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RECEIVED

OCT 21 2015

NEVADA COUNTY
BOARD OF SUPERVISORS

Michael J. Cook
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cc: Counsel
Planning
BOS

October 21, 2015

VIA FACSIMILE & OVERNIGHT MAIL

Honorable Nevada County Board of Supervisors
Clerk of the Board
950 Maidu Avenue
Nevada City, CA 95959

Re: Housing Element Update; Request for Inclusion of Eligible Property

Honorable Members of the Board:

This firm represents Clear Creek Oaks, LLC, the owner of property located in Penn Valley, California, comprised of approximately 20.1 acres and identified in your Housing Element Rezone Implementation Plan (Rezone Plan) as Site 13 (hereinafter referred to as Site 13). Our client volunteered its property for inclusion within the Rezone Plan and cooperated with County staff throughout the process of plan development. Site 13 is not among those sites recommended by the Planning Commission for inclusion within the Rezone Program. For the reasons set forth hereinafter, we suggest that Site 13 should be included within the Rezone Program and we hereby request that the Board of Supervisors include Site 13. Failure to do so will certainly and unnecessarily expose the County to challenges to the validity of the Rezone Program and will ultimately lead to HCD rejecting the proposed plan.

Characteristics of Site 13

Site 13 is located in Penn Valley between Highway 20 and Penn Valley Road. The site is relatively flat to gently rolling. At least two points of ingress and egress exist. Importantly, this is one of the larger sites under consideration and, even after considering potential constraints, Site 13 has the capacity to realistically accommodate a large number of housing units (185) compared to other sites under consideration. Numerous site studies have been completed, evidencing development potential. Feasibility/flexibility should be an important consideration in determining whether to include parcels within the Rezone Program but, in the case of Site 13, this important positive characteristic appears to have been ignored in favor of other considerations, most likely a parochial desire to prevent exactly the kind of development this Rezone Program is supposed to accommodate. Where logical sites with the capacity to actually deliver the density and housing types HCD desires are purposely and for political reasons excluded from participation, we believe HCD will view the Rezone Program with skepticism. This skepticism will be compounded by additional flaws described below, the net result of which will likely be rejection of the Rezone Program. Again, we request that Site 13 be included within

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the Rezone program and that the County take advantage of the 185 units that can be legitimately claimed. We wish to work cooperatively with the County, if allowed to do so.

**Limitations on the Planning Commission Recommendation/ Flaws
with adopting Tier One Sites Only**

Grass Valley SOI Sites

The Planning Commission, with very little deliberation, forwarded to your Board the Staff recommendation of including only the selected Tier 1 sites. Ignored were the testimony of both our project and Grass Valley representatives (including the Mayor) who testified that (1) the properties identified within the Grass Valley Sphere of Influence (SOI) were problematic as an overconcentration of high density/affordable housing in a single geographic location; (2) that the densities claimed would not actually be realized, since the zoning and development standards differ between the County and the City and actual density would be lower upon annexation; and (3) that any units annexed to Grass Valley would not count toward Nevada County RHNA obligations post-annexation, creating future shortfalls in the County which Grass Valley legitimately fears would again be made up in the Grass Valley SOI. The Planning Commission provided no response to the City's concerns. We agree with all of the arguments presented by Grass Valley. We expect that HCD will agree as well. We encourage your Board to address the legitimate concerns raised by the City. We further encourage your Board to look outside of the Grass Valley SOI for legitimate sites that can actually accommodate the type of housing that is intended by the program. Focusing your efforts to the Grass Valley SOI is bad for Grass Valley and bad for the County. Even if a lower number of units eventually materialize in the SOI area, the County won't be able to count them. You are just kicking the proverbial can down the road, needlessly. That approach is what led to noncompliance with HCD mandates over the last two cycles. In this cycle, we encourage you to focus on real sites that work for the county now and in the future.

The Rezone Program claims to generate seven hundred fifty nine (759) potential units, a meager sixty (60) units greater than the minimum number required by HCD, and that is after significant efforts by the County to secure a reduction from the number HCD initially required. The County needs to build in a greater margin for error and should anticipate problems with the limited number of sites currently included, some of which are obvious and are described below. Other issues will arise and a prudent contingency should be included. As noted above, the Grass Valley SOI sites are problematic now and in the future. The unit count claimed (340) is overstated, as testimony by the Grass Valley officials demonstrated. Our review of the respective General Plans and Zoning Codes indicates that anticipated units are 25%-40% overstated. If the estimate is even twenty percent (20%) high, 68 units are lost, 8 more than the current margin for error built into your program. We encourage the County to take a hard look at those Grass Valley SOI sites. We know that HCD will. Again, we encourage you to include sites that (1) can actually produce the unit counts you need now, and (2) will not be lost to you upon annexation to a City. Focusing your efforts in the Grass Valley SOI is not the best solution, either short-term or long-term. Fortunately, you have legitimate, analyzed, alternative sites

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outside of the SOI. Site 13 is such a site and the 185 unit potential it provides would help to legitimize the Rezone Program.

Lake of The Pines Sites

The Planning Commission conducted very little deliberation with respect to the Lake of The Pines sites. Concerned citizens questioned the viability/appropriateness of Sites 14 and 16, without any response. Those sites may prove problematic for the reasons cited by the neighbors, and as discussed below. More importantly, Site 18 has been included within the Rezone Program at a unit count of 108 units, despite numerous issues connected with that site. It is very remote from other development and significant infrastructure would be necessary to serve the site. Moreover, this site was already conditioned by the County to provide inclusionary housing for a previously approved and constructed development (30 units which have yet to be realized, likely due to the infrastructure burden). The staff report describes Site 18 as "the most remote of the 18 candidate sites" (page 71), making it an unlikely candidate, yet it was included. We expect that counting Site 18, the "most remote" site of the candidate sites, which lacks significant infrastructure and is already conditioned to provide inclusionary housing which has not materialized, will be viewed by HCD as, at best, a stretch and at worst, an indication that the entire Rezone Plan lacks credibility. We expect that attempting to count 108 units from this site, while rejecting other legitimate and viable sites for political reasons, will not be well received. We suggest you delete site 18 from further consideration, allow it to provide the inclusionary housing mitigation already required of it, and that Site 13 be included as a legitimate, feasible replacement property. The alternative staff suggestion to include Site 18 at a unit count of 44, while facially better than proposing 108, should be rejected as well. Inclusion of Site 18 at any number undercuts the legitimacy of your Rezone Program. The bottom line is that the Lake of the Pines unit count is overstated by at least the 108 units counted for Site 18, perhaps more.

Commercially Designated Sites

Several Commercial or mixed use sites (Sites 11, 14, 16) are included within the Rezone Program, which is positive. However, the unit counts assigned thereto appear aggressive and potentially overstated, if the sites are to also accommodate the non-residential uses contemplated. Site 16 is further complicated by the existing leach field and potential soil contamination, which was mentioned in the environmental analysis, but not discussed with any specificity. Whether those issues present either development constraints or constraints to ultimate unit counts is unclear. However, given that the unit counts currently included within the Grass Valley SOI and the Lake of the Pines area are overstated, any further reductions due to unexamined constraints only underscores the need for the County to ensure that an adequate number of sites is included and that the projected unit counts are realistic.

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Conclusion

The proposed Rezone Program is deficient and cannot realistically achieve its objective, namely, identifying sites capable of achieving the County's RHNA obligations. First, the County has included the bare number of sites to achieve project objectives, leaving very little margin for error. The County explicitly relied on a willing landowner approach and implicitly relied on a willing neighbor approach, further constraining the County's ability to critique project objectives. The County is overly reliant on the Grass Valley SOI and further reliant on overstated numbers therein. City officials have testified to that effect and have cited an overconcentration of this housing type in the SOI. A reduction of as little as 20% of projected units (a very conservative estimate) reduces the project units below the required 699. The Lake of the Pines sites will prove controversial over time, if not at the next Board meeting. Site 18 should not be included, and its proper exclusion will reduce the unit count by another 108 units. The mixed use sites present issues as to the viability of their unit counts. Together, these concerns should cause the Board to reevaluate its approach. The County should be submitting a Rezone Program to HCD that is not vulnerable to attack. Some flexibility should be incorporated. Some margin for error should be incorporated. Realistic projects with actual on the ground delivery potential should be included (Site 13). Unrealistic or inappropriate sites should not.

We request that Site 13 be included in the Rezone Program to provide legitimacy, flexibility, a margin for error, and to provide to HCD an assurance that the Rezone Program can be effective. The Planning Commission recommendation, if adopted by your Board, will be subject to attack and will be rejected by HCD. We look forward to working with your staff on improvements to this program.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By


 Michael J. Cook

MJC:sk/tan/dan

cc: The Honorable Nate Beason, Supervisor, District 1
 The Honorable Ed Scofield, Supervisor, District 2, Chair
 The Honorable Dan Miller, Supervisor, District 3, Vice Chair
 The Honorable Hank Weston, Supervisor, District 4
 The Honorable Richard Anderson, Supervisor, District 5
 Alison Barratt-Green, County Counsel
 Brian Foss, Planning Director
 Tyler Barrington, Principal Planner
 Clear Creek Oaks, LLC

Julie Patterson-Hunter

From: Tyler Barrington
Sent: Tuesday, October 13, 2015 12:47 PM
To: Julie Patterson-Hunter
Cc: 'damian@californiacraftsman.com'
Subject: FW: Rezoning of Darkhorse

Mr. Wells, Thank you for your comment. I have forwarded this to the County Clerk of the Board to ensure it is included in the public record and provided to the Board of Supervisors (See Below).

-Tyler

Hi Julie,

Attached is a comment on the Housing Element rezone project for the public record and for distribution to the individual Board members.

Regards,

Tyler Barrington
Principal Planner



Planning Department
County of Nevada
Community Development Agency

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<http://www.mynevadacounty.com/nc/cda/planning/Pages/Home.aspx>

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From: Damian Wells [<mailto:damian@californiacraftsman.com>]
Sent: Tuesday, October 13, 2015 12:10 PM
To: Tyler Barrington
Subject: Rezoning of Darkhorse

Mr. Barrington,

I'm writing you to make you aware of my opposition to the rezoning of Darkhorse phase 4. Not only does this area not have the infrastructure to support such a move, but it is merely a cash grab by Nevada County. Darkhorse finally has an ownership group with the means to fulfill the original vision of Darkhorse which will high-lite our beautiful county. By placing high density housing in this area, the county is ensuring that this vision will not become a reality. Please vote NO.

Thank You,

Damian Wells
President
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