



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**
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**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo**

MEETING DATE: June 26, 2018

TO: Board of Supervisors

FROM: **Brian Foss, Planning Director**

SUBJECT: Public hearing to consider the Planning Commission's recommendation on a property owner request to approve the rezone (RZN17-0002) of two contiguous parcels comprised of approximately 306 acres (consisting of six APNs; 38-330-01, 02, 03, 04, 87 & 86) from "TPZ-40" (Timberland Production Zone, 40 acre minimums) to "RA-10" (152 acres Residential Agriculture with 10 acre minimums) and "AG-30" (154 acres General Agriculture with 30 acre minimums). If approved, the rezone will initiate the TPZ ten-year roll-out process in compliance with the California Government Code Section 51100 et seq.

RECOMMENDATION

- I. Approve the attached Resolution (Attachment 1) for the project specific Negative Declaration (EIS17-0030) pursuant to the California Environmental Quality Act (CEQA) making Findings A-D.
- II. Adopt the Ordinance (Attachment 2) to amend Zoning District Map Nos 064a and 077, Timber Production Zone (TPZ) rezone (RZN17-0002) from TPZ-40 to RA-10 for APNs 38-330-01, 02, 03, 04, & 87 (152 acres) and TPZ-40 to AG-30 for APN 38-330-86 (154 acres) which will initiate the ten-year process to "roll-out" of TPZ making Findings A-E.

FUNDING: An action in the affirmative has no impact on the Planning Department budget. The project processing is paid for through the application fee. However, an action in the affirmative will have a positive impact on the General Fund. In compliance with the California Government Code Section 51100 et seq., upon approval, a tax recoupment fee is required to recoup the difference between the tax paid under the TPZ zone and the new zone. The land value increases each year, as does the property tax required. By the end of the 10-year roll-out period the property value is based on the new zoning designation.

ATTACHMENTS:

1. Resolution: Draft Initial Study/Proposed Negative Declaration (EIS17-0030)
 2. Adopting Ordinance: Amendment of ZDMs 064a and 077
 3. May 10, 2018 Planning Commission Staff Report (with Negative Declaration and Planning Commission Memo attached)
 4. May 10, 2018 Planning Commission Minutes
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BACKGROUND

The Z'Berg-Warren-Keene-Collier Forest Taxation Reform Act of 1976 changed the method of taxing "timber" in California. The act encouraged the protection of immature trees and continued use of timberland for the production of trees for timber products and provided restrictions on the use of timberland to the production of timber products and compatible uses.

Under the act, the county assessor was required to determine which parcels, as of the lien date of 1976, were assessed for growing and harvesting timber as the highest and best use of the land. This was known as "List A" and the list was adopted by the Board of Supervisors in 1976. The county assessor was also required to determine, in the assessors' judgment, what constituted timberland as of the lien date but were not assessed for growing and harvesting timber as the highest best use of the land. This was known as "List B" and was adopted in 1977.

Before a Board of Supervisors zoned the properties on both lists TPZ, an owner had the option to petition the Board to be removed ("Opt-Out") from the list. There was also a time-period in which an owner could "opt-in" to the "B-List" if their property met the required criteria. All parcels that are zoned TPZ are zoned for a term of 10 years. With each annual cycle another year is added so that there is a continuous 10-year zone on the parcel. The parcels zoned TPZ are valued by the county assessor each year based on a schedule of values sent out by the State Board of Equalization.

Compatible use is defined in Section 51104 (h) of the Government Code as any use which does not significantly detract from the use of the property for growing and harvesting timber, and includes hunting and fishing, grazing, and a residence or other structure necessary

for the management of land zoned as timber production. When a home site is developed on a TPZ property, that portion of the property use changes from timberland production to residential use. That home site is then valued at fair market value and not TPZ land value, and henceforth is under Proposition 13 rules.

If an owner requests to be “rolled-out” from the TPZ zoning, the new zone established by the Board of Supervisors approval becomes effective and operative 10 years after the board approval date. Upon approval, a tax recoupment fee is required to recoup the difference between the tax paid under the TPZ zone and the new zone for the prior 10-year period. The land value increases each year, so at the end of the 10-year period the value is based on the new zoning designation.

The existing TPZ zone was established in conformance with the Forest Taxation Reform Act of 1976 (California Government Code Section 51100 et seq.). The project area zoned TPZ containing APNs 28-220-01, 02, 03, 04, 87 and 86 was deemed suitable for inclusion within a TPZ designation as part of the B List pursuant to Section 51110.1 of the California Government Code effective March 22, 1979.

Under the TPZ-40 zoning district, parcels are required to maintain a minimum parcel size of at least 40 acres. Single-family residences are a permissible use within the TPZ-40 designation with the minimum acres per unit set at 40 acres or one single-family residence per legal parcel. In 2004 a Certificate of Compliance was issued on Parcel #1 (CC04-007) recognizing it as one parcel with five APNs. Parcel #2 (APN 38-330-86) was created by map recorded in Book 3 of Parcel Maps, Page 170 on October 2, 1971 (previously APN 38-330-35).

Project Setting: The 306 acre project area is heavily vegetated with three dominant plant communities: 1) mixed conifer-hardwood forest; 2) landmark black oak groves; and 3) montane riparian woodland and scrub. Clipper Creek, a perennial stream, bisects Parcel #2 flowing from the northeast to the southwest. Elevations in the project area range from 3,260 feet to 3,650 feet. Slopes range from gentle in the northern portion of project area to steep in the southern portion of parcel #2.

There is a single-family residence and a few outbuildings located in the northeast corner of Parcel #2. The two-acre portion of Parcel #2 that accommodates the single-family residence is considered the “home site” and as such the residence and other improvements are valued and taxed consistent with Proposition 13. The rest of the project area is undeveloped except for the Nevada County Roads running through Parcel #1 and the informal dirt roads that run throughout.

Analysis: The project area is surrounded by the General Plan’s Rural land use designations with 5, 10, 30 and 40-acre density limitations (Attachment 3.). Adjacent to Parcel #1 are the following zoning districts: RA-5 on the west; RA-X (X-combining district allows no further divisions of the parcels which range four to five acres in size) on the north; and RA-

10 to the east. Adjacent to Parcel #2 the zoning districts are as follows: General Agriculture-5 (AG-5) to the west; AG-10 and TPZ-40 to the south; and AG-30 to the east (Attachment 1). The adjacent properties (26 parcels share property boundaries) range in size from 1.5-acres to 40-acres, with a predominance of parcels that are approximately 5-acres or less in size.

Any amendment to the zoning ordinances requires that certain findings be made to insure compliance with the code. The following lists the three finding and provides a summary of the justifications to make all three findings.

1. The proposed amendment is consistent with and furthers the goals, objectives, policies and implementation measures of the General Plan and the provisions of the Code.
2. The proposed amendment will not be detrimental to the public interest, health, convenience or welfare of the County.
3. For General Plan land use map and zoning district map amendments, the site is physically suitable for the requested Plan designation(s) and zoning district(s) and anticipated land use development(s). Factors considered to evaluate suitability shall include access, provision of public facilities and utilities, compatibility with nearby land uses, and presence or absence of resources and constraints as found in the Resource Standards.

The proposed amendment sets up the process for the “roll-out” of 306 acres of TPZ-40 zoned land to become RA-10 and AG-30. There is no development proposal tied to this application at this time. Staff’s analysis has confirmed there are no conflicts between the proposed zone changes and the goals, objectives, policies and implementation measures of the General Plan.

The proposed zoning changes for parcels #1 and #2 will match the existing General Plan land use designations for 90% of the two parcels’ boundaries. In other words, the land use and associated residential density will now match the surrounding existing residential zoning. Low density, single-family residential is the dominant land use for most of the area surrounding parcels #1 and #2.

Currently the two parcels are served by three County roads; Red Dog Road, Banner Quaker Hill Road and Red Dog Cross Road. With a future development project, changes to circulation along with safe ingress/egress will be required of the projet design. The opportunity to develop an additional ingress/egress connector road that connects this area with the Greenhorn residential area, could provide an additional emergency escape route that does not exist today.

At such time, and, if a development application comes forward for these properties to subdivide, the applicant will be required to design a lay-out that considers clustering of development units to conserve open space, protect steep slopes and protect the riparian corridor

of Clipper Creek. The preparation of a Management Plans will be required to address oak woodlands, 30% or greater slopes and the riparian/creek corridor.

The project area is within County Service Area 16. The parcels are currently served by Nevada County Consolidated Fire District, Nevada County Sheriff, County road maintenance and improvement, Nevada City Schools and PG&E electrical service. Nevada Irrigation District water is available to serve future development within this area.

ENVIRONMENTAL REVIEW:

On April 13, 2018, the County, as lead agency, released a public review draft of the project specific Initial Study and proposed Negative Declaration (IS-ND) (EIS17-0030). The IS/ND was routed to several local, State and Federal agencies in addition to resident and special interest groups. The Draft IS-ND was available for public review from April 13, 2018 to May 2, 2018, at 5:00 p.m.

The Initial Study concluded there are no impacts that could result from the proposed legislative action to rezone 306 acres of TPZ-40 to RA-10 and AG-30. The IS-ND does recognize that if approved, the Rezone initiates a ten-year roll-out from the TPZ zone. At the end of the ten-year time period, if the applicant proposes to subdivide the property a discretionary approval and a CEQA document will be required to analyze any potential environmental impacts and identify mitigation measures to reduce impacts to a less than significant level.

The Nevada County Planning Commission held a public hearing May 10, 2018. Public comment was heard and the Planning Commission voted 4-0 to recommend approval to the Board of Supervisors to adopt the CEQA Negative Declaration and approve the TPZ Rezone for APNs 38-330-01 ,02, 03, 04, 87 & 86. One non-consequential amendment was made to the Initial Study Notice of Intent (NOI) and one to the Figure 1 Location Map in the Initial Study. These changes are reflected in the attached Resolution.

SUMMARY:

The findings and record in support of the Planning Commission's decision are found in the attached May 10, 2018 Planning Commission Staff Report, the May 10, 2018 Memorandum, and the May 10, 2018 Planning Commission Minutes (Attachments 3 and 4). Before taking action on this project, the Board should independently consider the Planning Commission's staff report, memorandum and meeting minutes with the discussion and reasoning presented in this report. Collectively, this information provides the reasons in support of approval of the Timber Production Zone (TPZ) Rezone.

RECOMMENDATION: Staff recommends the Board of Supervisors take the following

actions:

- I. Approve the attached Resolution (Attachment 1) for the project specific Negative Declaration (EIS17-0030) pursuant to the California Environmental Quality Act (CEQA) making Findings A-D.
 - A. That there is no substantial evidence in the record supporting a fair argument that the proposed project, might have any significant adverse impact on the environment; and
 - B. That the proposed Negative Declaration reflects the independent judgment of the Board of Supervisors;
 - C. Pursuant to Section 15073.5 of the CEQA Guidelines, recirculation of the project specific Initial Study/Negative Declaration (EIS17-0030) is not required as result of the new information added to correct a mistake regarding the proposed zoning of APN 38-330-86 in the Notice of Availability/Notice of Intent to Adopt a Negative Declaration (NOI/NOA) and Figure 1. Location and Vicinity Map of the Initial Study/Negative Declaration dated April 13, 2018 on page 3 of the Initial Study. The NOA/NOI and Initial Study/Negative Declaration have been amended to provide the accurate proposed zoning of General Agricultural 30-acre density minimums (AG-30) for APN 38-330-86 and the reference to RA-30 has been removed. This new information merely clarifies and makes insignificant modifications to the proposed Negative Declaration and because the rest of the document reflects the appropriate proposed zoning for APN: 38-330-86 recirculation is not required.
 - D. That the location and custodian of the documents which constitute the record of these proceedings is the Nevada County Planning Department, 950 Maidu Avenue, Nevada City, California.
- II. Adopt the Ordinance (Attachment 2) to amend Zoning District Map Nos 064a and 077, Timber Production Zone (TPZ) rezone (RZN17-0002) from TPZ-40 to RA-10 for APNs 38-330-01, 02, 03, 04, & 87 (152 acres) and TPZ-40 to AG-30 for APN 38-330-86 (154 acres) which will initiate the ten-year process to “roll-out” of TPZ making Findings A-E.
 - A. That the proposed amendment is consistent with and furthers the goals, objectives, policies, programs and implementation measures of the General Plan and the provisions of the Land Use and Development Code Chapter II Zoning Regulations, including Land Use and Development Code Section L-

- II 2.3 C.6.a, to allow for the TPZ zone ten-year roll-out to RA-10 and AG-30 on 306 acres currently bordered by RA and AG zoning; and
- B. The project site is physically suitable for the requested RA-10 and AG-30 zoning; and
 - C. That the proposed amendment for the project site will not conflict with uses and zoning that surround the subject parcels as the proposed zoning is consistent with those established uses; and
 - D. That the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the County; and
 - E. That the Nevada County Planning Commission after taking public testimony and deliberating on the project recommended that the Board of Supervisors adopt this Ordinance by a majority vote as required by Nevada County Land Use and Development Code Section L-II 5.9.E.

Please contact me should you require additional information or background.

Item Initiated by: Coleen Shade, Senior Planner

Approved by: Brian Foss, Planning Director