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PLANNING APPEALS

CDRA

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

(T20080157)

Form section for 'OFFICE USE ONLY' containing fields for Last Day to Appeal (7-19-10), Appeal Fee (\$504.-), Date Appeal Filed (7-16-10), Receipt # (10-0064858), Received by (L. Blum), and Geographic Area (Central).

TO BE COMPLETED BY THE APPLICANT

- 1. Project name: Bohemia Retail Project
2. Appellant(s): APACE - Alliance for the Protection of the Auburn Community Environment
3. Assessor's Parcel Number(s): 052-102-012, 052-102-013, 052-102-017, and 052-102-053 (CUP); 052-102-056 (MUP)
4. Application being appealed (check all those that apply): Administrative Approval (AA-), Use Permit (CUP/MUP- (SEE BELOW)), etc.
5. Whose decision is being appealed: Placer County Planning Commission
6. Appeal to be heard by: Placer County Board of Supervisors
7. Reason for appeal: Legally inadequate Environmental Impact Report. See attached.

(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s) Tal C. Finney on behalf of APACE

Handwritten signature of Tal C. Finney

Basis of Appeal

The legal basis for the appeal is the Planning Commission's improper approval of the Project EIR, due to its legally deficient analysis regarding Air Quality, Urban Decay analysis, and Cumulative Impacts of the No Canal Street Project. California law provides that an EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project. Bakersfield Citizens for Local Control v. City of Bakersfield, 124 Cal.App.4th 1184, 1197 (2004) ("Bakersfield"). Thus, the omission of relevant information can preclude informed decision-making and informed public participation, regardless of whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. Id. at 1198.

The Bohemia EIR failed to adequately identify and evaluate the potential environmental impacts of the No Canal Street Project, and thus failed as an informational document to permit complete and informed decision-making and informed public participation.

I. Deficient Air Quality Analysis

The EIR utterly fails to provide a meaningful analysis of air quality impacts expected under the No Canal Street Project. When an EIR fails to disclose the extent of the negative environmental effects of a proposed project, mitigation measures and alternatives cannot be even be considered. Thus, the EIR failed to meet the most basic standard of providing information to enable the public and the decision-makers to evaluate the known physical environmental impacts of the Project.

The FEIR clearly states that "implementation of the Project will result in significant impacts in regard to air quality." (FEIR, ch. 1, p. 12). It continues that "because the under No Canal Street Alternative is projected to increase traffic congestion at the primary access, and CO emissions are directly related to traffic congestion, the under No Canal Street Alternative would have greater impacts as compared to the proposed Project," and "more air pollutants" would be "emitted by [No Canal Street Alternative] Project-related traffic." (DEIR, ch. 17, p. 10). This point is plainly reflected in Table 17-2, which shows that the No Canal Street Alternative will result in greater air quality impacts than the proposed Project -- and the proposed Project has significant and unavoidable air quality impacts.

Despite the concession that the No Canal Street Alternative will have grave air quality impacts, neither the DEIR alternatives chapter (ch 17) nor the air quality analysis chapter (ch. 9) provides any data regarding this alternative's increase in pollutants or analysis regarding the greater air quality impacts. The public -- and the reviewing body -- lacks any data to assess the increased air quality operational impacts of the No Canal Street Project on study area intersections, impacts on nearby sensitive receptors and residential neighborhoods, or potential mitigation measures. There is no

way to assess the extent to which the No Canal Street Project negatively impacts air quality, because no data has been provided.

In addition, the FEIR's "enhanced analysis" of the No Canal Street Project also failed to provide any data regarding the increased air quality impacts, yet somehow concluded that the impacts would be less than significant. (FEIR, ch. 1, p. 13-14). Without the data pertaining to this "greater impact," the public – and the reviewing body – cannot assess, let alone conclude, that impacts would be less than significant, and whether any mitigation measures may be appropriate. This complete lack of data pertaining to impacts that are known to be more significant than a Project that is already significant and unavoidable utterly fails to meet CEQA's information threshold.

The EIR must meet the most basic standards regarding providing information about Projects and Project alternatives. The FEIR failed to discuss the known, grave air quality impacts in detail sufficient for the public to discern from the FEIR the "analytic route" the agency will travel "from evidence to action," and thus precluded analysis of suitable mitigation measures. Topanga Assn. for a Scenic Community, supra, 11 Cal.3d at 515. In this regard, the EIR completely failed as an informational document to enable the public to evaluate the potential physical environmental impacts. The omission of this relevant information precludes informed decision-making. Bakersfield, supra, 124 Cal.App.4th at 1197. Supplemental analysis is required.

II. Deficient Socio-Economic or Urban Decay Analysis

The EIR's urban decay analysis fails to meet the basic requirement for adequacy, completeness, and full disclosure. CEQA Guidelines §15151. For the reasons outlined below, the EIR's urban decay analysis is not legally adequate, and warrants rejection of the EIR by the Placer County Planning Commission.

A. Outdated Data Undermine ERA's Conclusions

ERA's analysis in Appendix U to the draft EIR is flawed. Most of the financial data in the report is from 2006 or 2007. The few references to more recent data, as recent as early 2008, are from national sources and are not local. The response to Comment Letter #3 indicates that the ERA adjusted its data to reflect 2010 information, but that adjustment was made only for population growth – no economic adjustments were made. Inexplicably, the ERA relied on pre-recession data, though it is intended to provide a comprehensive analysis of the regional economic impact of the Project.

In addition to failing to update its information, the ERA did not include complete data regarding the length of the recession. It is critical to recognize that ERA prepared its report during the effects of the recession, but did not collect or cite to any data from the beginning of the recession (i.e., from September 2008 to present). Thus, the ERA's conclusion that retail in the Auburn region "is performing relatively well" despite the recession is highly suspect at best, because this myopic conclusion is based

only on a fraction of the relevant data. The ERA also relied on outdated assumptions to conclude that median incomes are rising in Placer County. It is economically irresponsible to claim a linear growth in income based on data from the robust growth of the 1990s and the housing “bubble” of the 2000s.

Similarly, the ERA skipped over the short-term impact of the Project on urban decay (shuttered stores), and leaped to the conclusion that, in the long term, retail in Auburn will boom. The ERA offered no explanation for its conclusion that Auburn will get its assumed oversupply of demand from store closings, especially since the analysis acknowledges that the Project will cause some further closings.

Absent this information, the EIR’s socio-economic analysis does not meet the basic requirement for adequacy, completeness, and a good faith effort at full disclosure. CEQA Guidelines §15151. The omission of this relevant information precludes informed decision-making. Bakersfield, *supra*, 124 Cal.App.4th at 1197.

B. Deficient Retail Trade Area and False Conclusions

Auburn is a suburb of the Sacramento metropolitan area, yet the ERA treats Auburn as an isolated community. Ignoring the reality of Sacramento’s influence, the ERA simply “split the distance” between the Project and existing retail within the general area. The Socio-Economic chapter of the DEIR conceded that “retail in the trade area is concentrated in Auburn and along I-80.” (DEIR, ch. 16, p. 4). It also acknowledged that “a majority of the population growth occurred in the southwest portion of the County... population growth in central and northeast Placer County . . . was lower than the rest of the County.” (DEIR, ch. 16, p. 5). Thus, as the population of Placer County increases, it will be more concentrated in the southwest portion of the County, and I-80 will be the main thoroughfare for retail demand in the Retail Trade Area.

Despite these facts, the Retail Trade Area inexplicably includes large areas of central and northeast Placer County. This misrepresents the population centers and areas of retail demand for Placer County. By focusing the Retail Trade Area on lower population areas with less existing retail establishments and less retail demand, the urban decay data regarding existing and projected retail supply and demand is skewed, and the urban decay effects of the Project is minimized. This also conveniently created a Project Retail Trade Area that artificially excluded existing and planned retail developments, such as a supercenter in the Loomis area, that will compete with the Project.

The EIR’s socio-economic analysis created a skewed Retail Trade Area by misrepresenting the reality of Sacramento’s influence, the existing population along I-80, and the actual population centers in Placer County. Also, the EIR failed to analyze concerns regarding competition with existing and proposed retailers in the Retail Trade Area. The EIR inappropriately relied on this data to make the unfounded conclusion that the Project would not result in any significant urban decay impacts. Without accurate

information, the EIR's socio-economic analysis does not meet the basic requirement for adequacy, completeness, and a good faith effort at full disclosure. CEQA Guidelines §15151. The omission of this relevant information precludes informed decision-making. Bakersfield, supra, 124 Cal.App.4th at 1197.

C. No Urban Decay Analysis of Supercenters

The EIR also fails to assess the grave urban decay impacts of supercenters. The EIR's urban decay analysis should address the unique urban decay impacts of a supercenter, due to the likelihood that the Project will operate as a supercenter with extended operational hours. Supercenters are known to raise unique additional environmental impacts. Bakersfield, supra, 124 Cal.App.4th at 1213. In addition, though a tenant has not been identified for the Project, the EIR's urban decay analysis should factor in the blemished record of supercenters, such as Wal-Mart, regarding their contributions to urban decay, and the need for mitigation measures. Laurel Heights Improvement Assn of San Francisco v. The Regents of the University of California, 47 Cal.3d 376, 420 (1988).

Many news and research articles have been admitted into the record regarding the unique and damaging effects that supercenters have on their adjacent communities, due to the lack of proportion between supply and population demand; loss of jobs and tax revenue; and increased noise, traffic, and crime. Thus, where the shortcomings of previous projects are known, they should be applied to the proposed Project and thoroughly analyzed. Id. Here, the urban decay impacts of a proposed supercenter must be analyzed, including the known deleterious effects on communities of supercenters such as Wal-Mart.

III. Deficient Cumulative Impacts Analysis

A. Insufficient Project Analysis

The EIR failed to properly analyze cumulative impacts of the No Canal Street Project. The FEIR concedes that the No Canal Street Alternative would lead to greater traffic and air quality impacts at the Primary Access than the proposed Project. (FEIR, ch. 1, p. 6). However, the cumulative analysis did not study the No Canal Street Alternative. The increased traffic impacts of the No Canal Street Alternative have not been thoroughly studied as it relates to cumulative impacts. The omission of this relevant information precludes informed decision-making. Bakersfield, supra, 124 Cal.App.4th at 1197.

In addition, the cumulative analysis states that "the air and noise studies that were prepared for the Project were based on the traffic data." (DEIR, ch. 18, p. 2). Thus, because the traffic data used for the cumulative analysis only considered the Project options, and not the No Canal Street Alternative, the cumulative air and noise analyses are also deficient in that they also failed to analyze the No Canal Street Alternative. The EIR fails to ensure that the public and relevant decision-makers can

meaningfully consider the issues raised by this alternative. The omission of this relevant information precludes informed decision-making. Bakersfield, supra, 124 Cal.App.4th at 1197.

B. Insufficient Cumulative Supercenter Analysis

Finally, the cumulative analysis does not properly analyze the impact of supercenters. The cumulative impact analysis did not appear to consider that supercenters (Project option 2) draw from a larger regional market than more typical shopping centers with the same total square footage of retail space, and thus have unique impacts that must be analyzed. In addition, the Project's cumulative impacts analysis should factor in the blemished record of supercenters, such as Wal-Mart, regarding their damaging effects on communities, and the need for cumulative mitigation measures. Laurel Heights Improvement Assn of San Francisco, supra, 47 Cal.3d at 420.