

EDC supes disagree on Measure E implementation

By Joann Eisenbrandt

PLACERVILLE – El Dorado County Board of Supervisors on Aug. 30 voted 4-1 not to adopt a resolution to aid in the implementation of Measure E. Supervisor Shiva Frentzen dissented.

After a contentious and often bitter election process, Measure E was approved by voters on June 7 and became the law July 29. It then became the Board of Supervisors' responsibility to implement Measure E as the voters intended. This task has proven to be challenging.

Measure E focuses on the relationship between development and traffic, most specifically the prevention of traffic gridlock on Highway 50 and other county roads caused by large residential development projects. It isn't a new idea, but rather it reinstates some of the provisions of Measure Y, the Control Traffic Congestion Initiative passed by voters in 1998. Measure Y prohibited residential development projects of five or more units that would cause or worsen level of service (LOS) F on county roadways. It also required developers to pay fees to mitigate the impacts of their developments and prohibited the county from using tax revenues to mitigate these traffic impacts without voter approval.

In 2008, the Board of Supervisors put forward a revised Measure Y initiative that was again approved by voters. It allowed the board to override the prohibition against developments that created LOS F by a four-fifths vote of the board and allowed the use of tax revenues as payment for road improvements caused by new development as long as these road projects were in the county's long-range capital improvement

program.

Measure E, titled by proponents as Initiative to Reinstate Measure Y's Original Intent – no more paper roads, reversed the changes to Measure Y made in 2008 and made other additions and deletions to related policies in the county's 2004 General Plan.

The battle over Measure E did not end when it became law. On July 29, the day it was certified, it was challenged in court. A writ of mandate to stop implementation of Measure E was filed in El Dorado County Superior Court by the Alliance for Responsible Planning. Also known as EDCARP, the nonprofit focuses on land use issues and played a large role in the vocal, organized opposition to Measure E during the campaign.

Their writ alleges that Measure E is invalid because it is internally inconsistent and cannot be implemented in a way that is consistent with the policies and goals of the General Plan and of state law. It seeks a temporary restraining order and a permanent injunction to prevent El Dorado County and the Board of Supervisors from enforcing it.

While the writ works its way through the judicial process, the county has moved forward with determining how Measure E, which is now a part of the county's General Plan, will interact with existing policies and how it will affect the approval of future development projects.

County planning staff and the county counsel's office have met with Measure E's proponents to discuss the process. Staff prepared a 96-page memo for the board, which was reviewed at the special board meeting on Measure E on Aug. 9.

The length of the memo made it clear that implementing Measure E would not be a simple process. It identified what it called "potential legal conflicts, ambiguities, and internal inconsistencies relative to Measure E's language," and proposed ways to identify the voters' intent, resolve any

conflicts and implement Measure E in a way that was consistent with existing policies, regulations and laws.

On Tuesday, staff presented the board with a draft resolution for adoption that it believed did just that.



Measure E could affect future development because one of its main goals is preventing traffic gridlock. Photo/LTN

Of all the changes made by Measure E, two have been the focus of the most discussion and dissent. The first is the change in how the impacts of increased traffic created as a result of development projects are mitigated. Measure E no longer allows discretionary projects to be built and money from the county's TIM (traffic impact mitigation) fee program or other funding to simply go into the county's long-range capital improvement plan (CIP) to pay for needed road improvements at some later date.

These are the "paper roads" that Measure E wanted to eliminate. Even though projects were approved and built, the actual road improvements needed to offset the increased traffic they generated were only there on paper in the CIP.

Instead, Measure E requires that, "All necessary road capacity improvements shall be fully completed to prevent cumulative traffic impacts from new development from reaching level of service F during peak hours upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of the county before any form of discretionary approval can be given to a project."

Opponents of Measure E called this a "taking of property" and a "de facto moratorium on building" which will not only affect developers, but will also prevent small local projects that require county approval from being built.

There are two kinds of projects: ministerial and discretionary. Ministerial projects are those that meet all the planning requirements based on their location and zoning and only need to apply for and receive the appropriate permits, pay the required fees and proceed. Discretionary projects cannot be built by right as designed at the selected location because they need a zoning change or some type of General Plan amendment. Discretionary projects are reviewed by the county and then approved by planning staff, the Planning Commission or the Board of Supervisors.

Measure E only applies to discretionary projects, and only to those that worsen or create LOS F.

LOS is the other term that is important and the other place where implementing Measure E gets sticky.

Level of service is a scale that describes roadway traffic conditions with levels of congestion ranging from A to F. Level A represents unrestricted free-flowing traffic at normal speeds and Level F is gridlock. Caltrans and the county's Department of Transportation measure traffic flow and make LOS determinations. The problem is that they often disagree. Which data is used is important because LOS F will trigger the infrastructure-building requirements of Measure E and LOS C or

D or E will not.

Measure E requires that the county use Caltrans' calculations to determine the LOS existing on Highway 50. At this week's board meeting, Dave Defanti, assistant director of the Community Development Agency, gave a detailed analysis of how the county determines LOS and why staff believes its methodology and figures are correct.

During public comment Don Van Dyke spoke on behalf of the Measure E Committee and handed a printout of slides to the board explaining the proponents' view that not just volume of cars, but also speed and density need to be included for LOS calculations to be correct.

Frentzen said that those actually using the roadway frequently experience the level of congestion as much worse than what the DOT calculations say the LOS is. She expressed concern that all this "fighting with Caltrans" is counterproductive.

"What if Caltrans wants to improve roads because they are LOS F and we say, no, they are really LOS C," Frentzen said. "In the end the county will be losing."

The calculation of LOS is a vital component of Measure E. Initiative proponent Sue Taylor told *Lake Tahoe News*, "It is the backbone of our initiative. We don't want gridlock on our freeways."

Former El Dorado County Supervisor Bill Center noted that this issue has gone on unresolved for years and expressed the hope that proponents and county DOT traffic engineers could meet to reach some common ground. He likened the differing viewpoints to the case of three blind men describing an elephant. The one who is holding the tail says it is like a rope. The one who is touching the leg says it is like a tree, and the one touching its side says it is like a wall. None of them is wrong; they are just not feeling what the other ones have felt so they can't come to an agreement.

Deciding how to implement Measure E has turned out to be much like that. The resolution presented to the board on Aug. 30 was intended as a way to allow everyone to see the entire elephant.

Staff proposed an interpretation of the change made by Measure E to General Plan policy TC-Xa 3 mandating that all infrastructure must be built before a discretionary project creating LOS F could be approved. If applied literally, it would be the “de facto building moratorium” that opponents had pointed to since it would be almost impossible for any individual or group to be able or agree to fund all the required improvements even before their project was approved.

Staff interpreted this policy in conjunction with General Plan Policy TC-Xf, which says that at the time a tentative map for a single-family residential subdivision of five or more parcels is approved, the county will condition that project to construct all road improvements necessary to maintain or attain LOS standards. This would mean that developers whose projects would worsen or create LOS F would not have to build the improvements before approval, but that a condition of that approval would still be the construction of the needed infrastructure. Projects built in phases would be able to also construct roadway improvements in phases as they became mandated.

Taylor told *Lake Tahoe News* before the election that the initiative’s intent was not to prohibit all discretionary approvals. “We want to give the board a way to say no to projects that are not compatible where they are proposed to be located.”

The hearing room in Building C at the Government Center on Tuesday was standing-room only, packed with proponents and opponents of Measure E. The meeting, scheduled on the agenda for one hour, lasted more than three.

During the public comment session, former El Dorado County supervisor Jack Sweeney and Lexi Boeger of Boeger Winery both urged that the draft resolution not be adopted. As each of them spoke, a contingent of supporters in the room rose, silently holding up signs that said, "We stand with Jack" and "We stand with Lexi."

Craig Sandberg and Norm Brown, both representatives of development interests, spoke in support of the resolution, as did Measure E proponent Taylor. Taylor told the supervisors that she was "on board with the resolution" as long as discussions to resolve the LOS traffic levels issue continue either informally or through formation of a committee. "People have filed a lawsuit against Measure E," she told the board, "and it is the county's job to defend this measure."

County Planning Director Roger Trout explained how the draft resolution was much like what was done by the board in 1998 in interpreting Measure Y and applying it to development projects coming forward.

Supervisor Michael Ranalli, who missed the Aug. 9 meeting because of a family emergency, said he appreciated staff's efforts but, "I have some serious issues with what we are doing here ... what we have here is not an interpretation, but a rewrite."

Ranalli said more discussion was needed on the impacts of Measure E on the county's Housing Element and budget. Opponents of Measure E had raised concerns about how it would affect the county's ability to meet state requirements with regard to the General Plan's Housing Element. The state requires the county to accommodate a designated portion of regional affordable housing needs and must have enough buildable land available to fulfill those needs. Opponents said Measure E would render too many needed parcels unbuildable.

Referring to the county's interpretation of Measure E in the staff memo and resolution, Ranalli added, "What was before the voters was a measure that said give the board tools to stop big projects. What we have before us does not stop big projects. It also said no paper roads, you cannot mitigate the impacts with fees, but now we have fees."

He suggested that instead of adopting the Draft Resolution, it would be better to, "let the courts sort out what the voters voted for."

Board Chairman Ron Mikulaco agreed, saying that not only were parts of Measure E "as clear as mud" and a challenge to interpret but the draft resolution that county staff had presented was also vague.

Frentzen disagreed. "This is a very simple problem. Let's just implement it to make our county better. The voters have spoken. They have voted. If this goes to court, are we going to put all the projects on hold? We need to move forward. Let's avoid litigation from at least one side. We have the other side litigating us and they want us to go down this path."

The other litigation that Frentzen referred to is that which would come if Measure E were left to stand on its own, without interpretation by the board. Developers whose projects were denied because they could not afford to build roadway improvements upfront would sue the county, saying that Measure E as written was a de facto moratorium on building and thereby illegal.

Chief Assistant County Counsel David Livingston noted that there is potentially conflicting language within the measure itself. It is, he said, the board's duty to interpret those potentially-ambiguous provisions just like the board did earlier for Measure Y. What staff presented in their memo followed direction by the courts that voter-approved

initiatives be interpreted and implemented in a way that is consistent with voters' intent and in a way that insures their validity. The draft resolution up for approval by the board is consistent with this obligation under the law. What staff has recommended, he stated, would be consistent with the eventual outcome of any court proceedings brought to challenge the initiative.

County Counsel Michael Ciccozzi told the board, "Measure E is now part of our General Plan. It is this board's charge to interpret its General Plan and the courts give great deference to the county's interpretation of its own General Plan."

The board had two choices. They could either approve the draft resolution presented by staff and the interpretations of Measure E it contained while continuing discussions on the Highway 50 traffic levels issue. Or, it could reject the resolution and allow Measure E to stand uninterpreted in its actual language. Each choice would have very different consequences.

Planning Director Trout noted that staff is already processing applications with Measure E and along the guidelines as outlined in the draft resolution. If the board takes a different path, he added, it might "experience heartburn" when these projects come forward since there may then be conflicts they are not expecting.

Supervisor Ranalli said that he was, "for moving the initiative forward in its current form and current language and standing on that." He said he could not, "get past the clear intentions of the voters ... we are not on a path that supports what was in front of the voters."

Ranalli moved that the board receive and file the Measure E implementation documents presented and continue the resolution off calendar. The report presented on the Caltrans highway traffic calculations would also be received and filed and a

copy made available to the public on the county's website. Staff was directed to return in mid-October with more information on some of Measure E's potential impacts on the county's Housing Element and budget and a list of potential inconsistencies. Staff was directed to conduct board workshops to address the traffic circulation issues. The voter-approved Measure E was to be moved forward as written and as it was before the voters. Supervisor Brian Veerkamp seconded the motion.

Frentzen stated that, "If we just push this forward, then we are not implementing Measure E." She moved to adopt and authorize the chair to sign Resolution 149-2016 and direct staff to work on the inconsistencies of the traffic interpretation of the level of service on county roadways. The motion died for lack of a second. Ranalli's motion passed 4-1, with Frentzen dissenting.

Trout again told the board that he had been implementing Measure E since July 29, "almost exactly as you have seen it in the resolution and the Aug. 9 staff report . If you want something different, I want you to come back with a resolution to that effect. It is such a dramatic impact to impose a de facto moratorium, I want it done under your approval, not mine."

Asked after the meeting by *Lake Tahoe News* for her reaction to the board's decision, Taylor said, "We had heard that the opposition to Measure E had lobbied the Board of Supervisors to not allow county counsel and staff to create policy in which they could implement Measure E. The thinking was that doing so would make the Measure more vulnerable in court. It looked like Supervisor Ranalli decided to take that direction by stating, "Let the judge decide." This leaves county staff in a difficult position of determining the board's wishes for each project on a case by case basis. Even developers that agreed with the staff's recommendations in order to have clarity, felt that they were not afforded that with this

motion.”