



EL DORADO COUNTY PLANNING & BUILDING DEPARTMENT

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Date: June 16, 2021
To: Board of Supervisors
From: Evan Mattes, Senior Planner
Subject: **DR-A21-0001 & DR-A21-0002/Cool General Retail Appeals**

The purpose of this memorandum is to provide a summary of the County's response to the separate appeal requests of Woodcrest Real Estate Ventures (REV) and the joint appeal filed by the Divide Preservation Society and Cool Pilot Hill Advisory Committee (DPS and CHPAC) appealing the Planning Commission's May 13, 2021 conditioned approval of Design Review DR19-0006/Cool General Retail. Staff has identified three separate potential actions for the Board of Supervisors to consider. Staff recommends that the Board of Supervisors do one of the following:

1. Deny both appeals thereby upholding the project as approved by the Planning Commission or as amended by the Board of Supervisors;
2. Grant appeal DR-A21-0001 thereby amending Conditions of Approval 12 and 13 and upholding the project as amended by the Board of Supervisors; or
3. Grant appeal DR-A21-0002 thereby denying the project.

An overview of staff's response and recommendations are included in this memorandum. The analysis and substantial evidence supporting these responses are in the record presented to the Planning Commission and the Board of Supervisors.

DR-A21-0001 Woodcrest REV

The appeal filed by Woodcrest REV (DR-A21-0001) contests the Planning Commission decision on May 13, 2021 to add conditions of approval that were not recommended by staff, as follows:

1. Addition to Condition of Approval 12 requiring the construction of a 4-foot-wide asphalt pedestrian path along Northside Drive from SR49 to the project driveway.
2. Change to Condition of Approval 13 removing the in-lieu fee option.
3. Change to Condition of Approval 13 requiring the construction of a Class 1 Bike Path along the shoulder of SR49 from the southerly property line, north to Northside Drive.

The appeal asserts that these conditions violate several Federal and State laws, such as the Fifth Amendment of the United States Constitution and the California

Environmental Quality Act (CEQA). The full appeal may be found as attachment B. The grounds for appeal is provided below in bold with County staff responses immediately following in italics:

“there is neither a ‘nexus’ between the above Conditions of approval and the anticipated effects of the project, nor is there any ‘rough proportionality’ between the Conditions and the anticipated impacts of the project. Specifically, the Final EIR concluded that there are currently no significant safety risks to pedestrians or bicyclists at the site (because there are very few such pedestrians and bicyclists and as noted by staff and at least one of the Commissioners, the existing shoulder of SR49 is wide enough to accommodate the scant foot and bike traffic) and that the project will not change this. Therefore, there is no ‘nexus’ between the anticipated impacts of the project and the above Conditions of approval.”

County Response: The Planning Commission found that, based on the existing pedestrian and bicycle facilities in close proximity to the project, bicyclists and pedestrians may want to access the project site and the proposed project could increase pedestrian traffic in the project vicinity, necessitating pedestrian and bicycle facilities to access the project site, thus resulting in the revisions to Conditions of Approval 12 and 13. The Planning Commission relied on several General Plan policies and the Design Guide to support these conditions. First, the Planning Commission relied on page 15 of the Design Guide, which states that a commercial project should “[s]eparate pedestrian and car traffic” and “[c]onsider bicycle parking facilities.” One commissioner explained that from the provision of bicycle parking facilities, which are included in the project, the inference could be made that a safe path of travel for bicyclists should also be included in a project design.

Second, the Planning Commission relied on the following General Plan policies:

General Plan Policy TC-3c: “The County shall encourage new development within Community Regions and Rural Centers to provide appropriate on-site facilities that encourage employees to use alternative transportation modes. The type of facilities may include bicycle parking, shower and locker facilities, and convenient access to transit, depending on the development size and location.”

General Plan Goal TC-4: “To provide a safe, continuous, and easily accessible non-motorized transportation system that facilitates the use of the viable alternative transportation modes.”

General Plan Policy TC-4i: “Within Community Regions and Rural Centers, all development shall include pedestrian/bike paths connecting to adjacent development and to schools, parks, commercial areas and other facilities where feasible. In Rural Regions, pedestrian/bike paths shall be considered as appropriate.”

General Plan Policy TC-5b: “In commercial and research and development subdivisions, curbs and sidewalks shall be required on all roads. Sidewalks in industrial subdivisions may be required as appropriate.”

General Plan Goal TC-9: “To support the development of complete streets where new or substantially improved roadways shall safely accommodate all users, including bicyclist, pedestrians, transit riders, children, older people, and disabled people, as well as motorist.”

General Plan Policy TC-4b: “The County shall construct and maintain bikeways in a manner that minimizes conflicts between bicyclists and motorists.”

General Plan Policy TC-4h: “Where hiking and equestrian trails abut public roads, they should be separated from the travel lanes whenever possible by curbs and barriers (such as fences or rails), landscape buffering, and spatial distance.”

The Planning Commission also relied on the reduced road width allowed for the project on Northside Drive as a reason to require a separate pedestrian path along Northside Drive. Lastly, commissioners expressed safety concerns about the lack of a grade separation for a Class 2 Bike Lane along a state highway.

The project is located on a commercially zoned parcel within the Cool Rural Center. When the inclusion of the 4-foot pedestrian path and change from a Class 2 Bike Lane to a Class 1 Bike Path were discussed at the Planning Commission hearing, feasibility study or engineering analysis had been prepared and the cost and feasibility of these improvements were unknown. At the time of drafting this staff memorandum, the applicant has committed to analyzing the cost and feasibility of the 4-foot pedestrian path and the Class 1 Bike Path, including any conflict with existing utility poles.

The prepared Environmental Impact Report (EIR) and Transportation Study did not identify substantial impacts or increases to bicycle or pedestrian traffic as a result of the project. The Department of Transportation (DOT) staff maintains that they originally conditioned the project appropriately. In further conversations with the County since the Planning Commission decision, Caltrans has indicated their preference to include the in-lieu fee option or an improved 8-foot shoulder as conditions for the project. Caltrans indicated that it would not approve encroachment permits for construction of a bike path or bike lane that is disconnected from existing facilities. The County does not have approval jurisdiction over Caltrans right-of-way. As currently drafted, the condition requires construction of a Class 2 Bike Lane if Caltrans does not approve a Class 1 Bike Path, but does not require an in-lieu fee or other improvement if Caltrans denies the Class 1 Bike Path and Class 2 Bike Lane. Whether the Board of Supervisors removes the requirement for a Class 1 Bike Path or not, staff recommend that the Board of Supervisors retain the requirement for an in-lieu fee if Caltrans does not approve any improvement at this time. The condition could state, “The County may allow the applicant to pay an in-lieu fee to the County, to be combined with other funding, to construct said frontage improvements in concert with improvements required of adjoining properties. The in-lieu fee shall be equal in value to the required improvements. The applicant’s engineer is to provide an Engineer’s Estimate of the cost, to be reviewed and subject to the approval of the County Engineer.” The Board of Supervisors should determine whether this fee should be based on the cost to construct a Class 1 Bike Path or Class 2 Bike Lane. The Board of Supervisors should also

consider whether it would prefer an improved 8-foot shoulder or the in lieu fee and the condition should be drafted to reflect this decision.

“the Planning Commission made no ‘individualized determination[s] that the required dedication is related both in nature and extent to the impact of the proposed development.’ (Dolan, supra, p. 391.) In fact, the Commission made no determination at all that the required Conditions of approval are, in any way, related to the nature and extent of the impact of the project. Notably, even during discussion at the May 13 hearing, Commissioner Clerici, who is actually knowledgeable about transportation impacts and planning, noted that there was no evidence in the record upon which to base such a determination and warned the other Commissioners of going ahead with such arbitrary action.”

County Response: As stated above, the Planning Commission found that, based on the existing pedestrian and bicycle facilities in close proximity to the project, bicyclists and pedestrians may want to access the project site and the proposed project could increase pedestrian traffic in the project vicinity, necessitating pedestrian and bicycle facilities to access the project site, thus resulting in the revisions to Conditions of Approval 12 and 13. The Planning Commission relied upon several General Plan policies and the Design Guide to support these conditions, as noted above.

“the Conditions were added by the Commission arbitrarily and capriciously, and in violation of the California Environmental Quality Act (‘CEQA’). CEQA requires agencies making determinations to base those determinations on substantial evidence in the record. (Pub. Resources Code, § 21168.5.) ‘Substantial evidence’ includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. An agency making a determination without substantial evidence in the record to back it up has committed an abuse of discretion. As discussed above, there is no evidence in the record that there will be any pedestrian - or bicycle-related traffic or safety impacts associated with the project. The evidence actually in the record indicates the exact opposite-that there is currently very little pedestrian traffic in the area (including the vicinity of the project site, which is across Northside Drive from the existing post office and a restaurant) and given the development patterns of the area, a very low likelihood of any substantial increase in pedestrian and bike traffic resulting from the project. When presented with this evidence in the record, the Commissioners simply dismissed those conclusions without any contrary supporting evidence, only speculation and opinion.”

Staff Response: As stated above, the Planning Commission found that, based on the existing pedestrian and bicycle facilities in close proximity to the project, bicyclists and pedestrians may want to access the project site and the proposed project could increase pedestrian traffic in the project vicinity, necessitating pedestrian and bicycle facilities to access the project site, thus resulting in the revisions to Conditions of Approval 12 and 13. The Planning Commission relied upon several General Plan policies and the Design Guide to support these conditions, as noted above. The Planning Commission also relied on safety concerns from a bicycle facility without grade separation to require the inclusion of a Class 1 Bike Path, as opposed to a Class 2 Bike Lane, and the reduced road width of Northside Drive to require the pedestrian path

connection from SR49. These were not implemented as mitigation measures within the EIR, but as General Plan Policy findings and implementation of the Design Guide.

DR-A21-0002 Divide Preservation Society and Cool Pilot Hill Advisory Committee

The appeal filed by the Divide Preservation Society and Cool Pilot Hill Advisory Committee contests the Planning Commission's May 13, 2021 decision to approve Design Review DR19-0006 subject to findings and conditions of approval. The appellants assert that the project violates the requirements of CEQA and the El Dorado County General Plan. The full appeal may be found as attachment C. The grounds for appeal are provided below in bold with County staff responses immediately following in italics:

“This appeal is based upon the grounds that the Planning Commission’s approval of the project violates the requirements of the California Environmental Quality Act (‘CEQA’), Public Resources Code, section 21000 et seq., and the El Dorado County General Plan. The County Planning Commission’s certification of the Final Environmental Impact Report violates CEQA as the administrative record does not support the Final EIR’s certification as the project may have a significant impacts to traffic and circulation (including pedestrian and bike safety), aesthetics, air quality, and cumulative impacts. Additionally, the Project is not consistent with the El Dorado County Design Guidelines, the Site Planning Guidelines, and the Department of Transportation’s requirements for pedestrian paths and bike paths.”

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

County Response, Traffic: A Traffic Report was prepared for the proposed project, was subsequently revised to include weekend analysis, and was analyzed and discussed within the EIR and the Planning Commission Staff Report. The Traffic Report concluded that the proposed project would not have any significant Traffic/Transportation impacts. In addition, no design hazards for automotive, pedestrian, or bicycle facilities were identified.

County Response, Aesthetics: The EIR fully considers the potential aesthetic impacts of the proposed project and concludes there is no significant adverse impact to the

community's aesthetics. The project is not located within a scenic vista nor within an identified scenic resource. The project character of retail is consistent with the surrounding development and the proposed design was developed with significant input from the community and consideration of the design of the surrounding retail development. The project design, architectural treatments, and associated improvements substantially conform to the El Dorado County Community Design Guide and would not substantially detract from this commercial district. Therefore, construction of the project would not substantially degrade the character of the site or its surroundings, as the new retail store building would be consistent with existing development in the area.

County Response, Air Quality: The EIR fully considers the potential air quality impacts of the proposed project and concludes there is no significant adverse impacts to air quality with mitigation measures incorporated. Impacts resulting from construction and operation was determined to be less than significant. Although the proposed project site has not been identified as an area containing naturally occurring asbestos (NOA), current County records indicate that the project parcel is located within the Naturally Occurring Asbestos Review Area. As such, mitigation measures have been incorporated to reduce potential impacts to naturally occurring asbestos to a less than significant level. Mitigation Measure MM-AQ-1 requires the preparation of a geologic evolution, to be submitted to the Air Pollution Control Officer, for consideration prior to issuance of building permits. This is a standard County operating procedure for all development moving more than 20 cubic yards of earth, when located within the Naturally Occurring Asbestos Review Area, regardless of if the development's approval discretionary or ministerial. Pursuant to this measure if NOA bearing soils or rock formations are identified, the project applicant shall adhere to all applicable regulations and control measures for fugitive dust emissions and asbestos hazards mitigation as required by the El dorado County Air Quality Management District (EDCAQMD) Rule 223 (Fugitive Dust) and Rule 223-2 (Fugitive Dust – Asbestos Hazard Mitigation). Rule 223-2 sets a standard that visible emissions shall not exceed No. 0 on the Ringelmann Chart, or 0% opacity per US EPA Method 9, at 25 feet from the point of origin and at the property line. The plan shall include Best Management Practices identified in Rule 223-2 including the use of water or soil stabilizers to prevent fugitive dusts, limits on vehicle speed on the construction site, cessation of activities in high winds, soil management, track out control and other approved methods. The plan may include monitoring of airborne NOA if required by the Air Pollution Controls Officer and implementation of additional measures to reduce NOA exposure to a safe (less than significant) level.

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

County Response, El Dorado County Design Guidelines: As stated in the Findings section of the Planning Commission Staff Report the project was analyzed and found to be consistent with the El Dorado County Community Design Guide (see Aesthetic response above).

County Response, Site Planning Guidelines: As stated in the Findings section of the Planning Commission Staff Report the project was determined to be consistent with all

applicable development standards, including but not limited to setbacks, height, parking and landscaping.

County Response, DOT Requirements: As part of standard discretionary project processing, the project was distributed for review to DOT staff. Comments provided by DOT staff were incorporated into the project as conditions of approval, as applicable. DOT staff maintains that they adequately conditioned the project to address traffic and safety concerns.

RECOMMENDATION:

Based on the above staff analyses on both appeals, staff recommends the Board consider one of the following actions:

(1) Deny both appeals and uphold the approval of Design Review Permit DR19-0006, based on the Findings and subject to the Conditions of Approval as approved by the Planning Commission or as modified by the Board of Supervisors, certify the Environmental Impact Report, and adopt the Mitigation Monitoring Reporting Program in accordance with the California Environmental Quality Act Guidelines Section 15074(d), incorporated as Conditions of Approval;

OR

(2) Grant the appeal by Woodcrest Real Estate Ventures and deny the appeals by the DPS and CPHAC, amend Conditions of Approval 12 and 13 as the Board determines appropriate, uphold the approval of Design Review Permit DR19-0006 based on the Findings and subject to the Conditions of Approval as amended by the Board of Supervisors, certify the Environmental Impact Report, and adopt the Mitigation Monitoring Reporting Program in accordance with the California Environmental Quality Act Guidelines Section 15074(d), incorporated as Conditions of Approval;

OR

(3) Grant the appeals by the DPS and CPHAC, deny the appeal by Woodcrest Real Estate Ventures as moot, deny Design Review Permit DR19-0006, decertify the Environmental Impact Report, and instruct staff to return with Findings for Denial.