

RESOLUTION NO. 2024-66

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRASS VALLEY CERTIFYING THE SUPPLEMENT TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE DORSEY MARKETPLACE PROJECT

WHEREAS, in December 2015, the R. Jeter Family Trust (“the Applicant”) submitted applications for a General Plan Amendment, Zoning Map Amendment, Development Review Permit, and Use Permit for a proposed mixed-use development known as the Dorsey Marketplace on a 26.8-acre infill site within the City of Grass Valley (“City”) (the “Project”); and

WHEREAS, pursuant to the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (Cal. Code Regs., tit.14, § 15000 et seq.), City staff determined that an Environmental Impact Report (“EIR”) should be prepared to analyze all potentially adverse environmental impacts of the Project; and

WHEREAS, in early 2016, the City selected a consultant, Dudek, to prepare the EIR for the Project; and

WHEREAS, as Dudek began working on technical studies, an issue arose with potential impacts to one of the State Route (“SR”) 20/49 interchanges and, additionally, the Applicant began revisiting the land use mix based on nationwide trends impacting the retail market; and

WHEREAS, in July 2017, the Applicant developed an alternative site plan (“Alternative B”) that, compared with the original proposal, reduced the commercial area and increased the number of residential units; and

WHEREAS, the City prepared a Draft EIR for the Project that analyzed both Alternative A (the original proposal) and Alternative B, and provided a 45-day public review period from March 22 to May 6, 2019; and

WHEREAS, on April 16, 2019, the City’s Planning Commission held a public hearing to receive public comments on the adequacy of the Draft EIR; and

WHEREAS, the City’s Development Review Committee reviewed the design elements of the two proposed project alternatives at public meetings held on May 28 and August 27, 2019, and recommended that the City Council support Alternative B; and

WHEREAS, in October 2019, the City issued a proposed Final Environmental Impact Report (“Final EIR”) for the Project; and

WHEREAS, on December 3, 2019, the Planning Commission independently reviewed, analyzed and considered the Final EIR, as well as the related proposed Findings of Fact and Statement of Overriding Considerations, prior to making its recommendation on the Project; and

WHEREAS, on December 3, 2019, the Planning Commission conducted a duly noticed public hearing on the General Plan Amendment, Zoning Map Amendment, Development Review Permit, and Use Permit applications and considered the Final EIR, and recommended,

by a vote of five to zero, that the City Council certify the Final EIR and approve Alternative B; and

WHEREAS, on April 28, 2020, the City Council certified the Final EIR (the “2020 Final EIR”), adopted the Findings of Fact and Statement of Overriding Considerations, and approved Alternative B, including the required applications for a General Plan Amendment, Zoning Map Amendment, Development Review Permit, and Use Permit; and

WHEREAS, on August 3, 2020, Community Environmental Advocates, Community Environmental Advocates Foundation, Protect Grass Valley and Ralph A. Silberstein (collectively, “Petitioners”) filed a petition for writ of mandate in Nevada County Superior Court challenging the City Council’s certification of the 2020 Final EIR and approval of the Project; and

WHEREAS, on June 18, 2021, following briefing by the parties and a hearing on the merits, the Superior Court issued a “Final Ruling on Petition for Writ of Mandate (CEQA),” in which the court rejected all of Petitioners’ arguments attacking the 2020 Final EIR; and

WHEREAS, on July 27, 2021, the Superior Court issued a judgment in favor of the City and the Applicant, which denied the petition for writ of mandate in its entirety; and

WHEREAS, on July 29, 2021, the Petitioners appealed the trial court’s decision; and

WHEREAS, on February 28, 2023, the Third District Court of Appeal issued a Modified Opinion affirming the trial court’s ruling and judgment except in one respect, rejecting all of Petitioners’ challenges to the EIR but one; and

WHEREAS, the one flaw in the EIR identified by the Court of Appeal was the EIR’s failure to adequately analyze the potential health effects to Project residents and occupants in the year 2035 from mobile source pollution resulting from Project traffic using SR 20/49; and

WHEREAS, on October 19, 2023, on remand from the Court of Appeal, the trial court issued a new judgment consistent with the modified opinion of the Court of Appeal (“Revised Judgment”), as well as a Peremptory Writ of Mandate directing the City to suspend all Project activities that could adversely affect the physical environment and to address the deficiencies in the EIR identified in the modified Court of Appeal opinion; and

WHEREAS, on February 3, 2024, the City published a Notice of Availability for the Supplement to the Final Environmental Impact Report (“SFEIR”) for the Project, and held a 45-day public review period through March 19, 2024; and

WHEREAS, the SFEIR analyzes the potential health effects to Project residents and occupants in the present and the year 2035 from mobile source pollution due to Project traffic using SR 20/49, including all of the following:

- the analysis considers existing residents in the vicinity of the Dorsey Marketplace Project site as well as future Dorsey Marketplace residents and occupants;

- the analysis considers potential effects under the “no Project” and “with Project” scenarios in the year 2023 (existing) and year 2035 (cumulative) conditions;
- the analysis considers the potential health effects to receptors at various distances within 1,000 feet of the SR 20/49 travel lanes;
- the analysis focuses on the effects of diesel particulate matter and total organic gases from on-road vehicles, reflecting the total average daily trips and vehicle fleet mix (i.e., percentages of various types of vehicles, such as passenger cars and trucks, light duty trucks, and heavy duty trucks);
- the analysis relies on the results of air dispersion models that calculate how pollutants are transported from the emission source to particular points at various distances from the pollutant source to calculate the concentration of pollutants that are expected to reach existing and future sensitive receptors in the Project vicinity; and
- the conclusions regarding health risk are based on the cancer risk and chronic health effect risks associated with the identified exposure rates; and

WHEREAS, the SFEIR concludes that traffic from the Project on SR 20/49 would not significantly exacerbate environmental hazards and associated human health effects from mobile source emissions on SR 20/49 from traffic unrelated to the Project either in the present or in 2035; and

WHEREAS, on September 10, 2024, the City added the SFEIR, along with the public comments received on the SFEIR and the responses to those comments, to the 2020 certified Final EIR and provided the resulting new and expanded Final EIR (“the 2024 Final EIR”) to the City Council to review and consider, and to determine whether the deficiency identified in the modified Court of Appeal opinion, the Revised Judgment, and the Peremptory Writ of Mandate have been corrected before implementing the previously suspended Project activities; and

WHEREAS, the City Council finds that 2024 Final EIR, attached hereto as Exhibit A, is in compliance with CEQA and the State CEQA Guidelines insofar as the 2024 Final EIR corrects the deficiency in the 2020 Final EIR described in the modified Court of Appeal opinion, the Revised Judgment, and the Peremptory Writ of Mandate; and

WHEREAS, the City Council, having determined that the deficiencies in the previously certified 2020 Final EIR have been corrected in the 2024 Final EIR, reinstates the previously suspended Project activities as permitted by the Revised Judgment and Peremptory Writ of Mandate.

NOW, THEREFORE, BE IT RESOLVED that:

1. The City Council hereby finds the certified 2024 Final EIR, including the 2020 Final EIR, the SFEIR, the comments on the SFEIR, and the responses to those comments (all attached hereto as Exhibit A), addresses all environmental effects of the Project and fully complies with the requirements of CEQA, the CEQA Guidelines, the modified Court of Appeal opinion, the Revised Judgment, and the Peremptory Writ of Mandate. All of the information comprising the new Final EIR is on file with the Grass Valley Community Development Department, 125 E. Main Street, Grass

Valley, California. This finding of legal adequacy extends only, however, to the portions of the document modified in response to the directives of the Court of Appeal in the Modified Opinion, as the Court of Appeal did not require the City Council to vacate its certification of the previously certified 2020 Final EIR or to set aside any Project approvals, and the City Council did not do so. Because the prior certification was left undisturbed, this finding renders the entirety of the 2024 Final EIR adequate to reinstate the previously suspended Project activities as permitted by the Revised Judgment and Peremptory Writ of Mandate. Those suspended Project Activities are hereby reinstated.

2. The City Council hereby certifies that the 2024 Final EIR, and specifically the revisions made in the SFEIR in response to the modified Court of Appeal opinion, Revised Judgment, and Peremptory Writ of Mandate, were presented to the Council as the decision-making body of the lead agency, and that the Council reviewed and considered the information contained in the 2024 Final EIR prior to making its determination that the deficiencies in the previously certified 2020 Final EIR identified in the modified Court of Appeal opinion, Revised Judgment, and Peremptory Writ of Mandate have been corrected.
3. The City Council finds the 2024 Final EIR reflects the independent judgment of the City of Grass Valley.
4. The City Council finds that no significant new information within the meaning of CEQA Guidelines Section 15088.5 has required additional analysis on remand from the Court of Appeal beyond the analysis required by the modified Court of Appeal opinion, the Revised Judgment, and the Peremptory Writ of Mandate.
5. In light of the Superior Court's continuing jurisdiction under Public Resources Code section 21168.9, subdivision (b), the City Attorney, working with counsel for the Applicant, shall file with the Superior Court a return to the Peremptory Writ of Mandate and a Motion to Discharge the Peremptory Writ of Mandate.

ADOPTED as a resolution of the City Council of the City of Grass Valley at a regular meeting held on the day of _____ 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Jan Arbuckle, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael G. Colantuono, City Attorney

Taylor Day Whittingslow, City Clerk

Exhibit A

- 2019 Final EIR
- Supplement to the Final EIR (SFEIR)
- Comments to the SFEIR
- Response to Comments to the SFEIR and Errata

(Available by clicking this link due to file size)