



EL DORADO COUNTY PLANNING & BUILDING DEPARTMENT

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Date: July 1, 2020

To: Board of Supervisors

From: Evan Mattes, Senior Planner

Subject: DR-A20-0001 and DR-A20-0002/Cool General Retail Appeals

The purpose of this memorandum is to provide a summary of the County's response to the requests of the Divide Preservation Society and Cool Pilot Hill Advisory Committee appealing the Planning Commission's May 28, 2020 approval of Design Review DR19-0006/Cool General Retail. The analysis underlying the County's response is in the documents themselves. The grounds for the independently filed appeals are identical and assert that the project violates the requirements of the California Environmental Quality Act (CEQA) and the El Dorado County General Plan. The grounds for appeal as stated in both appeals is provided below in bold with County staff responses immediately following in italics:

"This appeal is based upon the grounds that the Planning Commission's approval of the project violates the requirements of the California Environmental Quality Act, Public Resources Code, section 21000 et seq., and the El Dorado County General Plan. The County's reliance on a Mitigated Negative declaration violates CEQA as the administrative record does and will support a fair argument that the project may have a significant impact to traffic and circulation (including pedestrian and bike safety), aesthetics, cultural resources, drainage, urban decay, and cumulative impacts."

General Plan Consistency: The project as approved by the Planning Commission has been adequately analyzed for potential environmental impacts in accordance with CEQA and is consistent with the applicable policies and standards of the General Plan and Zoning Ordinance, as identified in the Findings section of the Planning Commission Staff Report. The project site has a general plan land use designation of Commercial (C) and a zoning designation of General Commercial-Design Control (CG-DC), which allows for the proposed retail use by right but requires approval of a Design Review Permit. The required design review is the only requested entitlement. The County does not have adopted design standards for the Cool Community under Zoning Code subsection 130.27.050.F. If the County had adopted design standards for the Cool community, issuance of the design permit would have been ministerial under subsection 130.52.030.B and thereby exempt from CEQA.

Traffic: A Traffic Report was prepared for the proposed project, was subsequently revised, and was analyzed and discussed within the Initial Study Mitigated Negative Declaration (ISMND) and the Staff Report to the Planning Commission. The Traffic Report concluded that the proposed project would not have any significant Traffic/Transportation impacts. In addition, no design hazards for automotive, pedestrian, or bicycle facilities were identified. Additional information regarding the analysis of traffic is included in the memorandum from the Department of Transportation.

Aesthetics: The ISMND fully considers the potential aesthetic impacts of the proposed project and concludes there is no significant adverse impact to the community's aesthetics. The project is not located within a scenic vista nor within an identified scenic resource. The project character of retail is consistent with the surrounding development and the proposed design was developed with significant input from the community and consideration of the design of the surrounding retail development. The project design, architectural treatments, and associated improvements substantially conform to the El Dorado County Community Design Guide and would not substantially detract from this commercial district. Therefore, construction of the project would not substantially degrade the character of the site or its surroundings, as the new retail store building would be consistent with existing development in the area.

Cultural Resources: A Cultural Resources Inventory was prepared for the project site. The Inventory was peer reviewed by a qualified archaeologist under contract with the County and found to be adequate for reliance in the CEQA document. The inventory found no evidence of cultural resources, as defined by CEQA, on the project site. Despite the lack of substantial evidence of any significant impacts to cultural resources, the County imposed standard conditions of approval on the project for addressing the discovery of previously unknown cultural resources during project construction. There is no substantial evidence in the record that the project would have a significant impact.

Drainage: The proposed project is served by existing stormwater infrastructure and the project will not result in significant impacts from associated grading and drainage. All project related grading activities exceeding 250 cubic yards of graded material or grading completed for the purpose of supporting a structure must meet the provisions contained within the County of El Dorado Grading, Erosion, and Sediment Control Ordinance, County Code Section 110.14. All project related drainage facilities would be required to be constructed in compliance with standards contained in the County of El Dorado Drainage Manual and the County Stormwater Ordinance. There is no evidence in the record that the proposed project cannot meet these standards.

Urban Decay: The appellants identify "urban decay" as one of several issues that would have a significant impact on the environment but provide no discussion or elaboration. Additionally, several members of the public have expressed generalized concerns about potential economic effects of the project on existing businesses. Neither CEQA nor the County General Plan or Zoning Ordinance define "urban decay." "Urban decay" is commonly used to refer to an indirect significant effect on the physical environment

resulting from substantial economic change. A project's economic effect is not considered an impact under CEQA, per CEQA Guideline 15131(a). However, a CEQA analysis may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to substantial physical changes caused in turn by the economic or social changes. When that indirect physical change is so prevalent and substantial it impairs the proper use of affected real estate or the health, safety and welfare of the surrounding community it is typically called "urban decay." For example, one definition of urban decay accepted by a court for purposes of CEQA is:

"[U]rban decay is defined as, among other characteristics, visible symptoms of physical deterioration that invite vandalism, loitering, and graffiti that is caused by a downward spiral of business closures and multiple long-term vacancies. This physical deterioration to properties or structures is so prevalent, substantial, and lasting for a significant period of time that it impairs the proper utilization of the properties and structures, or the health, safety, and welfare of the surrounding community. The manifestations of urban decay include such visible conditions as plywood-boarded doors and windows, parked trucks and long term unauthorized use of the properties and parking lots, extensive gang and other graffiti and offensive words painted on buildings, dumping of refuse on site, overturned dumpsters, broken parking barriers, broken glass littering the site, dead trees and shrubbery together with weeds, lack of building maintenance, abandonment of multiple buildings, homeless encampments, and unsightly and dilapidated fencing." (Joshua Tree Downtown Business Alliance v. County of San Bernardino (2016) 1 Cal.App.5th 677, 685.)

The chain of cause and effect for a major retail project is typically as follows: (1) would the project, through the diversion of sales, cause one or more existing businesses to close; (2) would the business locations be leased or sold to new tenants within a reasonable period of time, or would the closures result in extended vacancies; (3) would the extended vacancies result (through neglect of the property) in the physical deterioration of properties or structures that impairs the proper utilization of the properties or structures or the health, safety, and welfare of the surrounding community. With regard to item (1), an economic analysis was prepared for the proposed project by a professional economist (ALH, November 26, 2019). The analysis found that the project would not substantially impact the existing retail businesses in Cool, and would not result in business closures. Therefore, the economic change required for a potential significant "urban decay" impact would not occur, and the potential for physical conditions constituting "urban decay" to result is not considered likely. There is no substantial evidence in the record that the proposed project would result in prolonged retail vacancies within Cool that would cause physical decay of the urban environment. Instead, the project seeks to utilize an existing vacant lot zoned for commercial that has historically had unpermitted uses that operated without any County review or authorization.

Cumulative Impacts: As stated in the Findings section of the Staff Report and as analyzed in the Cumulative Impacts section of the ISMND, there will not be any significant cumulative impacts resulting from the project.