

January 12, 2004

Kurt Lorenz  
Chairman  
Nevada County Planning Commission  
950 Maidu Avenue  
Nevada City, CA 95959

**RE: Amend Zoning Ordinance for limited development on 30+% slopes**

Dear Chairman Lorenz and Commissioners:

We have a variety of comments to offer on the proposed amendments of the Zoning Ordinance, with some pertaining to the draft as distributed before the January 8 Commission hearing, and some relative to the changes proposed at the January 8 hearing.

Although not a “change,” we call your attention to the introductory language found in existing Standard #1: ***Development, including access, shall be approved only when not within the defined areas, except as provided in this Section.*** Wouldn't a simpler way be: “Development, including access, located in steep slope or high erosion hazard areas, shall only be approved as provided in this Section.”

In making the comparison between existing and proposed, the wording presented a big challenge. Side by side comparisons can be very helpful when dealing with these kinds of changes. The intent is to easily identify the changes for the reader, so a better understanding can be gained. And a workshop before the March 11 return date might be useful. Just some thoughts for your consideration.....

The proposed amendment retains restrictive language found in the existing ordinance

- It only applies to 5 basic land uses: 1) utility trenching, 2) crop and tree planting, 3) water wells (only for onsite use), 4) sewage disposal system (only for onsite use), 5) single family home with driveway.
- It uses the cutoff date of October 12, 1981 to identify residential parcels subject to this regulation.
- It specifies that a grading permit is needed for a single family residence, and keeps other site-sensitive building standards (old 2b1-5) or Management Plan requirements (old 3a,b1-4).

**The proposed amendment adds NEW, more restrictive text or clarifies intent**

- It combines/deletes some of the uses defining “Limited Development” (old language: limited development = utility trenching, one single family residence, driveway access, sewage disposal system, construction, crop and tree planting, site access, water wells, placement of sewage disposal system “within the defined area”)(new language: limited development = utility trenching, crop and tree planting, water wells and sewage disposal systems on site).
- It provides a second choice for “utility trenching” based on amount of disturbance (old = obtain a grading permit)(new = obtain grading permit or prepare Erosion and Sediment Control Plan).
- It provides a different choice for “crop and tree planting” and “water well/sewage systems” based on amount of disturbance (old = Management Plan w/Erosion and Sediment Control Plan)(new = grading permit or Erosion and Sediment Control Plan).
- It restricts the parcel to only one primary residence (i.e. no second unit).  
*Perhaps some distinction could be made where a second unit would be permitted on a case-by case basis (i.e. specified parcel size/larger than x acres), with flatter area for home site, tying into existing utilities, etc.) ??? Since second units do not comprise a major contribution to the County’s housing supply, the added units would have “less than significant” impacts???*
- It requires all projects where a grading permit is required (for greater area of disturbance or residence) to submit a “design level geotechnical investigative report” covering specific topics.
- For projects operating under the terms of a Management Plan, the disturbance of steep slopes must now be “minimized to the greatest extent possible.”  
*Who defines “greatest extent”? Does an economic threshold come into play? Are we opening the door to arguments that 10 trees for screening need to be planted rather than 5???? This puts the burden of proof on the applicant to show that no additional mitigation could reduce disturbance further. That is a heavy burden and could be interpreted to cover a broad range of “disturbance” indicators – some objective and some subjective (i.e. vegetation, water quality, scenic view, and topographic character). Given all other conditions, is this necessary?*

**The proposed amendment is superior to the existing language**

Based on the proposed language requiring a multi-faceted geotech report for larger disturbed areas, and the blanket prohibition against a second unit, this language is superior to the existing regulation. Because impacts have been identified, and existing policy and the new requirements are proposed to offset any adverse health and safety or environmental “change,” the need for an EIR seems weak and unjustified.

1995 GP and 2000 Zoning Regulations do not outright prohibit the use of lots over 30% slope. The 1995 GP and 2000 Zoning Regulations do not outright prohibit the construction of a single family residence on a slope greater than 30+%. Had that been the case, the County would have been faced with numerous 5<sup>th</sup> Amendment “takings” lawsuits. Both the GP and implementing regs recognize that when you have no other choice, you can build a house on a 30+% slope, subject to a grading permit and other conditions.

Implementing regulations were written to minimize the resulting change. So that change in the landscape is a given. That “reality” was factored into the 1995 GP EIR and was not appealed.

Today’s discussion is a little different. We are dealing in the context where you have a choice – either build on the slope or build on the flatter area. We support this change for two main reasons: it gives the owner flexibility – choice – an option (possibly realizing the reason he or she bought the parcel in the first place), while strictly regulating the use from health/safety and environmental standpoints.

If you seek additional mitigation measures, we urge your restraint. Please consider these questions as you review proposed additional mitigation:

- Is it already covered by other zoning regs or policies?
- Is it the only way to address the known (not presumed) impact?
- Does it directly correlate to the known impact?
- Will it be effective at remedying the known problem?
- Is it based on site specific evidence?
- Will it harm the economic use of the land? (i.e. drives up the cost of modest sized home?)

#### **Additional Issues from 1/8/04 Hearing**

30% slope vs. other % – The gentleman with the Building Appeals Board raised this issue and I did not hear an answer to his question why “30%” was chosen by the County for this policy. What is the rationale for that number? Even if you choose not to discuss this (because of General Plan implications or staff shortage or other reason), please include this in your findings as worthy of future evaluation.

Number of Lots Affected – Although staff on Thursday night could not answer that question, I wonder what was done prior to the 1995 General Plan to determine the number. After all, these lots were created before October 1981, well before the 1995 GP. How was the topic covered for CEQA purposes in 1995? Keep in mind that a qualifier of at least 10% must be applied to any maximum number of lots identified – you will never see every lot developed. Is a “number” really required?

Establish a Trial/Annual Program - This suggestion deserves more discussion. It answers the general question: what kind of demand is present among property owners to build on their slopes (will only a few applications trickle in each year or more than two dozen)? Does a trial program create more problems than it solves? Will it give us information to better formulate policy? Please don’t dismiss this idea without more dialogue.

“Shall” to “May” – This change indicates that approval is not a sure thing for any parcel with 30+% slopes covered under the Zoning Ordinance. For all those owners who have no choice with residential siting on their property (i.e. all they have are 30+% slopes), the change could be ominous. Of all the originally proposed and newly proposed text pertaining to 30+% slopes, this change raises the red flag. From a property owner’s perspective, where there is no choice, what does this change mean? And from a property owner’s perspective, where there is a choice between using a slope or not, what does this change mean? Does the lack of certainty now mean that even if you dot all the “i’s” and cross all the “t’s,” your

application might still get rejected? Does it allow the County to deny “discretionary” homesites on 30% slopes, in essence granting the County a new power not inherent in the current policy? Is this unnecessarily making the County vulnerable to “takings” claims? No compelling reason has been provided why this change is needed. Also, this change is not made on Standard 1, which states, “Development, including access, shall be approved ...” Why the inconsistency? We request the original wording be kept throughout the text. If it becomes apparent that such a change is legally needed and unavoidable, then we ask that some criteria be suggested to indicate early on to the property owner when they might not get approval.

Visual Mitigation Measures 13A and 13B (per Staff Report Attachment 2/Neg Dec) – Are these “new” or “unique” measures for ridgeline preservation which represent a change in policy? If yes, please state such and evaluate them as either “minor” or “major” change, with supporting explanation. If the new measures are merely restating what is already County regulation, please reference the section number of the existing regulation.

Thank you for listening to our concerns. We look forward to your decision.

Sincerely,

Pat Davison  
Field Director

P.S. Thank you for continuing this agenda item!!!!