



Legislation Text

File #: 20-1259, Version: 1

HEARING - Planning and Building Department and County Counsel recommending the Board:

- 1) Adopt and authorize the Chair to sign Resolution **163-2020** which partially decertifies the Final Environmental Impact Report for the General Plan Biological Resources Policy Update only as it relates to the County's determination that focusing on preservation of oak woodland habitat in the Highway 50 corridor was not the best course of action and it was not feasible to focus on preserving the oak woodlands within the Highway 50 corridor;
- 2) Direct staff to bring the decertified portion of the FEIR into compliance with the requirements of the California Environmental Quality Act as set forth in the Court's Tentative Ruling and Ruling Following Post-Trial Briefs in *Rural Communities United v. County of El Dorado*, Superior Court of the County of El Dorado, Case No. PC20170536 and direct staff to augment the administrative record as authorized by CEQA, including the missing reports and studies described in the Court's rulings; and
- 3) Adopt and authorize the Chair to sign Resolution **164-2020** which recertifies the portions of the FEIR that were decertified by the Board's adoption of Resolution 163-2020 pursuant to recommendation 1, above.

FUNDING: General Fund.

DEPARTMENT RECOMMENDATION

Planning and Building Department and County Counsel recommend that the Board take the actions recommended above in order to comply with the Writ of Mandate issued by the El Dorado County Superior Court in *Rural Communities United v. County of El Dorado*, Case No. PC20170536. The scope of this hearing is limited to the issues that are the subject of the writ and is not a reconsideration of the remainder of the EIR that is not impacted by the writ and that remains certified and it is not a reconsideration of the Project approvals. The Court's judgment and writ do not impact the Biological Policies Project approvals or any other actions the Board took on October 24, 2017 with regard to the Project.

DISCUSSION / BACKGROUND

On October 24, 2017, the Board of Supervisors adopted Resolution 127-2017, thereby certifying the Final Environmental Impact Report (FEIR) for the General Plan Biological Resources Policy Update Project (Project). The Project included revisions to specific biological resource objectives, policies and implementation measures in the Conservation and Open Space Element of the County's 2004 General Plan, adoption of an Oak Resources Management Plan (ORMP) which included an in-lieu fee payment option for impacts to oak woodlands and individual oak trees, and adoption of the Oak Resources Conservation Ordinance.

THE LITIGATION

On November 21, 2017, Rural Communities United, an unincorporated association, filed a Petition for Writ of Mandate alleging that the County did not comply with the California Environmental Quality Act (CEQA). The petition was amended to add Conserve El Dorado Oaks, an unincorporated association, Ellen Van Dyke, an individual, and Cheryl Langley, an individual, as petitioners on the

writ petition. (*Rural Communities United v. County of El Dorado*, Case No. PC20170536)

Prior to the hearing on the merits, the court issued a 137 page tentative ruling that granted the petition in part and denied the petition in part. The Court ruled in the County's favor on all substantive issues except as to the portion of the FEIR/EIR related to the determination of where to focus mitigation for loss of oak woodlands, in the Highway 50 corridor versus Priority Conservation Areas (PCAs) which are not adjacent to Highway 50. The Court found that biological expert reports, memos or studies referenced in the EIR to support the County's decision to focus mitigation in the PCAs were not included in the administrative record; therefore, partial decertification of the EIR was appropriate with a writ of mandate directing the County to augment the record with the reports and studies.

The hearing on the merits was held on January 31, 2020. At the conclusion of the hearing the court requested further briefing on two issues: 1) the trial court's discretion to issue a writ of mandate that addresses a specific administrative record issue and a targeted decertification of the EIR and 2) the definition of the Highway 50 corridor. The hearing on the post-trial briefing was held on February 24, 2020.

On April 27, 2020, the Court issued a Ruling Following Post-Trial Briefs that left the tentative ruling unchanged and focused on the post-trial issues noted above. The Court found that 1) it is statutorily authorized to partially decertify the EIR in a targeted manner; 2) the issue of where to focus mitigation (within the Hwy 50 corridor or in the PCAs outside the Hwy 50 corridor) was severable from the rest of the EIR and the Project; and, 3) for purposes of the litigation the Hwy 50 corridor consists of the two previously mapped Important Biological Corridors (IBCs) that are adjacent to Hwy 50 because these IBCs address RCU's north/south connectivity issue.

THE TRIAL COURT RULING, JUDGMENT AND WRIT

The Court ruled that the appropriate remedy is to partially decertify the EIR only as it relates to the County's determination that focusing on preservation of oak woodlands habitat in the Highway 50 Corridor was not the best course of action and it was not feasible to focus on preserving the oak woodlands within the Highway 50 corridor; issue a writ of mandate directing the County to comply with CEQA by augmenting the administrative record with the reports and studies that were referred to and relied upon; and, suspend approval of "construction and Oak Woodland removal permits in the Highway 50 corridor defined as the mapped IBCs running north to south of Highway 50" pending final action on a return to the writ.

Other than the reports and studies that the Court ruled were missing from the record, the Court noted "the court stated in detail in the 137 page tentative ruling how the petitioners remaining contentions that the County violated CEQA in various other ways lacked merit and found that the remainder of the project complied with the CEQA requirements. In other words, the court finds that the remainder of the project complies with CEQA requirements."

On July 27, 2020, the Court entered a judgment and order that stated in pertinent part: "The Petition for Writ of Mandate is granted in part and denied in part, for the reasons and to the extent described in the Tentative Ruling announced by the Court on November 22, 2019...and the Ruling Following Post-Trial Briefs entered by the Court on April 27, 2020..." The clerk of the court was directed to issue a writ of mandate. The writ directs the County to do three things: 1) partially decertify the EIR only as it relates to the County's determination that focusing on preservation of oak woodlands in the

Highway 50 corridor was not the best course of action and that it was not feasible to focus preservation in the Hwy 50 corridor; 2) augment the administrative record with the reports and opinions omitted from the administrative record; and, 3) suspend approvals of construction and Oak Woodland removal permits in two identified Important Biological Corridors (IBCs) pending the court's final action on the return on the writ.

On August 14, 2020, the County was served with a copy of the Writ which triggered the suspension of approval of construction and Oak Woodland removal permits in the identified IBCs. This suspension of approval of permits will remain in place until the Court discharges the writ. Three building permits were erroneously issued after service of the writ on the County; however, those permits were suspended and will remain suspended until the writ is discharged.

THE COUNTY'S RESPONSE

The proposed action today is in response to the Court's orders in the writ. Accordingly, staff recommends that the Board adopt Resolution **XXX-2020** to decertify the specified portions of the FEIR noted in the writ. All other parts of the EIR will remain certified. The Court's ruling does not impact the Biological Policies Project approvals. All other actions the Board took on October 24, 2017 with regard to the Project will remain in effect.

The County has identified the various reports and studies that the Court has ordered augmented into the administrative record. Dudek, the County's CEQA consultant, has prepared a memo that puts the reports and studies into context and explains the relationship between the studies and reports and the County's decision to focus mitigation in the PCAs rather than in the Highway 50 corridor. The Dudek memorandum is attached to this Legistar item.

Resolution **XXX-2020** addresses the following two determinations: 1) the County's determination that focusing on preservation of oak woodlands in the Highway 50 corridor was not the best course of action and 2) that it was not feasible to focus preservation in the Hwy 50 corridor. By way of background information, the EIR was the result of the careful consideration of a number of different policy and regulatory approaches and considerations, supported by County staff and its independent consultant, Dudek. The policy changes and EIR was a result of a multi-year undertaking.

BACKGROUND INFORMATION AND PRIOR DETERMINATIONS

The determinations directed to be set aside by the court involve fundamental and core policy considerations of where growth should occur. The 2004 General Plan, as a balance of multiple competing considerations, included a conscious policy of concentrating future growth within the Highway 50 Corridor. This strategy acknowledged that substantial new growth would occur, and the County adopted policies and implementation actions which direct that growth to the Highway 50 Corridor where infrastructure capacity is best designed to accommodate new growth. To illustrate, Countywide, the County anticipated 10,000 new residential units by 2025 and additional 7,000 units by 2035. (DEIR 4-4) This growth is anticipated to occur within the Corridor resulting in significant conversion of oak woodlands. (DEIR p. 5-15). The EIR disclosed the areas of existing development within oak woodlands (DEIR Figure 5-2), along with the location of anticipated growth and oak woodland conversion anticipated under the 2004 General Plan in years 2025 and 2035 (DEIR Figure 5-1). Setting aside large blocks of land for habitat purposes would be inconsistent with the land use and growth decisions for the Highway 50 Corridor as embodied by the 2004 General Plan. Reducing growth within the Highway 50 Corridor could put pressure on more remote land to develop with urban

uses impacting areas providing existing undisturbed habitat. (Legistar 12-1203, 27B 26 of 60) .

At the time of EIR certification, the Board made a specific finding as to the infeasibility of land use alternatives and mitigation measures resulting in reductions in land use densities provided for in the existing General Plan. Specifically, the Board found “Additionally, the rejected measures and alternatives would materially and adversely interfere with the County’s ability to discharge its obligations under state law by potentially lowering densities, reducing housing opportunities and increasing development costs.” (Legistar 12-1203 27B; p. 31-32 of 69) This finding was unchallenged in the Litigation.

Existing development has already resulted in extensive parcelization of the Highway 50 Corridor. This was documented in the EIR. The Highway 50 Corridor does not contain large contiguous blocks of undisturbed land connecting conservation areas and providing habitat connectivity. (Staff presentation to the Board of Supervisors 3/20/2015)

The EIR acknowledged the adverse edge effects on wildlife resulting from urban and suburban development, the type of development anticipated to occur within the Highway 50 Corridor. These adverse effects include displacement, loss of natural landscape, noise and introduction of exotic plant species.(FEIR 2-9) Additionally, the impacts of habitat fragmentation were considered to be significant and unmitigated impacts at the time the 2004 General Plan was adopted (DEIR p. 6-46) and again at the time of the adoption of the TGPA-ZOU (DEIR p. 6-48) The Dudek memorandum provides supplemental documentation recognizing the adverse effects of development on wildlife, and the advantages to location of conservation lands in more remote locations (such as was adopted by the Board of Supervisors.)

Further complicating conservation efforts is the fact that the County is bisected by a state controlled highway facility, a recognized impediment to terrestrial animal movement. The County lacks jurisdiction over the State facility, however, the EIR recognized that Weber Creek provided opportunities for wildlife movement as the State facility was substantially elevated above Weber Creek. (FEIR p. 2-23) Accordingly the EIR concluded that Weber Creek was the most feasible crossing point. (DEIR 6-79)

The County’s adopted conservation strategy emphasizes acquisition and protection of lands in remote areas where urban triggered disturbances can be minimized. The remote lands approach has the added benefit that protected lands will be contiguous or located near large tracts of federal lands or other resource lands restricted to low intensity uses. This further supports the long term benefits to species, an option not available for lands located within the Highway 50 Corridor due to lack of significant federal land ownership.

STAFF’S RECOMMENDATION

Staff recommends that the Board adopt Resolution which partially decertifies the Final Environmental Impact Report for the General Plan Biological Resources Policy Update in accordance with the Writ.

Staff believes that the original decision to locate conservation lands away from the Highway 50 Corridor remains today as the best course of action. As set forth in the attached findings, staff does not believe that focusing conservation efforts within the Highway 50 Corridor is feasible.

Decertifying the specified portions of the FEIR and augmenting the administrative record with the

reports and studies identified in the Dudek memorandum will comply with the order in the writ; therefore, staff recommends that the Board adopt Resolution **XXX-2020** to recertify the portions of the FEIR that were decertified by Resolution **XXX-2020**.

If the Board takes the recommended actions to comply with the writ, County Counsel and outside counsel will make a return on the writ to seek discharge of the writ by the Court.

ALTERNATIVES

N/A

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION

Approve as recommended.

FINANCIAL IMPACT

There is no direct financial impact associated with approval of this item. Staff time and other costs associated with the lawsuit and writ of mandate were funded by the General Fund. The Oak Resources Management Plan (ORMP) includes an in-lieu fee payment option for impacts to oak woodlands and individual oak trees, the funds from which are to be used for oak woodland conservation efforts. The implementation of this plan is not anticipated to result in further General Fund Impacts

CLERK OF THE BOARD FOLLOW UP ACTIONS

Provide fully executed copies of Resolution **XXX-2020** and Resolution **XXX-2020** to the Planning and Building Department and County Counsel.

STRATEGIC PLAN COMPONENT

Good Governance

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