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BOARD OF SUPERVISORS  
 2008 APR 21 A 9:31

April 16, 2008

Chairman Thomas Mayfield and Honorable Supervisors  
 1010 10th Street, Suite 6500  
 Modesto, CA 95354

Re: Impact of Measure E (SOS Initiative) on the Salida Area Planning Initiative

Dear Chairman Mayfield and Honorable Supervisors:

We have reviewed Mr. Dennis Jackman's letter dated February 29, 2008 sent to you and are concerned over his unsupported contention that the voter approval requirements of Measure E (the "SOS Initiative") apply to the approved Salida community plan. The SOS Initiative requires voter approval before the Stanislaus County Board of Supervisors can approve the redesignation or rezoning of land from an agricultural or open space use to a residential use during the next 30 years. The SOS Initiative was submitted to the County Elections Official on April 14, 2006. The voters approved the SOS initiative on February 5, 2008. The Stanislaus County Board of Supervisors declared the vote on March 4, 2008. Therefore, the SOS Initiative became effective 10 days thereafter on March 14, 2008.

In his letter, SOS Initiative supporter Dennis Jackman is asserting that the SOS Initiative's voter approval requirements apply to the development approved by the Salida Area Planning Initiative (the "Salida Initiative"). The Salida Initiative was adopted by the Board of Supervisors on August 7, 2007, well before the SOS Initiative became effective in March 2008. Thus, the SOS Initiative's voter approval requirements do not apply to development approved under the Salida Initiative.

**A. The Development Projects Protected by Development Agreements Approved Pursuant to the Salida Initiative Fall Within an Express Exemption to the SOS Initiative**

The development projects which have vested rights pursuant to Development Agreements approved through the Salida Initiative fall within an express exemption to the SOS Initiative's voter approval requirements. Such voter approval requirements do not apply to "[a]ny development project that has obtained a vested right pursuant to state law prior to the

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effective date of” the SOS Initiative. (SOS Initiative, § II.E.3.) The Salida Initiative included approval of Development Agreements. On August 7, 2007, the Board of Supervisors adopted the Salida Initiative ordinance and thereby approved the Development Agreements, which created vested rights to develop the projects pursuant to state law. These development rights, therefore, were vested prior to the effective date of the SOS Initiative, which was not approved by the voters and did not become effective until several months later in March 2008. Consequently, with respect to those properties subject to a Development Agreement, the Salida Initiative is exempt from the terms of the SOS Initiative.

**B. The SOS Initiative Cannot Interfere with the Development Project’s “Antecedent Rights”**

Even without this express exemption, the SOS Initiative does not apply retroactively to the Salida Initiative. A statute, or an initiative, will not be applied retroactively if it interferes with “antecedent rights” unless that was the clear intent of the text’s language or the clear intent of the legislature or voters. *Evangelatos v. Super. Ct.* (1988) 44 Cal. 3d 1188, 1207 (citing *U.S. v. Sec. Indus. Bank* (1982) 459 U.S. 70, 79-80). Antecedent rights are preexisting rights which existed before the initiative became effective. When the SOS Initiative became effective in March 2008, the vested development rights created under the Salida Initiative were preexisting or antecedent. Therefore, unless there is clear intent otherwise, the SOS Initiative cannot interfere with the Salida Initiative’s vested development rights. The SOS Initiative does not purport to interfere with vested development rights. To the contrary, the SOS Initiative clearly protects vested development rights in the express exemption discussed above.

**C. The SOS Initiative Applies Prospectively, Not Retrospectively**

Notwithstanding the vested rights exemption, initiatives normally operate prospectively, not retroactively. *Evangelatos*, 44 Cal. 3d at 1208. Municipal initiatives and statutes are governed by the same rules of construction. *C-Y Dev. Co. v. City of Redlands* (1982) 137 Cal. App. 3d 926, 929. In general, there is a strong presumption that statutes, and thus initiatives, are not meant to operate retrospectively unless the words used are “so clear, strong and imperative that no other meaning can be” given to them. *Yoshioka v. Super. Ct.* (1997) 58 Cal. App. 4th 972, 980 (citing *U.S. Fidelity Co. v. Struthers Wells Co.* (1908) 209 U.S. 306, 314). Since the SOS Initiative does not expressly state that it will apply retroactively, the courts will look to the voters’ intent by examining the initiative’s language in order to determine whether to apply the SOS Initiative retroactively. *Yoshioka*, 58 Cal.App.4th at 980. The United States Supreme Court has held that an initiative should never be applied retrospectively if the initiative’s language is susceptible to any other construction. *U.S. Fidelity Co.*, 209 U.S. at 314.

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**D. The SOS Initiative's Language Does Not Require Retroactivity**

The SOS Initiative purports to address retroactivity in two sections. First, Section III.B discusses the validity of General Plan amendments adopted between the date the SOS Initiative was submitted to the County Elections Official and the effective date of the SOS Initiative. The Salida Initiative amended the General Plan during this period by changing the development project land use designation to non-agricultural. However, Section III.B does not impact the Salida Initiative because the SOS Initiative only applies to land designated for agricultural or open space on the County's General Plan Land Use Map as of the effective date of the SOS Initiative. On the SOS Initiative's effective date, the Salida Initiative had already designated the development project land as non-agricultural. (SOS Initiative, § II.B)

Second, Section III.E purports to cover the situation in which the Board of Supervisors amends the General Plan after the effective date of the SOS Initiative, but prior to the SOS Initiative election. The SOS Initiative cites the California Elections Code's (the "Elections Code") definition of "effective date." (SOS Initiative, § F(4)). Under the Elections Code, if a majority of the voters vote in favor of the initiative vote, then the Board of Supervisors will declare the vote and the initiative's effective date is 10 days thereafter. Cal. Elec. Code § 9122. Therefore, it is impossible for the Board of Supervisors to ever amend the General Plan after the effective date, but prior to the election, because the effective date is always after the election.

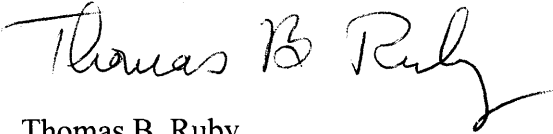
As mentioned above, "effective date" is a defined term within the SOS Initiative's text. Courts presume that the voters intended the "meaning apparent on the face of the initiative measure." *People v. Urziceanu* (2005) 132 Cal. App. 4th 747, 768 citing (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal. 4th 294, 301). Courts "may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language." *Id.* Therefore, "effective date" shall have the meaning apparent on the face of the SOS Initiative as defined in Section F(4). Consequently, "effective date" shall mean 10 days after the Board of Supervisors declared the SOS Initiative vote, March 14, 2008, not some earlier date.

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**E. Dennis Jackman's Arguments Fail**

In light of the above, Dennis Jackman's assertion, in his February 29, 2008, letter to the Stanislaus County Board of Supervisors, that the SOS Initiative requires voter approval for the General Plan amendment approved as part of the Salida Initiative must fail. Consequently, the Salida Initiative does not require voter approval to be consistent with the General Plan.

Sincerely,



Thomas B. Ruby

cc: John P. Doering  
Clients