

J. Diehl Public Comment  
5-13-14 # 44

May 13, 2014

County of El Dorado Board of Supervisors  
County of El Dorado Development Services  
Att: Jim Mitrising,  
Clerk of the Board 2850 Fairlane Court Placerville, CA 95667

Email

Subject:Planned Development PD11-0005/S11-0009/ Green Valley Nursery.

Supervisors Mikulaco, Nutting, Veerkamp, Briggs, Santiago, and Mr. Trout:

My husband and I are not able to attend the meeting today at 2pm but we wanted to voice our opinion on this issue. We are also concerned citizens and residents of El Dorado Hills and have an interest in this particular location as we are family members of residents of Shadowfax Lane.

We feel that it is in your best interest to do your due diligence in this situation for the local community. Public safety should be your number one priority in this specific project. A traffic impact analysis should be done before any project is approved in this location. Lack of required acceleration and deceleration turn lanes along with sidewalks, gutters and pedestrian curbs are a major concern and should be addressed. We feel that taking all the appropriate steps now in order to move forward on this project, ensures business development in the future with the support of the community in this particular corridor of Green Valley Road. Let's all work together to see that public safety is upheld and made a priority.

Friends of Green Valley have submitted letters of concerns along with a Review of Mitigated Negative Declaration. Residents of the area and local community have participated in efforts to bring to your attention major public safety concerns. We live and work in this particular community and along this corridor. We have personally seen the high rates of speed and accidents that have happened in and near this location. With this project being approved without proper analysis of the real impact it will have, makes us wonder what other projects are already approved to move forward without proper study on the effect on the communities and public safety. The lack of consideration for those that have voiced their opinions and concerns leads us to assume that tax revenue has much to do with this but what you may be missing is that with the amount of residents and established businesses that are opposed to moving this project forward in and along this corridor, we generate more tax revenue for the county as a whole than the nursery. Every vote counts and every voice should be heard. Your position on this is important to us and we would like to see it handled without favoritism. If Green Valley Nursery decides to leave and another business desires to set up in the same location, we will go through this all over again.

We have stated before that it is not that we do not want the nursery to do business in this location but we are simply asking that you, our local government perform due diligence when it comes to this project that will ultimately directly effect the safety and natural environment surrounding this area if nothing is done.

Green Valley Nursery may decide that one day they want to illegally set up shop somewhere else

in the near future and we are sure that their names will come across your desk again sometime. Their behavior seems to be a pattern of doing things "their way". Their blatant disregard, bullying and attempts at intimidation are very disturbing and unbelievable in some cases. But for now, we would like them to be held accountable for their share of the cost of doing business in this county just like everyone else.

Unfortunately this has somewhat been played out in the local papers as well and will most likely continue to do so as the community in general want to know how are tax dollars are spent. The Friends of Green Valley should not have to keep spending their own money to pay for reviews and lawyers to make you listen. We want to be heard. We are asking again that you send this project back to planning and put public safety FIRST.

Sincerely,  
John and Jenny Diel



Miller Starr Regalia Public  
Comment # 44

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May 12, 2014

**VIA E-MAIL [edc.cob@edcgov.us]**

Board of Supervisors  
El Dorado County  
Placerville Office  
330 Fair Lane  
Placerville, CA 95667

Re: Appeal of Planning Commission Approval of Special Use Permit S11-0009/Planned Development PD11-005/Green Valley Nursery & Landscape

Honorable members of the Board of Supervisors:

Miller Starr Regalia represents Julie and Don DeVors in their operation of Green Valley Nursery & Landscape. Green Valley Nursery & Landscape is one of the last remaining "mom and pop" nurseries in the region; these types of businesses are disappearing as corporate enterprises have entered the market. It is with some dismay, then, that Julie and Don must battle on an additional front — that is, defending their application for entitlements (the Project) against the meritless claims of a small group of neighbors.<sup>1</sup>

In general, these neighbors assert that the County's approval of the Project would result in a bevy of new and significant environmental impacts. First and foremost, Julie and Don wish only to obtain the entitlements necessary to sanction the business they have conducted at 230 Green Valley Road for the past three years. There is very little "new" activity being proposed — essentially, only minor construction actions necessary to ensure the nursery conforms with zoning rules — and this fact has an important legal effect. Simply, insofar as the neighbors claim, under the California Environmental Quality Act (CEQA), that the Project will have

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<sup>1</sup> These neighbors include Stan and Tracey Iverson, Betty Bernard, and Amy Anders (apparently representing a ground called Friends of Green Valley that has no other known members). This letter is intended to address all comments the County has received to date, including Ms. Ander's letter to the board of May 10, 2014, and its attachments. It should be mentioned that the Project site carries a commercial designation, and so there has been a reasonable expectation that this site would host some nature of commercial activity, even perhaps an intensity of commercial use much greater than a small nursery.

significant environmental impacts, generally there in fact are zero environmental impacts at issue.

Here is why: State law requires that an environmental document compare the effects of the Project to the existing conditions at the Project site at the time of environmental review. Even though Julie and Don may not have operated their business with all the requisite approvals since 2011, their "baseline" for environmental comparison encompasses their level of activity in 2012 and 2013 — the very same level of activity associated with the "Project." Pursuant to well-established case law, it does not matter whether past activities are legitimate. The setting of a baseline requires an assessment only of the physical activity occurring on a site, and not its legality. Therefore, there are no environmental impacts, except for de minimis impacts associated with the minor construction activities that may be necessary to bring the nursery's operations into zoning conformance (e.g., restriping of roads, construction of a small permanent bathroom, installation of a septic system, compliance with streambed alteration agreement conditions). The mitigated negative declaration that the County prepared, then, is overly conservative in assessing impacts. While Julie and Don applaud the efforts of the County in evaluating the Project, and will do whatever is necessary to comply with applicable building and planning ordinances, the fact is that there are only de minimis impacts resulting from the Project when properly viewed under CEQA.

Second, even if for the sake of the argument there could legally be the range of CEQA impacts identified by the handful of protesting neighbors, the impacts identified by Project opponents are based on mistruths and misunderstandings, and thus do not amount to the substantial evidence necessary to require preparation of an environmental impact report. While the standard of judicial review for a mitigated negative declaration may be non-deferential, the County's judgment with regard to the credibility of a given public comment does enjoy a high degree of judicial deference.

Each of these points are discussed in further detail below.

#### **I. Background.**

Julie and Don began operating the Green Valley Nursery ten years ago, in November 2004, at a different location — 334 Green Valley Road, El Dorado Hills. In about May of 2011 they moved to its current location after the family of Amy Anders, one of the Project opponents, evicted them from its property located a short distance away. It did not take a long time to set up operations at 230 Green Valley Road, as much of the work involved merely moving the nursery products (e.g., plants, soils, etc.) from one location to the other.<sup>2</sup> This quick move was born from necessity. That is, because the hot season was arriving, Julie and Don would have

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<sup>2</sup> The timing of operations is reflected in the County's staff report, prepared in advance of the Planning Commission hearing of March 27, 2014.

lost much, if not all, of their inventory, if they had not established an adequate nursery within a short timeframe.

Shortly after May 2011, Julie and Don set up a main modular building at the Project site, which housed an office and sales area; established six shade structures to protect various plants from the summer sun; and erected a port-a-potty. Except for a shed on the property, which the owner constructed in early 2012, the remaining physical structures on the Project site (e.g., a strawberry stand, a second shed in the strawberry orchards south of the nursery site) have existed for 20 or more years.

In terms of operations, Julie and Don took an established business and moved it a short distance down Green Valley Road. As such, the nursery's business operations began in mid-2011 at the Project site at a level that is consistent with the customer activity the business experiences today, or about 20 to 30 customers per day. If anything, the fairly recent opening of the big box nursery in late 2011/early 2012 near Highway 50, Green Acres Nursery and Supply, has led to a dwindling of customers (hurting business by 20 to 30 percent). The specific activities that Julie and Don established in 2011 included nursery supply sales, a landscaping business, the growing of fruit and vegetables, and the offering of seasonal sales of Christmas trees and pumpkins — the very same activities it carries on today, and proposes to carry on in the future. It is true that Green Valley Nursery now offers a greater variety of some products than it did in 2011, such as a few more types bulk goods (e.g., mulch), but those products occupy the same footprints they did when the business was relocated and, again, customer traffic has remained consistent.

Julie and Don began operation of Green Valley Nursery & Landscape without an understanding of all the permits and other entitlements that would prove necessary. As such, the Project entitlements for which Julie and Don are applying now largely seek to legitimize the operations they have managed for the past four years. The only "new" operation included in the application is for the sale of fruits and vegetables in a small stand, similar to the strawberry stand that has operated on-site for 20 years; that said, Julie and Don have been providing vegetables to the community for free in past years, and so the sale of similar goods would not generate much, if any, new customer traffic.<sup>3</sup> For instance, the vegetable garden that would supply the stand is a mere 20 feet by 20 feet. Various fruit trees already located on the Project site also would supply the stand. Otherwise, the only "new" activities contemplated are the minimal construction activities necessary to bring the business into compliance, such as refining the business' access driveways, providing for some minor, off-site traffic improvements, and installing a permanent bathroom facility and septic system.

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<sup>3</sup> The strawberry stand on site generates approximately 10-15 customers per day, and does not operate on a full-time basis. Rather, the stand has intermittent hours during the daytime hours, and remains open only on a seasonal basis. It is anticipated that the fruit and vegetable stand that Julie and Don are proposing would generate similar levels of customers.

**II. Under the California Environmental Quality Act, the approval of “as built” facilities and operations means the Project will result in no impacts; only de minimis impacts would result from the minimal activities Julie and Don must undertake to bring the Green Valley Nursery into zoning conformance.**

A CEQA document must describe existing environmental conditions in the vicinity of a proposed project, which is referred to as the “environmental setting.” (14 CCR, § 15125.) This description of existing environmental conditions serves as the “baseline” for measuring the changes to the environment that will result from the project and for determining whether those environmental effects are significant. (14 CCR, §§ 15125, 15126.2(a).) As the California Supreme Court has noted, to provide the impact assessment that is a fundamental goal of a CEQA document, the document “must delineate environmental conditions prevailing absent the project, defining a ‘baseline’ against which predicted effects can be described and quantified.” (*Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 447.) In other words, for purposes of CEQA, the existence and magnitude of an environmental impact is a measure of the difference between what exists now and what is proposed in the future.

Here, what is proposed is nearly the exact same thing as what exists and has existed for four years. The current mitigated negative declaration for the Project is dated February 2014, whereas a previous iteration of the document is dated February 2013. During both of these times and months that preceded them, the Green Valley Nursery has operated in the same manner that Julie and Don operate it today. It is these operations — the levels of traffic, the truck deliveries — that form the baseline. Moreover, as explained above, the proposed Project is the legitimization of these same activities, with some minor enhancements that largely serve to legitimize the current activities. The “delta” between what exists and what is proposed effectively is zero, except for in a few instances, also identified above, where the difference is minimal.

It is true that questions may arise when a project applicant claims a baseline that accounts for illegitimate activities. However, a long line of published court opinions, stretching back 15 years, provides that CEQA is not concerned with the lawfulness of baseline activities, and that the proper baseline simply is the existing condition of the site, even if that condition may be the result of prior illegal activity. (*Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 [illegal disturbance to mining site incorporated into baseline]; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 [county airport operating for 30 years without authorization properly incorporated into baseline]; *Eureka Citizens for Responsible Gov’t v. City of Eureka* (2007) 147 Cal.App.4th 357 [court rejecting claims that EIR identification of impacts must account for prior code or zoning violations; baseline can incorporate such violations]; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209.) The legitimacy of a land use falls within the purview of the

zoning enforcement officer, and is not the concern of planning staff who prepare an environmental review document.

Thus, the proper scope of CEQA review should concern only those minimal activities that Julie and Don have proposed to bring the site operations into conformance with zoning laws (e.g., minimal off-site improvements). In terms of operations and customer traffic, it is anticipated that operations conservatively will rebound (hopefully) to 2011 levels — about 30 customers per day (and certainly would not result in car trips greater than, for instance, the 100-trip threshold set forth in the General Plan that triggers the need for more intense environmental review).<sup>4</sup>

Each of the comments submitted by neighbors has failed to recognize the important concept of a CEQA baseline. For instance, Ms. Anders' letter of May 10, 2014 complains that traffic has worsened on Green Valley Road and that this "trending pattern ... must be addressed before any more pressure from new business is added."<sup>5</sup> This comment and others fail to recognize that the Project before the board does not add any significant "new" business to Green Valley Road.

**III. Even if, for the sake of argument, the scope of CEQA review properly could account for the entirety of Project operations, all allegations that**

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<sup>4</sup> See Phase 1 Initial Determination — Traffic Impact Study, demonstrating project does not exceed any of the thresholds set forth under Policy TC-Xf of the General Plan. Even if one adds the nursery traffic (a maximum of 20 to 30 customers a day, plus 15 customers of vegetable and fruit sales) to the strawberry stand traffic (15 customers a day), the aggregate traffic during a peak sales season only would amount to 60 customers (where it is not always the case that each customer arrives by separate vehicle, such that traffic trips could be well less than 60.)

<sup>5</sup> Robert Shanteau, a purported traffic expert, has submitted a letter to supplement Ms. Anders' letter of May 10, 2014. His comments too fail to address the fact that the Project under consideration does not propose any new activities that would exacerbate existing traffic conditions. His letter, legally, is irrelevant to any discussion of CEQA. Moreover, Mr. Shanteau makes improper legal conclusions, asserting the applicant should contribute funds toward Green Valley Road improvements. The County has concluded that the Project will have less-than-significant traffic impacts, and that Project activities fail to trigger any General Plan thresholds for undertaking a traffic study. Contrary to the assertions of Mr. Shanteau, to impose a requirement for fees could offend state and federal constitutional and statutory provisions against the levy of unjust exactions. (*Nollan v. Cal. Coastal Comm'n* (1987) 483 U.S. 825; see also *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391; Gov. Code § 66000 et seq.) It is noteworthy that Mr. Shanteau does not attack the County's assessment that the Project would fail to generate greater than 10 peak-hour trips, 100 daily trips, or otherwise cause the exceedance of a General Plan threshold.

**the Project would result in significant impacts have been based on misrepresentations or misunderstandings of fact.**

**A. CEQA law governing the evaluation of a mitigated negative declaration.**

Where a public agency considers a mitigated negative declaration, it is true that the agency must prepare an environmental impact report (EIR) where a project opponent submits substantial evidence of a fair argument that the project would have a significant impact. Conversely, where a lead agency properly finds it has been presented with no substantial evidence that a project may have a significant adverse environmental effect, it *must* prepare a negative declaration rather than an EIR. (*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144; Pub. Res. Code, § 21080(c); see 14 CCR §§ 15070(b), §§15063(b)(2), 15064(f)(3).) “The existence of public controversy over the environmental effects of a project *shall not* require the preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.” (Pub. Res. Code, § 21082.2(b), *emph. added.*) “Shall” is “mandatory.” (Pub. Res. Code, § 15.)

Again, the well-established “fair argument” test requires preparation of an EIR if “substantial evidence” supports a fair argument that a project may have a significant, unmitigated environmental effect. However, not just any argument qualifies as a “fair” argument, and not all evidence amounts to “substantial” evidence. To be “fair,” an argument must be more than argument alone; it must be relevant, logical, non-speculative, and supported by substantial evidence. “Substantial evidence” is evidence that is of “ponderable legal significance ... reasonable in nature, credible, and of solid value.” (*Stanislaus Audubon Society, Inc. v. County of Stanislaus, supra*, 33 Cal.App.4th 144.) As more specifically defined by CEQA, “substantial evidence” includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact”; it does *not* include “argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.” (Pub. Res. Code, §§ 21080(e); see Pub. Res. Code, § 21082.2(c); 14 CCR, §§ 15064(f)(5)-(6), 15384.)

As noted by the authors of a leading CEQA treatise, “[t]he fair argument rule does not mean ... that the lead agency has no discretion concerning the evidence or the determination of significance.” (1 Kostka & Zischke, *Practice Under the California Environmental Quality Act* (CEB 2013 ed.), §6.37, p. 343.) An agency’s discretionary determination whether evidence is “substantial evidence” thus includes a determination whether “it is sufficiently reliable to have solid evidentiary value” and, in making that determination, the agency may consider factors such as the evidentiary foundation, qualifications of the source, credibility, whether the evidence



is clearly inaccurate or erroneous, and other factors bearing on the reliability of the evidence. (*Id.* § 6.39, pp. 345-346.)

In exercising its discretion to determine whether alleged expert or other evidence qualifies as “substantial evidence,” a public agency’s determinations are entitled to judicial deference. Even under the “fair argument” test, lead agencies may, as a preliminary matter, weigh the evidence to determine whether it is “substantial” and worthy of consideration. (See, e.g. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903.) This limited weighing of the evidence is necessary so that an agency may address the threshold question of whether evidence is reasonable, credible, and of solid value so as to constitute “substantial evidence.”

**B. *The objection of Project opponents here do not qualify as “substantial evidence.”***

As a threshold matter, it bears repeating that all public comments submitted by opponents of the Project assume that CEQA requires the County to evaluate the impacts of the nursery when compared against a “zero” baseline, or an empty lot. As explained above, for 15 years a number of courts consistently have held, without a hiccup, that in situations such as the one here, the proper method is to compare the proposal against the actual operations occurring at the time of environmental review, regardless of whether those operations complied with all zoning ordinances.

Thus, insofar as neighbors complain about traffic levels and traffic safety impacts, those issues existed at the time the County prepared the mitigated negative declaration, and thus are not cognizable under CEQA. Insofar as neighbors complain about the grading near the ephemeral creek that runs across the site, that grading occurred a very long time ago.<sup>6</sup> That is not to say that Julie and Don should not remedy any problems insofar as a cure is necessary to meet zoning standards and other laws. It merely is to say that existing nonconformities are not the province of CEQA.

It is for the sake of argument, then, that we address the worth of the public comments submitted and the credibility of the commenters.

Project opponents, which here include local neighbors that include Amy Anders, Tracey and Stan Iverson, and Betty Bernard, have submitted a number of public comment on the inadequacy of the Project’s CEQA review, but each of these comments are based on misrepresentations or misunderstandings of fact and law.

For instance, during the Planning Commission proceedings:

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<sup>6</sup> Contrary to assertions by Project opponents, flooding issues occurred prior to 2011 and are not a result of any activities by Julie and Don.

- Stan Iverson repeatedly has asserted that delivery trucks cannot turn from Green Valley Road onto Shadowfax Lane without encroaching on the northbound lane of the latter road. On this basis, he claims that trucks must stop on Green Valley Road until traffic on Shadowfax Lane clears of traffic, which creates back-up on Green Valley Road and so engenders a safety hazard.<sup>7</sup> Insofar as Mr. Iverson has submitted a photo of a truck on Green Valley Road near its intersection with Shadowfax Lane, this “evidence” is a still image of what could be a truck in motion. Julie and Don dispute the truth of Mr. Iverson’s assertions but, regardless, Julie and Don hereby suggest that, to eliminate any and all concern, the County impose as a condition of approval restrictions on delivery trucks. Namely, and without conceding that the veracity of neighbors’ claims, it is respectfully requested that the County amend the Project conditions of approval to restrict Project-related truck deliveries to off-peak traffic hours, and require truck drivers travelling eastbound on Green Valley Road to use the Project’s entrance on Green Valley Road.
- Mr. Iverson complained of noise from generators that are not part of the Project. As clearly established during the Planning Commission hearing and in various documents within the administrative record, the Project envisions PG&E connections that would eliminate the use of any generators. The noise complaints are irrelevant.
- Amy Anders raised the issue of stinkwort and asserted the Project is responsible for propagating this invasive species. Chuck Hughes, a credentialed biologist, testified he did not believe this invasive weed originates at the Project site and the County’s deputy agricultural commissioner confirmed the weed already has been “endemic” in the region. The deputy commissioner moreover specified that Julie and Don likely could maintain their premises through the simple effort of hand-pulling weeds, and that Julie and Don already participated in the County’s established program for weed-free delivery materials. Insofar as stinkwort is a problem in the area, Julie and Don have minimized, to the extent they even exist, any contributions to this problem. Though the mitigated negative declaration prescribes a mitigation measure on this topic, and while Julie and Don do not advocate for its removal from the document, this measure really is

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<sup>7</sup> To put this issue in perspective, it is important to note that during busy seasons, trucks make deliveries a mere two times per week and, during slow seasons, trucks make deliveries two times per month. During the Planning Commission hearing, evidence surfaced that Mr. Iverson had experienced an issue at the intersection Green Valley Road and Shadowfax Lane once in a three-year time period.

unnecessary in light of the facts. It should be noted that the record contains no evidence that Ms. Anders is a biological expert.

- Betty Bernard complained about noxious odors from bathroom facilities and truck deliveries. Truck deliveries occur twice a week or twice a month (see footnote 7), depending on the season, and restrooms are meticulously maintained (and in any case will be replaced by permanent facilities, thereby mooted any comment in this regard). It is worth noting that Ms. Bernard's home sits about 500 feet from the operations she complains about, with intervening vegetation sitting between her home and the nursery uses. It simply is not credible to believe that odors from a meticulously maintained bathroom (see **Exhibit A** [record of maintenance, showing cleanings every three to four days]) travel the length of 1.5 football fields.
- Ms. Anders has complained about traffic conditions along the segment of Green Valley Road running from Sophia Parkway to Francisco Drive, and at the intersection of East Natoma and Green Valley Road. She has failed to address the fact that the subject intersection sits nearly a mile away from the Project site, and that traffic on the subject roadway segment has a unique feature, independent of the Project, that causes traffic (i.e., the roadway narrows from four lanes to two lanes). In her letter of May 10, 2014, Ms. Anders submits a photo of a traffic accident; while disturbing, the photo is irrelevant as it depicts an accident occurring near a property owned by Ms. Anders, and not along the frontage of Green Valley Nursery & Landscape.<sup>8</sup> To Julie and Don's knowledge, there has not been a single traffic accident along the frontage of Green Valley Nursery & Landscape during its three years of operation, and no evidence in the record exists to the contrary.<sup>9</sup> Ms. Anders' comments are irrelevant and unduly prejudicial.

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<sup>8</sup> Ms. Anders also submits a photo of what purports to be the creek on the Property, and "clear[] documentation" of irresponsible nursery activity. It is not clear what this photo shows and there is no foundation to believe the characterization it has been ascribed.

<sup>9</sup> Mr. Shanteau, Ms. Anders' purported traffic expert, asserts without any underlying analysis that access to the Project site is not adequate, alleging, for instance, that the turn lane from westbound Green Valley Road onto Shadowfax Lane is inadequate. The length of an average tractor trailer is approximately 65 feet, whereas the referenced turn lane is approximately 160 feet long. Mr. Shanteau appears to have made comments based on a fundamental misunderstanding of the facts. (See also footnote 5 [purported expert makes improper and incorrect legal conclusions].) Finally, insofar as Mr. Shanteau complains that internal site circulation was not addressed, the impact of a Project on its own users is not a

- Ms. Anders, in her letter of May 10, 2014, asserts that the mitigated negative declaration does not include any information related to hydrology problems, and contains no requirement to engage a drainage expert to review issues pertaining to flooding, standing water, and erosion. First, flooding problems existed prior to the occupation of the site by Julie and Don.<sup>10</sup> More importantly, the assertion fails to acknowledge that the site has undergone and will undergo review by a number of regulatory agencies, each staffed with biological and hydrological experts, who will impose, *inter alia*, Best Management Practices; requirements associated with a Streambed Alteration Agreement pursuant to Fish & Game Code section 1602; and a Storm Water Pollution Prevention Program. (See MND, pp. 11-13, 20-21.) For more than 20 years, courts have recognized that these hydrological regulations and mechanism can constitute “built-in” mitigation. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777; *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614.)
- Tracey Iverson has asserted the nursery has grown by leaps and bounds. She also asserted that Julie and Don have operated without a business license. These assertions are factually inaccurate, and have no basis. Attached hereto are true and accurate photos of Julie and Don’s business license, agriculture license, seller’s permit, and weighmaster license. (See **Exhibit B**.)

The comments received by the County are misguided, disingenuous and, in many cases, simply irrelevant. The commenters may be good people and good citizens, but the manner in which they have attacked this Project, as well as Julie and Don, is improper. Accordingly, the Board would be within its discretion to determine the commenters are not credible and/or have presented irrelevant evidence, and that this information does not qualify as “substantial evidence” under CEQA.

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CEQA concern. (See *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464; *Ballona Wetlands Land Trust, et al. v. City of Los Angeles* (2011) 201 Cal.App.4th 455; *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604.) On the whole, this letter states in conclusory fashion that the County’s CEQA document is not adequate, while failing to wrestle with a single fact; it thus fails to articulate substantial evidence that operation of the Project would have a significant impact.

<sup>10</sup> Martin Brinitzer, a resident of Shadowfax Lane, has lived at this location for 12 years and has informed Julie and Don that flooding began occurring prior to the establishment of the nursery.

Insofar as neighbors have submitted non-CEQA comments, and questioned whether the Project would comply with existing zoning and other laws, (1) the Project would indeed comply, as the Planning Commission determined after extensive discussion on March 27, 2014, and (2) the Board's decision is governed by a substantial evidence standard and enjoys judicial deference.

#### **IV. CONCLUSION.**

The Green Valley Nursery is Julie and Don's livelihood, and a "mom and pop" enterprise that has managed to somehow survive in an increasingly hostile business climate. Their activities are discrete, well within the purview of what existing zoning contemplates (subject to the Project activities that are designed to bring the nursery into conformance), and respectful of the surrounding community. The objections you have heard come from a small group of neighbors, at least some of whom appear to be motivated by concerns over property values and other pecuniary interests. (See, e.g., public comment at March 27, 2014 Planning Commission hearing.) These claims are based on misrepresentations and/or misunderstandings of fact.

But engaging in the analysis of whether neighbors have made credible claims should not overshadow the greater point that, as a matter of law, there generally are no CEQA impacts, and the impacts that properly do fall within the ambit of CEQA study are de minimis. Not a single public comment challenges this notion, nor could one. Again, the baseline for environmental review is the very operations that now constitute the Project; as clearly disclosed in the mitigated negative declaration and other documents, the Project merely seeks to legitimize "as built" operations. To the extent the Project does consist of "new" activities, these are negligible and largely designed to ensure the business' conformance with zoning. The painting of lines on a public road entails no significant activity. The replacement of a port-a-potty with a similarly sized permanent bathroom is not an onerous endeavor. Selling vegetables from a 20-by-20 foot plot, where Julie and Don already give such products away, entails no significant increase in operations. The mitigated negative declaration appears to be broader in scope than what legally is necessary, and the County would have been justified in adopting a narrower scope of environmental review. Nevertheless, Julie and Don understand that the prescribed mitigation measures may be necessary to comply with zoning and other laws, and do not challenge their imposition on that basis.

The Project opponents and whatever purported experts they have hired appear to have been confused by the mitigated negative declaration's conservative scope. As such, they comment on environmental concerns associated with existing activities, and activities that have existed for three years. While Julie and Don will do anything the County deems reasonable to fix any current problems and bring the nursery into conformance with zoning, such issues do not qualify as CEQA impacts, and thus the environmental attacks of these Project opponents fail.

Julie and Don thank the County and its staff for its attention to its application. They are dismayed by the Project opposition, but are prepared to exhaust all legal remedies available to them to ensure that, if the Board denies the appeal and upholds the Project approvals, that these approvals are defended. Such remedies may include seeking penalties against Project challengers under Public Resources Code section 21169.11, which authorizes a court to impose sanctions of up to \$10,000 against persons making frivolous claims in the course of a CEQA action. This sanction may be imposed attorneys, law firms, or any party responsible for the violation. Independent of maintaining a defense of any land use approvals, Julie and Don also are considering filing a defamation action against certain parties.

We thank you for your time, and will be available at the public hearing on May 13, 2014, to answer any questions or address any concerns.

Sincerely,

MILLER STARR REGALIA

A handwritten signature in blue ink, appearing to read 'S. Marciniak', is written over the typed name.

Sean R. Marciniak

SRM

cc: Julie and Don DeVorss  
David Livingston, Senior Deputy County Counsel (joy.henderson@ebcgov.us)

**EXHIBIT A**

DATE	DATE	DATE
10-9-88	1-6	3-17
10-31	1-9	3-20
11-4	1-13	3-24
11-7	1-16	3-27
11-11	1-20	
11-14	1-23	4-3
11-18	1-27	4-7
11-21	1-29	4-10
11-24	2-3	4-14
11-29	2-6	4-17
12-2	2-10	4-21
12-5	2-13	4-24
12-9	2-17	4-28
12-12	2-20	5-1
12-16	2-24	5-8
12-19	2-27	
12-23	3-3	
12-26	3-6	
12-30	3-10	
1-2	3-13	

THIS RENTAL INCLUDES COMPLETE  
SERVICING. IT WILL ACCOMMODATE 10  
PERSONS FOR A NORMAL WORK WEEK.  
EXCESSIVE USE WILL RESULT IN  
UNSATISFACTORY CONDITIONS BEFORE  
THE NEXT REGULAR SERVICING.



**EXHIBIT B**

C. L. RAFFETY, C.P.A.  
TREASURER AND TAX COLLECTOR  
360 FAIR LANE  
PLACERVILLE, CALIF. 95667-4197  
(530) 621-5800 Placerville  
(530) 573-3011 South Lake Tahoe

# County of El Dorado BUSINESS LICENSE

Business  
License No 2004-03416

ORDINANCE 3515

INDIVIDUAL	PARTNERSHIP	CORPORATION
XXX		

Business Name GREEN VALLEY NURSERY & LANDSCAPE

Mailing Address 230 C GREEN VALLEY ROAD

City EL DORADO HILLS CA 95762 Phone (916) 941-0401

Type of Business NURSERIES - RETAIL & WHOLESALE; SUPPLIES

Business Street Location 334 D GREEN VALLEY ROAD EL DORADO HILLS 95762

Business Owners (Attach list of additional  
owners, partners or corporate officers)

DEVORSS, DONALD  
DEVORSS, JULIE

Contractor's License Number 922061

Signature of Owner

Date

The person, partnership or corporation above named is hereby granted a license to engage in, carry on or conduct in the unincorporated  
area of the County of El Dorado, California the business, trade, calling, profession, exhibition or occupation described above for the

STATE OF CALIFORNIA  
DEPARTMENT OF FOOD AND AGRICULTURE  
1220 N STREET  
SACRAMENTO, CALIFORNIA 95814  
916 224 5405

### LICENSE TO SELL NURSERY STOCK



VALLEY NURSERY  
225 VALLEY ROAD  
SACRAMENTO

CA 95812

DATE

POST THIS LICENSE PROMINENTLY IN PUBLIC VIEW

REGULATIONS 9-09 THIS LICENSE IS NOT TRANSFERABLE - ANY CHANGE IN OWNERSHIP REQUIRES A NEW LICENSE

LIC. NO. 169

THIS LICENSE

LICENSE FEE

ADVERSE FEE

EL DORADO



42-002(Rev 7/04)

DEPARTMENT OF FOOD AND AGRICULTURE  
DIVISION OF MEASUREMENT STANDARDS

Remit fees to: PO Box 942872, Sacramento, CA 94271-2872  
6790 Florin-Perkins Rd., Ste. 100, Sacramento, CA 95828-1812  
...mail: dms@cdfa.ca.gov Web Address: www.cdfa.ca.gov/dms/programs/wm/wm.html  
Phone #: (916) 229-3040 Fax #: (916) 229-3055

**WEIGHMASTER LICENSE**

LICENSE NO. 013824

Weighmaster

DON DE VORSS & JULIE DE VORSS  
(DBA) GREEN VALLEY NURSERY &  
LANDSCAPE  
2481 SHADOWFAX LANE  
EL DORADO HILLS, CA 95762

Total Fees Remitted: \$155.00

Effective Date: 8/6/2013

**License Year: 07/01/2013 - 07/01/2014**

The Weighmaster is responsible to renew this license. (Division 5, Chapter 7, Section 12707, Business and Professions Code)

THIS LICENSE SHALL BE AVAILABLE TO WEIGHTS AND MEASURES OFFICIALS AT EACH WEIGHING LOCATION.  
This license is not transferable. Any change in ownership requires a new license.

Principal Location

2481 Shadowfax Lane  
El Dorado Hills, CA 95762  
County: El Dorado  
(916) 941-8660

Only persons listed below may perform the functions of a Deputy Weighmaster for the license holder Weighmaster.  
(Division 5, Chapter 7, Section 12703, Business and Professions Code)

For instructions on adding/deleting Deputies to your license, refer to the instruction sheet on our website.  
<http://www.cdfa.ca.gov/dms/programs/wm/wm.html>

Deputy Weighmaster(s) - 4

AUTRY, JARED  
TABOR, TRISH

BELLO, JOSE

HERNANDEZ-RODRIGUEZ, VIC

Number of vacant deputy positions: 0

DISPLAY CONSPICUOUSLY AT PLACE OF BUSINESS FOR WHICH ISSUED

CALIFORNIA STATE BOARD OF EQUALIZATION

**SELLER'S PERMIT**



ACCOUNT NUMBER

3/1/2005 SR KH 100-525833

GREEN VALLEY NURSERY  
DEVORSS LANDSCAPES, INC  
230 GREEN VALLEY RD STE C  
EL DORADO HILLS, CA 95762-3928

*NOTICE TO PERMITTEE:  
You are required to obey all  
Federal and State laws that  
regulate or control your  
business. This permit does  
not allow you to do  
otherwise.*

IS HEREBY AUTHORIZED PURSUANT TO **SALES AND USE TAX LAW** TO ENGAGE IN THE  
BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT THE ABOVE LOCATION.  
THIS PERMIT IS VALID ONLY AT THE ABOVE ADDRESS.

THIS PERMIT IS VALID UNTIL REVOKED OR CANCELED AND IS NOT TRANSFERABLE. IF YOU SELL YOUR BUSINESS  
OR DROP OUT OF A PARTNERSHIP, NOTIFY US OR YOU COULD BE RESPONSIBLE FOR SALES AND USE TAXES  
DUE BY THE NEW OPERATOR OF THE BUSINESS.

*Not valid at any other address*

**For general tax questions, please call our Information Center at 800-400-7115.**

**For information on your rights, contact the Taxpayers' Rights Advocate Office at 888-324-2798 or 916-324-2798.**

BOE-442-R REV. 15 (2-00)



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**Transactions for 07/01/2011 thru 12/31/2011 (1637 results)**

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## Karen Irias

---

**From:** edhgreenvalleynursery@gmail.com on behalf of Julie DeVorss  
<julie@greenvalleynursery.biz>  
**Sent:** Tuesday, May 13, 2014 9:26 AM  
**To:** Sean Marciniak  
**Subject:** Fwd: Shadowfax flooding

----- Forwarded message -----

**From:** **Martin Brinitzer** <n6swj@sbcglobal.net>  
**Date:** Tue, May 13, 2014 at 9:22 AM  
**Subject:** Shadowfax flooding  
**To:** Julie DeVorss <Julie@greenvalleynursery.biz>

July,

I forgot to mention that the partial flooding on Shadowfax has been observed by us since we moved here in November, 2002. Do you need that in the other email I sent?

Marty