




OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Kathryn Tyler, Deputy Clerk of the Board of Supervisors
FROM: Dave Livingston, Deputy County Counsel 
DATE: May 29, 2009
RE: No Gridlock Committee v. El Dorado County

On March 17, 2009 (Item # 21), the Board of Supervisors authorized the settlement of the case of No Gridlock Committee v. El Dorado County Board of Supervisors. (See attached excerpt from 3/17/09 minutes.) In accordance with that authorization, the parties have prepared a settlement agreement, which has been executed by the authorized representative from No Gridlock Committee. Attached are three partially-executed copies of the settlement agreement. Please have the Chairman sign each copy where indicated and retain one copy for your files. I will then distribute the other two copies to No Gridlock Committee and the Court.

Thank you for your assistance.

DAL

SETTLEMENT AGREEMENT

Respondents County of El Dorado and El Dorado County Board of Supervisors (collectively "County") and Petitioner No Gridlock Committee (County and Petitioner referred to collectively as "the Parties) hereby enter into the following settlement agreement ("Agreement"):

Recitals

This Agreement is entered into by the Parties based upon the following facts, findings and determinations:

- A. The Parties to this Agreement have been engaged in litigation over the County's 2005 and 2006 adoption of Traffic Impact Mitigation Fees. Petitioner's challenge to Traffic Impact Mitigation Fees adopted by the County in 2005 was dismissed by the Court on January 30, 2007. In 2006, the Petitioner filed a petition for writ of mandate ("Petition") pertaining to Traffic Impact Mitigation Fees adopted by the County in 2006 in *No Gridlock Committee v. El Dorado County Board of Supervisors* (PC20060502). By this agreement, the Parties seek to settle that litigation.
- B. The issues involved in the litigation include compliance with CEQA, the provisions of the El Dorado County General Plan of 2004, and the provisions of Measure Y, adopted by the voters in 1998.
- C. While the case has been in process, the Parties continued to meet and discuss the ongoing implementation of the Traffic Impact Mitigation Fee program, and the reauthorization of Measure Y in 2008. Through these meetings and discussions, the Parties arrived at mutually agreed upon language for the re-authorization of Measure Y. The language was put before the voters of El Dorado County in the election of November 2008, and was approved.

NOW, THEREFORE, in consideration of the above findings and the mutual covenants and obligations of the Parties set forth herein, the Parties hereby agree as follows:

1. Petitioner agrees to dismiss their petition for writ of mandate in *No Gridlock Committee v. El Dorado County Board of Supervisors* (PC20060502). Petitioners shall file a notice of dismissal with prejudice of their case.

2. The County agrees not to seek any costs from Petitioner.
3. The County agrees to pay Petitioner \$55,000 by way of a check made out to Thomas P. Infusino, counsel for Petitioner, for attorney fees, costs and expenses related to this case. Said check will be handed to Petitioner's counsel when he delivers a request for dismissal to the El Dorado County Office of County Counsel. This will be accomplished within thirty (30) days of execution of this Settlement Agreement.
4. This agreement shall settle all claims by any Party for attorneys fees, costs or other expenses associated with the litigation, and no Party shall seek or be awarded any such fees, costs, or expenses.
5. Except for the rights and obligations set forth in this Agreement, each Party, on behalf of itself and its respective officers, directors, agents, insurers and subrogees, predecessors, successors, affiliated and related entities, and assignors and assignees, hereby fully, completely, and finally waives, releases, and forever discharges each other party and its respective officers, directors, agents, insurers and subrogees, predecessors, successors, affiliated and related entities, and assignors and assignees, from any and all claims, demands, suits, liabilities, debts and obligations of any kind or nature, known or unknown, that it has had, now has, or may have in the future as to any and all matters of any kind relating to the violations alleged in the Petition based upon acts, errors, omissions, events, claims, demands or other occurrences that occurred prior to the Effective Date of this Agreement; provided however that this release does not release or discharge any claim, debt, or obligation expressly created by this Agreement.
6. The County agrees that the Petitioner can pick up, and remove from the County premises, the administrative record binders prepared by the Petitioner, and currently in the possession of the County.
7. With regard to the matters released herein, the Parties expressly waive the benefits of Section 1542 of the California Civil Code, which provide as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding this provision, this Agreement will constitute a full release in accordance with its terms. With regard to matters released herein, the County and Petitioner knowingly and voluntarily waive the provisions of Section 1542, as well as any

other statute, law, or rule of similar effect, and acknowledge and agree that this waiver is an essential and material term of this Agreement and that without such waiver this Agreement would not have been entered into by the County and Petitioners. Nothing in this paragraph shall be interpreted to prevent any Party from taking any action to enforce the terms of this Agreement.

8. This Agreement shall not constitute an admission of liability with respect to any allegation in the Petition.

9. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, assigns, and representatives of the Parties.

10. The contractual interpretation of this Agreement and all obligations, rights, privileges, and responsibilities under it shall be governed and construed in accordance with the laws of the State of California.

11. Nothing in this Agreement creates, nor will it be construed as creating, any claim in favor of any person not a Party to this Agreement.

12. The Parties agree that this Agreement is admissible as evidence in any action to enforce this agreement.

13. Each party hereto expressly agrees that the provisions of this Agreement shall be specifically enforceable by any Party. In the event of breach of any term or provision of this Agreement or any duty or obligation hereunder, remedies shall be limited to bringing an action for specific performance.

14. The Parties acknowledge that they have had the benefit of counsel prior to entering into this Agreement and that he, she, or it has relied upon the legal advice of his, her, or its own counsel. Each Party further represents that the terms and conditions of this Agreement have been completely explained and the terms and conditions are voluntarily accepted and agreed upon by each Party.

15. This Agreement, and each of the provisions hereof, is the product of negotiations between Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by or drafted by any particular Party or Parties hereto. The rule of construction to the

effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

16. This Agreement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are not representations, agreements, or understandings relating to settlement other than those expressly contained in this Agreement.

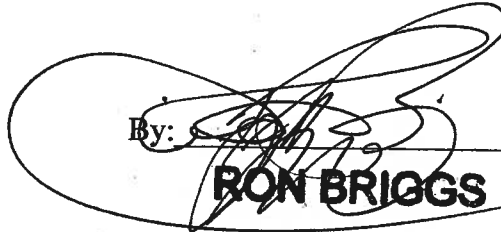
17. This Agreement may be executed in two or more facsimile counterparts or in separate signature pages, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

18. Upon the full execution of this Agreement by all Parties, this Agreement shall become effective ("Effective Date").

19. The undersigned representative(s) for each Party certify that he or she is fully authorized by the Party or Parties whom he or she represents to enter into the terms and conditions of this Agreement and to bind them legally to it.

Dated: 6/1/09
Board date
3-17-09

EL DORADO COUNTY and EL DORADO
COUNTY BOARD OF SUPERVISORS

By: 
RON BRIGGS

ATTEST: SUZANNE ALLEN de SANCHEZ
Clerk of the Board of Supervisors

Dated: 5/26/09

NO GRIDLOCK COMMITTEE

By: 
DEPUTY

By: 