



CALAVERAS COUNTY BOARD OF SUPERVISORS AGENDA SUBMITTAL

ITEM TITLE Continued Public Hearing under Chapter 17.98 of the County Code granting Appeals 2011-022 through 2011-027 from the Planning Commission's grant of Appeal 2011-0147 from a Planning Department decision regarding firearm target or shooting ranges in the M2 zoning district; Coe Shooting Center Appeal:		BOARD MEETING DATE August 23, 2011	AGENDA NUMBER 17
Dept: Contact: Phone:	Planning Department Darcy Goulart, Planner III 754-6394	Supervisory District Number 2	Consent Regular <u> X </u>
Published Notice Required? Public Hearing Required?	Yes <u> X </u> No _____ Yes <u> X </u> No _____	Estimated Time: 1 hour	
() Power Point Presentation			
(X) 6 Resolutions () Ordinance () Minute Order () Agreement			
() Budget Transfer (Must be signed by Auditor)			
() Other			
Dept. Head <i>R. White</i>	Counsel <i>A. Elliott</i>	CAO <i>Shuley</i>	

RECOMMENDATION:

Staff recommends that the Board of Supervisors adopt six resolutions granting Appeals 2011-022 through 2011-027 overturning the previous Planning Commission decision granting Appeal 2011-014 from a Planning staff decision.

DISCUSSION/SUMMARY:

At the July 26, 2011 meeting, the Board directed staff (4-0-1) to prepare the required resolutions overturn the June 16, 2011 Planning Commission decision and grant the appeals with the exception of the Foothill Fire Protection District, which has been withdrawn (Attachment 1). Per this direction, staff has prepared a resolution for each appeal, which is included as Attachments 2 – 7 of this supplemental staff report.

The appellants, project proponent and various members of the audience spoke for and against the appeals. Issues such as public noticing and the need for a CUP to address noise, lighting, safety and the environment were discussed as part of the public hearing. There were also various questions and/or statements raised during the public hearing that warrants a response. The questions or statements are summarized in bold type and followed by the staff response.

Is the Planning Commission decision binding on the Board of Supervisors?

Response: The Board of Supervisors is the final decision making body for the County. The Planning Commission's decision was appealed to the Board of Supervisors under Section 17.98.040 of the County Code, Appeals of Planning Commission. Once an appeal was filed, the Planning Commission's decision was no longer final and the Board of Supervisors was not bound by the decision. Section 17.98.050 provides that the decision of the Board is the final decision and an appeal from that decision is undertaken by filing the appropriate litigation in court.

Statements were made during the appeal hearing that the following projects or events were illegal, did not undergo County environmental review or were the subject of unequal interpretation of the County zoning code or code compliance: Bridlewood Equestrian Facility, with reference in part to onsite rentals similar to a KOA facility; Snyder's Pow Wow; Transient Occupancy Rentals at Lake Tulloch; and events at Ironstone Vineyards.

Response: Staff and counsel believe these statements are inaccurate. The following is additional information on each location named in the hearing:

- ***Bridlewood Equestrian Facility:*** On August 19, 2002, Bridlewood Equestrian Facility was granted a Zoning Amendment and Conditional Use Permit after approval of a Mitigated Negative Declaration. The Conditional Use Permit expressly authorizes use of the property for transient occupancy purposes: Condition of Approval II-12 – The twelve Guest Cottages shall have no kitchens or cooking facilities. The Cottages shall be limited to transient occupancy for guests using the onsite facilities for equine related uses. Staff is unaware of any code compliance issues with this facility.
- ***Snyder's Pow Wow:*** This is an annual land use event that predates adoption of the County's applicable zoning code. Zoning is not retroactive and any legal land use that is in existence at the time of adoption of a zoning code or amendments to a zoning code is considered a non-conforming legal land use. See Calaveras County Code, Section 17.92.010 - "Land use existing prior to the effective date of this title" which provides: The lawful use of land and structures thereon existing on the effective date of the ordinance codified in this title, or amendments thereto, may be continued although such use does not conform to the provisions of this title. If such use is discontinued for a period of one year, any future use of such land or structures thereon will require approval as set forth in Section 17.92.020 of this chapter, except for the following reasons: discontinuance for a period of one year due to destruction of structures for which a building permit for repairs or replacements cannot be reasonably issued in that one-year period; discontinuance for a period of one year due to acts of terrorism or acts of God. (Ord. 2859 § 3(part), 2005; Ord. 1812 § 1(part), 1986). Snyder's Pow Wow is a legal non-conforming event per the above County Code Section that requires no approval from the County.

- **Lake Tulloch vacation rentals:** Homes in and around the Lake Tulloch area (and in other parts of the County) are being used as vacation rentals for rentals of less than 30 days. This use in the Lake Tulloch area occurs in the R1 or Single Family Residential Zoning District. Staff and counsel recently reviewed this issue again and conclude that this use is legal although the Board has the discretionary authority to prohibit or regulate this use. Until the Board takes action to prohibit or regulate the use, staff believes commercial transient occupancy rentals of homes in the R1 zoning district is legal based on constitutional principles. Regulation of transient occupancy uses of single family residential homes must comply with the principles set forth in *Ewing v. City of Carmel-By-the-Sea* (1991) 234 Cal.App.3d 1579 [zoning ordinances must focus on the use of the property rather than the users as inquiry into who uses the property is suspect and may violate constitutional principles]. There was also a statement referring to the County's collection of transient occupancy tax for these rentals. TOT collection is separate from land use regulation and the Revenue and Taxation Code does not exempt the owner of a single-family residential dwelling from the requirement to collect and remit the TOT tax regardless of what the property is zoned. TOT is based on transient occupancy use of 30 days or less, not zoning.
- **Ironstone Vineyards:** Reference was also made to the concerts at Ironstone Vineyards. This issue involves the number and scope of events and not whether the events are a permitted or conditional use in the property's zoning district, as the events are not a permanent use of the property. There is a code compliance file on this property and code compliance has been working with the property owner and the former Planning Director to interpret the zoning code requirements applicable to the events and other related legal issues between the property owner and the County.

What if the County entered into an agreement with the property owner memorializing the property owner's offer to voluntarily comply with certain conditions of operation?

Response: The suggestion of a voluntary agreement was offered in an effort to give the County enforcement authority and therefore provide protection for the neighbors. However, the County is prohibited from approving a use not allowed in a zoning district through a development agreement or any other type of agreement as this would violate Government Code section 65852.1, which states that zoning regulations must be "uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones." *Neighbors in Support of Appropriate Land Use v. Tuolumne County* (2007) 157 Cal.App.4th 997 [development agreement authorizing a commercial use on agriculturally zoned property that was not a permitted use in that zoning district] was illegal. In the Tuolumne County case, the court held that a development agreement does not offer a way to create an exemption from the zoning ordinance. The main purpose of a development agreement is to vest the developer's rights under regulations existing at the time of the agreement, not to create an exemption from those regulations. The County is only authorized to rezone the property to a district allowing the use or to amend the text of the zoning

ordinance to allow the use in the existing district, not to contractually allow a use subject to conditions.

Diane Kindermann of Abbott & Kindermann, LLP, legal counsel for the project proponent, submitted a letter at the hearing that argues that interpretation of the M-2 zoning ordinance is not a project under CEQA as the interpretation “does not result in a physical change to the environment and is exempt under the provision excluding ‘general policy and procedure making’ from the definition of ‘project’”.

Response: The letter cites to two cases in support of this argument, neither of which are applicable to the issue before the Board. In the *Wollmer v. City of Berkeley* case, the city approved use permits and zoning variances for a mixed-use development project consisting of residential units and retail commercial space. The project included an award of density bonus residential units under the state Density Bonus Law. The city also approved a mitigated negative declaration for the project. One of the issues in the litigation was whether the city attorney’s interpretation of the state Density Bonus Law, as codified into a city ordinance, was a “de facto” amendment of the city ordinance and thus a project under CEQA. The court held that the city attorney’s memo about interpretation of the state law was not a change in policy that amended the local ordinance and was therefore not a project under CEQA. This case is distinguishable for two reasons. First, the project that was approved by interpretation and application of the local ordinance had been reviewed under CEQA and approved with a MND. Second, interpretation and application of the local ordinance did not grant a new use entitlement into the code at issue. The use itself was already a use authorized by the ordinance. It was the scope of the use that was at issue. Here, interpretation of the ordinance to permit target shooting ranges as a permitted use in the M-2 zoning district throughout the county is a new entitlement that may result in a physical change to the environment as a result of the interpretation. The interpretation does amend the zoning district to include a new permitted use without any environmental review of the impacts of adding that use throughout the county.

The other case, *Northwood Homes v. Town of Moraga* involved a citizen sponsored ballot initiative that amended the town’s open space element to prohibit a particular development and repealed the entitlements previously granted to that development. The developer sued the town when it refused to continue processing the final subdivision map approvals for the development. The developer also challenged the town’s guidelines that were developed to implement the ballot initiative on the grounds that the guidelines had not undergone CEQA review. The court held that the guidelines were not subject to CEQA review because an initiative measure is expressly exempted from the definition of a project under CEQA (CEQA Guidelines, § 15378, subd. (b)(4)). Adoption of guidelines to implement the initiative was no more than a procedural implementation (e.g., definitions of terms, application procedures) of the land use decisions reflected in the initiative, which was itself an enactment exempt from CEQA. The general policy and procedure making exemption was based on the initiative exemption from the definition of a project under CEQA. The *Northwood Homes* case does not hold that interpretation of an existing ordinance is exempt from CEQA and its holding is limited to the fact that there was an initiative adopted by the voters, a fact missing here.

CEQA defines a project as the “whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” and includes the amendment of zoning ordinances and the grant to a person of an entitlement for use. A project does not include “organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment”, CEQA Guidelines, section 15378. The grant of authority to the planning director to interpret the zoning code to allow uses as a permitted use when that use is not expressly listed in the zoning district is a grant of entitlement for that use. Here, it is also reasonably foreseeable that as a result of that grant of entitlement, a target shooting range will be constructed and operated on the Coe property, which is a direct physical change to the environment. That interpretation is in effect an amendment to the zoning code that requires environmental review. Staff recommends for that reason alone that when Title 17 is amended to conform to the updated General Plan, this language and similar language in other zoning districts (including similar decision making authority granted to the Planning Commission in some zones) be deleted from Title 17.

Counsel’s letter then argues that interpretation of the code is a ministerial act because the county cannot shape the potential shooting range and impose mitigation measures (note that the letter refers to the research and design facility also but that facility is not part of this issue as the target shooting range is proposed as a standalone project). Ministerial actions are defined as “a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards of objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.” CEQA Guidelines, section 15369. A discretionary project is “a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances or regulations, CEQA Guidelines, section 15357. Here, the planning director is granted the authority to decide whether an industrial use is similar to other permitted uses in the zone. This decision involves personal judgment and the exercise of discretion in determining similarities and there is no standard that is so fixed and objective as to eliminate the need for judgment and deliberation on the planning director’s part. Interpretation of the code also includes the decision to not include a target shooting range as a permitted use, which in effect, does shape the way in which the project moves forward for approval.

Counsel’s letter incompletely cites to the Mountain Lion Foundation v. Fish & Game Commission case. The quote on page 7 of counsel’s letter should have included the whole quote as follows:

The statutory distinction between discretionary and purely ministerial projects implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an EIR, or its functional equivalent, environmental review would be a meaningless exercise. (Cf. Friends of Westwood,

Inc. v. City of Los Angeles, supra, 191 Cal.App.3d at p. 267, 235 Cal.Rptr. 788.) Thus, ministerial projects “involv[e] little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.” (Guidelines, § 15369.) By contrast, a discretionary project is one which “requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity.” (Guidelines, *118 § 15357; see Miller v. City of Hermosa Beach (1993) 13 Cal.App.4th 1118, 1138–1142, 17 Cal.Rptr.2d 408 [applying these definitions to decide whether city's building permit process was subject to CEQA].)

The Mountain Lion Foundation court concluded that the commission's decision to delist the Mojave Ground squirrel from the threatened species list was subject to CEQA because the applicable statutes and guidelines provided that the commission “may” delist a species. The court held that “may” was an exercise of discretion. Here, the code provides the planning director “may” make a decision, which vests that decision with discretion subject to CEQA.

FINANCING:

There is no cost to the General Fund.

ALTERNATIVES:

Another option would be for the project proponent to apply for various discretionary entitlements to operate a public firearm target or shooting range on the subject parcel. Previously, staff had suggested a rezone to Recreation for portions of the project site. However, upon further review of language in the General Plan, Recreation would not be a consistent zoning designation with the current land use of Future Single Family Residential. General Agriculture (A1) is a resource zone that is consistent in any land use designation. The following discretionary entitlements could be applied for and processed all at once for the proposed shooting range:

- Zoning Amendment (ZA) to General Agriculture (A1) for the portion of land to be used as a public shooting range.
- Tentative Parcel Map (TPM) to divide off the land to be utilized for the public shooting range.
- Administrative Use Permit (AUP) for the operation of the public shooting range facility.

Similar to a conditional use permit, the AUP would place conditions and/or performance standards upon the use that would be enforced by the County through the discretionary process. Typically an AUP is an administrative permit requiring approval by only the Planning Director. A TPM only requires approval by the Planning Commission. However, the action of the rezone requires the approval of the Board of Supervisors.

Upon receiving a recommendation from the Planning Commission, the Board would be the appropriate authority to act on the TPM and AUP. This alternative would eliminate the need for a General Plan Amendment and would also require the project to go through the environmental review process, pursuant to the CEQA Guidelines.

Alternatively, many of the proposed uses of the property as detailed in various documents provided to the County and to neighbors are not permitted or conditional uses under the property's existing zoning. Mixed-use projects are generally better suited for a specific plan detailing the various uses and proposed zoning codes that are consistent with the specific plan. An example of such a mixed use project is Copper Town Square. The project proponent may want to consider addressing long-term uses of the property through a specific plan.

OTHER AGENCY INVOLVEMENT:

None

ATTACHMENTS:

- Attachment 1 Foothill Fire Protection District withdraw letter
- Attachment 2 Draft Approval Resolution for 2011-022 Pamela Rogers Appeal
- Attachment 3 Draft Approval Resolution for 2011-023 Lora Most Appeal
- Attachment 4 Draft Approval Resolution for 2011-024 Watertown Rd. Residents Appeal
- Attachment 5 Draft Approval Resolution for 2011-025 Ron & JS Randall Appeal
- Attachment 6 Draft Approval Resolution for 2011-026 Pat Pereira Appeal
- Attachment 7 Draft Approval Resolution for 2011-027 Joseph Bechelli Appeal
- Attachment 8 Email from Tom Garcia to Janis Elliott, dated February 23, 2011

ATTACHMENT 1

Foothill Fire Protection District withdraw letter



FOOTHILL FIRE PROTECTION DISTRICT

August 1, 2011

Board of Supervisors
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

Re; Appeal COE Shooting Range

Honorable Members of the Board

Let it be known that the Foothill Fire Protection District has been heard regarding the above project and is officially withdrawing its Appeal to the issuance of a Grading Permit for the Coe Shooting Range; Although our protest has been heard and consequently withdrawn by the District our concerns still remain in regards to the yet to be determined scope of this plan. It is common knowledge that this may be the initial stage of a much larger endeavor. To that end, Foothill Fire Protection District requests that it be notified, as early as possible, of any changes beyond the initial grading activity. Furthermore, we request that the District be notified of all building and business changes occurring within our jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Siligo".

Michael D. Siligo
Fire Chief

Cc: FFPD Board of Directors
Darcy Goulart, Planning Dept.

RECEIVED

AUG 03 2011

Calaveras County
Community Development Agency
 Building Planning OSS

ATTACHMENT 2

Resolution for 2011-022 Pamela Rogers Appeal

1 BOARD OF SUPERVISORS, COUNTY OF CALAVERAS

2 STATE OF CALIFORNIA

3 August 23, 2011

4
5 RESOLUTION No. _____

6
7 A RESOLUTION GRANTING APPEAL 2011-22 OF PAMELA ROGERS OF THE PLANNING
8 COMMISSION'S GRANT OF APPEAL 2011-014 FROM A PLANNING STAFF DECISION
9 REGARDING FIREARM TARGET OR SHOOTING RANGES IN THE M2 ZONING DISTRICT

10 WHEREAS, on April 20, 2011, the Planning Department issued a written
11 decision to Thomas Coe regarding whether a firearm target or shooting range was a permitted
12 use on the Coe property, APN 48-002-068; and

13 WHEREAS, the Planning Department's decision was that the property was
14 zoned M2 and a firearm target or shooting range was not a permitted use in the M2 zoning
15 district; and

16 WHEREAS, on May 2, 2011, Mr. Coe filed an appeal of the Planning
17 Department's decision, Appeal 2011-14, to the Planning Commission under Calaveras County
18 Code Section 17.98.030; and

19 WHEREAS, Mr. Coe's appeal was based in part on interpretation of Calaveras
20 County Code Section 17.42.020 C, General Industrial (M2) Zone, Permitted uses, which
21 provides: "the planning director may determine that industrial uses similar to the uses
22 enumerated in this section are consistent with this section", and Mr. Coe's argument that the
23 former Planning Director, George White, had made a determination that the proposed firearm
24 target or shooting range was an industrial use similar to the enumerated permitted uses in the
25 M2 zoning district; and

26 WHEREAS, on June 2, 2011 and June 16, 2011, the Planning Commission held
27 a noticed public hearing on Mr. Coe's Appeal 2011-14 and granted the appeal based on the
28 findings in Planning Commission Resolution No. 2011-036; and

WHEREAS, on June 30, 2011, Pamela Rodgers filed this appeal of the Planning
Commission's grant of Appeal 2011-14 under Calaveras County Code Section 17.98.040,
Appeal 2011-22- to the Board of Supervisors as the final decision making body of the County;
and

WHEREAS, on July 26, 2011, the Board of Supervisors held a noticed public
hearing on Appeal 2011-22 and other appeals filed from the Planning Commission grant of
Appeal 2011-14; and

WHEREAS, the Board of Supervisors took testimony from the appellants, the

1 project proponent and members of the public and closed the public hearing and directed staff
2 to prepare findings to support a grant of Appeal 2011-22 and continued discussion of those
3 findings to August 23, 2011; and

4 WHEREAS, on August 23, 2011, the Board of Supervisors held a noticed public
5 hearing and reopened the public hearing to take testimony on the proposed findings only.

6 NOW THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the
7 County of Calaveras does hereby grant Appeal 2011-22, Pamela Rogers, from Planning
8 Commission Resolution No. 2011-036, granting Appeal 2011-14 from the Planning
9 Department's decision based on the following findings:

10 FINDINGS:

- 11 1. Finding: The project has been determined to be subject to environmental review under the
12 California Environmental Quality Act pursuant to §15378 (a)(3).

13 Evidence: The interpretation of the zoning code by the Planning Director under Section
14 17.42.030 E. is a project subject to CEQA review. An interpretation of the ordinance to
15 permit target shooting ranges as a permitted use in the M-2 zoning district throughout the
16 County is a new entitlement that may result in a physical change to the environment as a
17 result of the interpretation. The interpretation broadens the permitted uses in Section
18 17.42.020, to include a new permitted use without any environmental review of the
19 potential impacts of adding that use throughout the County. Furthermore, the need for
20 CEQA review is also based upon the findings set forth in the Discussion/Summary section
21 of the August 23, 2011 staff report which is incorporated herein in its entirety.

- 22 2. Finding: Prior to the April 20, 2011 Planning Department written decision, there was no
23 planning director decision within the scope of Section 17.42.020 C authorizing the use of
24 the property as a stand alone shooting center.

25 Evidence: The project proponents contend that the former Planning Director, George
26 White made a decision that use of their property as a public firearm target or shooting
27 range was a permitted use in the M2 zoning district. Their emails stating their position
28 were forwarded to Mr. White, who responded by email that he did not make such a
decision. A copy of Mr. White's email was included in the July 26, 2011 Board packet and
is incorporated herein by reference. Mr. White stated that he discussed the issue with the
project proponents and asked them to submit their proposal in writing for a determination.
Tom Garcia, Public Works Director was also at the meeting and was asked separately and
independently of Mr. White to respond to the same emails from the project proponent. A
copy of Mr. Garcia's response is included as Attachment 8 to the Board packet and
incorporated herein by reference. Mr. Garcia's response also states that the project
proponents were told to submit a proposal with their specific development project so that
the departments could review the proposal and respond.

3. Finding: No building or structure shall be constructed, nor any land use commenced,
enlarged or altered unless it is permitted in the zone in which the land is located (County
Code 17.04.010).

1 Evidence: The parcel where the actual shooting range would be located is currently zoned
2 M-2 (General Industrial). Under the M-2 zoning classification a standalone firearm target
3 or shooting range is not listed as a permitted or conditionally permitted use. The Planning
4 Director is authorized to determine that "industrial" uses similar to those enumerated in the
5 M2 zone (and the incorporated by reference uses in the M-1 zone) are consistent uses.
6 The M-2 classification does not list a similar permitted or conditionally permitted use that
7 would allow a firearm target or shooting range to operate and be open for use by the
8 public or private organizations. Also "industry" is defined as "the manufacture, fabrication,
9 processing, reduction or assembly of any article, substance or commodity which results in
10 a new product from the original materials." Section 17.06.1020. Manufacturing is defined
11 as "the production of a product by hand of machine." Section 17.06.1200. A firearm target
12 or shooting range does not meet the definition of an industrial or manufacturing use (the
13 purpose of the M2 zone) as there is no manufacturing, fabrication, processing or assembly
14 into a new product associated with use of the property as a firearm target or shooting
15 range.

16 Evidence: "Target shooting organizations' are defined in Section 17.06.1852 as "the use of
17 property with stationary or mobile targets are provided for repetitive firing of projectiles for
18 target practice by an organization. These provisions do not apply to strictly private uses".
19 The proposed firearm target or shooting range falls within this definition and is not a strictly
20 private use. This use is included as a conditional use in the GF, TP, A1, AP, and REC
21 zones (Sections 17.12.030 P; 17.14.030 I; 17.16.04.030 B(4)(f); 17.18.030.B(4)(e);
22 17.46.030B(16)). This use is not included as a permitted or conditional use in the M-2
23 zone and the conclusion is that the Board of Supervisors knew how to define and include
24 the use in one zone but not another.

25 4. Finding: A firearm target or shooting range should be subject to a use permit.

26 Evidence: Testimony during the public hearing included concerns from neighbors
27 regarding noise and safety issues associated with use of the property, or any property in
28 the county zoned M2 as a shooting range. Conditions of approval and/or mitigation
measures are necessary to address these concerns and any other concerns or possible
significant physical impact as a result of a specific proposed project. A use permit would
provide the county the ability to condition a proposed project and a mechanism to enforce
those conditions. Interpreting the M2 zoning district to include a firearm target or shooting
range as a permitted use would not address these concerns. Most other counties also
require these types of facilities to have a use permit.

29 PASSED AND ADOPTED by the Board of Supervisors of the County of Calaveras on a
30 motion by Supervisor _____ and seconded by Supervisor _____
31 _____ at a regular meeting held on the 23rd day of August, 2011, by the following
32 vote of said Board:

33 AYES:

34 NOES:

35 ABSENT:

36 ABSTAIN:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chair, Board of Supervisors
County of Calaveras

ATTEST:

County Clerk and Ex-Officio Clerk of
the Board of Supervisors

ATTACHMENT 3

Resolution for 2011-023 Lora Most Appeal

1 BOARD OF SUPERVISORS, COUNTY OF CALAVERAS

2 STATE OF CALIFORNIA

3 August 23, 2011

4
5 RESOLUTION No. _____

6
7 A RESOLUTION GRANTING APPEAL 2011-23 OF LORA MOST OF THE PLANNING
8 COMMISSION'S GRANT OF APPEAL 2011-014 FROM A PLANNING STAFF DECISION
9 REGARDING FIREARM TARGET OR SHOOTING RANGES IN THE M2 ZONING DISTRICT

10 WHEREAS, on April 20, 2011, the Planning Department issued a written
11 decision to Thomas Coe regarding whether a firearm target or shooting range was a permitted
12 use on the Coe property, APN 48-002-068; and

13 WHEREAS, the Planning Department's decision was that the property was
14 zoned M2 and a firearm target or shooting range was not a permitted use in the M2 zoning
15 district; and

16 WHEREAS, on May 2, 2011, Mr. Coe filed an appeal of the Planning
17 Department's decision, Appeal 2011-14, to the Planning Commission under Calaveras County
18 Code Section 17.98.030; and

19 WHEREAS, Mr. Coe's appeal was based in part on interpretation of Calaveras
20 County Code Section 17.42.020 C, General Industrial (M2) Zone, Permitted uses, which
21 provides: "the planning director may determine that industrial uses similar to the uses
22 enumerated in this section are consistent with this section", and Mr. Coe's argument that the
23 former Planning Director, George White, had made a determination that the proposed firearm
24 target or shooting range was an industrial use similar to the enumerated permitted uses in the
25 M2 zoning district; and

26 WHEREAS, on June 2, 2011 and June 16, 2011, the Planning Commission held
27 a noticed public hearing on Mr. Coe's Appeal 2011-14 and granted the appeal based on the
28 findings in Planning Commission Resolution No. 2011-036; and

WHEREAS, on June 30, 2011, Lora Most filed this appeal of the Planning
Commission's grant of Appeal 2011-14 under Calaveras County Code Section 17.98.040,
Appeal 2011-23 to the Board of Supervisors as the final decision making body of the County;
and

WHEREAS, on July 26, 2011, the Board of Supervisors held a noticed public
hearing on Appeal 2011-23 and other appeals filed from the Planning Commission grant of
Appeal 2011-14; and

WHEREAS, the Board of Supervisors took testimony from the appellants, the

1 project proponent and members of the public and closed the public hearing and directed staff
2 to prepare findings to support a grant of Appeal 2011-23 and continued discussion of those
findings to August 23, 2011; and

3 WHEREAS, on August 23, 2011, the Board of Supervisors held a noticed public
4 hearing and reopened the public hearing to take testimony on the proposed findings only.

5 NOW THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the
6 County of Calaveras does hereby grant Appeal 2011-23, Lora Most, from Planning
7 Commission Resolution No. 2011-036, granting Appeal 2011-14 from the Planning
Department's decision based on the following findings:

8 FINDINGS:

- 9
10 1. Finding: The project has been determined to be subject to environmental review under the
California Environmental Quality Act pursuant to §15378 (a)(3).

11 Evidence: The interpretation of the zoning code by the Planning Director under Section
12 17.42.030 E. is a project subject to CEQA review. An interpretation of the ordinance to
13 permit target shooting ranges as a permitted use in the M-2 zoning district throughout the
County is a new entitlement that may result in a physical change to the environment as a
14 result of the interpretation. The interpretation broadens the permitted uses in Section
17.42.020, to include a new permitted use without any environmental review of the
15 potential impacts of adding that use throughout the County. Furthermore, the need for
CEQA review is also based upon the findings set forth in the Discussion/Summary section
16 of the August 23, 2011 staff report which is incorporated herein in its entirety.

- 17 2. Finding: Prior to the April 20, 2011 Planning Department written decision, there was no
18 planning director decision within the scope of Section 17.42.020 C authorizing the use of
the property as a stand alone shooting center.

19 Evidence: The project proponents contend that the former Planning Director, George
20 White made a decision that use of their property as a public firearm target or shooting
range was a permitted use in the M2 zoning district. Their emails stating their position
21 were forwarded to Mr. White, who responded by email that he did not make such a
decision. A copy of Mr. White's email was included in the July 26, 2011 Board packet and
22 is incorporated herein by reference. Mr. White stated that he discussed the issue with the
project proponents and asked them to submit their proposal in writing for a determination.
23 Tom Garcia, Public Works Director was also at the meeting and was asked separately and
independently of Mr. White to respond to the same emails from the project proponent. A
24 copy of Mr. Garcia's response is included as Attachment 8 to the Board packet and
incorporated herein by reference. Mr. Garcia's response also states that the project
25 proponents were told to submit a proposal with their specific development project so that
the departments could review the proposal and respond.
26

- 27 3. Finding: No building or structure shall be constructed, nor any land use commenced,
28 enlarged or altered unless it is permitted in the zone in which the land is located (County
Code 17.04.010).

1 Evidence: The parcel where the actual shooting range would be located is currently zoned
2 M-2 (General Industrial). Under the M-2 zoning classification a standalone firearm target
3 or shooting range is not listed as a permitted or conditionally permitted use. The Planning
4 Director is authorized to determine that "industrial" uses similar to those enumerated in the
5 M2 zone (and the incorporated by reference uses in the M-1 zone) are consistent uses.
6 The M-2 classification does not list a similar permitted or conditionally permitted use that
7 would allow a firearm target or shooting range to operate and be open for use by the
8 public or private organizations. Also "industry" is defined as "the manufacture, fabrication,
9 processing, reduction or assembly of any article, substance or commodity which results in
10 a new product from the original materials." Section 17.06.1020. Manufacturing is defined
11 as "the production of a product by hand of machine." Section 17.06.1200. A firearm target
12 or shooting range does not meet the definition of an industrial or manufacturing use (the
13 purpose of the M2 zone) as there is no manufacturing, fabrication, processing or assembly
14 into a new product associated with use of the property as a firearm target or shooting
15 range.

10 Evidence: "Target shooting organizations' are defined in Section 17.06.1852 as "the use of
11 property with stationary or mobile targets are provided for repetitive firing of projectiles for
12 target practice by an organization. These provisions do not apply to strictly private uses".
13 The proposed firearm target or shooting range falls within this definition and is not a strictly
14 private use. This use is included as a conditional use in the GF, TP, A1, AP, and REC
15 zones (Sections 17.12.030 P; 17.14.030 I; 17.16.04.030 B(4)(f); 17.18.030.B(4)(e);
16 17.46.030B(16)). This use is not included as a permitted or conditional use in the M-2
17 zone and the conclusion is that the Board of Supervisors knew how to define and include
18 the use in one zone but not another.

16 4. Finding: A firearm target or shooting range should be subject to a use permit.

17 Evidence: Testimony during the public hearing included concerns from neighbors
18 regarding noise and safety issues associated with use of the property, or any property in
19 the county zoned M2 as a shooting range. Conditions of approval and/or mitigation
20 measures are necessary to address these concerns and any other concerns or possible
21 significant physical impact as a result of a specific proposed project. A use permit would
22 provide the county the ability to condition a proposed project and a mechanism to enforce
23 those conditions. Interpreting the M2 zoning district to include a firearm target or shooting
24 range as a permitted use would not address these concerns. Most other counties also
25 require these types of facilities to have a use permit.

22 PASSED AND ADOPTED by the Board of Supervisors of the County of Calaveras on a
23 motion by Supervisor _____ and seconded by Supervisor ____
24 _____ at a regular meeting held on the 23rd day of August, 2011, by the following
25 vote of said Board:

25 AYES:

26 NOES:

27 ABSENT:

28 ABSTAIN:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chair, Board of Supervisors
County of Calaveras

ATTEST:

County Clerk and Ex-Officio Clerk of
the Board of Supervisors

ATTACHMENT 4

Resolution for 2011-024 Watertown Rd. Residents Appeal

1 BOARD OF SUPERVISORS, COUNTY OF CALAVERAS

2 STATE OF CALIFORNIA

3 August 23, 2011

4
5 RESOLUTION No. _____

6
7 A RESOLUTION GRANTING APPEAL 2011-24 OF WATERTOWN RD. RESIDENTS OF
8 THE PLANNING COMMISSION'S GRANT OF APPEAL 2011-014 FROM A PLANNING
9 STAFF DECISION REGARDING FIREARM TARGET OR SHOOTING RANGES IN THE M2
10 ZONING DISTRICT

11 WHEREAS, on April 20, 2011, the Planning Department issued a written
12 decision to Thomas Coe regarding whether a firearm target or shooting range was a permitted
13 use on the Coe property, APN 48-002-068; and

14 WHEREAS, the Planning Department's decision was that the property was
15 zoned M2 and a firearm target or shooting range was not a permitted use in the M2 zoning
16 district; and

17 WHEREAS, on May 2, 2011, Mr. Coe filed an appeal of the Planning
18 Department's decision, Appeal 2011-14, to the Planning Commission under Calaveras County
19 Code Section 17.98.030; and

20 WHEREAS, Mr. Coe's appeal was based in part on interpretation of Calaveras
21 County Code Section 17.42.020 C, General Industrial (M2) Zone, Permitted uses, which
22 provides: "the planning director may determine that industrial uses similar to the uses
23 enumerated in this section are consistent with this section", and Mr. Coe's argument that the
24 former Planning Director, George White, had made a determination that the proposed firearm
25 target or shooting range was an industrial use similar to the enumerated permitted uses in the
26 M2 zoning district; and

27 WHEREAS, on June 2, 2011 and June 16, 2011, the Planning Commission held
28 a noticed public hearing on Mr. Coe's Appeal 2011-14 and granted the appeal based on the
findings in Planning Commission Resolution No. 2011-036; and

WHEREAS, on June 30, 2011, Watertown Rd. Residents filed this appeal of the
Planning Commission's grant of Appeal 2011-14 under Calaveras County Code Section
17.98.040, Appeal 2011-24 to the Board of Supervisors as the final decision making body of
the County; and

WHEREAS, on July 26, 2011, the Board of Supervisors held a noticed public
hearing on Appeal 2011-24 and other appeals filed from the Planning Commission grant of
Appeal 2011-14; and

1 WHEREAS, the Board of Supervisors took testimony from the appellants, the
2 project proponent and members of the public and closed the public hearing and directed staff
3 to prepare findings to support a grant of Appeal 2011-24 and continued discussion of those
4 findings to August 23, 2011; and

5 WHEREAS, on August 23, 2011, the Board of Supervisors held a noticed public
6 hearing and reopened the public hearing to take testimony on the proposed findings only.

7 NOW THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the
8 County of Calaveras does hereby grant Appeal 2011-24, Watertown Rd. Residents, from
9 Planning Commission Resolution No. 2011-036, granting Appeal 2011-14 from the Planning
10 Department's decision based on the following findings:

11 FINDINGS:

- 12 1. Finding: The project has been determined to be subject to environmental review under the
13 California Environmental Quality Act pursuant to §15378 (a)(3).

14 Evidence: The interpretation of the zoning code by the Planning Director under Section
15 17.42.030 E. is a project subject to CEQA review. An interpretation of the ordinance to
16 permit target shooting ranges as a permitted use in the M-2 zoning district throughout the
17 County is a new entitlement that may result in a physical change to the environment as a
18 result of the interpretation. The interpretation broadens the permitted uses in Section
19 17.42.020, to include a new permitted use without any environmental review of the
20 potential impacts of adding that use throughout the County. Furthermore, the need for
21 CEQA review is also based upon the findings set forth in the Discussion/Summary section
22 of the August 23, 2011 staff report which is incorporated herein in its entirety.

- 23 2. Finding: Prior to the April 20, 2011 Planning Department written decision, there was no
24 planning director decision within the scope of Section 17.42.020 C authorizing the use of
25 the property as a stand alone shooting center.

26 Evidence: The project proponents contend that the former Planning Director, George
27 White made a decision that use of their property as a public firearm target or shooting
28 range was a permitted use in the M2 zoning district. Their emails stating their position
were forwarded to Mr. White, who responded by email that he did not make such a
decision. A copy of Mr. White's email was included in the July 26, 2011 Board packet and
is incorporated herein by reference. Mr. White stated that he discussed the issue with the
project proponents and asked them to submit their proposal in writing for a determination.
Tom Garcia, Public Works Director was also at the meeting and was asked separately and
independently of Mr. White to respond to the same emails from the project proponent. A
copy of Mr. Garcia's response is included as Attachment 8 to the Board packet and
incorporated herein by reference. Mr. Garcia's response also states that the project
proponents were told to submit a proposal with their specific development project so that
the departments could review the proposal and respond.

3. Finding: No building or structure shall be constructed, nor any land use commenced,
enlarged or altered unless it is permitted in the zone in which the land is located (County
Code 17.04.010).

1 Evidence: The parcel where the actual shooting range would be located is currently zoned
2 M-2 (General Industrial). Under the M-2 zoning classification a standalone firearm target
3 or shooting range is not listed as a permitted or conditionally permitted use. The Planning
4 Director is authorized to determine that "industrial" uses similar to those enumerated in the
5 M2 zone (and the incorporated by reference uses in the M-1 zone) are consistent uses.
6 The M-2 classification does not list a similar permitted or conditionally permitted use that
7 would allow a firearm target or shooting range to operate and be open for use by the
8 public or private organizations. Also "industry" is defined as "the manufacture, fabrication,
9 processing, reduction or assembly of any article, substance or commodity which results in
10 a new product from the original materials." Section 17.06.1020. Manufacturing is defined
11 as "the production of a product by hand of machine." Section 17.06.1200. A firearm target
12 or shooting range does not meet the definition of an industrial or manufacturing use (the
13 purpose of the M2 zone) as there is no manufacturing, fabrication, processing or assembly
14 into a new product associated with use of the property as a firearm target or shooting
15 range.

16 Evidence: "Target shooting organizations' are defined in Section 17.06.1852 as "the use of
17 property with stationary or mobile targets are provided for repetitive firing of projectiles for
18 target practice by an organization. These provisions do not apply to strictly private uses".
19 The proposed firearm target or shooting range falls within this definition and is not a strictly
20 private use. This use is included as a conditional use in the GF, TP, A1, AP, and REC
21 zones (Sections 17.12.030 P; 17.14.030 I; 17.16.04.030 B(4)(f); 17.18.030.B(4)(e);
22 17.46.030B(16)). This use is not included as a permitted or conditional use in the M-2
23 zone and the conclusion is that the Board of Supervisors knew how to define and include
24 the use in one zone but not another.

25 4. Finding: A firearm target or shooting range should be subject to a use permit.

26 Evidence: Testimony during the public hearing included concerns from neighbors
27 regarding noise and safety issues associated with use of the property, or any property in
28 the county zoned M2 as a shooting range. Conditions of approval and/or mitigation
measures are necessary to address these concerns and any other concerns or possible
significant physical impact as a result of a specific proposed project. A use permit would
provide the county the ability to condition a proposed project and a mechanism to enforce
those conditions. Interpreting the M2 zoning district to include a firearm target or shooting
range as a permitted use would not address these concerns. Most other counties also
require these types of facilities to have a use permit.

PASSED AND ADOPTED by the Board of Supervisors of the County of Calaveras on a
motion by Supervisor _____ and seconded by Supervisor ____
_____ at a regular meeting held on the 23rd day of August, 2011, by the following
vote of said Board:

AYES:

NOES:

ABSENT:

ABSTAIN:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chair, Board of Supervisors
County of Calaveras

ATTEST:

County Clerk and Ex-Officio Clerk of
the Board of Supervisors

ATTACHMENT 5

Resolution for 2011-025 Ron & JS Randall Appeal

1 BOARD OF SUPERVISORS, COUNTY OF CALAVERAS

2 STATE OF CALIFORNIA

3 August 23, 2011

4
5 RESOLUTION No. _____

6
7 A RESOLUTION GRANTING APPEAL 2011-25 OF RON & JS RANDALL OF THE
8 PLANNING COMMISSION'S GRANT OF APPEAL 2011-014 FROM A PLANNING STAFF
9 DECISION REGARDING FIREARM TARGET OR SHOOTING RANGES IN THE M2
10 ZONING DISTRICT

11 WHEREAS, on April 20, 2011, the Planning Department issued a written
12 decision to Thomas Coe regarding whether a firearm target or shooting range was a permitted
13 use on the Coe property, APN 48-002-068; and

14 WHEREAS, the Planning Department's decision was that the property was
15 zoned M2 and a firearm target or shooting range was not a permitted use in the M2 zoning
16 district; and

17 WHEREAS, on May 2, 2011, Mr. Coe filed an appeal of the Planning
18 Department's decision, Appeal 2011-14, to the Planning Commission under Calaveras County
19 Code Section 17.98.030; and

20 WHEREAS, Mr. Coe's appeal was based in part on interpretation of Calaveras
21 County Code Section 17.42.020 C, General Industrial (M2) Zone, Permitted uses, which
22 provides: "the planning director may determine that industrial uses similar to the uses
23 enumerated in this section are consistent with this section", and Mr. Coe's argument that the
24 former Planning Director, George White, had made a determination that the proposed firearm
25 target or shooting range was an industrial use similar to the enumerated permitted uses in the
26 M2 zoning district; and

27 WHEREAS, on June 2, 2011 and June 16, 2011, the Planning Commission held
28 a noticed public hearing on Mr. Coe's Appeal 2011-14 and granted the appeal based on the
findings in Planning Commission Resolution No. 2011-036; and

WHEREAS, on June 30, 2011, Ron & JS Randall filed this appeal of the
Planning Commission's grant of Appeal 2011-14 under Calaveras County Code Section
17.98.040, Appeal 2011-25 to the Board of Supervisors as the final decision making body of
the County; and

WHEREAS, on July 26, 2011, the Board of Supervisors held a noticed public
hearing on Appeal 2011-25 and other appeals filed from the Planning Commission grant of
Appeal 2011-14; and

1 WHEREAS, the Board of Supervisors took testimony from the appellants, the
2 project proponent and members of the public and closed the public hearing and directed staff
3 to prepare findings to support a grant of Appeal 2011-25 and continued discussion of those
findings to August 23, 2011; and

4 WHEREAS, on August 23, 2011, the Board of Supervisors held a noticed public
5 hearing and reopened the public hearing to take testimony on the proposed findings only.

6 NOW THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the
7 County of Calaveras does hereby grant Appeal 2011-25, Ron & JS Randall, from Planning
8 Commission Resolution No. 2011-036, granting Appeal 2011-14 from the Planning
Department's decision based on the following findings:

9 FINDINGS:

- 10 1. Finding: The project has been determined to be subject to environmental review under the
11 California Environmental Quality Act pursuant to §15378 (a)(3).

12 Evidence: The interpretation of the zoning code by the Planning Director under Section
13 17.42.030 E. is a project subject to CEQA review. An interpretation of the ordinance to
14 permit target shooting ranges as a permitted use in the M-2 zoning district throughout the
15 County is a new entitlement that may result in a physical change to the environment as a
16 result of the interpretation. The interpretation broadens the permitted uses in Section
17 17.42.020, to include a new permitted use without any environmental review of the
potential impacts of adding that use throughout the County. Furthermore, the need for
CEQA review is also based upon the findings set forth in the Discussion/Summary section
of the August 23, 2011 staff report which is incorporated herein in its entirety.

- 18 2. Finding: Prior to the April 20, 2011 Planning Department written decision, there was no
19 planning director decision within the scope of Section 17.42.020 C authorizing the use of
the property as a stand alone shooting center.

20 Evidence: The project proponents contend that the former Planning Director, George
21 White made a decision that use of their property as a public firearm target or shooting
22 range was a permitted use in the M2 zoning district. Their emails stating their position
23 were forwarded to Mr. White, who responded by email that he did not make such a
24 decision. A copy of Mr. White's email was included in the July 26, 2011 Board packet and
25 is incorporated herein by reference. Mr. White stated that he discussed the issue with the
26 project proponents and asked them to submit their proposal in writing for a determination.
27 Tom Garcia, Public Works Director was also at the meeting and was asked separately and
independently of Mr. White to respond to the same emails from the project proponent. A
copy of Mr. Garcia's response is included as Attachment 8 to the Board packet and
incorporated herein by reference. Mr. Garcia's response also states that the project
proponents were told to submit a proposal with their specific development project so that
the departments could review the proposal and respond.

- 28 3. Finding: No building or structure shall be constructed, nor any land use commenced,
enlarged or altered unless it is permitted in the zone in which the land is located (County
Code 17.04.010).

1 Evidence: The parcel where the actual shooting range would be located is currently zoned
2 M-2 (General Industrial). Under the M-2 zoning classification a standalone firearm target
3 or shooting range is not listed as a permitted or conditionally permitted use. The Planning
4 Director is authorized to determine that "industrial" uses similar to those enumerated in the
5 M2 zone (and the incorporated by reference uses in the M-1 zone) are consistent uses.
6 The M-2 classification does not list a similar permitted or conditionally permitted use that
7 would allow a firearm target or shooting range to operate and be open for use by the
8 public or private organizations. Also "industry" is defined as "the manufacture, fabrication,
9 processing, reduction or assembly of any article, substance or commodity which results in
10 a new product from the original materials." Section 17.06.1020. Manufacturing is defined
11 as "the production of a product by hand of machine." Section 17.06.1200. A firearm target
12 or shooting range does not meet the definition of an industrial or manufacturing use (the
13 purpose of the M2 zone) as there is no manufacturing, fabrication, processing or assembly
14 into a new product associated with use of the property as a firearm target or shooting
15 range.

16 Evidence: "Target shooting organizations' are defined in Section 17.06.1852 as "the use of
17 property with stationary or mobile targets are provided for repetitive firing of projectiles for
18 target practice by an organization. These provisions do not apply to strictly private uses".
19 The proposed firearm target or shooting range falls within this definition and is not a strictly
20 private use. This use is included as a conditional use in the GF, TP, A1, AP, and REC
21 zones (Sections 17.12.030 P; 17.14.030 I; 17.16.04.030 B(4)(f); 17.18.030.B(4)(e);
22 17.46.030B(16)). This use is not included as a permitted or conditional use in the M-2
23 zone and the conclusion is that the Board of Supervisors knew how to define and include
24 the use in one zone but not another.

25 4. Finding: A firearm target or shooting range should be subject to a use permit.

26 Evidence: Testimony during the public hearing included concerns from neighbors
27 regarding noise and safety issues associated with use of the property, or any property in
28 the county zoned M2 as a shooting range. Conditions of approval and/or mitigation
measures are necessary to address these concerns and any other concerns or possible
significant physical impact as a result of a specific proposed project. A use permit would
provide the county the ability to condition a proposed project and a mechanism to enforce
those conditions. Interpreting the M2 zoning district to include a firearm target or shooting
range as a permitted use would not address these concerns. Most other counties also
require these types of facilities to have a use permit.

PASSED AND ADOPTED by the Board of Supervisors of the County of Calaveras on a
motion by Supervisor _____ and seconded by Supervisor _____
_____ at a regular meeting held on the 23rd day of August, 2011, by the following
vote of said Board:

AYES:

NOES:

ABSENT:

ABSTAIN:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chair, Board of Supervisors
County of Calaveras

ATTEST:

County Clerk and Ex-Officio Clerk of
the Board of Supervisors

ATTACHMENT 6

Resolution for 2011-026 Pat Pereira Appeal

1 BOARD OF SUPERVISORS, COUNTY OF CALAVERAS

2 STATE OF CALIFORNIA

3 August 23, 2011

4
5 RESOLUTION No. _____

6
7 A RESOLUTION GRANTING APPEAL 2011-26 OF PAT PEREIRA OF THE PLANNING
8 COMMISSION'S GRANT OF APPEAL 2011-014 FROM A PLANNING STAFF DECISION
9 REGARDING FIREARM TARGET OR SHOOTING RANGES IN THE M2 ZONING DISTRICT

10 WHEREAS, on April 20, 2011, the Planning Department issued a written
11 decision to Thomas Coe regarding whether a firearm target or shooting range was a permitted
12 use on the Coe property, APN 48-002-068; and

13 WHEREAS, the Planning Department's decision was that the property was
14 zoned M2 and a firearm target or shooting range was not a permitted use in the M2 zoning
15 district; and

16 WHEREAS, on May 2, 2011, Mr. Coe filed an appeal of the Planning
17 Department's decision, Appeal 2011-14, to the Planning Commission under Calaveras County
18 Code Section 17.98.030; and

19 WHEREAS, Mr. Coe's appeal was based in part on interpretation of Calaveras
20 County Code Section 17.42.020 C, General Industrial (M2) Zone, Permitted uses, which
21 provides: "the planning director may determine that industrial uses similar to the uses
22 enumerated in this section are consistent with this section", and Mr. Coe's argument that the
23 former Planning Director, George White, had made a determination that the proposed firearm
24 target or shooting range was an industrial use similar to the enumerated permitted uses in the
25 M2 zoning district; and

26 WHEREAS, on June 2, 2011 and June 16, 2011, the Planning Commission held
27 a noticed public hearing on Mr. Coe's Appeal 2011-14 and granted the appeal based on the
28 findings in Planning Commission Resolution No. 2011-036; and

WHEREAS, on June 30, 2011, Pat Pereira filed this appeal of the Planning
Commission's grant of Appeal 2011-14 under Calaveras County Code Section 17.98.040,
Appeal 2011-26 to the Board of Supervisors as the final decision making body of the County;
and

WHEREAS, on July 26, 2011, the Board of Supervisors held a noticed public
hearing on Appeal 2011-26 and other appeals filed from the Planning Commission grant of
Appeal 2011-14; and

WHEREAS, the Board of Supervisors took testimony from the appellants, the

1 project proponent and members of the public and closed the public hearing and directed staff
2 to prepare findings to support a grant of Appeal 2011-26 and continued discussion of those
3 findings to August 23, 2011; and

4 WHEREAS, on August 23, 2011, the Board of Supervisors held a noticed public
5 hearing and reopened the public hearing to take testimony on the proposed findings only.

6 NOW THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the
7 County of Calaveras does hereby grant Appeal 2011-26, Pat Pereira, from Planning
8 Commission Resolution No. 2011-036, granting Appeal 2011-14 from the Planning
9 Department's decision based on the following findings:

10 FINDINGS:

- 11 1. Finding: The project has been determined to be subject to environmental review under the
12 California Environmental Quality Act pursuant to §15378 (a)(3).

13 Evidence: The interpretation of the zoning code by the Planning Director under Section
14 17.42.030 E. is a project subject to CEQA review. An interpretation of the ordinance to
15 permit target shooting ranges as a permitted use in the M-2 zoning district throughout the
16 County is a new entitlement that may result in a physical change to the environment as a
17 result of the interpretation. The interpretation broadens the permitted uses in Section
18 17.42.020, to include a new permitted use without any environmental review of the
19 potential impacts of adding that use throughout the County. Furthermore, the need for
20 CEQA review is also based upon the findings set forth in the Discussion/Summary section
21 of the August 23, 2011 staff report which is incorporated herein in its entirety.

- 22 2. Finding: Prior to the April 20, 2011 Planning Department written decision, there was no
23 planning director decision within the scope of Section 17.42.020 C authorizing the use of
24 the property as a stand alone shooting center.

25 Evidence: The project proponents contend that the former Planning Director, George
26 White made a decision that use of their property as a public firearm target or shooting
27 range was a permitted use in the M2 zoning district. Their emails stating their position
28 were forwarded to Mr. White, who responded by email that he did not make such a
decision. A copy of Mr. White's email was included in the July 26, 2011 Board packet and
is incorporated herein by reference. Mr. White stated that he discussed the issue with the
project proponents and asked them to submit their proposal in writing for a determination.
Tom Garcia, Public Works Director was also at the meeting and was asked separately and
independently of Mr. White to respond to the same emails from the project proponent. A
copy of Mr. Garcia's response is included as Attachment 8 to the Board packet and
incorporated herein by reference. Mr. Garcia's response also states that the project
proponents were told to submit a proposal with their specific development project so that
the departments could review the proposal and respond.

3. Finding: No building or structure shall be constructed, nor any land use commenced,
enlarged or altered unless it is permitted in the zone in which the land is located (County
Code 17.04.010).

1 Evidence: The parcel where the actual shooting range would be located is currently zoned
2 M-2 (General Industrial). Under the M-2 zoning classification a standalone firearm target
3 or shooting range is not listed as a permitted or conditionally permitted use. The Planning
4 Director is authorized to determine that "industrial" uses similar to those enumerated in the
5 M2 zone (and the incorporated by reference uses in the M-1 zone) are consistent uses.
6 The M-2 classification does not list a similar permitted or conditionally permitted use that
7 would allow a firearm target or shooting range to operate and be open for use by the
8 public or private organizations. Also "industry" is defined as "the manufacture, fabrication,
9 processing, reduction or assembly of any article, substance or commodity which results in
a new product from the original materials." Section 17.06.1020. Manufacturing is defined
as "the production of a product by hand of machine." Section 17.06.1200. A firearm target
or shooting range does not meet the definition of an industrial or manufacturing use (the
purpose of the M2 zone) as there is no manufacturing, fabrication, processing or assembly
into a new product associated with use of the property as a firearm target or shooting
range.

10 Evidence: "Target shooting organizations' are defined in Section 17.06.1852 as "the use of
11 property with stationary or mobile targets are provided for repetitive firing of projectiles for
12 target practice by an organization. These provisions do not apply to strictly private uses".
13 The proposed firearm target or shooting range falls within this definition and is not a strictly
14 private use. This use is included as a conditional use in the GF, TP, A1, AP, and REC
15 zones (Sections 17.12.030 P; 17.14.030 I; 17.16.04.030 B(4)(f); 17.18.030.B(4)(e);
16 17.46.030B(16)). This use is not included as a permitted or conditional use in the M-2
17 zone and the conclusion is that the Board of Supervisors knew how to define and include
18 the use in one zone but not another.

19 4. Finding: A firearm target or shooting range should be subject to a use permit.

20 Evidence: Testimony during the public hearing included concerns from neighbors
21 regarding noise and safety issues associated with use of the property, or any property in
22 the county zoned M2 as a shooting range. Conditions of approval and/or mitigation
23 measures are necessary to address these concerns and any other concerns or possible
24 significant physical impact as a result of a specific proposed project. A use permit would
25 provide the county the ability to condition a proposed project and a mechanism to enforce
26 those conditions. Interpreting the M2 zoning district to include a firearm target or shooting
27 range as a permitted use would not address these concerns. Most other counties also
28 require these types of facilities to have a use permit.

PASSED AND ADOPTED by the Board of Supervisors of the County of Calaveras on a
motion by Supervisor _____ and seconded by Supervisor _____
_____ at a regular meeting held on the 23rd day of August, 2011, by the following
vote of said Board:

AYES:

NOES:

ABSENT:

ABSTAIN:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chair, Board of Supervisors
County of Calaveras

ATTEST:

County Clerk and Ex-Officio Clerk of
the Board of Supervisors

ATTACHMENT 7

Resolution for 2011-027 Joseph Bechelli Appeal

1 BOARD OF SUPERVISORS, COUNTY OF CALAVERAS

2 STATE OF CALIFORNIA

3 August 23, 2011

4
5 RESOLUTION No. _____

6
7 A RESOLUTION GRANTING APPEAL 2011-27 OF JOSEPH BECHELLI OF THE PLANNING
8 COMMISSION'S GRANT OF APPEAL 2011-014 FROM A PLANNING STAFF DECISION
9 REGARDING FIREARM TARGET OR SHOOTING RANGES IN THE M2 ZONING DISTRICT

10 WHEREAS, on April 20, 2011, the Planning Department issued a written
11 decision to Thomas Coe regarding whether a firearm target or shooting range was a permitted
12 use on the Coe property, APN 48-002-068; and

13 WHEREAS, the Planning Department's decision was that the property was
14 zoned M2 and a firearm target or shooting range was not a permitted use in the M2 zoning
15 district; and

16 WHEREAS, on May 2, 2011, Mr. Coe filed an appeal of the Planning
17 Department's decision, Appeal 2011-14, to the Planning Commission under Calaveras County
18 Code Section 17.98.030; and

19 WHEREAS, Mr. Coe's appeal was based in part on interpretation of Calaveras
20 County Code Section 17.42.020 C, General Industrial (M2) Zone, Permitted uses, which
21 provides: "the planning director may determine that industrial uses similar to the uses
22 enumerated in this section are consistent with this section", and Mr. Coe's argument that the
23 former Planning Director, George White, had made a determination that the proposed firearm
24 target or shooting range was an industrial use similar to the enumerated permitted uses in the
25 M2 zoning district; and

26 WHEREAS, on June 2, 2011 and June 16, 2011, the Planning Commission held
27 a noticed public hearing on Mr. Coe's Appeal 2011-14 and granted the appeal based on the
28 findings in Planning Commission Resolution No. 2011-036; and

WHEREAS, on June 30, 2011, Joseph Bechelli filed this appeal of the Planning
Commission's grant of Appeal 2011-14 under Calaveras County Code Section 17.98.040,
Appeal 2011-27 to the Board of Supervisors as the final decision making body of the County;
and

WHEREAS, on July 26, 2011, the Board of Supervisors held a noticed public
hearing on Appeal 2011-27 and other appeals filed from the Planning Commission grant of
Appeal 2011-14; and

WHEREAS, the Board of Supervisors took testimony from the appellants, the

1 project proponent and members of the public and closed the public hearing and directed staff
2 to prepare findings to support a grant of Appeal 2011-27 and continued discussion of those
findings to August 23, 2011; and

3 WHEREAS, on August 23, 2011, the Board of Supervisors held a noticed public
4 hearing and reopened the public hearing to take testimony on the proposed findings only.

5 NOW THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the
6 County of Calaveras does hereby grant Appeal 2011-27, Joseph Bechelli, from Planning
7 Commission Resolution No. 2011-036, granting Appeal 2011-14 from the Planning
Department's decision based on the following findings:

8 FINDINGS:

- 9
10 1. Finding: The project has been determined to be subject to environmental review under the
California Environmental Quality Act pursuant to §15378 (a)(3).

11 Evidence: The interpretation of the zoning code by the Planning Director under Section
12 17.42.030 E. is a project subject to CEQA review. An interpretation of the ordinance to
13 permit target shooting ranges as a permitted use in the M-2 zoning district throughout the
14 County is a new entitlement that may result in a physical change to the environment as a
15 result of the interpretation. The interpretation broadens the permitted uses in Section
16 17.42.020, to include a new permitted use without any environmental review of the
potential impacts of adding that use throughout the County. Furthermore, the need for
CEQA review is also based upon the findings set forth in the Discussion/Summary section
of the August 23, 2011 staff report which is incorporated herein in its entirety.

- 17
18 2. Finding: Prior to the April 20, 2011 Planning Department written decision, there was no
planning director decision within the scope of Section 17.42.020 C authorizing the use of
the property as a stand alone shooting center.

19 Evidence: The project proponents contend that the former Planning Director, George
20 White made a decision that use of their property as a public firearm target or shooting
21 range was a permitted use in the M2 zoning district. Their emails stating their position
22 were forwarded to Mr. White, who responded by email that he did not make such a
23 decision. A copy of Mr. White's email was included in the July 26, 2011 Board packet and
is incorporated herein by reference. Mr. White stated that he discussed the issue with the
24 project proponents and asked them to submit their proposal in writing for a determination.
Tom Garcia, Public Works Director was also at the meeting and was asked separately and
25 independently of Mr. White to respond to the same emails from the project proponent. A
copy of Mr. Garcia's response is included as Attachment 8 to the Board packet and
26 incorporated herein by reference. Mr. Garcia's response also states that the project
proponents were told to submit a proposal with their specific development project so that
the departments could review the proposal and respond.

- 27
28 3. Finding: No building or structure shall be constructed, nor any land use commenced,
enlarged or altered unless it is permitted in the zone in which the land is located (County
Code 17.04.010).

1 Evidence: The parcel where the actual shooting range would be located is currently zoned
2 M-2 (General Industrial). Under the M-2 zoning classification a standalone firearm target
3 or shooting range is not listed as a permitted or conditionally permitted use. The Planning
4 Director is authorized to determine that "industrial" uses similar to those enumerated in the
5 M2 zone (and the incorporated by reference uses in the M-1 zone) are consistent uses.
6 The M-2 classification does not list a similar permitted or conditionally permitted use that
7 would allow a firearm target or shooting range to operate and be open for use by the
8 public or private organizations. Also "industry" is defined as "the manufacture, fabrication,
9 processing, reduction or assembly of any article, substance or commodity which results in
10 a new product from the original materials." Section 17.06.1020. Manufacturing is defined
11 as "the production of a product by hand of machine." Section 17.06.1200. A firearm target
12 or shooting range does not meet the definition of an industrial or manufacturing use (the
13 purpose of the M2 zone) as there is no manufacturing, fabrication, processing or assembly
14 into a new product associated with use of the property as a firearm target or shooting
15 range.

16 Evidence: "Target shooting organizations' are defined in Section 17.06.1852 as "the use of
17 property with stationary or mobile targets are provided for repetitive firing of projectiles for
18 target practice by an organization. These provisions do not apply to strictly private uses".
19 The proposed firearm target or shooting range falls within this definition and is not a strictly
20 private use. This use is included as a conditional use in the GF, TP, A1, AP, and REC
21 zones (Sections 17.12.030 P; 17.14.030 I; 17.16.04.030 B(4)(f); 17.18.030.B(4)(e);
22 17.46.030B(16)). This use is not included as a permitted or conditional use in the M-2
23 zone and the conclusion is that the Board of Supervisors knew how to define and include
24 the use in one zone but not another.

25 4. Finding: A firearm target or shooting range should be subject to a use permit.

26 Evidence: Testimony during the public hearing included concerns from neighbors
27 regarding noise and safety issues associated with use of the property, or any property in
28 the county zoned M2 as a shooting range. Conditions of approval and/or mitigation
measures are necessary to address these concerns and any other concerns or possible
significant physical impact as a result of a specific proposed project. A use permit would
provide the county the ability to condition a proposed project and a mechanism to enforce
those conditions. Interpreting the M2 zoning district to include a firearm target or shooting
range as a permitted use would not address these concerns. Most other counties also
require these types of facilities to have a use permit.

29 PASSED AND ADOPTED by the Board of Supervisors of the County of Calaveras on a
30 motion by Supervisor _____ and seconded by Supervisor _____
31 _____ at a regular meeting held on the 23rd day of August, 2011, by the following
32 vote of said Board:

33 AYES:

34 NOES:

35 ABSENT:

36 ABSTAIN:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chair, Board of Supervisors
County of Calaveras

ATTEST:

County Clerk and Ex-Officio Clerk of
the Board of Supervisors

ATTACHMENT 8

Email from Tom Garcia to Janis Elliott, dated February 23, 2011

Darcy Goulart

Subject:

FW:

From: Tom Garcia
Sent: Wednesday, February 23, 2011 12:24 PM
To: Janis Elliott
Subject: RE: emails

Janis,

The direction given by George and myself at the meeting that I was present at differs from what is portrayed in the attached email. As I recall, the direction from both George and myself was that the project needed to be submitted for review prior to determining if the proposal was a conforming use. There was certainly no pre-approval given at the meeting as that would not be consistent with either Planning or Public Works policies.

As I recall, as part of the meeting the project proponents presented an overview of their project, and we requested a proposal with specifics on the overall project development plans so that it could go through the normal approval procedures, consistent with County Planning policies. Grading or other pre-approval activities were not discussed independently of the Project.

I can only speculate that the people present at the meeting did not understand that they needed to comply with the standard County Planning process and submit an actual project for review prior to seeking permits for separate, but related actions. It was not George's policy, nor is it mine, to grant approvals independent of the County Planning Process.

I hope this helps,

Tom

Tom Garcia, P.E.

Director of Public Works

Calaveras County

891 Mountain Ranch Road

San Andreas, CA 95249-9709

(209) 754-6401