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Edcgov.us Mail - Sign Ordinance Update: March 26, 2015 PC Meeting; Agenda Item #6; File #13-0086

PC 3-26-15

#6

13 pages

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Sign Ordinance Update: March 26, 2015 PC Meeting; Agenda Item #6; File #13-0086

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Tue, Mar 24, 2015 at 12:06 PM

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Commissioners & Char—

I've attached a document for the Planning Commissioners' meeting of March 26, 2015. It is provided in response to the **Updated Sign Ordinance** Agenda Item No. 6; File No. 13-0086.

Char, please include these comments in the administrative record.

Thank you again—

Cheryl Langley
Shingle Springs Resident



PC Meeting March26.2015.pdf

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Cheryl Langley
Shingle Springs Resident

Planning Commission

Date: March 24, 2015

Rich Stewart, Chair, District 1
Dave Pratt, First Vice-Chair, District 4
Brian Shinault, Second Vice-Chair, District 5
Gary Miller, District 2
Tom Heflin, District 3

Subject: Sign Ordinance Update; Agenda Item #6; File #13-0086; PC Meeting March 26, 2015

Planning Commission Members:

I have reviewed the **Sign Ordinance Update**, the final Environmental Impact Report (FEIR), the Statement of Overriding Considerations, and the staff report and have found that implementation of the Sign Ordinance Update will have a **significant adverse impact** on County aesthetics. In addition, the **stated benefits (Findings of Fact) are not supported by "substantial evidence in the record," and therefore do not support a claim of "Overriding Considerations."**

Based on this conclusion, I ask you to **deny approval of the following staff recommendations** for the Updated Sign Ordinance and **send the ordinance "back to the drawing board"** for revision that includes modifications **requested by County residents**. (See discussion at end of this document regarding public participation.)

Staff recommendations include:

1. Adopt a Resolution Certifying the Environmental Impact Report for an Amendment of the El Dorado County Zoning Ordinance Chapter 130.16; Make Findings of Fact and Issue a Statement of Overriding Considerations; and
2. Adopt a Resolution to Amend the El Dorado County General Plan Land Use Element Objective 2.7.1 and Policy 2.7.1.2; and
3. Approve the final draft comprehensive update, to Chapter 130.16 of the County Zoning Ordinance, which includes the recommended Mitigation Measure; and
4. Adopt the Mitigation Monitoring and Reporting Program

The request for denial is based upon the following findings:

- The proposed ordinance **is less protective** of County aesthetics than the **existing ordinance when the existing ordinance is properly ENFORCED**. (Including enforcement of the existing moratorium on new billboards.) Although the existing ordinance is depicted as "*broadly written*" and said to provide only "*limited guidance*," **its content and effectiveness has been downplayed—and lack of enforcement of the existing ordinance has played into this narrative**. The existing ordinance includes not only section "**17.16 Signs**" in the Zoning Ordinance (2009), **but also specifies standards regarding size, location, and content under each of the specific zoning designations**. (See FEIR, pages 3.0- 58 through 3.0-66 at [http://www.edcgov.us/Government/LongRangePlanning/LandUse/Sign Ordinance Update.aspx](http://www.edcgov.us/Government/LongRangePlanning/LandUse/Sign%20Ordinance%20Update.aspx).)

- The “protective” nature of the Updated Sign Ordinance has been overstated: It allows for the placement of more signs, including digital signs, highway 50 oriented signs, mobile billboards on private property, etc. (See **Table 2** that compares the existing and updated ordinances.)
- **Existing billboards** along Highway 50 will likely not be removed under the Updated Sign Ordinance—they are designated “nonconforming” and removal is protected by applicable State law. The proposed ordinance applies to (limits) new billboards in designated scenic highway corridors (DSHC) only. (DSHCs in the County include: 1) Highway 50 east of the government center interchange in Placerville to Echo Summit; 2) Highway 50 from Echo Summit to South Lake Tahoe City Limit; and 3) Highway 89 from Alpine County line to Placer County line.) And, interestingly, it is not certain it even protects DSHCs:

Enforcement of these standards would ensure that future signs installed along U.S. Highway 50 segments designated as a state scenic highway would not substantially damage scenic resources. *Reference: DEIR page 3.1-9.*

Source: Statement of Overriding Considerations, page 9, Exhibit A-1 (Document 5C, Meeting Details)

- The proposed ordinance only “encourages” sign consolidation; **it does not necessitate** the reduction of “sign clutter” except in the case new multi-tenant shopping centers; it does nothing to eliminate exiting sign clutter.
- The proposed ordinance allows unauthorized signs to remain for 30 days, and for abandoned signs to remain in place longer than previously allowed.
- Many of the provisions are not enforceable in practical terms (time limits for temporary signs, in particular). (Temporary signs are a serious component of “sign clutter.”)
- It is likely there are no penalties for violations. The “penalty” section 9.02.050 in the Municode (El Dorado County Ordinance Code Recodification Project, June, 2014) only “encourages compliance,” it does not require compliance. (So why comply?)
- The Statement of Overriding Considerations is flawed; (see *Meeting Details document 5C, Exhibit A-1*) **the “benefits” ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD.** **Table 1** contains the “Findings of Fact” that are intended to support the *Statement of Overriding Considerations*, as well as comments regarding evidence to support the claims.

Table 1. Claims of Overriding Considerations and Comments Regarding Evidence to Support Claims.

Statement of Overriding Considerations "Findings of Fact"	Comments Regarding Evidence to Support Claims
Promotes signs that are attractive, pleasing and harmonized with the physical character of the structure and environment.	Rather subjective. How do you promote <i>attractive</i> signs?
Encourages consolidation of signs to reduce visual clutter .	Only <i>encourages</i> consolidation, except in the case of new multi-tenant shopping centers. It allows more signs , and many provisions are not enforceable in practical terms (time limits for temporary signs). It allows unauthorized signs to remain for a minimum of 30-days; abandoned signs to remain for longer periods.
Promotes economically stable and visually attractive communities .	Where is the "substantial evidence in the record" that supports this supposition?
Ensures signs are consistent with the aesthetic and visual goals of the General Plan	How are the provisions of the existing ordinance "inconsistent" with the General Plan?
Protects the County's visual appearance by being more restrictive than the existing ordinance.	Not true —allows more signs, more sign types, increases size of some signs, allows others to remain for longer periods of time.
Improves traffic safety .	Where is the substantial evidence in the record that supports this supposition?
Allows digital signs which will promote economic development and reduce sign clutter.	Where is the substantial evidence in the record that supports this supposition?
Supports the success of business , and thus improves the property and sales tax base for the County.	Where is the substantial evidence in the record that supports this supposition? More signs will help? What about the reduction of sign clutter?
Maintains continuity of the General Plan's economic development policies .	How/where does the current ordinance lack continuity?
Supports social benefits , including "clarification" of sign sizes for commercial and agricultural businesses, and home occupation businesses.	These are already clarified under the existing sign ordinance under specific zoning designations (See FEIR, pages 3.0-58 through 3.0-66). (Home occupations are allowed <i>larger signs</i> under the Updated Sign Ordinance, but sizes were "clarified" in the existing ordinance (see Table 2).
Suggests these benefits (mentioned above) are "among others."	What other benefits? And where is the substantial evidence in the record to support these undisclosed benefits?

Despite the lack of supporting evidence for many of the claims made in *the Statement of Overriding Considerations*, the conclusion is that the Sign Ordinance Update’s “**significant, unavoidable, and irreversible**” environmental impacts “**are outweighed by the benefit of implementing [it].**”

(SOC, page 13):

The Board of Supervisors has balanced the benefits of the Sign Ordinance update against the increase in the severity of significant and unavoidable impacts identified in the Sign Ordinance Update EIR and has concluded that this increase in the severity of impacts is outweighed by the benefit of implementing the Sign Ordinance update.

The Board of Supervisors has determined that the benefits of adopting the Sign Ordinance update override the significant, unavoidable, and irreversible increase in the severity of the environmental impacts identified in the Sign Ordinance Update EIR.

But because the “substantial evidence in the record” is lacking, aren’t we *pretending* this Updated Sign Ordinance is a solution? Why? Perhaps because some local businesses believe their limited success is based on not having enough signs (exposure)? Because El Dorado County Code Enforcement doesn’t want to face “push back” when attempting to get a business to comply with the existing ordinance? Because the County believes it will avert sales tax leakage if more signs are allowed? (Sorry to say, residents who work in Sacramento will continue to spend their dollars in Sacramento and Folsom; County job creation—of better-than-minimum-wage-jobs—is most likely the answer to reducing leakage.)

If El Dorado County’s Code Enforcement Unit has been getting too much blow-back from local businesses and is reluctant to enforce existing code (which I have heard from a Supervisor that that is the case in at least some instances), **let’s admit it, and figure out something we can all live with.** **LET’S FIND SOME BALANCE**—something both businesses and residents can approve.

This Sign Ordinance Update is not the answer; and the process under which it has been developed **devalued the public’s role,** and eliminated what might otherwise be valued contributions. The manner in which this revision has been managed reveals institutional arrogance, and it is *wrong*. **County government is stepping through the hoops of compliance, but not honoring the spirit of the process.**

Therefore, I ask you to **deny the current staff recommendations.** Ask the Board of Supervisors to send the dEIR back to be **revised,** and develop Findings of Fact that are realistic—that are *actually* based on substantial evidence. Let’s modify the ordinance, engage the public, and respond to the concerns of small, local business owners so the ordinance reflects a *balance*.

THE FOLLOWING PAGES CONTAIN:

- **Table 2** that depicts the different sign allowances between the **existing sign ordinance** and the **Sign Ordinance Update.** (Footnotes for the table [in red] available in the FEIR, pages 3.0-54 through 3.0-57.)
- **A Word About Public Participation**

Table 2. Signs by type allowed under existing and proposed ordinance.

Sign Type	Existing Ordinance Allows	Proposed Ordinance Allows
Billboard, stationary	<p>¹No</p> <p>Current Moratorium (Ordinance No. 4978)</p> <p>Existing billboards are the result of grandfathered billboards or procedural error (as in the case of the Cameron Park/Shingle Springs billboards)</p>	<p>²Yes—considered nonconforming and protected from removal by State law.</p> <p>County will consider amendment to the General Plan Objective and Policy that would allow elimination or relocation within <u>existing designated scenic highway corridors (DSHC)</u> in accordance with state and federal law; no implementing ordinance language accompanies this language.</p> <p>Historic routes are mentioned only in amendment to General Plan Objective; it is likely they are not (and may never be) protected under this proposed ordinance.</p> <p>17.16.070(J)(7)</p> <p>This section contains Special Development and Design Standards for DSHC (Reserved for future Scenic Corridor Ordinance)</p> <p>But...</p> <p>17.16.070(J)(4)(a) & (b) establishes maximum height design standards for signs along DSHCs for multi- and single-tenant signs: 24 and 48 ft., respectively</p>
Billboard, mobile On right-of-way	No	No
Billboard, mobile On private property	³ No	<p>³Yes</p> <p>Proposal is to “limit displays” only, not prohibit</p>
Highway 50 Oriented Signs	No	<p>⁴Yes (DRP)</p> <p>Pylon (60 sq.ft.)</p> <p>May be lighted <u>or digital</u></p> <p>(Setback: 10 feet from Highway 50)</p>
Digital Signs	No	⁵ Yes
Signs with blinking, flashing, or intermittent lights	No	No
Moving Signs (General)	⁶ No	⁶ Yes

Sign Type	Existing Ordinance Allows	Proposed Ordinance Allows
Moving Signs Signs Held by People (non-commercial message)	No	Yes (6 to 50 sq.ft.)
Moving Signs Signs Held by People (commercial message)	No	?
Home Occupation Signs	Yes (6 sq.ft.)	Yes Wall sign only for: R1,R1A,R-20,000,RM 1 wall sign 1 sq. ft. Wall sign & freestanding for: R2A,R3A,RE-5,RE-10 Agriculture & Resource Zones 2 freestanding 12 sq. ft.
Permanent Signs (on-site) (commercial message)	Yes	Yes
Permanent Signs (off-site) (commercial message)	Yes, can be established under a Special Use Permit (SUP)	⁷ Yes; permanent or temporary on private property in rural areas by right (without SUP) 16 sq.ft.
Temporary Signs (on-site) (commercial message)	Yes	Yes
Temporary Signs (off-site) (commercial message)	Yes	⁸ Yes On private property; (6 sq.ft; 5' from right-of-way)
Time Limits for Temporary Signs	Yes	Yes
Signs affixed to Private Property	n/a	⁸ Yes
Subdivision Signs (off-site)	No	Yes On private property or in right-of-way; 40 sq.ft; (Can remain for 30 days after all lots are sold)
Construction Company Signs	No	Yes (32 sq. ft.; 30 days)
Property (sale, lease, rental)	Yes	Yes
Roof Signs	No	Yes

Sign Type	Existing Ordinance Allows	Proposed Ordinance Allows
Wall Signs (including projecting signs) "Building Attached" (Commercial)	Yes	Yes
Signs Painted on Walls	Yes	No
Building Attached	Yes	Yes
Window Signs	Yes	Yes
Community Event	n/a	Yes
Community Identity	n/a	Yes
Community Directional	n/a	Yes
Industry Association (Farm Trails, etc.)	Yes	Yes
Election/Campaign Signs	Yes	Yes (32 sq.ft.)
Three-Dimensional Signs	Yes	?
A-Frame Signs	Outside right-of-way	Outside right-of-way
Gas Pricing Signs	n/a	Exempt from Limitations
Trespass, Hunting	Yes	Yes
Official Public Signs (parks, etc.)	Yes	Yes
Signs Resembling Traffic Signs	No	No
Garage Sale	Not in right-of-way	Not in right-of-way; Private property posting allowed (48 hours; 6 sq.ft.)
Consolidation of Signs	No	⁹ "Encouraged"; only <i>new</i> multi-tenant shopping centers are subject to the Uniform Sign Program
Variance	Yes	Yes

Sign Type	Existing Ordinance Allows	Proposed Ordinance Allows
Non-Conforming Signs	Variance Only	Yes Existing off-site signs (e.g., billboards) are considered nonconforming signs, but are protected from removal by applicable provisions of state law and may be removed only as allowed by state law. There are "Legal Nonconforming Signs" Such signs can also be approved under a Variance
Unauthorized (Illegal) Signs In right-of-way On trees, fence, utility poles	Immediate Removal	30 day grace period Appeal allowed
Abandoned Signs	No	Yes—Blank copy: 90 days okay Can remain blank for 1 year In rural areas can remain blank for 2 years If sign can be used by subsequently by another business at site, not defined as abandoned.
Abatement Procedures	¹⁰ Yes	Yes
Penalties	¹¹ Yes	¹¹ Yes

A Word About Public Participation

Participation of County residents in the Sign Ordinance Update has been limited.

- Four days prior to the July 22, 2014 meeting, a completely revised draft of the sign ordinance was made available to the public. This was a **37+ page** document that was a **complete overhaul of the prior version**. The **public was given four (4) days to review the document**—two days of which were weekend days. Though numerous residents (11) and at least one (1) organization (Cameron Park Design Review Committee) requested more time for review, this request was denied. (See public comments submitted July 20, 2014 – September 21, 2014; **Link to public comments:** [http://www.edcgov.us/Government/LongRangePlanning/LandUse/Sign Ordinance Update.aspx](http://www.edcgov.us/Government/LongRangePlanning/LandUse/Sign%20Ordinance%20Update.aspx).)

- Comment from Ellen Van Dyke, July 21, 2014:

It is not clear that public participation is actually welcomed in this process. Staff is recommending that you approve the draft ordinance before we have had a chance to review the changes (...the draft sign ordinance was just posted Friday, today is Monday, tomorrow is the hearing; and *where are all the previous public comments?*...).

Please continue this item. Provide a summary of what the proposed changes actually are, and actually welcome the public input rather than *pretend* to welcome it. There is mistrust of the process and staff, and approving the recommendations made on this item will only further that mistrust and yield an ordinance that does not reflect the communities' input.

- Comment from Sue Taylor in the FEIR, page 3.0-186 (Comment 11-5) reveals a similar problem with public involvement: (FEIR available at: http://www.edcgov.us/Government/LongRangePlanning/LandUse/Sign_Ordinance_Update.aspx.)

The meeting on January 29, 2015 was not informative. There was no discussion by the consultants or staff. They made it very clear that they were only there to receive comments from the public. At times the consultants were not helpful when the general public attempted to get answers to their questions. Staff became almost argumentative when attendees attempted to get answers to their questions. The public that was new to the process was completely confused and frustrated by the way this meeting was handled. It was not an environment that was conducive to providing opportunity for public participation.

- Inquiries sent to **County staff** regarding the types of signs that will be allowed have been met with either no answers at all, or indirect, difficult to interpret answers. An inquiry sent by me requesting answers to specific questions (September 17, 2014) was met with a total "side-step" by Code Enforcement. A second inquiry (October 17, 2014) was responded to by providing me with excerpts from the Public Review Draft dated 10-01-14. This response contained the typical ordinance language with numerous caveats; **I wanted to determine how the language would actually be interpreted (enforced). It seemed clear that the respondent knew I had read the code and that I was asking for language clarification.** This type of response is not productive, and it breeds mistrust.
- Requests for EIR content directed to **the consultant** were likewise met with either no response at all, or a statement that equated to a "dodge." The consultant "answered" many questions with the refrain: ***"This is not a comment on the adequacy of the EIR..."*** and that was the end of it. When the consultant doesn't answer questions put to it by the public that are relevant to the topic, it violates full-disclosure requirements.¹

¹ **Kings County Farm Bureau et al. v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692, 712 held:** "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process."

- Many residents requested **photographs** of signage that will be allowed, but the consultant has repeatedly refused this request, indicating it “**would be speculative**” to provide such representations (see consultant’s response below):

FEIR, Page 3.0-9; Response A-3 to Cameron Park Design Review Committee: *“The commenter previously requested that the DEIR provide **visual simulations [photographs]** of possible future signs in the county should the proposed Sign Ordinance be approved and implemented to help the reader better judge potential visual impacts. Because the Sign Ordinance does not approve any specific signs, it would be **speculative** for County staff or the environmental consultant to **attempt to determine the future location, size, and type of sign that could be proposed in the future**. Because of the possible variables with respect to sign location, size, and design, a conceptual simulation based on staff or consultant assumptions could provide a misleading representation of the severity of potential impacts, whether the impact is overstated or understated. Therefore, consistent with CEQA Guidelines Section 15145, **further discussion of the speculative nature of visual simulations is not included**. The commenter is referred to the illustrative diagrams provided in the Sign Ordinance for visual clarifications of the proposed sign standards.”*

I, too, asked for photos of **sign types** that would be allowed; the consultant dodged the question by inferring that I was asking for photos of **signs in locations**:

Response 8-6:

The commenter requests photographs of sign types that would be allowed and not allowed.

As discussed in response to Comment A-3 regarding the inclusion of photographs or visual simulations in the DEIR. Because the EIR must review the project in a programmatic manner, to provide specific examples in the EIR would illustrate signs in locations that may never be proposed. Given the uncertain nature of sign types and locations, it would be speculative, and could be considered misleading, to provide examples for which the EIR would be required to draw significance conclusions.

Residents were not asking the consultant to exercise *predictive capabilities*, they were simply asking for a **presentation of examples** of allowable signage. **Residents want to know, specifically**, what the ordinance “means” in terms of its impact on County aesthetics. Photos would enable residents to understand/visualize the impacts more easily than the “**legalese**” of the ordinance language with its numerous **caveats**. Photographs would also enable residents to determine specifically **how the ordinance will be enforced—the real “litmus test.”**

AS AN ASIDE, staff and the consultant’s **predictive capabilities** sharpened for this comment in the *Statement of Overriding Considerations* (page 10):

signs. Furthermore, although the proposed Project would in some limited cases allow a greater number of signs or total sign area; these increases would be minor or would occur outside the visually sensitive area and would not result in substantial adverse aesthetics impacts. Enforcement of the proposed standards would ensure that future signs installed in the county would be consistent with County visual and aesthetic goals. Reference: DEIR page 3.1-9.

- **The consultant evaded questions that it simply didn't want to answer. PMC ignored most of the questions in my NOP submittal, which I resubmitted for the FEIR.** PMC indicated they "considered all comments," but I did not receive responses. If the questions/requests weren't relevant, why did they respond to an identical question posed by another commenter?

Response 8-16:

The commenter requests responses to comments submitted by the commenter on the Notice of Preparation (NOP) "that were not responded to in the DEIR."

The DEIR considered all comments submitted on the NOP during preparation of the EIR.

This was one of my requests for information submitted under the NOP, for reconsideration under the FEIR:

C. → Please provide in an appendix to the dEIR any public surveys that have been performed to determine the preferences of EDC residents regarding installation of the following:¶

- → Billboards (along Highway 50) ¶
- → Digital signs ¶
- → Mobile billboards ¶
- → Signs installed within 100 feet of Highway 50 ¶
- → Off-site advertising (commercial messages) ¶
- → Signs on wire along County roads ¶
- → Signs along scenic/historic corridors ¶
- → Illuminated signs ¶

PMC answered the identical question posed by Karen Warner submitted for the FEIR (FEIR, page 3.0-177), while discounting my question.

Response 9-5:

The commenter asks how polling of county residents was conducted as part of the proposed project.

No polling was conducted as part of the proposed project. The commenter is referred to DEIR subsection 2.3.1 on page 2.0-2 and subsection 1.3 on pages 1.0-1 and -2. Public input on the project was obtained in the form of oral and written comments submitted to the County. Prior to release of the NOP for the DEIR, the County held a total of eight public meetings in which the public could provide comments on the draft Sign Ordinance. Six public meetings were held in August 2013, and two board meetings (December 17, 2013, and July 22, 2014) were held to discuss project updates.

This tells me that **they simply ignored my resubmittal**, despite the fact that it contained relevant comments. Needless to say, **this is among the more minor points of information requested in my submittal** for the Notice of Preparation. (See re-submitted NOP comments, **FEIR, page 3.0-71 through 3.0-82.**)

I understand the public's questions/comments can be rather "pointed," but the consultants are supposed to be professionals, and, **the EIR is supposed to be a full-disclosure document**, not an

exercise in avoidance. People get frustrated when they can't get answers—and once again—it breeds mistrust. And **why shouldn't answers be provided?**

In fact, answers **must** be provided. **The consultant is responsible for** understanding the subject matter, and for **preparing an accurate, full-disclosure document for public review.**

The purposes served by the EIR have been variously explained. The principal purpose...is **"to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; ..."** (Pub.Res.Code, s 21061.) The court in *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 804, 161 Cal.Rptr. 260, put it this way: "In reviewing an EIR a paramount consideration is **the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision.**" But public decision makers, too, need the information. EIR's are **"... to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences."** (Cal.Admin.Code, tit. 14, s 15150). The EIR serves both the public officials and the public: they are "to inform other governmental agencies, and the public generally, of the environmental impact of a proposed project ... and to **demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action.**" (*No Oil, Inc. v. City of Los Angeles* [1974] 13 Cal.3d 68, 86, 118 Cal.Rptr. 34, 529 P.2d 66.)²

And, the EIR should be "user friendly"—easily understood by the general public. EIRs must be "organized and written in a manner that will be meaningful and useful to decision makers and to the public." (Pub. Resources Code, sec. 21003, sub. (b). **The EIR should contain well-reasoned conclusions based on investigation and fact.** And so should the *Statement of Overriding Considerations*.

Please, let's start this process afresh. And this time, let's make it a meaningful, productive exercise in ordinance development.

² CEQA. *Environmental Planning and Information Council of Western El Dorado County, Inc., Plaintiff and Appellant. v. County of El Dorado*. April 30, 1982. Available at: http://resources.ca.gov/ceqa/cases/1982/el_dorado_043082.html