

PC 12-9-21
#3
15 pages



EL DORADO COUNTY PLANNING & BUILDING DEPARTMENT

2850 Fairlane Court, Placerville, CA 95667
Phone (530) 621-5355, Fax (530) 642-0508

Date: November 24, 2021
To: Planning Commissioners
From: Bianca Dinkler, Project Planner
Subject: County Response to Public Comments on Air Quality/GHG Emissions/Traffic Grocery Outlet at Green Valley Station, Phase II (PD-R20-0009)

This memo is in response to a Public Comment submitted to Planning Services on October 27, 2021, which was filed in a timely manner from Attorney Robert M. Bone, regarding concerns about the proposed project and potential impacts to Air Quality, Greenhouse Gas Emissions, and Traffic (Attachment A). The Public Comment included a Public Records Act request (PRA) which Planning Services responded to separately.

AIR QUALITY & GREENHOUSE GAS EMISSIONS

On November 4, 2021, Planning Services conducted a meeting with the project applicants, the applicant's air quality consultant with Raney Planning & Management, and the County Air Quality Management District (AQMD) to discuss the concerns raised by the Public Comment.

On November 5, 2021, AQMD provided a formal response (Attachment B) which states "the El Dorado County Air Quality Management District (AQMD) responded to Public Comments made regarding the subject project's MND. The response included the statement that the standard condition number one addressed the Naturally Occurring Asbestos (NOA) concern expressed in the public comment. APN 116-301-012, the parcel where the proposed project is located, is **not** in an Area More Likely to Contain NOA, and therefore the Fugitive Dust Plan standard condition from the previous comment letter dated July 6, 2021 applies. If NOA is found during construction, the Asbestos Dust condition would apply beginning at the time of discovery." Further, the criteria pollutant emissions for the proposed project were determined to be below the thresholds of significance and the GHG emissions are below thresholds as adopted by the Sacramento Metropolitan Air Quality Management District which is what the County Air Quality Management District bases significance findings on. Planning Services concurs with the response provided by AQMD. Complete analysis of Air Quality and Greenhouse Gas Emissions is discussed and included as Attachments 15 and 18 within the Initial Study Mitigated Negative Declaration.

TRAFFIC

On November 23, 2021, Planning Services received a response from County Department of Transportation (DOT) (Attachment C) stating that, “the project is consistent with the General Plan and the Zoning therefore it is considered to have been assumed in the General Cumulative analysis. The cumulative analysis for the General Plan did not identify a capacity deficiency for Green Valley Road in this area. The size of the project does not indicate a need for a traffic signal, and the County is not typically supportive of an unwarranted traffic signal.” Planning Services concurs with the response provided by DOT. Complete analysis of traffic is discussed and included as Attachments 13, 14, and 16 within the Initial Study Mitigated Negative Declaration.

Attachments:

- Attachment A - Public Comment from Attorney Robert M. Bone
- Attachment B - County Air Quality Management District Response
- Attachment C - County Department of Transportation Response



PC 10/28/21

Planning Department <planning@edcgov.us>

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PD-R20-0009/Grocery Outlet at Green Valley Station

11 pages

1 message

Robert Bone <bob@robertbonelaw.com>
To: planning@edcgov.us

Wed, Oct 27, 2021 at 7:04 PM

Please find attached two items concerning the above proposed development.

Robert M. Bone, Esq.
Law Office of Robert M. Bone
645 Fourth Street, Suite 205
Santa Rosa, CA 95404
P: 707.525.8999
F: 707.542.4752

Please consider the environment before printing this e-mail

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2 attachments

LTR TO PLANNING COMM 10.26.21.pdf
1669K

LTR TO CLERK PLANNING COMM (PRAR) 10.26.21.pdf
2020K

Law Office of
ROBERT M. BONE

October 26, 2021

VIA EMAIL ONLY

planning@edcgov.us

Clerk
El Dorado County Planning Commission
Building C Hearing Room
2850 Fairlane Court
Placerville, CA 95667

RE: Public Records Act Request
PD-R20-0009/Grocery Outlet at Green Valley Station

Dear Sir or Madam:

Our office represents Residents for a Safe Cameron Park, an unincorporated association of concerned residents of the County of El Dorado (“Association”) that oppose the approval of PD-R20-0009/Grocery Outlet at Green Valley Station, Phase II (“Project”) proposed to be located at Assessor’s Parcel Number 116-301-012, consisting of 5.37 acres, is located on the south side of Green Valley Road, approximately 600 feet west of the intersection with Winterhaven Drive, in the Cameron Park area, Supervisorial District 2 (“Property”). Pursuant to our clients’ rights under the California Public Records Act (Government Code Section 6250 et seq.), we ask to **obtain a copy** of the following, which we understand to be held by your agency:

For ease of reference in this document, please refer to the following defined terms:

“The Planning Division” shall refer to the County of El Dorado Planning Division, its commissions, offices, departments (including the in-house attorneys and outside special attorneys), officials, employees, consultants, engineers, and agents.

“CEQA” shall refer to the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*

“County” shall refer to the County of El Dorado, the El Dorado County Planning Division, the Board of Supervisors, commissions, boards, offices, departments (including the in-house attorneys and outside special attorneys), officials, employees, engineers,

consultants, and agents.

“County” shall refer to the County of San Bernardino, the San Bernardino County Supervisors, commissions, boards, offices, departments (including the in-house attorneys and outside special attorneys), officials, employees, engineers, consultants, and agents.

“Properties” shall refer to any and/or all of the properties a 1,000-foot radius of the current proposed Project property line.

“Property Owners” shall refer to the owners of any and/or all of the Properties, as defined above.

Please provide to us the following items:

- (1) All documents through the date of your compliance with this request which refer or relate to the Project, including but not limited any staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, and audio and/ or video recordings.
- (2) All documents through the date of your compliance with this request which refer or relate to any community meetings relating to the Project, including but not limited to any materials from scoping meetings, any staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, text messages, photos, and audio and/ or video recordings, including any email correspondence and all documents related to the proposed Project, including any public communication with Planning Division commissioners.
- (3) All documents through the date of your compliance with this request which refer or relate to any request for proposals, bids, contract awards to demolish any structures for the Project.
- (4) Any and all documents through the date of your compliance with this request which refer or relate to any communications between the Planning Division and the County regarding the Project.
- (5) All documents through the date of your compliance with this request which refer or relate to any communications between the Planning Division on the one hand, and the State Historic Preservation Officer (SHPO) on the other hand, including but not limited to its officers, agents, employees, consultants, attorneys, which refer or relate to the Project.

- (6) All documents through the date of your compliance with this request which refer or relate to any communications between the Planning Division on the one hand, and the Greenwood Center of the California Conservation Core on the other hand, including, but not limited to, its officers, agents, employees, consultants, attorneys, which refer or relate to the Project.
- (7) Any and all documents which refer or relate to the Association, including any emails, staff reports, memoranda, reports, and/ or presentations.
- (8) All documents through the date of your compliance with this request which refer or relate to the total budget and proposed budget for the Project, including but not limited to reports, studies, correspondence, notes, emails, memoranda and internal memoranda, applications, plans, proposals, photos, renderings, agendas, minutes, and staff reports related thereto.
- (9) All documents through the date of your compliance with this request which refer or relate to the itemization of funds for the Project, including but not limited to applications, reports, studies, correspondence, notes, emails, memoranda and internal memoranda, applications, plans, proposals, photos, renderings, agendas, minutes, and staff reports related thereto.
- (10) All documents through the date of your compliance with this request which refer or relate to any audits of monies spent on the Project, including but not limited to reports, studies, correspondence, notes, emails, memoranda and internal memoranda, applications, plans, proposals, photos, renderings, agendas, minutes, and staff reports related thereto.
- (11) All documents through the date of your compliance with this request which refer or relate to any communications between the Planning Division on the one hand, and the El Dorado County Board of Supervisors on the other hand, including but not limited to its officers, agents, employees, consultants, attorneys, which refer or relate to the Project.
- (12) The Planning Division Project Manager's entire file on the Project, including but not limited to any and all staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, and audio and/ or video recordings.
- (13) The Planning Division CEQA Project Manager's entire file on the Project, including but not limited to any and all staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda

statements, correspondence, emails, text messages, notes, photos, and audio and/or video recordings.

- (14) All emails and text messages from the Planning Division staff charged with responsibility over the Project regarding the Project.
- (15) All emails and text messages between the Planning Division staff and Project Owners, Project Applicant and/or Project Representative regarding the Project.
- (16) All Form 700 Disclosure forms for any public officials and or personnel charged with discretionary power over the Project.
- (17) All documents through the date of your compliance with this request which refer or relate to any communications between the Planning Division on the one hand, and Congressman Tom McClintock on the other hand, which refer or relate to the Project.
- (18) All documents through the date of your compliance with this request which refer or relate to any communications between the Planning Division on the one hand, and the Project applicant which refer or relate to the Project.
- (19) Electronic versions (PDFs) of all Environmental Impact Reports (EIRS) for all the El Dorado County grocery store projects since January 1, 2010.

I draw the Planning Division's attention to Government Code Section 6253.1, which requires a public agency to assist the public in making a focused and effective request by: (1) identifying records and information responsive to the request, (2) describing the information technology and physical location of the records, and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought.

If the Planning Division determines that any information is exempt from disclosure, I ask that the Planning Division reconsider that determination in view of Proposition 59 which amended the State Constitution to require that all exemptions be "narrowly construed." Proposition 59 may modify or overturn authorities on which the Planning Division has relied in the past.

If the Planning Division determines that any requested records are subject to a still-valid exemption, I request that the Planning Division exercise its discretion to disclose some or all of the records notwithstanding the exemption and with respect to records containing both exempt and non-exempt content, the Planning Division redact the exempt content and disclose the rest. Should the Planning Division deny any part of this request, the Planning Division is required to provide a written response describing the legal authority on which the Planning Division relies.

Please be advised that Government Code Section 6253(c) states in pertinent part that the agency “shall promptly notify the person making the request of the determination and the reasons therefor.” (Emphasis added.) Section 6253(d) further states that nothing in this chapter “shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.”

Additionally, Government Code Section 6255(a) states that the “agency shall justify withholding any record by demonstrating that the record in question is exempt under expressed provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Emphasis added.) This provision makes clear that the agency is required to justify withholding any record with particularity as to “the record in question.” (Emphasis added.)

Please clearly state in writing pursuant to Section 6255(b): (1) if the Planning Division is withholding any documents; (2) if the Planning Division is redacting any documents; (3) what documents the Planning Division is so withholding and/or redacting; and (4) the alleged legal bases for withholding and/ or redacting as to the particular documents. It should also be noted that to the extent documents are being withheld, should those documents also contain material that is not subject to any applicable exemption to disclosure, then the disclosable portions of the documents must be segregated and produced.

We request that you preserve intact all documents and computer communications and attachments thereto, including but not limited to all emails and computer files, wherever

originated, received or copied, regarding the subject matter of the above-referenced requests.

If the copy costs for these requests do not exceed Five Hundred Dollars (\$500.00), please make the copies and bill me. If the copy costs exceed Five Hundred Dollars (\$500.00), please contact me in advance at bob@robertbonelaw.com, or at (707)

October 26, 2021

525-8999 to arrange a mutually convenient time and place where I can inspect the records.

As required by Government Code Section 6253, please respond to this request within ten (10) days. Please ensure that your response is provided to me by no later than Monday, November 8, 2021.

Thank you for your prompt time and attention to this critical matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'RB', written in a cursive style.

Robert Bone, Esq.

Enclosures

Law Office of
ROBERT M. BONE

October 26, 2021

VIA EMAIL ONLY

planning@edcgov.us

El Dorado County Planning Commission
Building C Hearing Room
2850 Fairlane Court
Placerville, CA 95667

RE: Public Comments on PD-R20-0009

Dear Honorable Commissioner:

Our office represents Residents for a Safe Cameron Park, an unincorporated association of concerned residents of the County of El Dorado (“Association”) that oppose the PD-R20-0009/Grocery Outlet at Green Valley Station (“Project”), proposed to be located on Assessor’s Parcel Number 116-301-012, consisting of 5.37 acres, located on the south side of Green Valley Road, approximately 600 feet west of the intersection with Winterhaven Drive, in the Cameron Park area, Supervisorial District 2 (“Property”). Members of the Association live and work in the local area. As such they would be directly affected by the various negative environmental impacts created by the Project. By creating unmitigated negative impacts on the community, the Project fails to comply with the California Environmental Quality Act (“CEQA”), codified in Public Resources Code § 21000, *et seq.*

The IS/MND notes, at p. 15, that “[t]he Environmental Protection Agency and State of California designate regions as “attainment” (within standards) or “nonattainment” (exceeds standards) based on the ambient air quality. It is then noted that El Dorado County is in nonattainment status for both federal and state ozone standards and for the state PM10 standard and is in attainment or unclassified status for other pollutants (California Air Resources Board 2013).” Thus, the Project must adversely impact ambient air quality in the Project region. The Finding that the Project being added to the region would have less-than-significant impacts on air quality cannot be correct. Effective mitigation measures must be imposed on the Project for the protection of the community.

People who are sensitive receptors live in the Project area. They will be exposed to substantial pollutant concentrations. The IS/MND deceptively defines “sensitive receptors” (at p. 16) as “facilities that house or attract children, the elderly, people with

illnesses, or others that are especially sensitive to the effects of air pollutants. Hospitals, schools, and convalescent hospitals are examples of sensitive receptors.” It then states that the “proposed grocery market would not be considered a source of substantial pollutant concentrations.”

The California Air Resources Board (“CARB”) defines “sensitive receptors” in terms of people, not facilities. “Sensitive receptors are children, elderly, asthmatics and others whose are at a heightened risk of negative health outcomes due to exposure to air pollution.”¹ The residential neighborhoods surrounding the Project site contain people who meet this definition of sensitive receptors. CARB actually distinguishes between people who are sensitive receptors and locations where concentrations of sensitive receptors occur. Sensitive Receptor locations may include hospitals, schools, and day care centers, and such other locations as the air district board or California Air Resources Board may determine (California Health and Safety Code § 42705.5(a)(5)). The failure of the IS/MND to recognize people, rather than buildings, as sensitive receptors allowed the erroneous Finding that “sensitive receptors would not be exposed to substantial pollutant concentrations.” This Finding is utterly nonsensical given the fact that the IS/MND states that El Dorado County is in nonattainment status for both federal and state ozone standards and for the state PM10 standard and is in unclassified status for other pollutants.

The IS/MND also found no cumulative impact to air quality. The Project will undoubtedly result in a cumulatively considerable net increase of criteria pollutants for which the Project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors). This must be the case because the IS/MND states, at p. 15, that the region is already in nonattainment status for both federal and state ozone standards and for the State PM10 standard and is in unclassified status for other pollutants. The Association will engage consultants to analyze the environmental impacts caused by the Project and will submit the analyses to the Planning Commission for its consideration.

The IS/MND is vague in its analysis of greenhouse gas (“GHG”) emissions. The required analysis is neatly sidestepped by stating, on Page 31, that “CEQA does not provide clear direction on addressing climate change. It requires lead agencies identify project GHG emissions impacts and their “significance,” but is not clear what constitutes a “significant” impact. As stated above, GHG impacts are inherently cumulative, and since no single project could cause global climate change, the CEQA test is if impacts are “cumulatively considerable.” Not all projects emitting GHG contribute significantly to climate change. CEQA authorizes reliance on previously approved plans (i.e., a Climate Action Plan (CAP), etc.) and mitigation programs adequately analyzing and mitigating GHG emissions to a less than significant level. “Tiering” from such a programmatic-level document is the preferred method to address GHG emissions. El Dorado County does not have an adopted CAP or similar program-level document; therefore, the project’s GHG emissions must be addressed at the project-level.”

¹ <https://ww2.arb.ca.gov/capp-resource-center/community-assessment/sensitive-receptor-assessment>

In analyzing GHGs at the Project level, the IS/MND admits, at p. 32, that “the cumulative global emissions of GHGs contributing to global climate change can be attributed to every nation, region, and city, and virtually every individual on Earth. An individual project’s GHG emissions are at a micro-scale level relative to global emissions and effects to global climate change; however, an individual project could result in a cumulatively considerable incremental contribution to a significant cumulative macro-scale impact. As such, impacts related to emissions of GHG are inherently considered cumulative impacts.” Despite this language, the IS/MND then goes on to find “the proposed project would not generate GHG emissions during construction and operations that would have a significant impact on the environment, or conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs. Therefore, the project would not result in a cumulatively considerable incremental contribution to impacts related to GHG emissions or climate change and the project’s impact would be less than significant.” This language is internally inconsistent, in that it finds GHG emissions are inherently cumulative, and yet finds the proposed Project would not generate GHG emissions during construction and operations that would have a significant impact on the environment. If the GHG emissions are inherently cumulative, they simply must impact the environment. Sufficient mitigation measures must be considered to address these issues.

In the few areas of the IS/MND where negative impacts to the environment were actually acknowledged, the mitigation measures imposed on the Project are wholly inadequate. For instance, the IS/MND states, at p. 15, that ROG and NO_x emissions “may be considered to be less than significant if the project proponent commits to pay mitigation fees in accordance with the provisions of an established mitigation fee program in the district (or such program in another air pollution control district that is acceptable to District).” It is not at all clear how an administrative fee will be applied to, or effective in protecting against, these ROG and NO_x emissions. Sensitive receptors in the area will be adversely impacted despite the imposition of a mitigation fee because their very existence is denied by the IS/MND. They are not facilities. They are people that live in residential areas surrounding the Project. As such they are not likely to be protected by a mitigation fee that is intended to be applied to commercial buildings.

The transportation/traffic assessment of the Project does not adequately describe the impacts of the Project. The project will likely be inconsistent with CEQA Guidelines § 15064.3(b), which governs vehicle miles traveled. Traffic will likely increase during peak hours during construction and operation of the Project. Daily trips and vehicle miles traveled for area residents (and people attracted to the area because of the Project) will also increase post-construction such that cumulative impacts will occur. The Association has engaged a transportation consultant and will submit its traffic impact findings to the Planning Commission under separate cover.

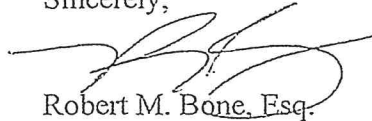
The environmental impact issues set forth herein are very serious and remain unresolved. They must each be adequately analyzed to ensure that the decision-makers and the Public have current information about environmental impacts at the Project site. Growth and expansion in El Dorado County must be carefully controlled to ensure the

balance of benefits to the community. Members of the Association live here because they love the open spaces in this community. They discourage unplanned urban growth for this reason.

As these public comments demonstrate, the Project cannot be approved until the Public has been provided with “detailed information about the effect which a proposed project is likely to have on the environment,” and “to list ways in which the significant effects of such a project might be minimized.” *Laurel Heights Improvement Association v. Board of Regents of University of California* (1988) 47 Cal.3d 376, at 391.

Thank you for considering the Association’s concerns. For the reasons stated herein, the Association requests that PD-R20-0009 be denied.

Sincerely,



Robert M. Bone, Esq.



**County of El Dorado
Air Quality Management District**

330 Fair Lane, Placerville Ca 95667
Tel. 530.621.7501 Email: AQMD@edcgov.us
www.edcgov.us/airqualitymanagement

Dave Johnston
Air Pollution Control Officer

November 5, 2021

Bianca Dinkler, County Planner
El Dorado County Planning Services
2850 Fairlane Court
Placerville, CA 95667

RE: Public Comments – Grocery Outlet (PD-R20-0009) – Clarification of September 27, 2021 AQMD Comments

Dear Ms. Dinkler:

The El Dorado County Air Quality Management District (AQMD) responded to Public Comments made regarding the subject project's MND. My response included the statement that the standard condition number one addressed the Naturally Occurring Asbestos (NOA) concern expressed in the public comment. APN 116-301-012, the parcel where the proposed project is located, is **not** in an Area More Likely to Contain NOA, and therefore the Fugitive Dust Plan standard condition from the previous comment letter dated July 6, 2021 applies. If NOA is found during construction, the Asbestos Dust condition would apply beginning at the time of discovery.

If you have any questions regarding this letter, please contact our office at 530.621.7501.

Respectfully,

Lisa Petersen
Air Quality Engineer
Air Quality Management District

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Bianca Dinkler <bianca.dinkler@edcgov.us>

Question about the Grocery Outlet in CP

1 message

Natalie Porter <natalie.porter@edcgov.us>
To: Bianca Dinkler <bianca.dinkler@edcgov.us>

Tue, Nov 23, 2021 at 12:09 PM

Hi Bianca -

The following question was asked regarding the proposed Grocery Outlet in Cameron Park. My response is in blue:

- For the grocery outlet in Cameron Park. The proposal does not call for a light for the access and egress into the site from Green Valley Road. is this correct? Yes. At build-out will there need to be a light or some other traffic mitigation? Or is the current set-up sufficient for build-out? This project is consistent with the General Plan and the Zoning therefore it is considered to have been assumed in the General Cumulative analysis. The cumulative analysis for the GP did not identify a capacity deficiency for Green Valley Road in this area. The size of the project does not indicate a need for a traffic signal, and the County is typically not supportive of an unwarranted traffic signal.

Let me know if you need any additional information from me.

--

Natalie K. Porter, P.E., T.E.
Supervising Civil Engineer

County of El Dorado
Community Development Services
Department of Transportation, Transportation Planning
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Placerville, CA 95667
530-621-5442
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