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FILED
MAY 26 2010

Superior Court of the State of
California, County of Nevada
Deputy Clerk *Joel Correa*

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF NEVADA**
10 **TRUCKEE BRANCH**

11 FRIENDS OF TRUCKEE, a California
12 Corporation, TEAM TRUCKEE FOR SMART
13 GROWTH, an unincorporated association,
14 SIOBHAN SMART, an individual, and BRYAN
15 DEVOE, an individual,

Petitioners,

16 vs.

17 TOWN OF TRUCKEE,

Respondent.

19
20 TRUCKEE DEVELOPMENT ASSOCIATES,
21 LLC and HOLLIDAY DEVELOPMENT, LLC,

Real Parties in Interest.

CASE NO. T09/3651C

**RULING ON PETITION
FOR WRIT OF MANDATE**

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24 Petitioners' Petition for Writ of Mandate came on before this court on April 2, 2010.
25 Attorney Donald B. Mooney appeared for Petitioners, attorney J. Dennis Crabb appeared for
26 Respondent, and attorneys Whitman F. Manley and James L. Porter appeared for Real Parties
27 in Interest. Following oral argument on April 2, 2010, this court took the matter under
28 submission and now rules.

1 track runs through the Brownfield and is used by the railroad to allow locomotive snow plows
2 to turn around.

3 For many years Respondent has undertaken efforts to facilitate the historic downtown.
4 The General Plan called for a Downtown Specific Plan which encompassed the area of the
5 current project. The Downtown Specific Plan was adopted in 1997 and created goals of a
6 master-plan for the rail yard, promoting it as an attractive, pedestrian-oriented development
7 which was physically and visually connected to the existing downtown core.

8 Trout Creek flows west to east near the project before it enters the Truckee River.
9 Over the past 150 years, the alignment of the creek has been often modified and channelized.
10 The creek is heavily degraded with little habitat. The creek channel has insufficient capacity
11 to handle flood flows. Extensive flooding occurred in early 1997. Respondent's efforts to
12 restore the creek predate the RMP by approximately six years. Funding for restoration is
13 either uncertain or non-existent. The entire restoration project is 7,000 feet of which 600 feet
14 are adjacent to the RMP area. The 6,400 feet of the creek outside of the RMP area has many
15 diverse owners.

16 DISCUSSION

17 The inquiry of the court here "extends only to whether the public agency (i.e.
18 Respondent) committed a prejudicial abuse of discretion." *Public Resources Code § 21168.5*.
19 Such an abuse is established "if the agency has not proceeded in a manner required by law or
20 if its determination or decision is not supported by substantial evidence." *Public Resources*
21 *Code § 21168.5*. Courts accord great deference to the substantive factual conclusions of the
22 agency. *Ebbetts Pass Forest Watch v. California Depart. of Forestry & Fire Protection*
23 (2008) 43 Cal.4th 936, 944-945. In its examination of the FEIR, the court looks "not for
24 perfection but for adequacy, completeness and a good faith effort at full disclosure."
25 *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal.App.4th 704, 712.
26 *CEQA Guidelines § 15151*. Petitioners are assigned the burden to show there is no substantial
27 evidence in the record to support Respondent's findings and conclusions.

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1 Finally, the court here does not pass upon the correctness of the EIR's environmental
2 conclusions, but only upon its sufficiency as an informative document. *Laurel Heights*
3 *Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392. The
4 court cannot set aside an agency's approval of an EIR on the ground that an opposite
5 conclusion would have been equally made or more reasonable. *Citizens of Goleta Valley v.*
6 *Board of Supervisors* (1990) 52 Cal.3d. 553, 564.

7 1. The Segmentation Claim.

8 Petitioners argue Respondent erred when it did not include analysis of the entire
9 restoration plan for Trout Creek in the FEIR. They were treated as separate projects here. An
10 EIR must consider an analysis of future expansion or other project-related activity if; "(1) it is
11 a reasonably foreseeable consequence of that initial project and (2) the future expansion or
12 action will be significant in that it will likely change the scope or nature of the initial project
13 or its environmental effects." *Laurel Heights I., supra*, at pg. 396.

14 The court concludes there is substantial evidence that the Restoration Project can occur
15 without the RMP. The opposite is also true although the RMP clearly benefits from the 100
16 year floodplain created by the Restoration Plan. Although these two projects are related that
17 does not mean they should be treated as one for CEQA purposes. *Berkeley Keep Jets Over the*
18 *Bay Com. v. Board of Port Comms.* (2001) 91 Cal.App.4th 1344, 1357-1363.

19 As Respondent claims, *Anderson First* is controlling. *Anderson First Coalition v. City*
20 *of Anderson* (2005) 130 Cal.App.4th 1173. In *Anderson First*, the development of an adjacent
21 freeway interchange offered to handle traffic from a WalMart project was not definite or
22 specific and was subject to a longer development timeline. Thus, segmentation was proper as
23 the freeway interchange was closer to a future action that is merely contemplated or is a gleam
24 in a planner's eye, as described in *Laurel Heights I, supra* at p. 398.

25 The Court finds that the Trout Creek Restoration Plan is not a crucial or functional
26 element of the RMP and the RMP does not depend on the Trout Creek Restoration Plan to
27 proceed and will be implemented with or without progress on the Trout Creek Restoration
28 Plan.

1 The FEIR here did not improperly segment Trout Creek Restoration from the project
2 described in the FEIR.

3 2. Alternatives to the Project.

4 The EIR is the heart of CEQA and the mitigation and alternatives discussion forms the
5 core of the EIR. (*Citizens of Goleta, supra* at p. 564). "In determining the nature and scope of
6 alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be
7 guided by the doctrine of feasibility." (*Citizens of Goleta, supra* at p. 565). CEQA defines
8 "feasible" as "capable of being accomplished in a successful manner within a reasonable
9 amount of time, taking into account economic, environmental, social and technological
10 factors." *Public Resources Code § 21061.1; 14 California Code of Regulations § 15364.*
11 CEQA does not prescribe a minimum number of alternatives to be analyzed. Each case is
12 evaluated on its own facts. (*Citizens of Goleta, supra* at p. 566).

13 Implementation of the RMP would result in six unavoidable impacts, four of which
14 would occur regardless of the approval of the RMP.

15 Three of the four were transportation impacts and the fourth was a long term air quality
16 impact. No alternative could avoid them. Only two of the six impacts could be potentially
17 avoided by an alternative.

18 The three FEIR alternatives were: 1) No project (required by CEQA); 2) Maintain
19 Donner Pass Road (DPR) Alternatives; 3) Reduce Development Alternative.

20 Petitioner advances many arguments about project alternatives. They are:

- 21 a) There should have been an off-site alternative.
- 22 b) The Maintain DPR Alternative does not avoid an impact as the historic
23 railroad warehouse would be removed. (Emphasis added)
- 24 c) The Reduced Development Alternative doesn't meet CEQA Guidelines.
- 25 d) The EIR failed to identify other alternatives which were established earlier
26 and would have saved the warehouse.
- 27 e) Project Objectives were too narrow.
- 28 f) The EIR failed to consider an alternative traffic configuration which would

1 save the warehouse.

2 g) The EIR failed to consider rehabilitation and restoration of the warehouse.

3 h) Respondent's Findings Regarding Alternatives were insufficient.

4 The background under which the bulk of these objections must be analyzed is the
5 guideline requirement that the EIR must "describe a range of reasonable alternatives to the
6 project...which would feasibly attain most of the basic objectives of the project but would
7 avoid or substantially lessen any of the significant effects of the project." [*Guidelines Section*
8 *15126.6(a)*] Further, an EIR does not have to consider alternatives "whose effect cannot be
9 reasonably ascertained and whose implementation is remote and speculative." [*Id. Section*
10 *15126.6(f)*]

11 The FEIR corrected an error in the draft EIR regarding the removal of the railyard
12 warehouse. In its final form, (corrected before certification and therefore relied upon by
13 Respondent), the FEIR did not require removal of the warehouse. Consequently, the
14 alternative addressed the preservation of the warehouse and created the potential for lessening
15 the impact upon the cultural (i.e. historic) resource, the warehouse.

16 The claim regarding an off-site alternative and narrowness of objectives are closely
17 related. Here, the staff of Respondent found no alternative site which would avoid or
18 substantially lessen project impacts without creating other comparable impacts elsewhere. No
19 alternative site was ever proposed. If the object of RMP was redevelopment of a railyard, no
20 other site would work. Further, the objective of integrating the Brownfield railyard with core
21 downtown Truckee could not be attained elsewhere. There is substantial evidence to justify
22 Respondent's decision to not include an alternative site analysis. The same conclusion is
23 found as to the project objectives as the objective (3) to "develop a connected community
24 (with) easy pedestrian, bicycle and vehicle access to and from the Master Plan Area and
25 Downtown" would be completely undermined by a broader objective requiring off-site
26 analysis.

27 Although it is true that during "scoping" proceedings other conceptual schemes were
28 addressed, those discussions and schemes were not done to avoid or lessen identified adverse

1 environmental impacts during CEQA analysis. These schemes were initially offered as mere
2 design concepts. However, because the court finds the Maintain DPR Alternative
3 accomplishes that analysis, Respondent need not address all options accomplishing the same
4 goal. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989)
5 209 Cal.App.3d 1502, 1519.

6 Petitioners argue that Respondent's findings of actual infeasibility regarding the
7 reduced project alternative violates CEQA.

8 An alternative for the project may be identified and analyzed as potentially feasible but
9 later rejected as actually infeasible. *Mira Mar Mobile Community v. City of Oceanside* (2004)
10 119 Cal.App.4th 477; *Guidelines* §§ 15091(a)(3), 15126.6(a).

11 Respondent cited lack of financial feasibility and inconsistency with the General Plan
12 as justification for the finding of actual infeasibility. Respondent argues, curiously, that the
13 reduced project alternative could also be rejected because it did not remedy any environmental
14 impacts. (See Opposition Brief at p. 29, lines 1-3.) That is an argument against potential
15 feasibility under The Guidelines, not actual infeasibility and the Court doesn't consider that.

16 Based upon review of the record there is substantial evidence in the record supporting
17 the findings of Respondent rejecting the alternative as actually infeasible.

18 Petitioners argue Respondent should have considered an alternative traffic
19 configuration incorporating traffic roundabouts and realignment of Donner Pass Road to
20 preserve the railroad warehouse. A roundabout is not allowed or required at the intersection
21 of Church Street and Donner Pass Road and would require removal of a historic residence.
22 Indeed, four road alignment plans were evaluated in the response to the draft EIR which could
23 have modified its extension of Donner Pass Road between Street A and the current site of
24 Donner Pass Road. However, once the alternative alignment of Donner Pass Road was picked
25 as an alternative, more alternatives were unnecessary.

26 Petitioners argue the FEIR should have included an alternative which rehabilitated or
27 relocated the railyard warehouse. For many reasons this, in the court's view, becomes a bit of
28 a moving target. Apparently, the issue of "integrity" is important for historical designation

1 (See: Respondent's Opposition Brief pg. 26 fn.10). The relocation of the balloon track, as part
2 of the project, would possibly negate the historical categorization. Does this render the
3 warehouse a meaningless item for CEQA analysis? The answer is no as we take the building
4 in its current status. The Administrative Record demonstrates Respondent considered
5 relocation (of course that also could have jeopardized historical status). A mitigation measure,
6 CULT-1, was deemed to have some impact reduction, but clearly no avoidance of impact.
7 Petitioners argue the draft DIR should have analyzed the rehabilitation, but the fact remains
8 the EIR was still open until certified and Respondent, as shown in the Administrative Record,
9 determined the cost to be double the cost of new construction. (See: *Uphold Our Heritage v.*
10 *Town of Woodside* (2007) 147 Cal.App.4th 587, 599.) The finding of Respondent that
11 rehabilitation was infeasible is supported by substantial evidence. The timing of the receipt of
12 rehabilitation information by Respondent complies with CEQA.

13 In the area of alternatives, CEQA allows for a two step process. First, the agency must
14 identify project alternatives which are potentially feasible. Such a finding allows inclusion of
15 the alternative in the draft DIR. Second, the agency must conclude whether any of these
16 alternatives are actually feasible. *Mira Mar Mobile Community v. City of Oceanside, supra.*
17 This analysis places into context Petitioners' final alternative argument, namely, that
18 Respondent's findings re alternatives are insufficient. Respondent found the Maintain DPR
19 Alternative to be infeasible. It is in this area where reference to the court's role needs to be
20 made. The law does not allow a court determination of whether the correct environmental
21 choice was made. The court only passes on the sufficiency of the document as an
22 informational item. There is abundant, and therefore substantial, evidence supporting the
23 infeasibility finding on the Maintain DPR alternative. Respondent rightly pointed out higher
24 traffic speeds and greater pedestrian challenges.

25 Although the findings of the reduced project alternative by Respondent seem to
26 suggest a brief conclusion of economic infeasibility (i.e. – reduced housing units won't
27 produce a financially feasible project), the clash between such reduction and the general plan
28 calling for significant residential component is evident and irreconcilable. Also, it fails, under

1 actual feasible analysis, to produce any substantial lessening or avoidance of the shown
2 environmental impacts. Thus, the findings of infeasibility for that alternative are also
3 supported by substantial evidence.

4 3. Traffic Impacts.

5 Respondent's Statement of Overriding Considerations omits any reference to Traff-15.
6 Here the EIR process is less than perfect. However, Respondent has considered the significant
7 and unavoidable impact on the Truckee Bypass (State Route 267). First, the impact exists
8 without regard to the project. Second, the impact is upon a road of the State of California and
9 thus removed from Respondent's jurisdiction. (See: *Tracy First v. City of Tracy* (2009) 177
10 Cal.App.4th 912) Third, Respondent adopted mitigation measure Traff-15 requiring the
11 project proponent to contribute up to \$100,000 for a study to examine options to increase
12 capacity of the bypass bridge. The EIR here succinctly requires payment for a study to
13 examine options to increase the Bypass bridge capacity. The only deferral is payment. No
14 CEQA violation is found by this.

15 Petitioners argue Respondent has improperly deferred mitigation measures for impacts
16 Traff-1, 2, and 4 by adopting Implementation Measure #18. A close examination of 75 AR
17 22022-22024 on the third page shows no deferral. The obligation of real parties in interest is
18 real and fixed. The only question is timing. No CEQA violation is found.

19 Petitioners argued in their opening brief that the FEIR was deficient because it
20 contained no analysis of Respondent's ordinance establishing traffic impact fees. All the brief
21 states is that there are eleven potentially significant traffic impacts which require the
22 proponent to pay Respondent's impact fees. (Petitioner's Brief at page 29, line 21(cites to
23 Admin. Record omitted)). The Administrative Record contains substantial evidence that the
24 mitigation measures were considered, and the fees to fund them also were considered.

25 4. Hazardous Materials.

26 Although the Petitioners raise the claim initially in their opening papers, they do not
27 reply to the Opposition Brief which shows that Mitigation Measure HAZ-1, mentioned in the
28 FEIR, does not lack sufficient standards to allow for adequate evaluation of hazardous

1 materials on site. No grading permit is to be issued without full analysis and supervision by
2 the Lahontan Regional Water Quality Control Board. That clearly is adequate.

3 5. Noise, Ground Water, Wetlands and Growth Inducing Impacts.

4 Although all of these issues were raised in Petitioners' Brief, only the noise and growth
5 inducing impacts were covered in the Reply Brief. Nevertheless, at oral argument,
6 Petitioners' counsel confirmed there was no intent to drop these issues.

7 The key noise issue seems to be the requirement in NOI-2a which requires that all
8 submitted construction plans must achieve an exterior noise level of 65 dBA¹. This is
9 designed to reduce the impact of train-related noise. Also, Respondent listed other specific
10 measures to be implemented. There is substantial evidence supporting the adequacy of the
11 EIR in this regard.

12 The project will not include any water wells and will rely upon the Truckee Donner
13 Public Utility District for domestic water and fire flow. The District does rely upon ground
14 water to supply water to its customers. The EIR correctly stated the project would not rely on
15 "local ground water." That reference should be analyzed as to site specific impacts. The
16 FEIR does mention reliance upon TDPUD water service and the source of that water. The
17 argument is meritless.

18 Petitioners argue that the FEIR is inadequate in that the wetlands shown in the FEIR
19 did not have the delineation verified by the U.S. Army Corp. of Engineers for the entirety of
20 the project. The EIR concluded .254 acres of wetlands would be impacted and offered
21 mitigation measure BIO-4 to offset this impact. Corps. verification did occur (58 AR 17033-
22 17033.2). (See: Certification and Lodging of Second Supplemental Administrative Record).
23 Further, the mitigation measures were adequate. (See: 58 AR 17052)

24 Petitioners argue the flood mitigation measure HYD-4 defers mitigation until a new
25 100 year floodplain analysis is made. Since the Trout Creek Restoration will proceed
26 separately, the project will be governed by whatever floodplain is then in effect. The balloon
27 track relocation and other changes will move the floodplain farther from the project area than

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¹ This mitigation measure is not completely absolute. See: 58 AR 17001.

1 the existing floodplain. 58 AR 17033.1-17033.2. The mitigation measure states the obvious;
2 the project is subject to the then-current floodplain.

3 Although the FEIR notes that the infrastructure for the project would match project
4 needs and there are no adjacent undeveloped areas which would be subject to facilitated
5 development as a result, Petitioners argue there are other indirect growth inducing impacts.
6 (Referring to 57 AR 16825 which identified areas to the east of the project.). This argument is
7 without merit as the court finds there is no evidence this land can be developed. Indeed, the
8 triangle shape of that land shows convergence of Trout Creek, floodplain, and the Truckee
9 River. Thus, *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App. 4th
10 144, 147 is distinguishable. If the argument of growth inducing impacts assumes that the
11 project will generally improve other roads in the area, there is substantial evidence of FEIR
12 analysis in mitigation and further, it does not appear this express claim was raised before.

13 6. Inconsistency of RMP with General Plan.

14 Petitioners incorrectly claim the FEIR requires removal of the railyard warehouse and
15 thus the RMP is inconsistent with the General Plan Policies to Preserve Historic Resources.
16 This argument is rejected above and cannot be the basis for a claim of inconsistency with the
17 General Plan.

18 The second prong of inconsistency advanced is based upon the claim of segmentation
19 raised and rejected above. It also fails as there is no improper segmentation.

20 The claim that the RMP is inconsistent with Policy 2.1 of the General Plan's
21 Circulation element was not raised before and cannot be raised now.

22 7. Impacts to Historically Significant Resources.

23 When it comes to a historic residence at 10144 Church Street, the Administrative
24 Record is hardly pristine. The draft and proposed FEIR contained language which, at the very
25 least, suggested removal. In a resolution adopted by Respondent, an amendment to mitigation
26 measure CULT-1 was adopted which struck the language mandating photographing the
27 residence if it will be removed (emphasis added). 75 AR 22017. However, a few pages later
28 in the same resolution, at 75 AR 22131, an attached exhibit maintains the obligation of

1 architecturally documenting this property before removal.² Finally, at the hearing, the
2 attorney for Respondent testified that staff of Respondent was seeking findings that the FEIR
3 have language specifying the residence not be removed. 75 AR 22167. At oral argument,
4 counsel for Real Parties in Interest said the removal language was simply a "goof."

5 Interestingly enough, despite the language allowing removal found at 75 AR 22131,
6 the findings of Respondent in the final column only refer to the railyard warehouse. This
7 seems consistent with the claim of error and subsequent revision offered by Respondent.

8 CEQA Guidelines state the court should examine the EIR for its adequacy,
9 completeness and a good faith effort at full disclosure. Guidelines §15151. Although the
10 FEIR is less than perfect, the court finds there is enough evidence to conclude that Respondent
11 locked itself into a "no removal policy" regarding the residence.

12 8. Recirculation of EIR.

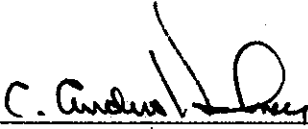
13 Petitioner's claim the issue of Radon raised in Special Report 211 requires
14 recirculation of the EIR. A consultant opines that Radon posed no risks. 74 AR 21767.
15 Recirculation, therefore, was not required. Although pure boilerplate and without any
16 reference to the Radon issue, Respondent did make appropriate findings justifying the lack of
17 recirculation. 75 AR 22080-22081.

18 CONCLUSION

19 The court denies the Petition for Writ.

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DATED: 5-26-10



C. ANDERS HOLMER
Judge of the Superior Court

² See: 75 AR 22131 where the removal error is repeated.

DECLARATION OF SERVICE BY MAIL

I, G. SEAN METROKA, Court Executive Officer, County of Nevada, being a citizen of the United States, a resident of the County of Nevada, and not a party to the cause, do hereby certify that I mailed copies of the: RULING ON PETITION FOR WRIT OF MANDATE

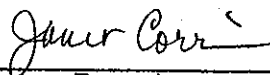
of which the original is on file, in case #T09/3651C to the following named persons, to wit:

DONALD B. MOONEY of LAW OFFICE OF DONALD B. MOONEY
129 C STREET, SUITE 2, DAVIS, CA 95616

J. DENNIS CRABB of ROLLSTON, HENDERSON, CRABB & JOHNSON LTD
591 TAHOE KEYS BLVD., #D8, S. LAKE TAHOE, CA 96150

I certify that I am a permanent resident of the United States, employed in the county where the mailing occurred, over the age of eighteen years and not a party to this action; and that I served a true copy of the foregoing by depositing a copy thereof, enclosed in a sealed envelope with postage prepaid in the United States mail at Truckee, Nevada County, California, at the addresses as follows and that the mailing of the foregoing and execution of this certificate occurred on 5/26/10

G. SEAN METROKA, Court Executive Officer
Nevada County Courts



Deputy

