

CONCERNED RESIDENTS OF EDH HERITAGE VILLAGE

501(c)(3) nonprofit dedicated to education and protection seniors and environment

P.O. Box 4512 El Dorado Hills, California 95762

www.heritagecarsoncreek.com

November 11, 2024

Hon. Wendy Thomas, Chair
Hon. George Turnboo, Second Vice Chair
Hon. Lori Parlin
Hon. Brooke Laine
El Dorado County Board of Supervisors
330 Fair Lane, Building A
Placerville, California 95667

Re: File No. P-A24-0002
Appeal of Zoning Administrator Decision re: P22-0009
Carson Creek R&D Parcel Map

Honorable Members of the Board of Supervisors:

Thank you for your consideration of Concerned Residents of EDH Heritage Village recent appeal of the referenced Tentative Parcel Map and CEQA exemption. Although we had hoped for a different outcome, discussion during the course of the public hearing partially alleviated our concerns as described below.

Uses Allowed by Right in the R&D Zone. In 2023, El Dorado Hills residents were told repeatedly by the Project Frontier applicant and county officials that the proposed Amazon warehouse project was a use allowed by right in the R&D zone, except that the increased building height would require a Conditional Use Permit. After the Project Frontier application was withdrawn, the County issued a “Director’s Determination” (June 12, 2023) authorized under the Zoning Code to resolve ambiguities in the code.

The Director’s Determination found that ecommerce uses (fulfillment centers, heavy distribution and parcel hubs) are considered specialized industrial uses only allowed in Industrial Zones but not allowed in the R&D Zone. The Zoning Code section (130.20.030) authorizing the director to issue such interpretations to resolve ambiguities in the code required that an interpretation **shall be** incorporated into the text of the code within 12 months of the determination.

The owner of the Project Frontier site, Wynn Ridge Investments (“Wynn”), appealed the Director’s Determination. Wynn and the County entered into a Tolling Agreement during which Wynn agreed not to apply for an ecommerce use on the site, and the County agreed not to amend the Zoning Code to codify the interpretation. This led to confusion about whether the Director’s Determination would or would not be enforced as to properties other than the Project Frontier site.

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At the Appeal Hearing before your Board on October 8, 2024, Deputy County Counsel Jefferson Billingsley clarified that only the Project Frontier site is exempt from the Director's Determination under the terms of the Tolling Agreement, and the determination remains applicable to all other properties zoned R&D, including the Pac Realty property that was the subject of our appeal. This explanation by Mr. Billingsley helped to alleviate our concerns that we would face new ecommerce facilities on the lots created under the parcel map.

We agree with the analysis in the Director's Determination and Mr. Billingsley's conclusion that the Tolling Agreement applies only to the former Project Frontier Site. The Director's Determination relies on the text of the Zoning Code which clearly differentiates between uses allowed in the Industrial Heavy (IH), Industrial Light (IL) Zones and Research & Development (R&D) Zone. The code is clear that warehousing, trucking, and use types which may generate significant truck traffic, noise, pollution, etc., are confined to either IL or IH zones, and then often only permitted upon approval of a Conditional Use Permit. The R&D Zone, on the other hand, is characterized as a business park with offices, high technology and non-polluting manufacturing, not a location that supports extensive trucking activity of the type associated with major distribution facilities.

Ambiguity in Definition of Land Uses. Since the Project Frontier application, we have raised concerns that the Zoning Code is ambiguous and does not clearly describe uses allowed in the R&D Zone. The purpose of a zoning code is to regulate land use to protect the public health, safety and welfare. In order to regulate a use, it must first be defined or described.

Pac Realty has stated that parcels created under the new Parcel Map will be used for "wholesale distribution warehouses". This use is not found in the Zoning Code. Although a "Wholesale Storage and Distribution" use is listed, is unclear how those uses differ from ecommerce uses, making it difficult to determine if the developer's intended use of the property includes ecommerce elements that are prohibited under the Director's Interpretation in the R&D Zone.

At the start of the appeal hearing, Planning Director Garner clarified that the subject of the appeal was the Zoning Administrator's approval of a Tentative Parcel Map. Ms. Garner confirmed that the Parcel Map "does not approve any different development than what is already allowed by right through the R&D zoning..." it is "...simply putting lines on a map". Based upon her limitation of scope, the use described in the Initial Consultation P22-0009 Letter of April 10, 2023 "for industrial wholesale distribution buildings" is disregarded.

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Accordingly, we understand the CEQA exemption is also limited to the Tentative Parcel Map and does not address subsequent development activity. The 1992 Draft and Final Environmental Reports identify five objectives that serve as the foundation for the development of a business park with campus environment including a golf course as a primary objective. The 1994 Business Park Design Specifications identifies the location of that golf course on the PacTrust parcels. The DEIR also confirms that no biological or cultural assessments were conducted. With the more recent studies by HELIX Environmental Services for the Carson Creek Preserve wetlands identifying significant species of interest and special concern within the neighboring areas, an update to the 1992 EIR is appropriate and necessary.

Compliance with AB 98. Legislation signed by the Governor on September 29, 2024, imposes new planning and zoning standards on “logistics warehouse” uses and related trucking activity, in an effort to minimize impacts on “sensitive receptors” such as homes, schools, parks, hospitals and nursing homes located within 900 feet of the logistics use. The law is effective January 1, 2025, and the new standards become effective January 1, 2026. Cities and counties must also update their Circulation Elements by January 1, 2028 to identify truck routes for these uses.

The new law broadly defines a logistics use to include “A building in which, cargo, goods, or products are moved or stored for later distribution to businesses or retail customers, or both, that does not predominately serve retail customers for onsite purchases, and heavy-duty trucks are primarily involved in the movement of the cargo, goods, or products.” This definition is broader than the ecommerce uses described in the Director’s Determination and likely includes both Pac Realty’s planned “Wholesale Distribution Warehouse” and the generic “Wholesale Storage and Distribution” use identified in the Zoning Matrix.

Zoning Administrator’s Role. Title 120.52 – Parcel Maps Consistency: subpart II defines Minor Land Divisions as comprising 5 or less parcels. The parcel split into 16 parcels makes the current action a Major Land Division and, therefore, beyond the scope of the Zoning Administrator. Further, Title 130 Section 130.60.30 subsection B, the Zoning Administrator *may* transfer original hearing jurisdiction to the Commission at his/her discretion “when it is deemed necessary because of policy implications, unique or unusual circumstances, or the magnitude of a project.”

Current Construction. PacTrust is completing construction of four buildings under permits granted by the Planning Department as ministerial. The two warehouse-style buildings at the corner of Carson Crossing and Golden Foothills have a total footprint of nearly 150,000 sq/ft and include 12 and 13 loading docks/bays, respectively. The number of loading docks/bays raises concern that potential uses could involve logistics operations.

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Summary. During the appeal hearing, we learned that we are not alone in our concern about the zoning code ambiguity. Several Board members expressed their concern as well that the Zoning Code and the matrix are ambiguous and inadequately define certain uses, including the nature of warehousing uses allowed within the R&D Zone. The County has been aware of these problems since at least May of 2023. The County must now also consider the impact of AB 98 on its zoning code uses and development standards. Accordingly, we urge the Board to direct County staff to schedule the necessary review and clarification of the Zoning Code to avoid the probability of future litigation.

Very truly yours,

On behalf of the Board of Directors

George Steed, President-Emeritus

Rick Burgardt, President