

46

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FW: BOS item 46 (8) 12-6-16 Legis 14-0245 22H

1 message

James Sweeney <jamessweeney@comcast.net>
To: edc.cob@edcgov.us

Sun, Dec 4, 2016 at 4:37 PM

From: James Sweeney [mailto:jamessweeney@comcast.net]
Sent: Sunday, December 4, 2016 2:25 PM
To: 'jim.mitrisin@edcgov.us' <jim.mitrisin@edcgov.us>
Subject: BOS item 46 (8) 12-6-16 Legis 14-0245 22H

Clerk of the Board:

Chair and Members of the Board:

The revised Ordinance # 5044 submitted Friday Dec 2 by staff provides corrections that remove the concerns contained in my comments sent you dated 12-1-16.

Please convey my thanks to the staff for recognizing my comments and making the adjustments.

Thank You, Jack Sweeney

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#46

December 5, 2016

El Dorado County Board of Supervisors
Clerk of the Board
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Placerville, CA 95667
Email: edc.cob@edegov.us

Attn: Hon. Ron Mikulaco, District 1 bosone@edegov.us
Hon. Shiva Frentzen, District 2 bostwo@edegov.us
Hon. Brian Veerkamp, District 3 bosthree@edegov.us
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Claudia Wade, P.E., Senior Civil Engineer
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Long Range Planning Division
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Re: Board of Supervisors December 6, 2016 Hearing
Agenda Item 46 / #14-0245
Major Capital Improvement Program (CIP) and Traffic Impact Mitigation (TIM)
Fee Update – Adoption of CIP and TIM Fee Program

Honorable Supervisors and Ms. Wade:

This letter is submitted on behalf of Preserve El Dorado Hills.Org (“Preserve EDH”), and incorporates by reference our comments dated July 5, 2016 and October 26, 2016, and the comments from Save Our County/Measure E Committee submitted prior to the October 27, 2016 Planning Commission hearing,¹ all of which letters and testimony challenge El Dorado County’s staff determination that adoption of the CIP and TIM Fee Program FEIR at this time is consistent with the El Dorado County General Plan. Preserve EDH provides this response to County’s proposed adoption of the FEIR for its TIM Fee Program, and supplements its comments submitted July 5, 2016 [identified as No. 4 in County’s Response to Comments] and submitted October 26, 2016, as follows:

- A. The adoption of Measure E guts a primary purpose of preparing the Traffic Impact Mitigation Fee Program, which is that the funds deposited by the development community as assigned by staff as “partial mitigation” for traffic impacts adequately resolve that developer’s obligation.

Measure E puts the original meaning of Measure Y back in place – the development community cannot mitigate with partial funding for future road improvements (i.e. “paper roads”), put in the

¹ Save Our County Comments transcribed and attached in Addenda to this letter.

1 – Preserve EDH Comments, BOS 12-6-16 Agenda Item 46 / #14-0245
Adoption of CIP and TIM Fee Program

20

CIP/TIM fee plan (“the Project”) and possibly never built. The structure of the programmatic nature of the Project itself must be seriously reconsidered before the environmental impacts can be properly evaluated in light of the adoption of Measure E.

On June 7, 2016, the electorate passed Measure E challenging the County’s prior General Plan assumptions that contribution to the Traffic Impact Mitigation fund was properly allowed by the County General Plan [Measure E: “Initiative to Reinstate Measure Y’s Original Intent – No More ‘Paper Roads’”]. As stated in our prior comment letters, with the passage of Measure E, the County’s General Plan policies as written result in an unintentional practical fraud on the voters.

Although the long-term design and planning of roadways throughout the County is a valid and important obligation of the County, the funding of such roadways must be tied to the voters’ demands as set forth in Measure E. The Board should postpone any decisions on the Program as presently written and direct staff to compare the analysis underlying the Program to ensure that the Program includes all roadways and intersections mandated by measure E. After the voters adopted Measure E, the relevant General Plan Policy TC-Xa of Measure Y (in Measure E) now reads:

“All necessary road capacity improvements shall be fully completed to prevent cumulative traffic impacts from new development from reaching *Level of Service F during peak hours upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of the county before any form of discretionary approval can be given to a project.*” [Emphasis added.]

As stated by County Counsel Mike Ciccozzi August 9, upon adoption, Measure E was incorporated immediately in the General Plan.

1. Staff’s response to our prior comment letters ignores that fact that Measure E mandates calculation of LOS, not just on U.S. 50 *but at all arterial roads and adjacent intersections*. The CIP/TIM Fee Program fails to meet these requirements. The TIM Fee Program includes some but not all intersection improvements. The CIP/TIM Fee policies fly in the face of the clear language of the adopted Measure E because as staff admits, only some of the roadways are receiving sufficient funding to effect an improvement in traffic congestion [Diamond Springs Parkway Phase IA, Silva Valley Parkway/Serrano Parkway Traffic; US 50/Silva Valley Parkway Interchange Phase I].² The CIP Program does not pretend to cover all impacted intersections, identify the mitigation for said mitigation, or mandate immediate payment for any of these improvements. For example the El Dorado Hills Blvd. and Latrobe Road segments closest to the freeway on either side, and regularly clocked at LOS E and F in peak periods, are not presently funded for completion in any near time horizon.

2. The TIM Fee Program is based on the concept that the development community uses TIM fees for suitable mitigation, regardless of whether the improvements to the roadways ever get built, or as has been the case on multiple occasions, just get pushed farther back in the planning chronology. Thus, use of a TIM fee payment structure allows the development

² October 10, 2016 Staff Response to Comments, Response 1.2.

community to evade the whole purpose of Measure E. Transportation projects are identified in the CIP and associated TIM Fee program, but often never get completed because the horizon year for completion is constantly being extended through updates to the CIP/TIM Fee Program. As mentioned by Preserve EDH multiple times, the whole point of the CIP/TIM Fee Program is to allow developers, including residential developers, to pay into the Program as mitigation and the roadway improvements would be constructed, if at all, sometime in the future when adequate funding is available. Thus, the approval of the project precedes the actual construction of arterial roads and their intersections, now violating the General Plan.

3. Preserve EDH understands that County has spent a ton of money asking its consultants, with recent Caltrans concurrence, to recalibrate many segments especially impacting Highway 50 from F to E using a traffic demand model, as preferred by CARB, instead of the traditional LOS modeling used until recently by all traffic engineers. Such recalibration does nothing to evade the language of the General Plan as modified by Measure E, which requires mitigation of all road segments and intersections, not just Highway 50. These excluded segments establish a separate violation of the General Plan. Recent efforts by staff and its consultants to avoid LOS F designations by use of the “Vehicle Miles Traveled” concept [Traffic Demand Model] cannot be used to thwart the express issues motivating the people of El Dorado County. Staff has tried to finagle around Measure E by recalculating Highway 50 from “F” to “E” designations in certain segments, during certain months, and during certain times a day, and then adopting the TDM model now in vogue with California Air Quality Board [CARB] and forced upon Caltrans. However this legerdemain does not resolve the General Plan violation because Measure E requires evaluation of cumulative impacts on arterial roads and their intersections *based on LOS standards*, and mandates denial of new residential development approvals and mixed use development approvals that do not propose construction of the necessary mitigation to the intersection or feeder street at the time the residential development is completed.

Simply put, the people of El Dorado County are the sovereign – not staff, not Caltrans, not CARB. The people of El Dorado County don’t want more congestion on their roads. Trying to apply the push-pull theories in vogue in Sacramento to a rural county like El Dorado County underscores what is wrong with top-down planning in the first place. If the County adopts phony VMT standards by using unrealistic job growth projections, the result is the assumed creation of minimum wage jobs in Placerville/Diamond Springs, and then anticipating that folks in El Dorado Hills with big mortgages are going to commute uphill east to those low paying jobs instead of along Highway 50 west down to Sacramento and Folsom. This Board of Supervisors should not support such unrealistic planning, merely because it is fashionable at the Capitol.

4. With approval of Measure E, El Dorado County must apply LOS standards to its roadways. Local land use and development decisions must be consistent with the applicable general plan. (*Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal. App. 4th 1332, 1336 (*FUTURE*)). “A project is consistent with the general plan ‘if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.’” [Citation.] (*Ibid.*) “[T]he nature of the policy and the nature of the inconsistency are critical factors to consider.” (*FUTURE, supra*, 62 Cal. App. 4th at p. 1341.)

An approval must be set aside, where there is an inconsistency with a mandatory policy. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777, 783 (*Endangered Habitat*).)

The Court of Appeals in a very recent decision, when confronted with City of Sacramento and developer's claim that adherence to City traffic management policies and methods of calibrating for LOS to reduce the impacts, thus avoiding mitigation, was a sufficient compliance to avoid analysis of other impacts, overturned the adoption of the EIR. (*East Sacramento Partnership for a Livable City v. City of Sacramento* (Cal. Ct. App., Nov. 7, 2016, No. C079614) 2016 WL 6581170.) The EIR for that residential project had found the traffic and circulation impacts to be less than significant based solely on the mobility element in the City's general plan. The Court of Appeals held that the petitioners provided sufficient evidence of direct significant impacts on traffic in the face of City of Sacramento's calculations. The Court determined that the City of Sacramento's manner of calculating LOS were not determinant on whether actual environmental impacts are significant under CEQA.³ Directly relevant to El Dorado County staff's efforts to flip LOS Fs to Es or below is the 3rd DCA's reference to their prior holding in *Amador Waterways*⁴ to significant traffic impacts. The Court held in *East Sacramento Partnership* that because the EIR failed to explain or provide substantial evidence to support the finding of no significant traffic impact, the City and developer were mandated to take the action necessary to bring the transportation and circulation section of the EIR into compliance with CEQA. This same reasoning, coming as it does from a court of appeal citing to prior El Dorado County cases for support, mandates that the Board defer taking any action at the present time to allow for staff incorporation of all excluded road segments, and application of traditional calculations of LOS modeling on all roadways before adopting the CIP/TIM Fee EIR. (*East Sacramento Partnership*, p. 11 Westlaw.) El Dorado County's CIP/TIM Fee EIR must evaluate for LOS F on the feeder streets, and mandate direct and immediate improvements, and not allow participation in a CIP/TIM Fee deposit as mitigation. If the County wants to utilize a VMT Traffic Demand Model methodology in addition to the LOS mandate in Measure E, it may do so, but only as a separate analysis. County must adhere to the wishes of its voters, in amending the General Plan.

- B. The Board of Supervisors should either deny the Project as designed, and its Final EIR, until it has incorporated the specific requirements of Measure E, or at a minimum defer any final decision until the writ of mandate brought to challenge enforcement of Measure E is determined.

Finally, as this Board is aware, the El Dorado County Alliance for Responsible Planning filed a writ of mandate in July to halt Measure E's implementation.⁵ Preserve EDH believes that

³ The cited case discusses *Berkeley Keep Jets over the Bay Committee v. Board of Port Commissioners (Berkeley Jets)* (2001) 91 Cal. App. 4th at p. 1381 [land use noise threshold not determinative for CEQA], and *Communities for a Better Environment v. Cal Resources Agency and CBLA (CBE)* (2002) 103 Cal. App. 4th 98.

⁴ See *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 11 Cal. Rptr. 3d 104 (*Amador Waterways*).

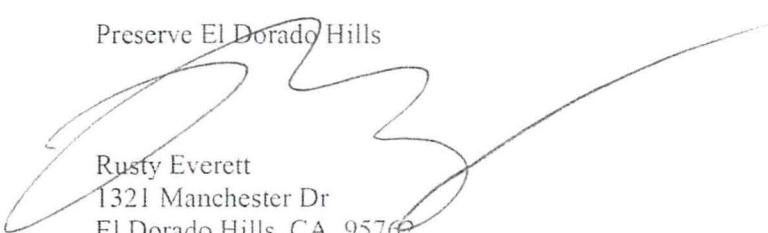
⁵ *Alliance for Responsible Planning v. El Dorado County, Sue Taylor, et al.* Case No. PC20160346.

hearings on the writ will not be heard until April or May 2017, when a hearing on the merits of that claim are considered by the Court.

Therefore, there are multiple reasons to deny approval of the Program as a Project and/or defer a determination until staff can return with a plan to incorporate all congested roadways required by Measure E into the CIP, complete with costs of improvement so that the Board can then mandate compliance with Measure E as a condition upon all pending and future residential development projects.

Sincerely,

Preserve El Dorado Hills



Rusty Everett
1321 Manchester Dr
El Dorado Hills, CA 95762

cc: Rural Communities United
Save Our County
Supervisor Elect John Hidahl

ADDENDUM

Oral comments from Sue Taylor (Save Our County/Measure E Committee) presented at the October 27, 2016 Planning Commission hearing:

Staff response to our Comment letter acknowledges the impact of Measure E but claims that the FEIR should be adopted authorizing the TIM Fee program anyway. We know of no way to sever adoption of the long range planning and timelines included in the EIR from the planning for construction funded under the deferred mitigation model, because the DEIR has not been modified to provide for construction funding for these critical improvements. Based on the foregoing, it is our position that the General Plan and CIP/TIM Fee Program need to be reconstructed so that planning for roadway improvements and funding of those improvements are identified without the deferred mitigation identified in the CIP TIM Fee program. The pending litigation against the County challenging the recent General Plan Amendment has only been further strengthened by the will of the citizens through the passage of Measure E.

As a result of Measure E, these connections must be improved by developers now, not allowed to be further deferred through the artifice of contributions to the TIM Fee fund. Further efforts by El Dorado County to permit payment of mitigation fees instead of actual construction of improvements to our impacted roadways should be terminated.

We note that Caltrans' July 5, 2016 letter appears to concur with County generally in methodology, however the actual calculations applicable to intersections and to Highway 50, including Latrobe Road, for 2016 have not be included in County's calculations of LOS. As mentioned above, the method of calculation is not the issue. El Dorado County does not evaluate intersections mandated by Measure E. Moreover, we understand that summer 2016 traffic calculations showing larger traffic numbers than used in 2015 LOS submissions is under current review by Caltrans District 3, but that no determination has been made at this time. For all these reasons, we respectfully request that the Planning Commission recommend denial of the Program and FEIR until essential traffic evaluations are completed in compliance with Measure E.