



July 13, 2012

Alameda County Planning Department  
224 West Winton Ave., Room 111  
Hayward, CA 94544

The Sierra Club provides the following comments on the Initial Study and Negative Declaration for the project: “General Plan Amendments to the East County Area Plan and Castro Valley Plan Regarding Allowable Floor Area Ratios (FARs) for Equine Breeding and Training Facilities.” The Sierra Club reserves the right to supplement these comments at future public hearings on this Project.

1. The Initial Study and Negative Declaration (ISND) is inadequate, and a full Environmental Impact Report must be prepared. The ISND projects that over 1.4 million square feet of additional buildings will be constructed and additional equestrian activities will be conducted owing to expansion of the allowable Floor Area Ratios (FAR) from 0.01 to 0.02. This additional development is projected to take place over 20 years and involve numerous separate projects. However, the ISND omits any analysis of the cumulative impacts of these additional projects and activities. The ISND assumes that individual proposals will be subject to Site Development Review, but this level of review does not consider the cumulative impacts of multiple individual proposals. As just one example, cumulative impacts from multiple new or expanded buildings could adversely affect scenic vistas and scenic resources, as well as produce substantial light and glare that cumulatively could adversely affect day or nighttime views. The Initial Study conclusion that this Project (i.e., the proposed General Plan Amendments) “COULD NOT have a significant effect on the environment” (p. 11, emphasis in the original) is therefore incorrect, and a CEQA analysis that considers cumulative impacts must be conducted. An Environmental Impact Report must be prepared.

2. The proposed general plan amendments would be available only to facilities that engage primarily in agricultural equine operations. However, many if not most equestrian facilities in the county are a mix of recreational and agricultural operations. The proposed definition of Commercial Breeding and Training of Horses, which states that a minimum of 50% of the horses maintained on the site “are categorized for breeding, in training for commercial sale, or for commercial livestock ranching,” is unworkable for this purpose. The county would no doubt rely on the statements of facility operators as to the nature of the horses maintained on site, and operators would clearly have an incentive to categorize horses as agricultural even if they were used for recreational purposes. Moreover, there is nothing in the proposed definition or policy that requires a facility owner to maintain a primarily agricultural operation after obtaining an expansion permit. Therefore, it is entirely reasonable to expect that many expanded facilities would become primarily recreational over time. Indeed, one can readily imagine a facility owner temporarily increasing the percentage of agricultural horses maintained on site from less than 50% to over 50%, obtain an expansion permit, and then revert to a primarily recreational operation, thus defeating the stated purpose of the amendments.

3. The ISND states that the proposed General Plan Amendments are consistent with Measure D passed by the voters in 2000. This is incorrect. The ISND claims that the amendments are necessary to create an internally consistent General Plan, and that Section 23 of Measure D allows such amendments without a vote of the people. However, the requirement for internal consistency applies to the policies of the General Plan in order that the policies do not conflict with each other leaving the county unable to consistently administer the plan. The requirement for internal consistency does not require that every policy support every goal of the plan. Indeed, there is inevitably going to be tension among the many goals of a general plan, and all policies cannot consistently support every goal. Even within Measure D there are multiple purposes--to enhance agriculture as well as to protect the natural qualities, wildlife habitats, and beautiful open spaces of the county. Despite this tension among goals and policies that support those goals, the policies of the Alameda County General Plan are internally consistent, and courts have found them so when developers sued the county to overturn Measure D on the basis of creating an internally inconsistent general plan. These amendments are not necessary to create an internally consistent general plan.

Moreover, Section 4 of Measure D is a specific provision that prohibits the proposed amendments (“In areas outside the County Urban Growth Boundary...the maximum floor areas and floor area ratios...may not be increased.”). Specific provisions of an initiative take precedence over general provisions, for example, those in Section 23 that allow “technical or nonsubstantive modifications” to be adopted by the Board of Supervisors for the purpose of “formal consistency.” Nor is a doubling of the Floor Area Ratio from 0.01 to 0.02 a nonsubstantive modification since it is projected to allow the development of 1.41 million square feet of additional non-residential buildings. These amendments are neither permitted (Section 4) nor do they fall under the very narrow exceptions provided for in Section 23.

If these amendments are to be made to Measure D, they must be adopted by the voters as required by California Elections Code Section 9125:

No ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance. In all other respects, an ordinance proposed by initiative petition and adopted shall have the same force and effect as any ordinance adopted by the board of supervisors.

Measure D, Section 23 (Amendments) states, “The provisions of this ordinance may be changed only by vote of the people of Alameda County, except the Board of Supervisors may impose further restrictions on development and use of land.” Plainly, this doubling of the Floor Area Ratio is not a further restriction on development and use of land.

Respectfully submitted,

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