

Ranch Marketing Ordinance

Reason for the report

The 2003/2004 Grand Jury received a citizens' complaint concerning the El Dorado County Ranch Marketing Ordinance 17.14.190.

Scope of the investigation

People interviewed

- The complainant
- Current and former Agricultural Commissioner
- Assistant Agricultural Commissioner
- Planning Department staff
- Agriculture Department staff

Documents reviewed

- The citizen's complaint
- The El Dorado County Ranch Marketing Ordinance
- Correspondence to and from the County and complainant
- Planning Department documents
- El Dorado County Crop Report 2002

Background

The following is the stated purpose of the Ranch Marketing Ordinance:

“The purpose of this section is to provide for the development of ranch marketing activities to encourage the economic development of the agricultural and tourism industries while regulating such uses to protect the public health, safety and welfare and the enjoyment of property by adjacent land owners...”

The complaint alleges confusion within the County Government on the interpretation and enforcement of the Ranch Marketing Ordinance. There is no uniform interpretation of the Ranch Marketing Ordinance. This confusion is compounded by the transfer of the Ranch Marketing Ordinance enforcement between the Planning and Agriculture Departments.

Facts

1. The Ranch Marketing Ordinance was originally written in 1988 and last revised in 2003.
2. The Agriculture Department took over sole code enforcement of the Ranch Marketing Ordinance in 2003. Previously code enforcement was done by both the Planning and Agriculture Departments.
3. The Ranch Marketing Ordinance does not define specific crops but does have acreage requirements.

4. The Ordinance does not state a minimum crop density.
5. The Agriculture Department, in September 2003, gave approval of compliance with the Ranch Marketing Ordinance to the complainant on acceptable crops and acreage requirements.
6. The Agriculture Commissioner, in October 2003, rescinded the Department's approval based on his opinion that Christmas trees were not a crop as it pertains to the Ranch Marketing Ordinance.

Findings

1. The Ranch Marketing Ordinance is open to interpretation and is confusing to those attempting to comply with its requirements.

Response to Finding 1: The respondent agrees with the finding. Most laws, regulations, and ordinances are not written to contemplate every situation that might come under their respective jurisdictions. Inevitably, some interpretation by the enforcing agency is required, particularly as new situations arise. However, the respondent does agree that the Ranch Marketing Ordinance, as revised in 2001 and now codified as §17.14.180 & 190, includes some terms and requirements that could be better defined. Planning Department staff is working in conjunction with staff from the Agriculture Department to revise the code and anticipates that revised ordinances for both wineries and ranch marketing will be ready for adoption within the next year. In addition, both departments will work together to ensure that interpretations of the code by County staff are consistent.

2. The Ranch Marketing Ordinance is open to interpretation and is confusing to those who are attempting to explain and enforce its requirements.

Response to Finding 2: The respondent disagrees partially with the finding. The Ranch Marketing Ordinance is open to interpretation, similar to other laws, regulations, and ordinances. The relative newness of the ordinance has led to some confusion in the interpretation of the ordinance and its standards, but as staff becomes more familiar with the provisions of the code and as interpretations have developed, a more consistent approach to enforcement has evolved. Communication and mutually agreeable interpretations between the Agriculture and Planning departments are critical in ensuring that accurate and timely information is disseminated to all interested parties. The ordinance revisions referenced above will also assist in clarifying the standards and requirements and lead to further consistency in interpretations and enforcement.

3. There is inconsistency in the methodology of measuring acreage (manual versus global positioning satellite also known as GPS), resulting in possible disqualification.

Response to Finding 3: The respondent disagrees partially with the finding. There may have been times in the past when manual measurements using measuring wheels were performed by County staff prior to GPS capabilities within the Agriculture Department.

Since October 2003, all measurements for Ranch Marketing compliance have employed GPS technologies and have adhered to strict measurement guideline standards implemented by the Agriculture Department. In an effort to further limit measuring errors, GPS units with sub-meter capabilities have recently been used in measuring planted acreage. Nonetheless, calculations of planted acreage using standardized protocols and accurate measurements by all methods should result in similar findings.

4. The County generally does not enforce the Ranch Marketing Ordinance unless a complaint is received, resulting in a lack of standardized enforcement.

Response to Finding 4: The respondent disagrees partially with the finding. In FY2003/04 the Board assigned responsibility for the enforcement of the ranch marketing and winery provisions of Title 17 to the Department of Agriculture. In FY2004/05, that responsibility has been returned to the Planning Department.

The Planning Department's code compliance officer works to assure compliance with all code requirements and where violations of the code are known, will attempt to enforce the provisions of the code. Budgetary and staffing constraints play a significant role in the overall Ranch Marketing enforcement priorities. It is not possible, given the staffing level available, to review all active ranch marketing operations to determine if they are in compliance, unless violations are brought to the attention of the code compliance officer. This is consistent with code compliance operations for all provisions of the zoning code. The Planning Department prioritizes its enforcement actions based on the health and safety aspects of the violation. Complaints are a welcomed source of information that can be used to initiate an investigation of individuals or businesses allegedly violating the Ranch Marketing Ordinance.

For the past year, the Agriculture Department has taken proactive steps by notifying individuals in writing of impending Ranch Marketing and Special Use Permit deadlines as recommended by the Agricultural Commission and conditioned by the Planning Commission and Planning Department.

Additionally, the Agriculture Department, acting as staff to the Agricultural Commission, places timely informational items on the Commission's agenda to facilitate discussion and/or action by the Department based on the motions passed by the Commission.

Whenever an individual requests information concerning Ranch Marketing, the Agriculture and Planning Departments try to consistently explain and enforce each provision of the applicable code prior to the initiation of any Ranch Marketing activities.

5. Confusion between Agriculture and Planning Departments delays an applicant's qualification or rejection for Ranch Marketing.

Response to Finding 5: The respondent disagrees wholly with the finding. There are numerous opportunities for the public to contact either the Agriculture or the Planning Department for information regarding the provisions of the Ranch Marketing ordinance.

Some are applicable to Planning standards; others are more appropriately addressed to the Agriculture Department.

The term “applicant” suggests that an official County application is submitted for approval or disapproval. Since the Ranch Marketing Ordinance allows certain activities “by right” rather than through a permitting process, no applications are required or submitted for compliance verification. However, while an application is not required, some individuals request that the Agriculture Department verify the size of their planted acreage to ensure compliance with the requirements of the Ranch Marketing Ordinance. In instances such as this, once the Department receives a request for this service, it is scheduled for a site visit, usually within two (2) weeks.

If a formal application is submitted to the Planning Department for a special use permit as an example, the applications are processed in the same manner as any other application. At times there are delays for a variety of reasons, including unclear application materials, requirements by state or other local agencies, environmental concerns, or changes to the project made by the applicant. The Planning Department is not aware of any delays of such an application caused by the alleged confusion between the Agriculture and Planning Departments.

Less formal requests for information are also made to the Planning Department and staff attempts to respond in as timely a fashion as possible. In some cases, the responsibility for providing the information lies with Agriculture Department and the member of the public is referred to that department, not because of confusion but because the Agriculture Department can better provide the type of information requested.

Recommendations

1. The Agricultural Commissioner and the Director of the Planning Department need to resolve the differences of interpreting the Ranch Marketing Ordinance until it is rewritten.

Response to Recommendation 1: The recommendation has been implemented. The new Agricultural Commissioner and the Acting Planning Director have taken a cooperative and collaborative approach towards the Ranch Marketing ordinance. Currently, both departments are meeting on a routine basis to discuss the Ranch Marketing Ordinance and are moving forward to resolve any interpretative differences. Staff is also actively working together on revisions to the ordinance.

2. The Agricultural Department should lead the expeditious rewrite of the Ranch Marketing Ordinance to make it complete, clear and concise.

Response to Recommendation 2: The recommendation will not be implemented because it is not warranted. The County is currently working on a rewrite of the Ranch Marketing Ordinance; however, because §17.14.180 is a part of the Zoning Ordinance, and the primary responsibility for amendments to Title 17 lies with the Planning Department, the

Planning Department has the primary responsibility for the rewrite of the Ranch Marketing provisions. Revisions to the Ranch Marketing provisions of Zoning Ordinance are anticipated to be included in the broader rewrite of Title 17 as provided in General Plan Implementation Measures LU-A and AF-A. While revisions to the Zoning Ordinance are one of the highest priorities of the implementation program, the timing may be impacted due to possible legal challenges to the General Plan.

The Planning Department is working directly and in cooperation with the Agriculture Department on the revision effort. The Agriculture Department has an active role in the process and the final recommended revision submitted to the Planning Commission (and ultimately to the Board of Supervisors) for adoption will be the result of a cooperative effort.

Additionally, other stakeholders' input must be considered in the rewriting of the ordinance. The diversity of opinions within the agricultural community may complicate the rewriting of the Ranch Marketing Ordinance, and may delay the "expeditious" rewrite as recommended by the Grand Jury.

Work on revisions to the Ranch Marketing provisions of the Zoning Ordinance is ongoing with a goal to complete the revisions within the fiscal year.

3. The Agricultural Department needs to become proactive rather than reactive regarding enforcement of the Ranch Marketing Ordinance.

Response to Recommendation 3: The recommendation has been implemented. For the past year, the Agriculture Department has taken additional proactive steps by notifying individuals in writing of impending Ranch Marketing and Special Use Permit deadlines as recommended by the Agricultural Commission and conditioned by the Planning Commission and Planning Department. The staff to the Agricultural Commission also places informational items on the Commission's agenda to facilitate discussion/action, and to inform the public of Ranch Marketing activities.

4. A specific timeframe should be set by the County to approve or disapprove Ranch Marketing applications.

Response to Recommendation 4: The recommendation will not be implemented, because it is not warranted. There currently are no official County applications for Ranch Marketing activities, since the intent of the Ranch Marketing Ordinance is to allow certain activities "by right". However, some individuals call upon staff to verify the size of their planted acreage to ensure compliance with the Ranch Marketing Ordinance requirements. Once the Agriculture Department receives a request for this service, it is scheduled for a site visit, usually within two (2) weeks. Also, the Department of Agriculture receives requests for specific information concerning the Ranch Marketing Ordinance and the various accessory uses that are allowed "by right". These types of inquiries are usually answered the same day staff receives them.

The Agriculture and Planning Departments will continue to meet to find consensus and agreement regarding the applicability of the various agricultural crops to ensure consistency with the information provided to these individuals.

Certain types of applications for Ranch Marketing activities are discretionary in nature and subject to existing processing timelines (CEQA, Permit Streamlining Act). The Planning department will continue to work within the timelines provided given the workload and available staffing levels.

The Departments have been and will continue to be responsive to all public inquiries.