

Be Happy, Stay Rural!

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Sierra County Board of Supervisors
P. O. Drawer D
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Transmitted via Email

RE: Timber Production Zone Ordinance Amendment

Dear Board Members,

Having had a chance to more closely review the proposed amendment to the Timber Production Zone Ordinance since it was first issued for consideration at the Planning Commission meeting of June 16, 2010, we submit these comments out of concern that the proposed ordinance may have unanticipated consequences detrimental to the people and environment of Sierra County. We believe elements of the proposed ordinance are inconsistent with the General Plan making the ordinance legally vulnerable and triggering the need for environmental review. Minor changes in the ordinance could remedy the problems.

The proposed ordinance is inconsistent with the Sierra County General Plan in that it permits large acreage estate residential uses on TPZ parcels without the requirement to make a finding the residence is necessary for timber management. It also allows the subdivision of TPZ parcels in and near community areas to 160 acres.

The Sierra County General Plan only allows "large acreage estate residential [uses] on non-TPZ parcels" (General Plan p. 1-74)¹. The analysis, findings and mitigations of the General Plan Environmental Impact Report assumed there would be no residences on TPZ parcels². The General Plan EIR refers to TPZ parcels as "non-residential".³

We believe there is broad agreement amongst County residents, reflected in the County's General Plan Theme and Goals, for a land use pattern which is a system of distinct and cohesive rural clusters amid open lands. Such a pattern increases the vitality of communities and preserves the viability of resource production and preservation. It is the exact opposite of sprawl.

In adopting the General Plan the County found that the proposed land use pattern of rural clusters effectively mitigates the significant environmental impacts of the General Plan.⁴ The mitigation measures which are legally binding upon the County⁵, specifically found, among other things⁶, clustering:

- Minimizes fire hazard
- Discourages inefficient vehicle use
- Prevents growth inducement along transportation corridors inconsistent with existing land use patterns
- Allows orderly and cost effective extension of public facilities and services
- Prevents conversion of timber producing lands to other uses
- Protects habitat and species diversity
- Reduces the potential for conflicts resulting from residential development on timber production lands

There are two implementing zones in the Forest Designation, General Forest and TPZ. The minimum acreage in both zones is 640 acres. Lot splits are prohibited in the Forest Designation. Even lot line adjustments which could create an opportunity to construct an additional home beyond what is possible under the existing parcelization is prohibited.⁷ Large acreage estate residential uses are allowed as a right in the General Forest Zone. A single family residence built in the General Forest Zone is assessed and taxed as a residence on the actual acreage the parcel is on. Because the County decided it wanted to encourage timber production, it adopted a policy which confers the generous tax benefits of the Forest Taxation Reform Act and Timber Productivity Act on property dedicated to timber production and zoned TPZ while strictly limiting other uses on the property.⁸ The General Plan states on page 1-75:

“TPZ lands: Because the Timberland Productivity Act focuses on timber cultivation and harvest, and because it confers special tax benefits on affected lands, ancillary uses on these lands shall also...:

- Maintain existing parcel sizes or create larger parcels.
- Not be a use for which a suitable alternative site is available outside of Timberland Productivity Act contracted lands.”

State law permits a single family residence on a TPZ parcel as necessary for timber management. In regulating TPZ lands, the State allows the County to be more restrictive, but not more permissive. Like Lassen County, in order to protect timberlands from premature conversion to other uses, Sierra County is within its right to prohibit large acreage residential estates on TPZ parcels. In fact, the General Plan recognizes residential uses as incompatible with forest and timber management:

”The County shall provide for protection of its forest lands within the Forest designation in order to...prevent conversion to residential uses and *other incompatible* land uses.”⁹ (*emphasis added*)

When analyzing the environmental impacts of the General Plan, the General Plan EIR assumes there will be no residences on the 305 TPZ parcels in the County. In fact 304 TPZ

parcels are described in the build-out tables as being “*unavailable for residential development*”¹⁰. Presumably, the assumption could be made partly because the majority of TPZ acreage in the County is owned by Sierra Pacific Industries and SPI does not need a residence on its holdings to manage its timberlands. That assumption no longer seems valid because SPI now intends to develop their holdings¹¹. In fact, at the Planning Commission hearing for the ordinance SPI wanted to delete the phrase “necessary for the management of land zoned as timberland production” from section (c)(6) defining which defines how a residence or structure can be a compatible use on a TPZ parcel. Staff Report 1114a report SPI wanted residential uses be allowed on all TPZ parcels regardless of size.

The current TPZ ordinance, adopted before adoption of the General Plan, was never revised to be consistent with the General Plan. In the interim period between adoption of the General Plan and update of the Zoning Code the General Plan directs the County to use the density standards found in the Land Use Element Maps as a basis for land use density decisions.¹² The Land Use Maps identify TPZ lands as constraints where “residences are discouraged in policies”.¹³

Precisely, because of the minimal taxes the County can collect on TPZ parcels, the General Plan contains strong policies to prevent and discourage residential uses on TPZ lands. Large forest estates or residences on large acreage parcels are allowed only on non-TPZ lands¹⁴, and are not permitted where a suitable alternative is available. We agree with the Planning Director when he said,

“A single family residence is not permitted on a TPZ parcel. There is no sound basis for a house on TPZ land, as it would then become a holding zone for people who want an estate.”¹⁵

By allowing residences on GF parcels and excluding residences on TPZ parcels, the County assures the citizens of its existing communities their tax dollars will not be siphoned off to subsidize the delivery of services to remote forest estates.

If the proposed amendment is adopted, residences will become standard on TPZ parcels. In fact, the County will be providing an incentive to not only build residences on TPZ parcels, but also for GF parcel owners to rezone to TPZ in order to then build a residence on a large acreage parcel and dramatically reduce their tax bill. The proposed ordinance has the potential for significant growth-inducing and cumulative impacts which should be analyzed in a CEQA document. If the Board, indeed, desires to modify the land use pattern intended by the General Plan and reviewed by the General Plan EIR, the growth-inducing and cumulative impacts must be considered.^a

^a Indeed, Staff Report 1114a (p. 4) posits allowing a residence on a TPZ parcel is preferable to requiring a rezone of a TPZ parcel to a zone which permits residential uses, because “poignantly” an EIR would be required for a rezone and that could not be what the Legislature had intended. If an EIR is necessary to rezone a single parcel to allow a residential use (and we believe that it would not be necessary in the majority of cases), shouldn’t at least an Initial Study be necessary to allow a change in policy which will have the effect of allowing residential uses on nearly all TPZ parcels?

Prior to enactment of the Forest Taxation Reform Act and the Timber Productivity Act, timberlands were eligible for protection through a Williamson Act contract. The legislature intentionally made the FTRA and TPA

The staff report asserts the County can rezone parcels from TPZ to another zone when timber management is no longer taking place because, for example, the parcel is being used as a forest estate. This is precisely the situation the General Plan tried to avoid by restricting large-acreage residential uses to non-TPZ parcels. (See discussion in General Plan EIR p.8-6) Permitting residences on TPZ lands without assurance the residence is necessary for timber management could have the effect of converting timberlands to a large acreage forest estate and forcing removal from TPZ without consideration of the environmental and economic impacts on the County.

The County's environment, residents, and ability to deliver services would all be potentially impacted. The proposed amendment will allow a residential unit on all TPZ parcels greater than 80 acres. Based on the staff report calculations for number of TPZ parcels less the number being rezoned and less the number of parcels less than 80 acres leaves a total of approximately 234 new residences which could be built outside of community areas on TPZ lands. At a rate of 2.4 people per residence the proposed amendment potentially increases the population of Sierra County by 20% as compared to the existing population. To Sierra County it is like adding two new communities except delivering services will be more difficult because the population of these new communities is decentralized and remote in a rugged landscape with limited transportation routes.

Clearly, the cost of extending services and facilities to remote areas of the County are far greater than the cost of providing services to existing clustered communities¹⁶. Add on to that the fact that the taxes collected from the new development will be less than the tax revenue from similar properties in existing communities or parcels zoned General Forest, it can be seen that in effect, residents in existing communities will end up subsidizing the cost of providing services to new residences on TPZ parcels.¹⁷

Furthermore, since adoption of the General Plan and the existing TPZ ordinance, new information has become available showing that sprawl increases the threat of wildland fires¹⁸ and increases the emission of greenhouse gases.

Locating residences in remote areas without public transit increases vehicular use which is a known contributor to greenhouse gas emissions. Thus, the proposed amendment will have an indirect impact on the environment through an increase in greenhouse gas emissions. The attorney general has stated, "...where a project's direct and indirect greenhouse gas-related effects, considered in the context of the existing and projected cumulative effects, may interfere with California's ability to achieve the greenhouse gas reduction requirements of the California Global Warming Solutions Act, the project's global warming-related impacts should be considered cumulatively significant." The attorney general gives specific direction on how to address the issue.¹⁹ The new CEQA guidelines which became effective March 8, 2010 requires an analysis of a project's contribution to greenhouse

agreement subject to the regulations of Zoning Law rather than Contractual Law in order to accommodate the long term planning necessary for timber management. The Legislature intended to present an incentive to property owners to maintain timberlands for long term timber management; not feel economic pressure to convert timberlands to development; and provide local jurisdictions a long term planning tool where expected property taxes would balance the demand for necessary services. Please see the discussions in Exhibits 6 and 13.

gas emissions.²⁰ The Fire Hazard Severity Zones delineated by CalFire precisely correspond to the County's TPZ parcels.^b The proposed ordinance will encourage residential development in high risk fire zones without further discretionary review in conflict with General Plan policies and the findings and mitigation measures of the General Plan EIR. An impact analysis is required to adopt the proposed ordinance.

The proposed resolution makes the finding that the proposed ordinance is consistent with the Timberland Productivity Act and the General Plan because the proposed ordinance disallows future residential development of TPZ parcels under 80 acres in size to help ensure that eligible timberlands are not being converted to large-estate residential uses. Conversely, we do not understand how allowing a residence on a parcel greater than 80 acres ensures eligible timberlands *won't* be converted to large-acre estate residential uses. The potential impact of locating large acreage residential uses remote from existing clustered communities must be analyzed in an Initial Study to determine if an EIR is necessary.

If it is the Board's intention to maintain the land use pattern intended by the General Plan, an ordinance consistent with the General Plan and General Plan EIR will *not* trigger new environmental analysis. Similar to the recommendation made by the Planning Director in his August 3, 2007²¹ memo to the Planning Commission, we believe if the proposed ordinance would simply make a single family residence subject to findings that the residence is necessary for the management of timber as part of a discretionary review which includes public notice, we believe the proposed ordinance would then be consistent with the General Plan; not constitute a change from existing policy; and therefore not trigger the need for CEQA review.

The proposed amendment also allows parcelization of TPZ lands in violation of the General Plan policy, which requires maintenance of existing TPZ parcel sizes or creation of larger parcels²². The proposed amendment will allow subdivision of TPZ parcels in Community Cores and Community Influence Areas. At the Planning Commission meeting Staff asserted that there were only a few TPZ parcels located in Community Areas implying that allowing the subdivision of these parcels wouldn't cause significant impacts. This is information and a conclusion which should be part of an environmental review which could look at alternative scenarios such as reconfiguring the Community Area so as to exclude the parcel from its Core or Influence Area consistent with the General Plan policy to locate TPZ parcels outside of Community Areas.²³ Another alternative would be to rezone and redesignate TPZ parcels in Community Areas consistent with the Rural or Rural Residential Designation of the General Plan and their corresponding zoning districts. These Designations are designed to provide transitional housing density within Community Core and Community Influence Areas while still providing a compact community form; free from sprawl; reducing the need for and cost of extension of public facilities and services; protecting environmental resources and preserving resource production lands.²⁴ This alternative would require updating the Rural Residential and Rural Districts of the Zoning Code to be consistent with the General Plan²⁵.

We firmly believe updating the Zoning Code consistent with the General Plan will give the County far more flexibility in its ability to manage land use issues than it currently has

^b Compare the FRAP and TPZ maps found in Exhibit 12

reducing the confusion and frustration so often presently encountered. Thank you for the opportunity to submit these comments.

Sincerely,



Stevee Duber

Exhibits:

1. General Plan Excerpts and 1A General Plan Background Document Excerpts
2. General Plan EIR Excerpts
3. General Plan Findings of Fact Excerpts
4. Previous HSRA submittals regarding TPZ policies in the GP
5. Page from SPI's website regarding their interest in development
6. Tax analysis
7. Board of Supervisors Minutes 10/17/2006
8. Memo to Planning Commission 8/3/2007
9. Dangerous Development
10. Attorney General Letter regarding AB 32
11. Current Initial Study template
12. FRAP and TPZ maps
13. USDA study

¹ Sierra County General Plan, Exhibit 1

² Sierra County General Plan EIR, Exhibit 2

³ ibid

⁴ ibid

⁵ Findings of Fact and Statement of Overriding Considerations for the Adoption of the Sierra County General Plan, Oct. 1, 1996; p.11 Exhibit 3

⁶ The HSRA has submitted previous comments regarding the policies for TPZ in the GP. For your convenience they are included in Exhibit 4

⁷ General Plan p. 1-75 and 1-76, Exhibit 1

⁸ General Plan p. 1-75 and p. 9-16, Exhibit 1

⁹ General Plan p. 1-74, Exhibit 1

¹⁰ General Plan EIR, Project Description, build-out Tables, Exhibit 2

¹¹ SPI website excerpt Exhibit 5

¹² Sierra County General Plan BackGround Document Vol. I October, 1996, p1-2.

¹³ General Plan p. 1-17 and the second map of each Town Map set

¹⁴ General Plan p. 1-74, Exhibit 1

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- ¹⁵ BOS minutes Oct. 17,2006; Exhibit 7
¹⁶ Development at the Urban Fringe and Beyond, excerpt from USDA study, Exhibit 13
¹⁷ Tax Analysis, Exhibit 6
¹⁸ Dangerous Development, Exhibit 9
¹⁹ Attorney General letter, Exhibit 10
²⁰ Initial Study Questionnaire, Exhibit 11
²¹ Memo dated August 3, 2007, Exhibit 8
²² General Plan p. 1-75, Exhibit 1
²³ ibid
²⁴ General Plan p. 1-58
²⁵ General Plan p. 1-60 and 1-61