mitigation measures for the entire Project area.

D. Land Use Planning

In the section on Land Use Planning, the MND notes that a Project would have a significant impact if it would "[r]esult in a use substantially incompatible with the existing surrounding land uses." (MND, p. 27.) The MND discusses the GP land use designations of the Project site, oddly ignoring all surrounding land uses. There is, again, no mention of the School.

The School is an existing use and several comment letters have been, and will be, submitted regarding the extremely dangerous conditions for students and others around the School. During the January 26, 2012, Planning Commission hearing, Commissioner Pratt opined that the traffic and safety problem is the School's problem, and that the School should mitigate any impacts "on site." Not only does this position completely violate the letter and spirit of CEQA, it is a shocking statement by a public official.

The County has apparently decided to whistle past the graveyard and pretend that this risk to children and their families and teachers is not an issue. It is an issue; it is a traffic issue, a safety issue and a land use incompatibility issue, and it does not even appear in discussion in the MND. A full EIR is required because of the traffic, safety and incompatibility issues that will be created by the Project.

E. Traffic and Circulation

The MND finds that the Project will **not** have a significant impact on traffic, then oddly goes on to discuss how the impacts will be reduced to a level of insignificance through mitigation measures, including the payment of traffic mitigation fees.

The School is ignored, and subsection (d) of this section of the MND includes a conclusion that the Project will not result in any substantial increase in hazards. (MND, p. 33.) Substantial evidence in the record reveals that the Project will increase hazards to motorists and pedestrians as a result of uses that will be incompatible with the adjacent School.

Additionally, the proposed mitigation measures are inadequate. The MND notes that the "traffic study recommended signalization of two intersections." Strangely concluding, "[t]he impacts have been mitigated and meet General Plan consistency requirements." (MND, p. 33.)

Significant impacts at the Missouri Flat Road/Enterprise Drive intersection will, according to the MND, be mitigated to a level of insignificance by the construction of the Diamond Springs Parkway (CIP project # 72334.) (MND, p. 34.) Unfortunately, the Parkway is "included in the ten-year CIP."

Thus, the "mitigation" will occur if and when the County Capital Improvements Program ("CIP") has sufficient funds to build the Parkway. Payment of mitigation fees to go toward capital improvement programs is an acceptable form of mitigation, but it must be shown that the improvements will actually be completed and mitigate the impacts if the County wishes to make a conclusion of less than significant impact. (See *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173; and *Napa Citizens for Honest Government v. Board of Supervisors* (2001) 91 Cal.App.4th 342.) The County may not make a finding of insignificant impacts with respect to the Missouri Flat Road/Enterprise Drive intersection.

The MND goes on to say that significant impacts were also noted at Forni Road/Golden Center Drive, and that the traffic study suggested signalization. (MND, p. 34.) Then, without any discussion, the MND concludes that signalization is infeasible and so some additional turn lanes will "mitigate the impacts." There is no evidence to support this claim, not to mention the fact that a finding of infeasibility may only be made in the context of a statement of overriding considerations, which may only be adopted after preparation of a full EIR.

The payment of fees and future annexation into a community services district will not reduce the significant impacts to a level of insignificance before Project construction. The tremendous impacts to traffic are either completely ignored, or "mitigated" through illegal means. A full EIR must be prepared with a complete analysis of traffic impacts.

F. Mandatory findings of significance

There are two mandatory findings of significance that must be made for the Project. The Project may indeed substantially reduce the habitat of a fish or wildlife species. The MND acknowledges that the Project will destroy 300 linear feet of stream, and then makes the assumption that other agencies will require mitigation for the impacts. There is no evidence that the CDFG, the Army Corps of Engineers or the RWQCB will step in and ensure that the impacts are mitigated to a level of insignificance. Those agencies will enforce their policies and requirements, but there is no reason to believe that the impacts will be mitigated to the level assumed by the County.

The second mandatory finding relates to cumulative impacts. The County failed to do an adequate analysis to be able to make a determination regarding cumulative impacts. Section 15130(b)(1) of the CEQA Guidelines provides two options for considering potentially significant cumulative adverse impacts. This analysis can be based on either: (1) A list of past, present and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control

El Dorado County
February 27, 2012
Page 11 of 11

of the agency; or (2) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency.

The County did not perform the required analysis under either of the options, and so the MND contains an insufficient review of the Project's cumulative impacts.

IV. Conclusion

Because of the issues raised above, we believe that the MND fails to meet the requirements of the California Environmental Quality Act and the Project is inconsistent with the General Plan and its approval will violate the planning laws. For these reasons, we believe the document should be withdrawn and a revised environmental document, a full EIR, should be prepared.

Very truly yours,

// Marsha A. Burch //

Marsha A. Burch
Attorney

cc: Friends of the Herbert Green Middle School Neighborhood

RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY
8:42 am, Feb 28, 2012

25
LATE DISTRIBUTION
Date 8:43 am, Feb 28, 2012

February 27, 2012

Re: Creekside Plaza #12-0224

Hearing Date: February 28, 2012, 2:00PM

Dear Board of Supervisors:

I am writing to you with concerns regarding the Creekside Plaza development. I am a parent of a student attending Herbert Green Middle School and have concerns about the development's negative impact on the safety of Herbert Green's students and on the traffic conditions around the school as well as at the Forni Road/ Missouri Flat intersection particularly during peak school drop-off and pick-up times.

I understand from viewing several documents included in the planning file, that the developer of this project does not need to widen Forni Road at the project site, does not need to provide a turn lane/middle lane on Forni Rd. for the increased amount of traffic that the project will attract, and they do not need to provide a designated crosswalk for the students and community members accessing the development and/or the school.

I would encourage the decision-makers of this project to visit the school area during peak drop-off and pick-up times as it would provide them a clearer understanding of the traffic and safety concerns which surround this project if it is allowed to go forward as proposed and as recommended by the county's planners.

If more parents and the general public knew and understood the ramifications of this proposed plan, I am sure there would be more public outcry for the Board of Supervisors to take a common sense approach when approving design and making recommendations for commercial developments in and around school zones. I believe most parents and community members have the belief that because Herbert Green Middle School is in close proximity to this development project, our elected officials have most certainly kept the protection and safety of our school-aged community members a priority. I am hoping for our whole community's sake that we are not wrong.

As I do not agree that the project (as designed) has adequately addressed the safety and traffic concerns in and around the school area, I am respectfully requesting that the Board of Supervisors review, address, and resolve the traffic and safety concerns as expressed by the Herbert Green Middle School community and the community as a whole, before they give their final approval of the Creekside Plaza development project.

Sincerely,

Danielle Peterson





EDC COB <edc.cob@edcgov.us>

Creekside strip mall

1 message

renee hargrove <writeon@internet49.com>

Tue, Feb 28, 2012 at 8:06 AM

To: edc.cob@edcgov.us

With regard to the proposed Creekside strip mall, I continue to question why El Dorado County needs more retail space when there are so many vacancies. Plus, if there are favored developers who do not pay the appropriate fees, is that not taking revenue out of County coffers when it could be spent on road maintenance, **economic** development, job creation/security (after all, there are employees who are furloughed because of lack of funding) and other much-need services?

It seems counter-productive to favor developers when citizens are struggling with employment. I sincerely doubt that new strip malls are going to employ any more citizens than using existing ones. For instance, why not "encourage" the absentee owners of the strip mall on Broadway, anchored by The Dollar Tree and Grocery Outlet, to repair that property and rent it out? I am aware that there was a revitalization plan for that area...why was that stymied?

If more strip malls and unchecked development ensues, it seems that traffic will increase, more roadways will be built and everyone will be going around in circles to nowhere. Has anyone noticed the increased vehicular speed and running of red lights everywhere? Another case in point is the safety of the children at Herbert Green School and pedestrians everywhere. Along with that goes distracted drivers who are texting, talking on their cell phones and checking their GPS while driving. Are they going to be looking out for the children as they hurry from one strip mall to another? Doubtful.

I am here to vote for revitalization and smart, planned use of existing retail and commercial space and properties. Our county is beginning to look bedraggled with darkened commercial/retail buildings, unkempt grounds, bankrupt businesses who failed because of decreased revenue from shoppers, and more. Not to mention, I personally do not want El Dorado County to look like Folsom where there are a million food places and the same retail recipe around the big box stores. Why not preserve charm and the unique qualities that exist here? What about honoring heritage and inventiveness? I am against cookie-cutter development.

Thank you for your attention. Renee' Hargrove, Placerville



MOTHER LODE UNION *School District*

3783 Forni Road * Placerville CA 95667

Tim Smith, Superintendent
(530) 622-6464 * Fax (530) 622-6163

LATE DISTRIBUTION

DATE 2/27/12

Board of Trustees

John Parker, President
Gene Bist, Clerk
Shaun Verner, Member
James Haynie, Member
Janet VanderLinden, Member

February 23, 2012

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

2012 FEB 27 AM 10:14
BOARD OF SUPERVISORS
EL DORADO COUNTY

Re Creekside Plaza (Project), Rezone Z10-0009/Planned Development PD10-0005/Parcel Map, P10-0012
Creekside Plaza

Dear Supervisors,

I am writing this letter regarding the Creekside Plaza Project (CPP) on behalf of the Mother Lode Union School District (MLUSD). Since learning of the CCP, the MLUSD has had concerns relative to student safety and traffic congestion, both of which will be impacted as a result of the proposed development. I am requesting the Board of Supervisors consider the MLUSD concerns and requests before taking action to approve the CPP.

I want to start by stating that the MLUSD is not opposed to development, and that in fact is supportive of development. The District recognizes the positive effects developments have on schools and the community in general, thus we are not suggesting or advocating the termination of the CPP.

The MLUSD began to consider the impact of the project in the spring of 2011 when we met with Tom Dougherty, Project Planner. Since then, we have attended meetings and public hearings held by the El Dorado County Planning Commission to communicate the MLUSD concerns regarding student safety and traffic congestion related to the CPP.

The following are the primary concerns of the MLUSD:

1. Risk of students being injured and traffic accidents due to increased traffic and congestion related to the CPP.
2. A left hand turn lane into the CPP on Forni Road with two vehicle stacking capacity, which will not mitigate traffic congestion related to the development.
3. A lack of specificity on the improvements to the school frontage on Forni Road, as stated in the mitigation plan.
4. A thirty foot retaining wall behind the development, without a specific plan to mitigate potential safety hazards related to the wall.

The MLUSD is requesting the following to address the above mentioned concerns:

1. Utilize the 50 foot right-of-way on Forni Road to assist in the mitigation of the traffic congestion related to the CPP.
2. Clearly state what improvements will be made to the school frontage on Forni Road. The MLUSD proposes a side walk and a right hand turn lane into the school parking lot on Forni Road.
3. Include a barrier fence on the retaining wall behind the CPP.

I have personally witnessed the daily traffic congestion, near accidents, and several accidents involving vehicles on Forni Road for years. We are fortunate that no students have been injured as a result of accidents, to date. The traffic related to the school site has been significantly impacted by the multitude of surrounding developments on Missouri Flat and Golden Center Drive. Adding additional traffic to Forni Road without utilizing the County right-of-way to mitigate the problem is not a good decision for the MLUSD or the community. It is the opinion of the MLUSD that any development with an entrance on Forni Road will require the 50 foot right-of-way to mitigate traffic to an already congested roadway.

Due to the potentially significant impacts to the students and stakeholders of the MLUSD, I am requesting the Board of Supervisors table the CPP development plan until the above concerns have been addressed.

Respectfully,



Tim Smith
Superintendent
Mother Lode Union School District

Unaddressed
Issues:

Impact of traffic on
Herbert Green

Impact of traffic
stacking at Forni
and Missouri Flat

28 acre feet of dirt
on creek

27 foot unprotected
wall against
remaining creek

The need for
additional retail
space at this time?

Parking for large
vehicles at exit
driveway

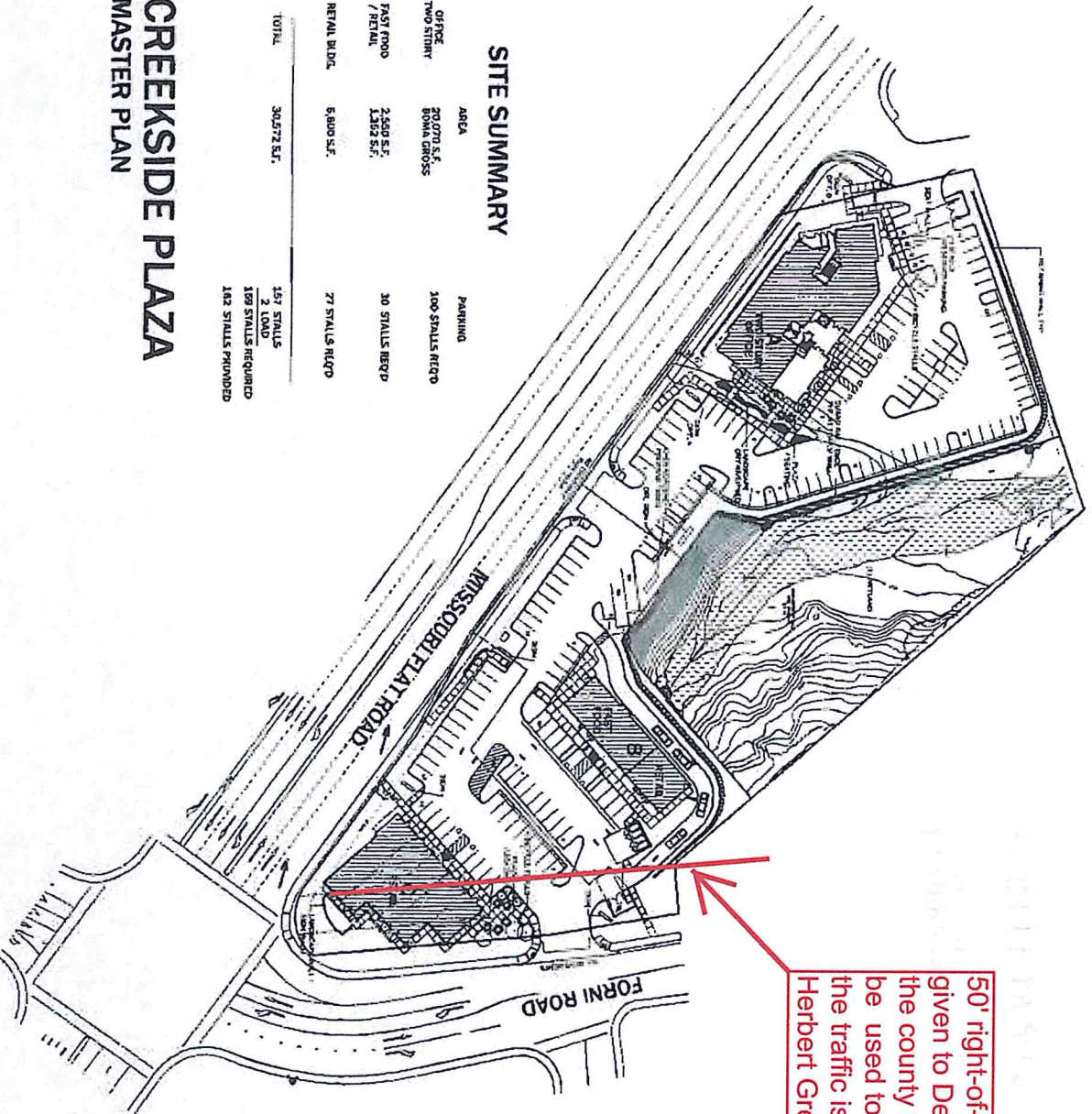
1+ acre donated to
Conservancy
forever

Exhibit G-1

SITE SUMMARY

STAGE	AREA	PARKING
A TWO STORY	20,070 S.F. 80% GROSS	100 STALLS REQ'D
B FAST FOOD / RETAIL	2,550 S.F. 1,352 S.F.	30 STALLS REQ'D
C RETAIL BLDG.	5,800 S.F.	27 STALLS REQ'D
TOTAL	30,572 S.F.	157 STALLS 2 LOTS 159 STALLS REQUIRED 162 STALLS PROVIDED

CREEKSIDE PLAZA MASTER PLAN



50' right-of-way being
given to Developer by
the county that could
be used to mitigate
the traffic issue at
Herbert Green.

BRIAN WICKERT, ARCHITECT
P.O. BOX 2106
SHIPLEY SPRINGS, CA 95668
PH 530-402-1350

GRADO
EQUITIES
VII LLC

CREEKSIDE
PLAZA

MASTER
PLAN



SCALE 1" = 40'
DATE 6-12-11

SHT A-1

The TGPA/ZOU will create chaos in El Dorado County.

The Home Occupation policies propose to allow intense commercial uses in residential areas, and the Mixed Use policies propose to increase residential development in commercial areas. There will be a blurring between commercial and residential uses and an increase of incompatibilities between neighbors.

The Final Environmental Impact Report (FEIR) relies on unenforceable and nonexistent mitigations. As such, I request that you deny approval of the FEIR.

Conflicting statements regarding Home Occupancy:

From Response O-1-451:

"However, given the number of additional employees allowed by right on larger rural parcels, it is reasonable to assume that traffic impacts could be significant in some situations at some time in the future. Mitigation has been included in the TGPA/ZOU EIR that will reduce this impact to a **less-than-significant level**" conflicts with **Table ES-1. Impacts and Mitigation**, which states that the impacts are Significant and Unavoidable.

3.9 Transportation and Traffic			
TRA-1: Conflict with an applicable congestion management program, including, but not limited to, level-of-service standards and travel demand measures or other standards established by the county congestion management agency for designated roads or highways ²	S	TRA-1: Extend timeframe of General Plan Transportation and Circulation Element Policy TC-Xa TRA-2: Reduce the Proposed Number of Employees Allowed by Right at Home Occupations	SU

Home Occupancy Response O-1-452:

The response fails to provide analysis of distances required to avoid nuisances from Home Occupations using Heavy Commercial Vehicles. Instead, it relies on mitigation that is faulty and currently unattainable in El Dorado County. Simply stating that "No analysis of the potential for heavy commercial vehicles to create noise, vibration, dust, glare, fumes, odors, or electrical interference is necessary. Subsection C.6 prohibits these impacts **'as detectable by normal senses off-site,'**" is faulty because there are current projects within the County that are "detectable by normal senses off-site," yet the County refuses to acknowledge the complaints because the complaints were not witnessed by a County official. Will the County be able to hire enough new personnel to go to sites and witness these nuisances?

It would have been fairly simple for the analysis to have been more thorough to include a list of estimates for how much distance is needed between a residence and a truck tractor so that a nearby residence is not disturbed by the fumes, vibrations, or noise of Heavy Commercial Vehicles. **Table 3.7-2. Typical A-weighted Sound Levels** in the FEIR is an example. Maybe 300' (the length of a football field) is far enough away so that nearby residences would not be impacted by noisy, smelly commercial vehicles. The very name "Heavy Commercial Vehicle" indicates that these should NOT be in a residential neighborhood, unless there is sufficient distance between the residence and the home occupation.

Vehicle, Heavy Commercial. Vehicles used for commercial purposes that require a Commercial Driver's License in compliance with state Department of Motor Vehicle regulations. These vehicles include, but are not limited to buses or cars that seat ten or more passengers, tow trucks, dump trucks, truck tractors with or without semi-trailers, flat bed trucks, fork lifts, front end loaders, backhoes, logging vehicles, graders, bulldozers, and other similar construction equipment.

Table 3.7-2. Typical A-weighted Sound Levels

Common Outdoor Activities	Noise Level (dBA)	Common Indoor Activities
	110	Rock band
Jet flyover at 1,000 feet		
	100	
Gas lawnmower at 3 feet		
	90	
Diesel truck at 50 feet at 50 mph		Food blender at 3 feet
	80	Garbage disposal at 3 feet
Noisy urban area, daytime		
Gas lawnmower, 100 feet	70	Vacuum cleaner at 10 feet
Commercial area		Normal speech at 3 feet
Heavy traffic at 300 feet	60	
		Large business office
Quiet urban daytime	50	Dishwasher in next room
Quiet urban nighttime	40	Theater, large conference room (background)
Quiet suburban nighttime		
	30	Library
Quiet rural nighttime		Bedroom at night, concert hall (background)
	20	
		Broadcast/recording studio
	10	
	0	

Source: California Department of Transportation 2013.

Home Occupancy Response O-1-453:

The text below was added to the FEIR to show that Home Occupations in more rural areas could result in a significant impact on aesthetics. However, there is no explanation as to why this was only applied to more rural areas when, in fact, the less rural, more suburban areas consisting of one acre parcels would be impacted just as much because there is less space for relief from the potential intensive home occupation nearby.

There is no explanation as to why a mitigation measure wasn't added to require that Heavy Commercial Vehicles, goods and materials be screened from adjacent property owners in addition to the required screening from a right-of-way or road easement.

Text added to page 3.15 of the FEIR regarding Aesthetics and Home Occupations:

The aesthetics impact of future home occupations, absent information about the type of use, existing visual setting and its intensity, and the extent to which the use may degrade the setting, cannot be known at the site level. However, because these uses may be applied for in rural areas that are of high visual quality, that there may be instances where a home occupation that would be allowed by right under Section 17.40.160 could adversely affect the aesthetics of its surroundings. The same would be true for more intensive home occupations requiring a discretionary permit. Although more intensive uses would require a conditional use permit and would be subject to CEQA analysis, that does not assure that the use would not result in a significant impact.

Home Occupancy Response O-1-455:

The EIR relies on a nonexistent mitigation monitoring program to ensure that CEQA is followed. This is unacceptable as there are no guarantees that this program will EVER be created.

permit. The County would be required to adopt a mitigation monitoring and reporting program to ensure the mitigation measures identified in the CEQA document are implemented, and the conditions of approval would incorporate any mitigation measures identified in the CEQA document.

The text below is from a presentation given to an ad hoc subcommittee in 2008. At that time the County did not have a mitigation measure monitoring program. It is now 2015. The County still does not have a mitigation measure monitoring program. The County is currently in a financial debt crisis, with a best estimate of recovery in 5 years. It is unacceptable to use a nonexistent program as mitigation for negative impacts.



Environmental Document Preparation

Ad Hoc Committee Subgroup
Presentation

June 18, 2008

- El Dorado County has no adopted mitigation measure monitoring program
 - ☐ No funds or staff resources to ensure that mitigation measures are effectively implemented
 - ☐ Staff must rely on applicant to assist with mitigation monitoring by submitting site photos of mitigation measure implementation

Home Occupancy Response O-1-458:

It is an absolute farce to state that the County can ensure that paint fumes would not escape the home occupation.

O-1-458

Paint spray booths and automotive refinishing coating are regulated by the El Dorado County Air Quality Management District under its Rule 230 to limit the emission of volatile organic compounds from finishing or refinishing. This would ensure that fumes would not escape from a home occupation. Please see response to comment O-1-455 regarding environmental review of conditional use permits.

The mitigation in this response is completely nonexistent and unattainable, as you CANNOT prevent paint fumes from floating onto another property. This is evidenced in a statement to Lori Parlin by Dave Johnston of the Air Quality Management District on June 7, 2012, regarding the paint fumes that leave the Kniesel's property and are a nuisance to the adjacent property.

6/7/12 Thursday 2:00pm – Called and reported smells to Dave Johnston at Air Quality Management, also emailed my log to him. He called back and said he would have Levi go out and visit the facility. Dave explained that paint booth ventilation systems remove particulate matter from the paint exhaust, but cannot remove fumes. I told him I was angry about that because we had been assured by Tom and Erin Kniesel at a meeting years ago that their businesses are good neighbors and that we would not notice that they were even there because they do all of their work inside. He said there was nothing he could do about the paint smells or sounds.

I ask you, the Board of Supervisors, to consider all of the flaws in the FEIR and the deception that has surrounded this process. Please reject the Final EIR. The next General Plan Review is due to start next year. Let's put this flawed process aside, learn from it, and do it better next time with true input and notification to the public.

G. Berger - #29 Bos 11/10/15

P: (800) 306-3956
E: INFO@ELDORADOWINES.ORG



PO Box 1614
PLACERVILLE, CA 95667
www.eldoradowines.org

November 5, 2015

Board of Supervisors
El Dorado County

Sent via Email – EDC.cob@gov.us, bosone@edcbov.us,
bostwo@edcgov.us, bosthree@edcgov.us,
bosfour@edcgov.us, bosfive@edcgov.us.

The El Dorado Winery Association ask that you to support the General Plan and Zoning update which addresses the much needed changes directly affecting the agricultural community.

1) Expand AG districts - this project was led by the late Dr. Dave Jones and Dr. Bill Frost then of the UC Cooperative Extension - EDC. Soils, slopes and parcels were the main analysis points with properties adjoining the existing Ag Districts. It was ground proofed back in 2003 and reviewed and approved by the Ag Commission several times. This has been waiting for over a dozen years to move forward and will add another 17,000 acres to Ag Districts.

2) AG Zoning - This has been a problem for years particularly in Fair Play and on the Divide around Garden Valley. There are a large number of parcels with RE zoning which are 1) deemed residential, not agriculture and 2) have no right to farm protections in or out of the Agricultural Districts. The Ag Commission held a series of public hearings concerning the "opt-in" to Agricultural zoning and passed forward a recommendation that is now part of the proposed zoning update. This corrects a flaw from the last zoning update in 1983 which failed to address the individual parcel maps.

3) Right to Farm - This has existed for decades but only on Agricultural zoning where it currently exists. Noise, smells and general Ag related activities are protected from the usual complaints that can arise. The updated right to farm act will cover all operations in an Agricultural Districts and more isolated agricultural parcels outside of the Districts.

There are many more items being addressed than the short list above including Ag home-stays, Ag support services, expanded home occupation, etc. Individual farmers, agricultural associations and the EDC Farm Bureau have been involved in this process every step of the way. The Ag Commission has held numerous hearings, the Planning Commission has completed over 8 days of public hearing in the past 13 months and now it is at the Board of Supervisors for final action. Collectively, we support the process as defined by the General Plan, the Board of Supervisors and the update being presented.

The El Dorado Winery Association ask that you support this update and support the much needed changes directly affecting the agricultural community.

Very truly yours,

Carey Skinner, Vice President
El Dorado Winery Association

1 of 1

1

Testimony Before the El Dorado County Board of Supervisors Regarding the TGPA/ZOU, November 10, 2015

- 1) My name is Ellen Van Dyke.
- 2) I live in Rescue & have been in this county for about 15 years.
- 4) I am making these comments on behalf of myself and Rural Communities United.
- 5) After three years of following this project, I feel that staff and consultants have rigged the TGPA/ZOU process by hiding the ball from the good people of El Dorado County. I'll share three examples.
- 6) One, staff did not provide a track-change version of all the changes made when they rewrote the zoning ordinance, so there is no simple way to find out what has been changed without reading the entire document. For example, there's a new proposal to reimburse developers for Bass Lake infrastructure, buried in the ZOU. It was not in the NOP, or the ROI, or the Project description, so it's not a surprise if you missed it. But the Bass Lake PFFP (Public Facilities Financing Plan) was the subject of rigorous debate by the Board two years ago. This newly added section should have received a full public vetting in the light of day.
- 7) Two, the EIR did not disclose traffic impacts in meaningful detail when it was feasible to do so. For example, what matters to most people when it comes to rush hour traffic to and from Sacramento is *"how congested will Highway 50 be on my way to work going west, and how bad will it be on my way home from work going east?"* That is why the County's Traffic Demand Model needs to calculate level of service in each direction on a roadway.

But instead of providing level of service in each direction, the lanes were *averaged* in the EIR. This not only fails to provide the useful information, but it underestimates the true impacts of the TGPA/ZOU.

8) And three, the EIR relies on half-truths throughout. For example, the EIR frequently justifies postponing the site specific analysis of zoning map or policy changes by claiming that those changes will be evaluated "later" when a project is proposed. But that ignores the fact that the TGPA/ZOU allows a broader spectrum of activities by right with ministerial approvals that will never receive that level of CEQA review prior to approval: no site specific impact analysis will be done.

There are many examples of these errors of omission exposed in the piles of public comments submitted, that should serve to inform you of the problems with this EIR.

The Supervisors who certify this document that so obviously has not transparently conveyed information to the public, risk tainting their own good names and reputations for straight dealing.

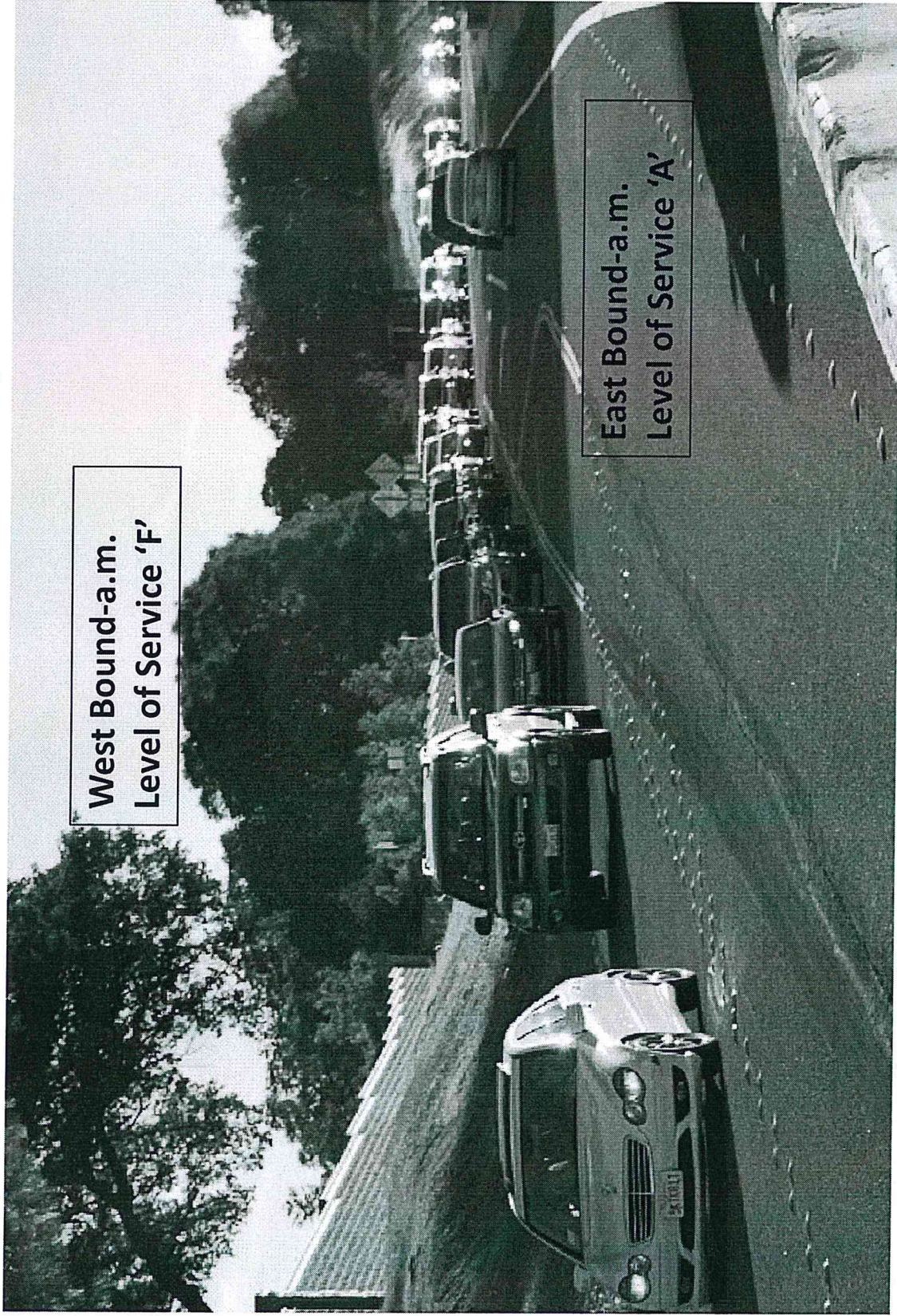
Please do not certify this EIR or approve the project as it is proposed.

Thank you.

1 of 4

Copy to the Clerk

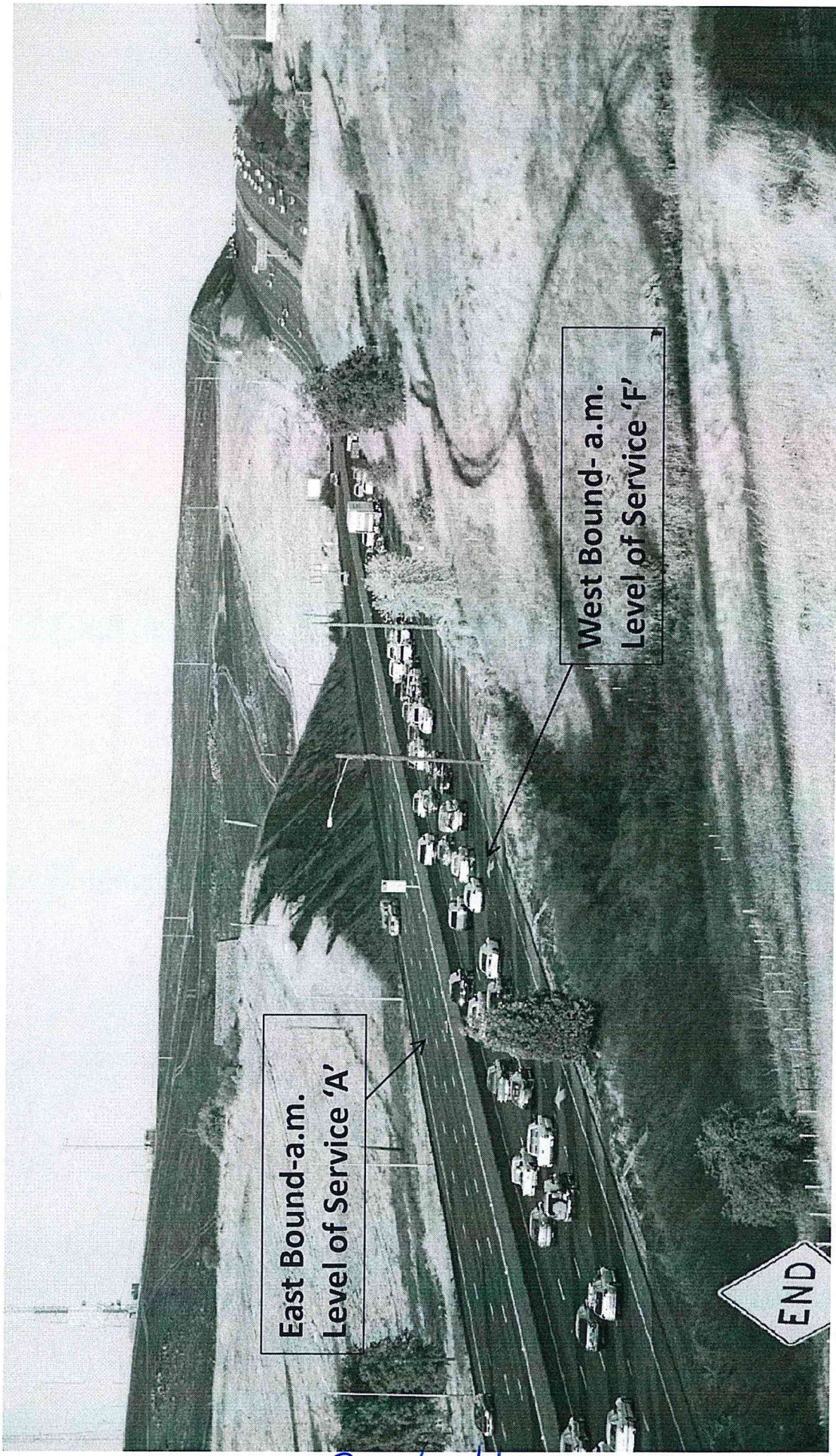
Level of Service 'C' on Green Valley Road?



2 of 4

Averaging is NOT the standard, or in keeping with General Plan policy, but it is what our County is doing in order to approve more projects.

Level of Service 'C' for the a.m. commute on Hwy 50?



Averaging is NOT the standard, or in keeping with General Plan policy, but it is what our County is doing in order to approve more projects.



TRPA Code of Ordinances Update

Phase 1: Reorganization and Reformatting

*Sample - 1st Page of Tahoe's
Report communicating their changes when
updating*

Disposition Report

This disposition report summarizes the general organizational changes made to the current Code of Ordinances in comparison to the proposed reorganized and reformatted Code. For the sake of clarity and simplicity, this report tracks changes at the "section" level, and occasionally at the "subsection" level when necessary. It provides changes made as part of the reformatting and reorganization (Phase 1) of the Code update project only. The complete changes can be viewed in the track-changes versions of the Code.

DISPOSITION REPORT		
Current Chapter	Proposed Location	Comments
Ch 1: Introduction to the Code of Ordinances	Ch 1: Introduction to the Code of Ordinances	
1.0: Purpose	1.1: Purpose	
1.1: Applicability	2.1: General Provisions	
1.2: Short Title	1.2: Short Title	
1.3: Use Of Terms	90.1.10: Mandatory and Discretionary Terms	Text clarification
1.4: General Provisions	1.4: Land Use Document Supporting the Code of Ordinances	
1.5: 208 Plan	1.5: 208 Plan	
1.6: Interpretation And Severability	1.6: Interpretation and Severability	
1.7: Administrative Fees	1.7: Administration Fees	
Ch 2: Definitions	Ch 90: Definitions	
2.0: Purpose	Deleted	
2.1: Applicability	Deleted	
2.2: Definitions	90.2: Other Terms Defined	90.2 includes definitions from current 2.2; Chapter-specific definitions generally retained in chapters; Rules of measurement proposed and added
Ch 3: Special Provisions Governing Certain Projects, Uses and Activities	Ch 2: Applicability; Section 2.4 Previously Approved Projects, Uses, and Activities	
3.0: Purpose	2.4.1: Purpose	
3.1: Applicability	2.4.2: Applicability	
3.2: Prior Conditions of Approval	2.4.3: Prior Conditions of Approval	
3.3: Foundations with Expired TRPA Approvals		Deleted: Obsolete
Ch 4: Project Review and Exempt Activities	Ch 2: Applicability (Section 2.2)	
4.0: Purpose	2.1.1: Purpose	Reworded for new context
4.1: Applicability	2.1.2: Applicability	Reworded to incorporate Sec. 1.1 text
4.2: List Of Exempt Activities	2.3: Exempt Activities	Exempt shorezone and sign activities added
4.3: List Of Qualified Exempt Activities	2.3.7: Qualified Exempt Activities	Qualified exempt shorezone and sign activities added

4 of 4

4

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

My name is Charlet Burcin and since retiring, I have lived in EDH since 2010.

I am making these comments on behalf of myself and Rural Communities United.

One of the reasons that people like myself are so upset with this process is that your staff and consultants dismissed the detailed and heartfelt comments on the Draft EIR with superficial responses, non-sequiturs, conclusory remarks, where their reply didn't follow logically from the previous statement; and arguments without basis in fact. I took the time to read each public comment and response by staff and their consultants.

During the Planning Commission hearing, many members of RCU provided long lists of comments that they had made on the DEIR that were inadequately responded to by staff and consultants in the Final EIR. These included comments regarding home occupation impacts, groundwater supply, groundwater quality, conflicting policies, traffic impact analyses, and various other substandard aspects of the EIR.

The Planning Commission did not address these flaws in the EIR. As a result, serious land use and resource conservation issues remain in controversy; far more than are acknowledged in the EIR summary.

RCU has submitted a list of issues that remain in controversy, along with proposals for responding effectively to address those issues. We encourage a delegation of you supervisors to take an active role in resolving as many of these issues as possible, rather than approving the TGPA/ZOU as proposed. This would go a long way to restoring public faith in your dedication to the wellbeing of the good people of El Dorado County.

Thank you.

1 of 1

6

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

- 1) My name is **[Your name here]**. *HARRY MERCADO*
- 2) I live in **[Your Town]**. My family has lived here since **[Year]** *personalize/optional*
- 3) I make my living as a **[your occupation]**.
- 4) I am making these comments on behalf of myself and Rural Communities United.
- 5) One of the reasons that people like myself are so upset with this process is that the County is ignoring successful solutions to local problems that are being implemented elsewhere.
- 6) For example, the TGPA/ZOU EIR notes the problems that will arise for groundwater dependent farms and ranches as new groundwater dependent uses are allowed to expand in areas where limited groundwater exists. The EIR just throws up its hands and says there are no additional mitigation measures for this significant impact. EIR comments suggested that the County prepare and implement a groundwater management plan. The EIR consultants responded that it is too costly, and not feasible to manage fractured-rock groundwater in this fashion. RCU has shown that there are state funds available to local governments for the preparation of such plans, and that there are existing counties that have prepared such studies and management plans for fractured-rock groundwater..
- 7) Stop spending our money on consultants who are committed to not solving our resource conservation problems. Adopt this mitigation measure and implement it immediately. We are not asking you to re-invent these feasible-mitigation-wheels. Just to use them. We deserve it, and the law requires it.

Thank you.

1 of 1

11

Testimony Before the El Dorado County Board of Supervisors
Regarding the TGPA/ZOU, November 10, 2015

- 1) My name is **[Your name here]**.
- 2) I live in **[Your Town]**. *My family has lived here since [Year] -personalize/optional*
- 3) *I make my living as a [your occupation].*
- 4) I am making these comments on behalf of myself and Rural Communities United.
- 5) One of the reasons that people like myself are so upset with the TGPA/ZOU, is that it does not reflect a reasonable accommodation of competing regional, state, and national interests that we share. El Dorado County is not an island where people can come to ignore their legal responsibilities to be part of the solution on regional, state, and national issues.
- 6) We cannot ignore the impact that our traffic on a federal highway has on commuters in Sacramento, and on people traveling to recreate at Lake Tahoe. Yet that is what the TGPA/ZOU does.
- 7) We cannot ignore the impacts of the greenhouse gas emissions from our vehicles on the ability of our region, state, and our nation to delay or avoid the worst catastrophic effects of global climate change. Yet that is what the TGPA/ZOU does.
- 8) We cannot ignore the need to collaborate with state and federal agencies responsible for regulating waterways, wetlands, flood control channels, riverbeds, and riparian habitat when permitting land uses, yet the TGPA/ZOU makes no mention of such collaboration when allowing land uses by right and by permit in these areas.
- 9) We cannot ignore state regulations regarding on-site waste water treatment that are designed to protect the health, safety, and wellbeing of the good people of El Dorado County. But that is what we do when we adopt more lenient standards in the TGPA/ZOU.
- 10) The TGPA/ZOU removes the balance in the 2004 General Plan that was the basis for its popular support at the polls.

The TGPA/ZOU removes the balance that was the basis for the court upholding the validity of the 2004 General Plan. You supervisors can and must restore that lawful balance.

Thank you.

1 of 2

Testimony before El Dorado County Board of Supervisors regarding the TGPA/ZOU, November 10, 2015
John Hovey, resident of Shingle Springs

On July 23, 2014, Rural Communities united submitted commentary on the TGPA/ZOU draft EIR. In that document it was mentioned "Substantial evidence in the record does not support the County's conclusion that there is no need to address hazards in the EIR." I wrote several paragraphs concerning the need to address the fact that the El Dorado Hills are a risky area and are home to one of the largest Naturally Occurring Asbestos deposits in the world. This includes Actinolite and Tremolite, both members of the more harmful Amphibole Group. I also included a map showing that a verified find of asbestos is situated on lands of the proposed Marble Valley and Lime Rock Valley developments.

In response to this the county replied in part "The privately initiated proposals for large development projects are not a part of the TGPA/ZOU. Project-level EIRs are being prepared to analyze the impacts of these specific projects."

This is not true, because staff has recommended the rezoning of a parcel in the proposed Lime Rock Project from Open Space to RL-10. This parcel, APN 109-020-20, is completely within the buffer area of a verified and mapped find of asbestos.

In the Lime Rock Valley project proposal the applicant had asked to remove the aforementioned parcel from Open Space and rezone is to RE-10. Therefore, I can only conclude that this proposed open space rezoning is an attempt to work this change into the TGPA/ZOU as a favor to the developer before it can come under scrutiny of the full Lime Rock Valley project EIR.

This is not the first time staff has been made aware of this. When confronted with the maps showing the presence of asbestos on the Lime Rock Project during the joint 2012 county and developer public presentation, county staff completely disregarded them saying "those are old maps". These maps were eight years old and the asbestos deposits have been there for thousands of years. At the same time developers of this project said they could control the asbestos during construction. However, after they have finished carving up this mountain, they can do nothing to prevent the continued introduction of asbestos into the air from all of the resulting cuts and fills.

After human lungs have been exposed to asbestos it will take from 10 to 40 years for this exposure to develop into Asbestosis, Lung Cancer and Mesothelioma cancer. Since children are much more susceptible to asbestos exposure, it will be the children living in these disturbed asbestos areas who will be the victims in the future.

According to the National Cancer Institute, "overall evidence suggests there is no safe level of asbestos exposure." CEQA guidelines indicate that an EIR should "evaluate any potentially significant impacts of locating development in areas susceptible to hazardous conditions."