



City of Grass Valley City Council Agenda Action Sheet

Title: Supplement to the Final Environmental Impact Report for the Approved Dorsey Marketplace Project

CEQA: 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.), the City Council, at its April 28, 2020, regular meeting, certified a Final Environmental Impact Report (“EIR”) for the mixed-use development known as the Dorsey Marketplace Project (“Project”).

That City Council action, along with the City Council’s approval of the Project, was subsequently challenged in court, with the ultimate result being that the City needed to make only minor changes to the original 2020 EIR. The required changes are set forth in documents from both the Court of Appeal and the Nevada County Superior Court, namely, a Modified Opinion from the Court of Appeal and a Revised Judgment and Peremptory Writ of Mandate from the superior court. These documents ordered the City to prepare further analysis of the extent to which Project-related traffic added to anticipated 2035 traffic on State Route (“SR”) 20/49 could result in adverse health effects on future Project residents and occupants.

In response to these judicial directives, the City prepared a Supplement to the Final EIR (“SFEIR”). The Draft SFEIR was circulated for public comment, and a Final SFEIR is now ready for City Council consideration and certification.

Recommendation:

- 1) Conduct the public hearing regarding the Supplement to the Final Environmental Impact Report for the Dorsey Marketplace Project
- 2) Adopt Resolution No. 2024-66 certifying the updated Final Environmental Impact Report for the Dorsey Marketplace Project, thereby (i) determining that the deficiency in the Final EIR identified in the Modified Court of Appeal Opinion and Revised Judgment has been remedied, (ii) further determining that a new 2024 Final EIR, consisting of (a) the 2020 Final EIR, (b) the Draft FSEIR, and (c) responses to comments on the Draft FSEIR and related corrections, is legally adequate under CEQA, and (iii) permitting the implementation of any and all previously suspended Project activities and Project Approvals, subject to authorization by the superior court

Prepared by: Amy Wolfson, City Planner

Council Meeting Date: September 10, 2024 **Date Prepared:** August 27, 2024

Agenda: Public Hearing

Background Information: At its April 28, 2020 regular meeting, the City Council approved the Project applicant’s preferred iteration of the Project “Alternative B” and also certified the

Final EIR prepared for the Project and adopted Findings of Fact and a Statement of Overriding Considerations. The approved Project consisted of applications for a General Plan Amendment, Zoning Map Amendment, Development Review Permit, and Use Permit for a proposed mixed-use development on a 26.8-acre infill site. Approved Alternative B includes 104,350 square feet of commercial space, 8,500 square feet of office space, and 172 apartment units, along with pedestrian corridors, public plaza spaces, spaces for public art and murals throughout the commercial component, as well as a small dog park.

The City Council's certification of the 2020 Final EIR for the Project was challenged by Community Environmental Advocates, Community Environmental Advocates Foundation, Protect Grass Valley, and Ralph A. Silberstein (collectively, "Petitioners"), who filed a Petition for Writ of Mandate ("Petition") in the Nevada County Superior Court. The Petitioners appealed the Superior Court's denial of their Petition, and the Third District Court of Appeal upheld the Superior Court's rejection of the Petitioners' challenges to the Final EIR, with one exception. The Court of Appeal found that traffic from the Project could exacerbate health risks for future Project residents and occupants by contributing to mobile source emissions associated with SR 20/49 in 2035, and that the Final EIR did not adequately evaluate this potential impact. In October 2023, the Superior Court issued a Revised Judgment directing the City to suspend all Project activities that have the potential to adversely affect the physical environment until this deficiency in the Final EIR is properly addressed. The Superior Court did not require the City Council to vacate any of its prior actions associated with Project approval in 2020. Thus, the approved General Plan Amendment, Zoning Map Amendment, Development Review Permit, and Use Permit all remain in effect. The Superior Court did, however, suspend any and all Project activities that could result in an adverse change or alteration to the physical environment until the City has taken the necessary actions to comply with CEQA.

Supplement to the EIR

In August 2023, the City approved a revised scope to its contract with environmental consulting firm, Dudek, authorizing that firm to prepare the SFEIR in compliance with the focused scope mandated by the courts. On February 3, 2024, the City published a Notice of Availability (NOA) for the Draft SFEIR for a 45-day public review period. The Draft SFEIR was published on the City's website, and on the State Clearinghouse website, CEQAnet, and was available in hard copy at City Hall and at the Grass Valley - Royce Branch Library.

Consistent with the direction in the Revised Judgment and the Third District Court of Appeal's Modified Opinion, the SFEIR includes a narrow scope that evaluates the health risk impacts of Project-related mobile source emissions from SR 20/49 in 2035 on new residents and occupants of the Project. In addition, health risks associated with existing sensitive receptors within 1,000 feet of SR 20/49 were assessed. Four roadway Health Risk Assessment (HRA) scenarios were analyzed in the SFEIR: baseline, baseline + Project, cumulative 2035, and cumulative 2035 + Project. Using these scenarios, Dudek was able to estimate the change between the current baseline impact and cumulative scenarios with and without Project-generated vehicle travel.

It is important to note that the 2020 Final EIR, based on data available in 2019 from the California Department of Transportation ("Caltrans"), assumed a baseline of daily traffic of 41,000 trips on SR 20/49, with the cumulative 2035 scenario resulting in an expected 57,000 trips, which exceeded the California Air Resource Board's ("CARB's") Air Quality and Land Use Handbook: A Community Health Perspective ("handbook") threshold for "High Traffic

Roadways.” However, the most current data from Caltrans, as used in the 2024 FSEIR, shows a marked decrease of average daily trips on SR 20/49 since 2019, with 31,000 trips shown as the current baseline and 40,000 trips on SR 20/49 in the cumulative 2035 + Project scenario in 2035. Even though the current and projected 2035 trip counts fall below the CARB handbook’s definition of a High Traffic Roadway, the City conservatively analyzed the associated health risk associated with the Project per the court’s ruling.

The SFEIR concludes that mobile source emissions from Project generated traffic would not significantly exacerbate an existing or future environmental hazard. While Project-generated traffic would increase emissions and associated health effects from mobile source emissions under current and 2035 conditions, the additional cancer risk associated with the Project, using a conservative assumption that 100% of those daily trips are coming from SR 20/49, does not result in a significant exacerbation of the baseline cancer risk from mobile source emissions on SR 20/49 under current or 2035 conditions. Given that the Project’s trip distribution is expected be closer to 20% travel along SR 20/49, the baseline cancer risk associated with the Project is not expected to be significantly exacerbated. In other words, no significant health-related impacts would occur.

The SFEIR concludes no new mitigation is required to reduce the air quality impacts of the Project to a less-than-significant level with respect to exposing sensitive receptors and occupants to substantial pollutant concentrations. The proposed site design, along with mitigation measures already required under the 2020 Final EIR, adequately address air quality impacts of the Project, including the less-than-significant health effects identified in the SFEIR. The design of the Project, including spacing of the buildings to allow adequate airflow, along with the 50-foot buffer between the Dorsey Drive off-ramp with landscaping in compliance with Mitigation Measure 5a, and the 6-foot soundwall required under mitigation measure 9a, will reduce the potential health effects of Project-generated mobile source emissions. The SFEIR concludes there are no new significant impacts or impacts more severe than those that were identified in the Final EIR and that increased cancer and chronic health risks associated with Project-generated traffic would remain below applicable thresholds. Thus, the Project’s air quality impacts would remain less than significant.

Responses to Comments received during the 45-day public notice period for review of the Draft SFEIR were published on August 22, 2024. While the City received a total of 12 comment letters, most of them did not address the analysis in the SFEIR but instead commented on other aspects of the Project that were no longer under active consideration, given the narrow scope of the SFEIR and the fact that the courts did not require the City Council to vacate its 2020 Project approvals. For example, many comments addressed the Final EIR’s analysis of environmental issues that were either challenged and decided in the City’s favor in the Revised Judgment, or that could have been challenged in the prior litigation but were not. In either case, the Final EIR’s analysis is conclusively presumed valid, with the exception of the narrow, new analysis of Project-generated mobile source emissions and associated human health impacts on future project residents and occupants, as analyzed in the SFEIR. Nevertheless, Dudek provided responses to all comments, even those outside the scope of the SFEIR, describing the disposition of any significant environmental issues raised with good faith, reasoned analysis. The responses to the comments did not require any revisions to the analysis and conclusions in the SFEIR, though some data corrections were made as a result of comments from Northern Sierra Air Quality Management District.

The new (2024) Final EIR now before the City Council consists of (i) the 2020 Final EIR, (ii) the Draft FSEIR, and (iii) responses to comments on the Draft FSEIR and related corrections.

The adequacy of the original 2020 Final EIR is not in contention, however. The City Council should therefore focus its consideration on the adequacy of the Draft FSEIR and responses to comments on the Draft FSEIR and related corrections. The Council need not reconsider the merits of the Project, as the courts left all of the 2020 Project approvals intact.

By certifying the 2024 Final EIR, the City Council would put the City into a position whereby the City Attorney, working with the Project applicant, could ask the Superior Court to discharge the pending Peremptory Writ of Mandate. If the Court agrees with the City and applicant that the FSEIR and the associated responses to comments satisfy the directives from the Modified Court of Appeal Opinion, the Revised Judgment, and Peremptory Writ of Mandate, the Court would lift the current suspension of Project-related activities that can adversely affect the environment. At that point, the Project could proceed with development once all required City permits have been obtained.

Council Goals/Objectives: Adoption of Resolution No. 2024-66 certifying the Supplement to the Final Environmental Impact Report for the Dorsey Marketplace Project supports the 2022 Strategic Plan Update Goal # 4, by which the City of Grass Valley encourages a robust and sustainable economy that reflects diverse employment opportunities that support the values of Grass Valley, and Goal # 5, by which the City of Grass Valley strives to exemplify an innovative, efficient, effective, open and collaborative city government.

Fiscal Impact: There is no fiscal impact to the City; Preparation of the SFEIR and construction of the Project are funded at the applicant's expense, as City policy requires.

Funds Available: N/A

Account #: N/A

Reviewed by: City Manager

Attachments:

- Dorsey Marketplace Site Plan, Alternative B (approved project)
- Resolution No. 2024-66, Certifying SFEIR with Exhibit A (2024 EIR)
- Supplement to the Final EIR (SFEIR)
- Response to Comments to the SFEIR and Errata
- Public Comments (received prior to publishing)