

August 20, 2010

Ms. Janet Postlewait
El Dorado County
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Re Comments on Draft Environmental Impact Report (DEIR) for the
Diamond Springs Parkway Project (Project), State Clearinghouse No. 20071222033

Dear Ms. Postlewait:

This comment letter is written on behalf of Save Our County (SOC) concerning the DEIR for the Project. SOC is composed of a diverse group of concerned community members in and around the area of the proposed project. For many of us the project would directly and, as planned, adversely affect our homes, businesses and sense of place.

Our specific comments are set out below. We are focusing only on those aspects of the Project DEIR that are most dramatically flawed and out of compliance with the California Environmental Quality Act (CEQA) and the regulations promulgated by the State to establish the requirements for CEQA compliance.

We are also raising an issue of the propriety of having the firm of Michael Brandman Associates as principal author of the DEIR when that firm was originally hired by one of the major landowners in the area who stands to directly and munificently benefit from the Project.

The Project Description is Misleading and Inaccurate:

At the heart of CEQA is the statutory requirement that a "project description" being both complete and completely accurate, and that the project description not be changed over the course of or in different parts of the environmental analysis represented by the DEIR. Guideline 15124 requires, among other requirements, that a project description needs to set forth project objectives, which in the present case, are wholly lacking insofar as there is no description of the physical development, and its environmental results, that will occur as a result of using the described road improvements to foster a land and economic development program which is the heart of the Project.

The CEQA court decisions are unanimous in requiring a complete and accurate description of a "project" in an EIR. See e.g. County of Inyo v. City of Los Angeles (1977), 71 Cal. App. 3d 185; Dusek v. Anaheim Redevelopment Agency (1986), 173 Cal. App. 3d 1029; and Santiago Water District v. County of Orange (1981), 13 Cal. App. 4th 31.

The present Project is misdescribed in the DEIR in two major ways. The Project is labeled as one solely concerned with road improvements and the upgrading and extension of a waterline. That description woefully understates what is really involved, which is the provision of road improvements, largely at the expense of the general taxpayer, to benefit one developer in

particular, as well as several others whose property interests are directly benefited by the Project.

The properties concerned are generally described as Assessor's Parcels No. 051-250-12, -46, -51, and -54 and are owned of record by Lawrence Abel, Jacqueline Abel, GGV Missouri Flat LLC, Michael D. Lindeman and Lorraine D. Lindeman. These properties directly front on the proposed Parkway and will have Parkway frontage of approximately 1150 feet, the preferred Project route that has been selected for construction. The development of the commercial purposes of the noted parcels, and the associated development of other parcels in the area, is the real purpose for the Project. The inclusion of the environmental impacts of the development of those parcels must be included as part of the Project description and is necessary to the Project's environmental impacts to be reviewed in the DEIR.

The documentation that this commercial development is in reality part of and perhaps the reason for the Project in the first place is extensive. The promotion for retail development has been established by objective 1c. in this DEIR. Also from the EDC Economic Development Advisory Commission on December 19th, 2008, Leonard Grado (of GGV Missouri Flat LLC) petitioned the commission to establish "shovel ready" sites for national retailers or manufacturers in which the commission agreed to pursue that concept. In a Sacramento Bee article of February 21, 2008 it was reported that "Developer Leonard Grado is involved in two commercial ventures; El Dorado Crossing, a 445,000 square-foot retail development proposed northwest of the Highway 50-Missouri Flat Road interchange, and the Diamond Dorado Retail Center, planned on 44 acres south of the proposed Diamond Springs Parkway." Grado was quoted as saying, "The Diamond Dorado center is envisioned as a retail "power center." Grado said he expects it to include a home improvement store such as Home Depot or Lowe's, as well as "soft goods" stores like Target or Kohl's. He also sees potential for a discount grocery, a Sam's Club or Costco. Other buildings would house small restaurants and neighborhood retail such as a nail shop, florist, beauty supply store and spa." Precisely the issue of whether public infrastructure development (road and sewer lines) that would trigger or permit the further development of properties should include the cumulative environmental impacts of that development in the EIR for that project, was answered in the affirmative in City of Antioch v. City Council of the City of Pittsburg (1986), 187 Cal. App. 3d 1352.

The development of the commercial properties that will result from the Project as described must be included in the description of the Project in the DEIR in order to make it accurate and CEQA compliant. However, the description of the Project and the environmental analysis also suffers from a failure to clearly set out that the Parkway will not be built in a single phase, but in at least two separate phases.

At the public meeting called by the County on July 28, 2010, to discuss the DEIR, the County admitted it had no funding to complete more than two lanes of the four lane parkway project. This means several things. First, funding may never exist for the "second" phase of the project and the roadway and water improvements described in the DEIR will therefore only be "half-completed" when the Project comes to an end. There is no traffic analysis or other environmental impact analysis as to what this will mean for the area.

Probably as important, if the roadway is built in two distinct time-separated phases, there will be two sets of construction impacts related to noise, dust, glare, landscape alteration, constraints on the ability of anyone to plan for their properties, etc. If there is any lengthy separation between these phases people will be unable to plan for the eventual use of their properties and

no lender will touch the financing of improvements anywhere in the area until the road is fully built or abandoned. None of these dual-construction period impacts are analyzed in the DEIR, nor is the Project analyzed from the standpoint of never obtaining the financing to build the second phase of the Project, a distinct possibility given the economic circumstances of the country.

Growth Inducing Impact Analysis Lacking:

CEQA requires that the “growth inducing” impacts of any project be thoroughly analyzed in the DEIR. Public Resource Code section 21100(b)(5) and Guideline 15126; Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001), 91 Cal. App. 4th 342. They are totally missing from the present DEIR.

First, the waterline that is part of the Project is not analyzed for its growth inducing impacts as required by CEQA. The only statement in the DEIR concerning those impacts is found on page 4.1-5 of the DEIR which states: “Any future demand associated with EID’s proposed infrastructure improvements would be consistent with the General Plan and its accompanying EIR and is therefore not considered growth inducing”. Consistency with a General Plan is never an excuse to avoid analyzing the growth inducing or other environmental impacts of a project. The impacts that must be analyzed are those that will occur on the ground or as a result of activities on the ground, not those that considered in some theoretical General Plan

See court case Environmental Planning and Information Council v. County of El Dorado (1982) 131 Cal. App. 3d.

CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as existing physical condition in the affected area. The legislation evinces no interest in the effects of proposed general plan amendments on an existing general plan, but instead has clearly expressed concern with the effects of projects on the actual environment upon which the proposal will operate.

Furthermore, the EID planning process and the impacts of that planning process are not accounted for in the County’s General Plan, but, if analyzed at all, are found somewhere in EID’s own planning documents. Whatever analyses undertaken in that regard by EID are not part of this Project DEIR and are not listed in the heading of “Documents Incorporated by Reference” in Section 2.4 of the DEIR. In all events, the impacts from other than merely replacing with no added capacity, outdated water lines as part of the Project are nowhere analyzed in the DEIR for the Project.

Second, the growth inducing impacts of commercial and industrial development in the area impacted by the Project are never even discussed in the DEIR. Yet the heart and soul of the why of the Project is being developed is to encourage that development, and in fact, according to the MC&FP there will not be enough revenue to fund the Project improvements completely unless properties currently undeveloped or perhaps marginally developed, are encouraged to develop in the near future. Therefore, the DEIR is fatally flawed for not analyzing the growth that must occur in the area served by the Project.

Determining Important Mitigations Strategies sometime in the Future does not comply with CEQA.

As part of the CEQA process, CEQA allows a lead agency, such as the County in this case, to make a determination that even though a Project will engender adverse environmental consequences, the lead agency can still determine that consequences are “less than significant” if the lead agency imposes conditions on the project that will reduce those impacts to a non-existent or miniscule status. Such conditions are referred to as “mitigations”.

However, a lead agency may not determine that a particular environmental impact—for example, the Project’s impact on water quality---has been reduced to a level of insignificance -- by imposing a condition that itself has yet to be developed, is not a simple cut and dried formula that everyone can look at and determine that the mitigation will work, and where the mitigation itself involves discretionary judgments as to how it will be developed or constructed. These types of “mitigations” are “future mitigations” and are not permitted under CEQA. Sundstrom v. County of Mendocino (1988), 202 Cal. App. 3d 296.

They are not permitted for two reasons. First, the environmental review process is hidden from the public and CEQA is a public participation process first and foremost. Secondly, a future mitigation to be imposed later in the Project’s processing, unless it refers to an exact standard--- such as for example a pipe size for a domestic leach field contained in a publicly available manual covering such matters—represents a development of a discretionarily approved mitigation which may or may not be adequate. However, since it is developed in private neither the public nor the scientific or technical consultants who might review the mitigation on behalf of the public, ever get to see the proposed mitigation or challenge its adequacy.

The DEIR is replete with these “mitigations” that are to be developed in the future, out of the purview of public review, and involve a great deal of discretion in the development of the particular procedure, plan or activity, that are purported to mitigate various environmental concerns. Some examples (not a complete listing) are:

- The development of a “traffic management plan” for the construction of the Project (4.3-22);
- Detailed performance standards for an Oak woodland mitigation plan are to be developed off-record and in the future and not, of course, subject to review by arborists involved on behalf of the public or Oak woodland preservation groups (4.4-45);
- A work plan to deal with contamination of the Bahlman Parcel (APN 327=270-04), which must under the DEIR be developed before construction on the Project begins, is set for determination in the future, solely by the County’s Environmental Management and Transportation Departments, outside the purview and review of the public (4.7-23);
- The Storm Water Prevention Plan, which is highly individualized for each project, is to be developed in the future (4.8-13);

These and other “mitigations” cannot be found to qualify as CEQA sanctioned mitigations when they in fact do not exist, involve a great deal of discretion and professional judgment in their development/implementation, and are developed outside of the public review process as part of the public’s review of the DEIR.

The DEIR Fails to Analyze the Decay and Resultant Urban Blight When the Project Destroys the Economic Viability of the Diamond Springs Business District.

CEQA does not ordinarily require that an economic analysis of a Project be included in an EIR. However, where, as with the present Project, the rearrangement of automobile traffic patterns which have sustained the Diamond Springs rural business community, and the provision of a roadway primarily designed to serve new commercial “big box” enterprises is contemplated, CEQA does require that an analysis be made of the potential physical impacts that will result from the closure of businesses currently in the area. The boarded up store fronts that will result in the area are in fact a significant environmental impact that must be analyzed in the DEIR, and that impact and analysis is wholly absent from the DEIR.

There can be no question that it is highly likely that Diamond Springs will economically become an Old West Ghost Town, once the Project with its attendant commercial development is completed. The 2007 Missouri Flat Retail Market Absorption Study conclusively demonstrates that the provisioning of large scale commercial development outside of downtown Placerville (the north side of Highway 50 at Missouri Flat in particular) has decimated retail activity in Placerville. With the present project the County is proposing to bring this devastation to the south side of the Missouri Flat/Highway 50 interchange as well. A similar impact on “old town” economic activity can be seen in the effects of rerouting of traffic to a highway bypass in the Town of Sutter Creek, which has suffered a 50% decrease in taxable sales since the bypass around that town was completed.

All this empirical evidence demonstrates that there is a high probability that the small town merchants in Diamond Springs will be severely impacted if the present Project is implemented in the form presented in the DEIR. CEQA demands that those impacts be analyzed in the DEIR and they are wholly missing in the present case. Anderson First Coalition v. City of Anderson (2005), 130 Cal. App. 4th 1175; Bakersfield Citizens for Local Control v. City of Bakersfield (2004), 124 Cal App. 4th 1184.

Oak Tree Replacement as Mitigation:

The 1:1 and 2:1 replacement ratios for removed mature oaks, or the payment into a “conservation” fund, does not in fact mitigate the adverse effects caused by the oak removal contemplated by the project. As anyone cognizant of the slow growth of oak trees can attest, the planting of oaks of small size, and then requiring only an 80% survival rate to be deemed “success”, will leave the area denuded of tree cover for years to come. This is not only adversely affects the plants and animals that are oak coverage dependent, but will change for years the visual aesthetics of the area. Further, as only mature oak trees really function as “carbon sinks”, while immature growing trees do not, the greenhouse gas emissions for the project will be adversely affected by only a minimal oak tree replacement program.

Aesthetics:

While beauty may reside in the eyes of the beholder, the County General Plan enumerates a number of stated aesthetic goals for this part of the County, among which are the preservation of the rural or semi-rural character of the rolling oak hillsides and small town character of the communities of the region.

Policy 2.4.1.1: Design control combining zone districts shall be expanded for commercial and multiple family zoning districts to include identified Communities, Rural Centers, historic districts, and scenic corridors.

Policy 2.4.1.2: The County shall develop community design guidelines in concert with members of each community which will detail specific qualities and features unique to the community as Planning staff and funds are available. Each plan shall contain design guidelines to be used in project site review of all discretionary project permits. Such plans may be developed for Rural Centers to the extent possible. The guidelines shall include, but not be limited to, the following criteria:

- A. Historic preservation
- B. Streetscape elements and improvements
- C. Signage
- D. Maintenance of existing scenic road and riparian corridors
- E. Compatible architectural design
- F. Designs for landmark land uses
- G. Outdoor art

Policy 2.5.1.1: Low intensity land uses shall be incorporated into new development projects to provide for the physical and visual separation of communities. Low intensity land uses may include any one or a combination of the following: parks and natural open space areas, special setbacks, parkways, landscaped roadway buffers, natural landscape features, and transitional development densities.

Policy 2.5.1.2: Greenbelts or other means of community separation shall be included within a specific plan and may include any of the following; preserved open space, parks, agricultural districts, wildlife habitat, rare plant preserves riparian corridors, and designated Natural Resource areas.

Policy 2.6.1.1: A Scenic Corridor Ordinance shall be prepared and adopted for the purpose of establishing standards for the protection of identified scenic local roads and State highways. The ordinance shall incorporate standards that address at a minimum the following:

- A. Mapped inventory of sensitive views and view sheds within the entire County;
- B. Criteria for designations of scenic corridors;
- C. State Scenic Highway criteria;
- D. Limitations on incompatible land uses;
- E. Design guidelines for project site review, with the exception of single family residential and agricultural uses;
- F. Identification of foreground and background;
- G. Long distance view sheds with the built environment;
- H. Placement of public utility distribution and transmission facilities and wireless communication structures;
- I. A program for visual resource management for various landscape types, including guidelines for and restrictions on ridgeline development;

- J. Residential setbacks established at the 60 CNEL noise contour line along State highways, the local County scenic roads, and along the roads within the Gold Rush Parkway and Action Program;
- K. Restrict sound walls within the foreground area of a scenic corridor;
and
- L. Grading and earthmoving standards for the foreground area.

Policy 2.6.1.2: Until such time as the Scenic Corridor Ordinance is adopted, the County shall review all projects within designated State Scenic Highway corridors for compliance with State criteria.

Policy 2.6.1.3: Discretionary projects reviewed prior to the adoption of the Scenic Corridor Ordinance, that would be visible from any of the important public scenic viewpoints identified in Table 5.3-1 and Exhibit 5.3-1 of the El Dorado County General Plan Draft Environmental Impact Report, shall be subject to design review, and Policies 2.6.1.4, 2.6.1.5, and 2.6.1.6 shall be applicable to such projects until scenic corridors have been established.

Policy 2.6.1.6: A Scenic Corridor (-SC) Combining Zone District shall be applied to all lands within an identified scenic corridor. (Community participation shall be encouraged in identifying those corridors and developing the regulations.

Policy 2.6.1.8: In addition to the items referenced in Policy 2.6.1.1, the Scenic Corridor Ordinance shall consider those portions of Highway 49 through El Dorado County that are appropriate for scenic highway designation and pursue nomination for designation as such by Caltrans.

Policy TC-1w: New streets and improvements to existing rural roads necessitated by new development shall be designed to minimize visual impacts, preserve rural character, and ensure neighborhood quality to the maximum extent possible consistent with the needs of emergency access, on street parking, and vehicular and pedestrian safety.

The Project clearly does not consider these policies, and if the County policies enumerated are deemed to constitute “thresholds” of environmental significance, then the Project clearly violates or exceeds these thresholds, and has a decidedly negative impact on the aesthetics of the area.

Dark Skies become Dark Stars:

The DEIR is wholly silent on what has become a major issue in both rural and urban development---the disappearance of the “night sky” due to the “sky glow” that results from light pollution. This has a number of effects that are adverse---from the inability of people within its ambit to clearly see the stars and constellations at night; because it probably interferes with both animal migration pattern instincts, and may well contribute to sleep disorders in humans. In all events, compiling the night lighting effects from the project, the existing Missouri Flat

developments, and the creep up the Sierra slope of a 24 hour per day illumination pattern stretching from at least Sacramento to Missouri Flat, is nowhere even discussed in the DEIR.

Project Alternatives not studied:

CEQA requires that a reasonable range of project alternatives be reviewed and analyzed in the context of the preparation of an EIR. Although the Project is perhaps the most destructive to the Diamond Springs area of those analyzed in the DEIR, what is not analyzed in that document is the alternative of simply utilizing Bradley Drive and extending it to Missouri Flat.

This alternative will be far less destructive to the environment and the economic base of the Diamond Springs community than any of the alternatives presented in the DEIR. Since it appears that the Project, if implemented, will still leave levels of service at almost identical levels as if no project had been implemented in the first place (Table 4.12-6), the proposed Project is useless as a long term traffic "fix" for the area (if indeed such a fix is needed at all) and therefore the sole purpose of the Project seems to be to open up new land areas for growth and development, all impacts that the DEIR fails to study or account for.

Selection of the EIR Consultant:

CEQA does permit the hiring by the County of an EIR consultant previously hired by the developer of a project for which the EIR is being prepared. However, the County Conflict of Interest Code requires the department head in charge of an EIR to review the consultant's prior involvement with that developer (or other developers or project proponents of the Project) and make a determination that the facts of the particular case warrant the County in hiring the consultant. We do not believe that any such analysis was conducted in the present case, and that the hiring of the DEIR consultant was not appropriate.

We request that the County withdraw the present DEIR from further processing at this time until the issues raised above have been satisfactorily resolved.

Respectfully,

Save Our County

Sue Taylor
Contact Person
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