

**REPORT ON POTENTIAL ISSUES AND IMPACTS
OF PROPOSED LAND USE INITIATIVE
Presented to City Council on May 13, 2008**

Intent of Report

This report identifies the potential issues and impacts of implementing the terms and provisions of the “Initiative to Amend the Land Use Element of the General Plan of the City of Grass Valley”, hereinafter described as the “Initiative”. The Initiative was filed with the City on April 1, 2008. The Initiative seeks to lock in, with limited exceptions, the City’s current Land Use Element and Map of the City’s 2020 General Plan for a period of thirty (30) years. As the Initiative requires the City to implement its provisions, staff has completed a preliminary review in which concerns, questions and potential conflicts were raised.

The purposes stated for the Initiative are goals that are embraced by the City’s 2020 General Plan. The report poses questions as to whether or not the intent of the Initiative will actually help or hinder the City in achieving these goals. This report touches on a number of concerns and questions, but does not fully address each one as more time and research is necessary. It is requested that the City Council to consider the information in this report and provide direction to further evaluate any of the issues or topics discussed or other items of concern to the Council.

Assumptions Used in Developing Report

After conducting an initial evaluation of the Initiative, staff developed our comments, concerns and questions based on the following assumptions on what would occur, if this ballot measure was adopted:

- The Land Use Element of the 2020 General Plan would be readopted and locked in for a period of 30 years from the date of approval (e.g. until November 2038), except under certain circumstances and unless approved by a majority vote. The Initiative would remain intact for this 30 year period unless repealed or amended by a majority of the City’s voters.
- Unless otherwise exempted by the Initiative, all changes to the Land Use Element, whether tied to the Land Use Map or the text of this Element, would require an election and majority vote of the citizens of Grass Valley. All future rezonings, specific plans, subdivision maps, conditional use permits, building permits or any ministerial or discretionary action made by the City will need to be found compliant with the Initiative.
- Changes can be made to the Land Use Element without voter approval only if they generally decrease the residential density or intensity of a property or convert land into an “open space” or “public” land use designation.
- A project already approved by the City and having “vested rights” would not be subject to the Initiative. “Vested rights” are obtained by an applicant having a valid Development Agreement, a vesting Tentative Map or other entitlement that meets the vested rights criteria pursuant to State or Federal Law.

Potential Implications of Implementing Initiative for City of Grass Valley

The general implications of implementing the Initiative are summarized below:

Implications with Future Land Use Planning in City and Sphere of Influence

1. Timeframe of Initiative Extends Beyond 2020 General Plan. The time frame provided for in the Initiative extends the life of the Land Use Element and Map for 30 years or potentially 2038. The 2020 General Plan did not contain projections or land use scenarios extending beyond the year 2020. It is common in California for a General Plan of a community to extend twenty years or less with revisions or comprehensive updates occurring within its lifespan. Between 2008 to 2038, the City will face and need to address new social, economic and development trends that were not foreseen in the current General Plan.
2. Maintaining Internal Consistency with City General Plan. The City will be challenged with how to update the other Elements of the 2020 General Plan to match this 2038 timeframe. For example, setting the current land uses in place for a 30 year period may result in the 2020 General Plan being found inconsistent with State law requirements by our inability to meet certain housing requirements or other State mandates. Of particular concern is the City's ability to comply with future State housing mandates and how our Housing Element can be updated and linked to the Land Use Element. If the City does not maintain an internally consistent General Plan, it could be subject to; a) being denied the ability to apply for a number of State or Federal grant funds (i.e. CDBG); 2) face other State penalties in not complying with a specific mandate, or 3) potential litigation on any action taken by the City to approve or deny a project, regardless of whether that project complied with the Initiative.
3. Maintaining Consistency between Land Use Maps of the City and County General Plans. The City will be challenged with how to address land use projects proposed in the City's Sphere of Influence which are not consistent with the City's 2020 General Plan. The General Plan includes land uses for properties that are not currently part of the City. The land use planning is done through a Memorandum of Understanding between the City and Nevada County. For example, if a project is proposed to be developed in the County, but within the City's Sphere of Influence, and the land use for this project does not match the City's Land Use Map, no matter how small or large, could the project proceed in the County without regard to the provisions of the Initiative?
4. Inability to Clearly Identify Projects Consistent with Initiative. The Initiative applies to both the Land Use Element, the Land Use Map of the 2020 General Plan and, by reference, possibly the City's Development Code, Title 17. In attempting to determine whether a land use application is consistent with the intent and purpose of the Initiative, the following issues will arise on certain projects such as:
 - A) A land use scenario that is at contrast with the Land Use Map and text of the Land Use Element. For example, the text of the Land Use Element references that the annexation agreements with the SDA's could be revised to specify densities for

multi-family housing, a statement that is at conflict with the land uses of the Special Development Areas (SDA's) shown on Figure 3-4.

- B) A land use scenario that is at conflict with the Population, Density and Building Intensity Standards, Table 3-2, and the City Development Code, Title 17. For example, the development standards contained in Table 3-2 relating to building intensity and height are not consistent with the recently adopted City Development Code. In addition, can the City approve a variance for a building height without a vote of the citizens?
 - C) A land use scenario that is at contrast with the Population, Density and Building Intensity Standards, Table 3-2, the City Development Code, Title 17 and the State Bonus Density Law. For example, it is possible that a project may be presented to the City that is afforded additional residential units beyond the density standards in Table 3-2 as allowed by the State Bonus Density Law. Would the State allowed density bonus be counted against the property's housing density already assigned by its land use designation or be allowed under the Initiative? Also, it is unclear whether special residential care facilities or senior housing units count against the residential density provisions of Table 3-2 or even the intent of the Initiative.
 - D) A land use scenario where a property was not accurately mapped in the Land Use Element and its land use designation does not match the current use or the boundaries of the property. The Initiative does not appear to account for mapping errors or changes in land use to reflect actual use.
 - E) A land use scenario that is at contrast between the Land Use Element and the City's Redevelopment Plan. For example, could a mixed residential-commercial use project promoted by an adopted Redevelopment Plan (i.e. South Auburn Street Master Plan or Downtown Specific Plan) be disallowed as the Land Use Map and Table 3-2 of the Land Use Element does not specify that residential units may be integrated into a commercial land use designation?
- 5) Inability to Implement Certain Provisions of City Development Code. The Initiative potentially presents a conflict between the Land Use Element and the City's Development Code that may further limit the City's ability to be creative in approving infill projects. The lack of any residential density ranges allocated to commercial, office and business park in Table 3-2 of the Land Use Element may preclude the use of the recently adopted form based codes in the City Development Code. The form based codes allow for the integration of residential uses into the commercial districts; however, the current Land Use Element, Table 3-2, does not reference or allocate any residential use.
- 6) Inability to Clearly Define "Vesting" Projects. The City would be challenged on how to define or confirm what previously approved projects are clearly vested and not subject to the provisions of the Initiative. Several approved, unbuilt projects having mixed use components or involving a rezoning of commercial land could be declared invalid since they have no development agreement or vested map (e.g. Olympia Plaza II, Whiting Street project, Village of South Auburn).

Implications with Future Fiscal Conditions

1. Costs of Regular and/or Special Election to Initiate any General Plan Amendments. The Initiative locks in, with certain exceptions, the current Land Use Map and Element in the 2020 General Plan for a 30 year period, with only limited changes unless approved by the Voters. The added requirement for the election process adds an unknown cost and is questionable whether or not the cost may be passed on to the applicant. The initiative is silent as to the election process and therefore may be open to any regular election or require a special election. It may be assumed that an election must be held for a land use change once it is filed with the City in accordance with the initiative section of the election code. The costs estimated for conducting an election to comply with the provisions of the Initiative were obtained from the County Elections Office. The estimated cost to the City to conduct a regular election approximates \$8,000, while a special election would cost approximately \$46,500.
2. Ability to Maintain City Public Services may be Impacted. The City's financial ability to provide current levels of service is linked to the economic prosperity of the region and a healthy mix of development types within the City limits. Funding for General Government services is reliant on sales tax generation and property tax, which account for 70% of revenues. If the Initiative has a dampening effect on the diversification of the City's tax base, there will be a negative impact on the City's fiscal condition. Generally housing does not pay for the services required and commercial projects generate more revenue than the cost of service. However, a proper mix of the two is necessary. A negative impact would occur if the SDA's are developed outside of the City and not annexed. If the areas are developed at rural residential densities, a negative impact will also result. Based on information provided in the "Economic and Fiscal Conditions Study for the City of Grass Valley", there appears to be an excess of "business park" designated property, but there is a lack of residential property to support the potential for job creation, placing pressure on housing to sprawl out into the County. Secondary impacts will be felt in a drop in fees and charges, impact fees, and utility connections, all of which impact the City's financial health. By limiting the City's ability to respond to the market and require a more balanced mix of land uses, the ability to meet financial requirements is also diminished. The loss of flexibility in approving infill projects with mixed uses, or small land use changes will also impact the financial ability of the City to provide services.

Implications with Future Growth and Development of Community

1. Maintaining Grass Valley as "Economic Hub" of Western Nevada County. Grass Valley is recognized as the "economic hub" of western Nevada County. Shopping, jobs, schools (including a College), personal services and a vibrant downtown are all available within City Limits. Some of the challenges that face the City with being the "economic hub" are to define an inventory of usable vacant lands for future expansion, promote effective redevelopment of existing structures, achieve a strong jobs-housing balance and continually expand or maintain our infrastructure such as our road and sewer systems.

As of this date, the City has a dwindling supply of residential, business park and industrial lands lying within City Limits that are vacant and buildable. Though the City can focus its efforts on developing all of its infill vacant properties, it will not be sufficient for our future needs if the City wishes to continue to serve effectively as the economic hub for western Nevada County. If the City faces uncertainty in how its Sphere of Influence would be annexed and developed over time, our ability to plan, coordinate and finance the needed infrastructure to prepare these properties and facilitate job growth would be hindered.

2. Increased Potential for Development to Occur in Unincorporated Areas (outside City). One of the central themes of the County General Plan is to direct urban growth to existing urban areas or Cities such as Grass Valley. Growth is to be directed into areas that have urban services such as sewer and water for which, in western Nevada County, the City is the logical provider. After the County adopted their General Plan in 1995 and the City adopted their General Plan in 1999, a significant shift of land use policy was established; future growth projected within Western Nevada County would be directed to Grass Valley. As compared to other Counties where urban growth is allowed to occur outside established communities, this philosophy was embedded in both Grass Valley's and the County's General Plans. For the City to work within this philosophy of directing future growth to our Sphere of Influence and City Limits, rather than outlying areas of the County, there is a need for the City to retain a certain level of flexibility and creativity. The ability for the City to work with an applicant to integrate new or innovative approaches such as mixed uses, transit oriented design or transferring or clustering residential densities would be hindered since any prospective changes in the General Plan, whether it relates to an increase in residential density or adjusting the land use, would prompt an election. Property owners would probably be less cooperative in advancing unique or superior designs for a project for fear of prompting the provisions of the Initiative. In addition, for larger projects lying within the City's Sphere of Influence, applicants may be inclined to defer their projects to the County, rather than the City, in order to avoid any potential for prompting the provisions of the Initiative. As a result, the Initiative has the potential of providing a greater incentive to an owner to develop their property within the County, rather than the City.
3. Ability to Implement Goals and Objectives of 2020 General Plan. The Initiative is focused on maintaining the Land Use Element for a thirty year period. However, the Land Use Element is one of 10 elements of the 2020 General Plan which collectively define a quality of life standard for our community on everything from land use to circulation to parks to public safety to historic protection. While the Land Use Element plays an important role in projecting future population growth, levels of density and building intensity, the other Elements of the 2020 General Plan are also important for how the community will fully evolve. By extending the Land Use Element for 30 years or potentially 18 years beyond the life of the current 2020 General Plan, the goals, objectives and implementation strategies contained in the nine other Elements will not, in all likelihood, be implemented by 2020. The ability to create parks, trail systems,

circulation improvements, open space and further our public safety standards are tied to the levels of growth and development identified in the Land Use Element. The expectations of what the City had for certain community improvements or enhancements may not be achievable by 2020. As a result, it is highly probable that the City will need to revisit the other nine elements of the General Plan at a later date and measure what quality of life standards can be realistically achieved for the community by the year 2038.

Implications for Potential Conflicts with State and Federal Laws

1. Ability to Achieve or Meet State Requirements. Under state law, all cities and counties have affirmative obligations to allow for certain types of affordable income housing. State law, over the years, has imposed additional obligations on cities and counties in this area. The Initiative could make it legally impossible for Grass Valley to comply with such state-mandated requirements, forcing either an election or the City into a legally vulnerable and “no-win” situation.
2. Ability to Achieve or Meet Federal Requirements. Federal law also imposes certain land- use related requirements on cities and counties as, for example, under RLUIPA (“Religious Land Use and Institutionalized Persons Act”). Again, a possible conflict between RLUIPA requirements and the Initiative could leave the City in an impossible legal conflict.

Implications for Compliance with the California Environmental Quality Act (CEQA)

1. Requirement for CEQA Compliance by for Initiative. If the City Council wished to adopt provisions, identical to those set forth in the Initiative, the City would first be required to conduct a thorough environmental analysis under CEQA (California Environmental Quality Act), with input from the community, as well as from consultants on key topics such as traffic, air quality, noise, and similar matters. Because the Initiative is citizen-sponsored, no CEQA analysis will be performed.

