SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME	: AUGUST 31, 2005 9:00 A.M.	DEPT. NO	: 11
JUDGE	: GAIL D. OHANESIAN	CLERK	: C. LEWIS
REPORTER	: S. CONNOLLY #5659	BAILIFF	: J. DOUGHERTY

EL DORADO COUNTY TAXPAYERS FOR QUALITY GROWTH, LEAGUE TO SAVE SIERRA LAKES, ENVIRONMENTAL PLANNING AND INFORMATION COUNCIL OF WESTERN EL DORADO COUNTY INC., FRIENDS AWARE OF WILDLIFE NEEDS, SAFEGROW, CALIFORNIA NATIVE PLANT SOCIETY, PLASSE HOMESTEAD, et al,
Petitioners,

COUNSEL:
STEPHAN C. VOLKER
MARNIE RIDDLE

VS. Case No.: 96CS01290

EL DORADO COUNTY BOARD OF SUPERVISORS, the governing body of El Dorado County, California; and EL DORADO COUNTY,
Respondents.

LOUIS B. GREEN
WILLIAM J. WHITE
PAULA FRANTZ

EL DORADO COUNTY COUNSEL
2005 SEP -1 AM 10:34

Nature of Proceedings: MOTION FOR REVIEW OF COUNTY'S RETURN TO WRIT OF MANDATE- RULING

RULING ON SUBMITTED MATTER

The court, having taken this matter under submission, now makes its ruling on the issues as follows:

1. WHETHER THE COUNTY'S EIR FAILS TO ADDRESS THE ENVIRONMENTAL IMPACTS OF THE PLAN'S PROPOSED CHANGES IN LAND USE

In the 1999 ruling, the court discussed the undisputed facts that changes were made to the project - the General Plan - after the circulation of the Draft EIR, and that a Supplement to the Draft EIR was circulated. Issues were framed as to whether each change identified by petitioners was adequately reviewed in the Supplement to the EIR, and, if not, whether it was the subject of a finding that it was not so significant as to require further environmental review; and, if such a finding was made, whether it was supported by substantial evidence. (Ruling on Submitted Matter, February 5, 1999 {"Ruling"], pp. 56-62.)

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Superior Court of California,
County of Sacramento

BY: C. LEWIS,
Deputy Clerk

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These changes included changes in land use maps. (Ruling, pp. 62 et seq.) A change in the description of the Low Density Residential land use designation dropped certain restrictions on the use of the designation. The court in its 1999 Ruling found that an expansion of Low Density Residential lands had occurred. (Ruling at p. 63.) A number of site-specific changes were made in land use definitions. (Ruling at p. 64.) In some cases, the Agricultural Overlay was removed. (*Id.*) The boundaries of certain Rural Centers and Community Regions were expanded, and one of the Planned Communities proposed in the original Project Description was eliminated. (*Id.*) The court concluded that there was not substantial evidence to support the County's finding that the changes in the land use maps did not require further environmental review. (Ruling at p. 68 [emphasis added].)

The 1999 Ruling granted the petition on that issue.

The Writ of Mandate issued July 19, 1999, provided the following direction to the County:

> "2.1.2 Direction to the County
> "The County is directed that, in any reanalysis or supplemental analysis prepared by the County in response to this writ and the related judgment, the County must 'either make a finding, based on substantial evidence, that the changes in the land use maps did not result in a new significant environmental impact or a substantial increase in the severity of an environmental impact, or it must review the environmental impacts of the changes pursuant to CEQA.' (See also Ruling, pp. 68-69.)" (Writ of Mandate, 2:23-3:2.)

Discussion

Petitioners contend that the County's compliance with this portion of the writ is deficient.

It is clear from a review of the 1999 Ruling, Judgment and Writ of Mandate that this direction concerned violations of CEQA in the processes which concluded in the approval of the EIR regarding the 1996 General Plan. Subsequent to the issuance of the judgment and writ of mandate in 1999, the County began the CEQA process anew, with a new draft General Plan and new environmental review process. Thus, issues concerning changes made in former versions of a General Plan prior to January 1996 are no longer relevant.

Petitioners raise additional issues and argue that they are violations of paragraph 2.1.2. of the Writ of Mandate. Petitioners contend the

increased density and intensity of use "resulting from these changes" will increase traffic, congestion, noise, air pollution, degradation of wildlife habitat, demands for urban services and other deleterious impacts of urban development and that there has not been an adequate environmental review of "these changes."

Petitioners contend that examples of this inadequate review include (1) a failure to provide a full environmental review of the impacts of "these changes" on Caples, Silver and Aloha Lakes; (2) the inadequacy of Important Biological Corridors ("IBCs") proposed by the County to mitigate impacts on wildlife habitat; (3) the inadequacy of the assessment of the impact of smaller parcels within wildlife habitat; (4) the failure to discuss Deer Herd Management Plans developed by the California Department of Fish and Game which petitioners contend conflict with the General Plan; and (5) the inadequacy of the County's contemplated Integrated Natural Resource Plan because adoption of it has been deferred for another five years.

This court finds that these issues are not issues of compliance with the direction in the 1999 Writ of Mandate to review the changes in the land use maps. In the subsequent planning and environmental review process, one of the project alternatives considered by the County was "the 1996 GP Alternative," which contained all of the land use map and other changes that had been incorporated into the 1996 General Plan.

To the extent that petitioners are asserting that the current EIR improperly concluded that certain impacts of "the 1996 GP Alternative" would be less than significant—such as increases in traffic, congestion, noise, air pollution, degradation of wildlife habitat, demands for urban services—these were all identified in the current EIR and in the County's CEQA findings as significant impacts. The final plan adopted by the County substantially modified "the 1996 General Plan Alternative" to include numerous mitigation measures in the final Plan. More importantly, CEQA does not preclude an agency from adopting a project with significant impacts. As long as those impacts are adequately disclosed, and the agency has adopted all feasible means for reducing them, the agency has full discretion to approve the project. (Pub. Resources Code § 21002.1(c); (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-66 ["*Goleta II*"]; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1507.)

This court concludes that petitioners have failed to establish that the County has not complied with paragraph 2.1.2, the portion of the Writ of Mandate issued in 1999 which concerns changes to the land use maps.

Petitioners' arguments regarding the DEIR's analysis of water supply impacts and deer mitigation will be addressed in other portions of this ruling.

2. WHETHER THE COUNTY'S EIR FAILS TO ADDRESS THE IMPACTS OF THE PLAN'S CHANGES IN OAK WOODLAND CANOPY COVERAGE POLICIES

The policy regarding oak woodlands had been changed from "canopy cover retention standards" to "canopy coverage retention or replacement standards." The court found it was clear that there was no discussion of this issue in an EIR, and also that there was no explicit finding to the effect that the change was not significant. (Ruling at pp. 70-71.)

The court found that respondent offered no substantial evidence to show that there was no significant environmental impact stemming from the change and granted the petition on this issue. (Ruling at p. 72.)

The Writ of Mandate gave the following direction to the County:

> "2.2.2 Direction to the County
> "The County is directed that, in any reanalysis or supplemental analysis prepared by the County in response to this writ and the related judgment, the County must
>
> > 'either: 1) readopt its original policy of retention of specified percentages of canopy coverage as proposed in the Annotated Project Description dated August 17, 1995; 2) make a finding, based on substantial evidence, that the changes in the oak woodland canopy coverage policies did not result in a new significant environmental impact or a substantial increase in the severity of an environmental impact previously disclosed; or 3) review the environmental impacts of the change pursuant to CEQA.'
>
> (Ruling, p. 73.)" (Writ of Mandate, 3:15-21.)

Discussion

Petitioners contend that the County's current EIR fails to address the impacts of the Plan's changes in oak woodland canopy coverage policies.

As with the direction concerning changes in land use maps, paragraph 2.2.2, above, concerns violations of CEQA in the processes followed prior to adoption of the 1996 General Plan. Subsequent to the issuance of the judgment and writ of mandate in 1999, the County began the entire CEQA process anew, with a new draft General Plan and new environmental review

process. Thus, issues concerning changes made in former versions of the General Plan are no longer relevant.

Moreover, the County has gone well beyond the direction of the 1999 writ. It has provided a new analysis of the impacts of replacement versus retention of oak woodlands, and it has also eliminated the "replacement" option from the policy as approved. The new, revised canopy protection measure keeps the retention percentages that were adopted in 1996, eliminates replacement as an option in lieu of retention, and requires a replacement of any canopy not required to be retained under the policy. In addition, the current DEIR proposed an alternative to the retention requirements, "Option B", which allows the County to require a project applicant to provide funding for woodland preservation in lieu of on-site canopy retention. The preservation would be at a 2:1 ratio and would allow the County to pool funds and apply them towards acquisition and restoration projects that would preserve larger contiguous blocks of habitat. The County adopted other new mitigation measures regarding oak woodland habitat. (See Mitigation Measures 5.12-1(e) and 5.12-1(g).)

Petitioners challenge the mitigation fee as ineffective; however, Public Resources Code section 21083.4 specifically authorizes such fees. The fact that the Integrated Natural Resources Management Plan has not been adopted is not relevant, because the County will be required to apply the retention-only policy of "Option A" until the adoption of the INRMP. That is required by provisions of the General Plan to occur within five years of adoption of the General Plan.

This court finds that petitioners have failed to establish that respondents have not complied with the directions of the Writ of Mandate regarding the oak woodlands canopy coverage policies.

3. WHETHER THE COUNTY'S EIR FAILS TO ADDRESS THE IMPACTS OF THE PLAN'S CHANGES IN ACCEPTABLE LEVELS OF TRAFFIC CONGESTION

In its 1999 Ruling, the court concluded as follows:

> "At the very least, the County's discussion of traffic impacts was unnecessarily complex and obscure. The Court is persuaded that it violated CEQA because it did not fairly disclose one of the significant environmental impacts of the General Plan. Thus, with regard to traffic impacts, the County's environmental review failed to serve as an 'environmental alarm bell' or a 'document of accountability', which the Supreme Court has stated are two of the essential functions of CEQA. (See Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376, 392.) The petition for writ of mandate is

> granted on this issue. Since the record demonstrates that the County failed to disclose this significant impact, the County must, pursuant to Public Resources Code section 21168.9(a)(3), perform a full environmental review of the traffic impacts of the General Plan in compliance with the provisions of CEQA." (Ruling, p. 79, l. 17 - p. 80, l. 6)

The writ of mandate directed the county as follows:

> "2.3.2 Direction to the County
> "The County is directed that, in any reanalysis or supplemental analysis prepared by the County in response to this writ and the related judgment, the County must 'perform a full environmental review of the traffic impacts of the General Plan in compliance with the provisions of CEQA.' (Ruling, p. 80.)" (Writ of Mandate, 4:4-8.)

Discussion

Petitioners contend that with regard to the County's 2004 General Plan and DEIR, the discussion of traffic impacts from proposed development remains "unnecessarily complex and obscure." Petitioners contend that the 2004 General Plan and DEIR fail to provide the reader with a clear and direct summary of the plan's impacts on the existing traffic conditions throughout the County. Petitioners contend that instead, the DEIR presents a confusing set of assumptions and accompanying text and tables that fail to clearly and fairly delineate the impacts on traffic of the four alternatives under consideration.

This court finds petitioners' contentions to be without merit. The new traffic analysis included traffic modeling for each of the equal weight project alternatives. Table 5.4-7 identifies all roadway segments projected to operate at Level of Service (LOS) D or worse by 2025 and compares the projected LOS to the existing LOS for each segment. A similar table was prepared for the modified general plan adopted by the County.

Petitioners further contend that the traffic analysis is flawed because the EIR incorrectly assumes that Highway 50 will be widened from six to eight lanes west of Cameron Park by 2025. However, CalTrans' State Route 50 Transportation Concept Report identifies the ultimate facility concept for Highway 50 as eight lanes west of Placerville. This improvement has not yet been added to the current SACOG MTP, but can be added to the MTP at a subsequent update. If the widening of Highway 50 is delayed or prevented, there are "concurrency policies" in the General Plan which substantially preclude new development from proceeding in the absence of needed roadway improvements. (See Goal TC-X, Policies TC-Xa, b, c, f,

and g.) The EIR acknowledges that some new traffic may be generated in advance of roadway improvements, and it concludes that those impacts are significant and unavoidable.

Petitioners complain that the 2004 General Plan would increase the Levels of Service, i.e., increase traffic congestion, on Highway 50 and other major roads. However, the County's decision to adopt an alternative with significant traffic impacts is within its discretion and is not precluded by CEQA.

Petitioners' challenge to the County's compliance with section 2.3.2 of the Writ of Mandate is without merit.

Air quality/ozone standards

In their arguments regarding compliance with the Writ's directions concerning traffic analysis, petitioners also contend that there is no discussion in certain sections of the General Plan and insufficient discussion in the EIR of attainment of or conflict with California and federal ozone standards. Petitioners contend that the analysis required by CEQA Guidelines, Appendix G, Section III is absent.

In its 1999 Ruling, the court rejected petitioners' arguments regarding the County's treatment of air quality impacts. (Ruling at p. 28.) There is no direction in the Writ of Mandate regarding analysis of air quality impacts.

Moreover, this claim fails on the merits. The EIR's analysis of ozone impacts follows the Appendix G guidelines (see SAR 46:19367 et seq.; 46:19659D-60), and new policies were adopted to reduce emissions (SAR 1:1284-86).

4. WHETHER THE COUNTY'S EIR FAILS TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES

In its 1999 ruling, the court found that the County's discussion of alternatives violated CEQA by failing to demonstrate that it had considered a reasonable range of alternatives. (Ruling at p. 90.)

The writ of mandate directed the county as follows:

> "2.4.2 Direction to the County
> "The County is directed that, in any reanalysis or supplemental analysis prepared by the County in response to this writ and the related judgment, the County must 'make a finding, supported by substantial evidence, which adequately discloses the analytic route it traveled in arriving at its conclusion that the "Low

> Growth Alternative" offered significant environmental advantages over the General Plan, or, in the alternative, the County shall consider at least one new alternative that does so.' (Ruling, p. 91.)" (Writ of Mandate, 4:20-25.)

Discussion

Petitioners contend that the County's new EIR does not consider a reasonable range of alternatives.

Petitioners contend that the "Environmentally Constrained Alternative" does not protect the environment in many substantial respects, in that it would result in greater traffic congestion and air pollution than current conditions. Petitioners contend that, as to most areas of environmental impact, the "Environmentally Constrained Alternative" ranks exactly the same as the other alternatives. Petitioner contends that (at SAR 34:14402 [Appendix G]) the EIR admits that the Environmentally Constrained Alternative is less environmentally protective than other alternatives because it states that the "No Project Alternative" would be environmentally superior overall to the other equal weight alternatives.

Petitioners' challenge is without merit. The County developed 10 alternatives. The differences in impact severity among the equal weight alternatives are discussed in Chapter 5 of the DEIR, which is summarized in table format for each significant impact. Chapter 6 analyzes the impacts of the remaining alternatives, and a comparison of all of the alternatives is presented in summary form in Table 6-1. The County's CEQA findings also discuss the alternatives and their ability to mitigate or avoid impacts.

As the County states, each of the alternatives has different environmental advantages and disadvantages. However, all but one of the alternatives were determined to have substantial environmental advantages over the 1996 GP Alternative.

The EIR and Findings show that most of the significant impacts of the "1996 GP Alternative" would be less severe under the EC Alternative. The EC Alternative was found to be environmentally superior to all of the other equal weight alternatives, including the No Project Alternative, in six general impact categories, including biological resources.

The inclusion of the EC Alternative satisfies the Writ's directive to include an alternative with "significant environmental advantages." Further, there are numerous other alternatives analyzed in the EIR.

Petitioners have failed to establish that the County has violated paragraph 2.4.2 of

the Writ of Mandate or that the County has not considered a reasonable range of alternatives.

5. WHETHER THE COUNTY'S EIR FAILS TO CONSIDER A "NO PROJECT" ALTERNATIVE

In its 1999 ruling, the court found that the EIR's discussion of the "No Project" alternative was faulty because it focused on a comparison between the projected population under the proposed General Plan and projected population under the existing plans, rather than basing the comparison on the current population of the County. (Ruling at pp. 91, 94.) The court concluded that pursuant to Public Resources Code section 21168.9(a), CEQA Guidelines section 15126(d)(4) and *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 358, the discussion of the "No Project" alternative must discuss both projected and current population.

The writ of mandate directed the county as follows:

> "2.5.2 Direction to the County
> "The County is directed that, in any reanalysis or supplemental analysis prepared by the County in response to this writ and the related judgment, the County must 'analyze the "No Project" alternative in a manner that clearly discloses the population impacts of the General Plan in relation to current County population as well as in relation to what would be reasonably expected to occur in the foreseeable future if the General Plan were not approved, based on current plans and consistent with available infrastructure and community services.' (Ruling, p. 95.)" (Writ of Mandate, 5:8-14.)

Discussion

Petitioners contend that the new DEIR fails to analyze the "No Project" alternative in the required manner. Petitioners contend that the "No Project" alternative is the same as the 1996 General Plan. Petitioners appear to contend that since the 1996 General Plan could not be legally implemented under the 1999 Judgment and Writ of Mandate, it is unlawful to consider it as an alternative in the current environmental review process. Petitioners also appear to contend that, in the current environmental review documents, the "No Project" alternative is the same as the "1996 General Plan" alternative.

This court finds these arguments to be without merit.

The current EIR includes, as required by the 1999 ruling and Writ of Mandate, a discussion of the population impacts of the 2004 General Plan in relation to the current County population.

However, the current EIR does not compare the impacts of the 2004 General Plan to the development that would be expected to occur under the plans in existence in 1996. It compares the impacts of the 2004 General Plan to the development that would be expected to occur under the terms of the 1999 Judgment and Writ of Mandate. Paragraph 5 of the Writ of Mandate contained lengthy provisions curtailing the County's authority in the areas of land use control, property development and construction "[u]ntil the County makes a return to this writ that is deemed satisfactory by the Court after a challenge or by the absence of a timely challenge ..." (Writ of Mandate, 9:25-27.) The EIR stated that the "No Project (Writ Constrained)" alternative "looks at the growth that is reasonably foreseeable to occur if the County does not adopt a General Plan *and* the Writ remains in effect indefinitely." (SAR 43:018459, emphasis added.)

In their reply memorandum, petitioners contend that the EIR does not contain an adequate "No Project" alternative because it does not provide the baseline existing environmental conditions. In a footnote, petitioners contend that this error is prejudicial as the EIR nowhere provides a comparison of the acreage of developed land uses under the various alternatives with the acreage of developed land uses under existing conditions.

However, the focus of paragraph 2.5.2 was population: "the population impacts of the General Plan in relation to current County population as well as in relation to what would be reasonably expected to occur in the foreseeable future if the General Plan were not approved . . ." (Writ of Mandate, 5:11-13.) The EIR indicates, at Table 3-2, that the County's *existing* population of 121,000 would increase at full buildout to 194,829 under the "No Project" alternative, 225,137 under the RC alternative, 258,688 under the EC alternative, and 317,692 under the 1996 GP alternative. (SAR 43:18443.) Similar comparisons with existing conditions were made for housing units and jobs. (*Id.*) Moreover, in Chapter 5 of the DEIR, each impact analysis begins with a discussion of the existing setting. (See, e.g., SAR 43:18512-29 [setting for Land Use and Housing].)

Petitioners have not established that the County failed to comply with paragraph 2.5.2 of the Writ of Mandate or CEQA.

6. WHETHER THE COUNTY'S EIR REJECTS SPECIFIC PROPOSED MITIGATION MEASURES WITHOUT SUBSTANTIAL EVIDENTIARY SUPPORT

The court, in its 1999 ruling, found that certain of the County's findings that proposed mitigation measures were infeasible based on

incompatibility with project objectives violated CEQA because they did not set forth the facts and analysis supporting them.

The court granted the petition as to the findings regarding specific proposed mitigation measures, including, but not limited to:

establishment of a scenic corridor combining zone;
prohibition on piping, culverting or lining of streams;
street standards (a proposal to revise street standards to allow or require narrower streets);
lower densities for certain land use designations ("rural residential" and "rural residential low density");
oak woodland canopy coverage standards ("retention or replacement" rather that just "retention");
"limiting" parcel size (to a 40 acre *minimum* lot size) in areas of deer habitat;
parcel size adjacent to grazing land; and
parks/open space standard.

(Ruling at pp. 101-113)

The writ of mandate directed the county as follows:

> "2.6.2 Direction to the County
> "The County is directed that, in any reanalysis or supplemental analysis prepared by the County in response to this writ and the related judgment, the County must 'either take action to make proper findings of infeasibility according to the standards set forth [in the Court's Ruling], adopt the proposed mitigation measures, or otherwise comply with the requirements of CEQA.' (Ruling, p. 113.)" (Writ of Mandate, 5:28-6:5.)

Discussion

Petitioners contend that the County sought to evade this requirement by deferring findings regarding mitigation measures to the time of project approval. (SAR 34:14403.) Petitioners contend, without citing any authority, that CEQA requires disclosure of the County's assessment of the feasibility and efficacy of contemplated mitigation measures in the EIR. Petitioners argue that the County failed to make such a disclosure, but that instead, barely one week before adopting the 2004 General Plan, the County purported to issue an "Environmental Assessment of Revisions to Mitigation Measures." Petitioners contend that this was a blatant violation of the public review and comment process required for EIRs.

However, this court finds that these claims of procedural violations are without merit. CEQA does not require any advance public review of proposed findings of fact, statements of overriding consideration, or other project-approval documents. (See Guidelines §§ 15090-93; see also Pub. Resources Code § 21083.1.)

The Environmental Assessment of Mitigation Measures ("MM Assessment") (SAR 8:3692-3731) did not need to be circulated for public review and comment. The CEQA Guidelines provide that new information may be added to the EIR without recirculation if the new information is not "significant." (Guidelines § 15088.5(a), (b).)

Petitioners did not identify until their reply brief the specific changes that they contend require recirculation. In their reply brief, they contend that there are specific changes which reduce the efficacy of the mitigation measures, including: (1) a change in Mitigation Measure 5.9-4(b), prohibiting development on slopes exceeding 30 percent, rather than 25 percent; (2) a change in Mitigation Measure 5.11-2(d) which eliminated requirements to replace non-certified wood heaters upon the sale of property and to retrofit some heaters in existing homes; (3) a change in Mitigation Measure 5.12-1(e) which eliminated the requirement that farmers pay fees to acquire, restore and manage one to two acres of equivalent habitat for every acre lost; (4) a change in Mitigation Measure 5.12-1(g), which created an exemption in the Oak Tree Removal Permit Process; and (5) a change in Mitigation Measure 5.12-3(b) which created an exception for agricultural and wildfire safety activities from the Important Biological Corridor (IBC) overlay requirements.

Even though the MM Assessment stated that some of these changes reduced the efficacy of the particular mitigation measures, these changes do not require recirculation under the terms of CEQA. The MM Assessment described the proposed modifications to mitigation measures and the effect of those changes. It did not identify any new or more severe significant impact or otherwise meet criteria for "significant new information." With the exception of Mitigation Measure 5.9-4(b), the mitigation measures referred to by petitioners concerned environmental impacts that were significant and unavoidable both before and after the revisions to the mitigation measures. As to Mitigation Measure 5.9-4(b), the impact, i.e., additional development that could affect the rate or extent of erosion, was significant before the mitigation measures as described in the draft EIR. Mitigation Measure 5.9-4(b) is a change to a policy in the "1996 General Plan Alternative" which merely "discouraged" development at slopes exceeding 40%. The County found that Mitigation Measure 5.9-4(b) as originally proposed was infeasible and that it was necessary to change Mitigation Measure 5.9-4(b) to make it feasible.

CEQA Guidelines § 15088.5 provides, in part:

> "New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." (CEQA Guidelines, § 15088.5.)

Petitioners have failed to show that the MM Assessment added "significant new information" requiring recirculation pursuant to CEQA Guidelines § 15088.5.

Petitioners make a number of arguments regarding certain specific mitigation measures which were the subject of the Writ of Mandate:

--Piping, culverting or lining of streams: In the previous environmental process, the County rejected a mitigation measure that would prohibit piping, culverting or lining of streams except at road crossings. The County rejected this measure as infeasible on the basis that "applied mechanically on a Countywide basis, it would have unacceptable economic impacts, and thus would be inconsistent with Project Objectives 1 and 12, which seek to create a business and regulatory climate attractive to new and expanding businesses." The court in its 1999 Ruling concluded that that finding was insufficient; the County had mechanically applied project objectives to reject a proposed mitigation measure without any attempt to provide a factual, reasoned analysis of the actual effect of the measure, and that violated CEQA. (Ruling, p. 108, l. 9-22.)

As to the current policy or policies regarding piping, culverting or lining of streams, (SAR 34:14405): Petitioners contend the policies' undefined exceptions would swallow the rule. Petitioners rely on a statement in Appendix G regarding compliance with the Writ, which states in part that proposed measures would prohibit culverting, lining or piping "except where avoidance is infeasible." (SAR 34:14405.) However, the discussion in Appendix is much more thorough than petitioners suggest, and there is additional discussion at page 5.12-113 of the EIR (SAR 46:19529) and in the response to comments (SAR 29:12222-223). The Board included ample detail in its findings that a complete prohibition of culverting, lining or piping of streams is infeasible. (SAR 1:1305-06.) A review of Policies 7.4.1.6, Implementation Measure CO-U, Policy 7.3.3.4. and Policy 7.3.3.5 shows that there is no merit to Petitioners' contention that the current policies' exceptions would swallow the rule.

--Utilization of narrower road standards: In the previous environmental process, the County rejected a proposal to revise street standards to allow or require narrower streets. The County rejected this

measure as infeasible on the ground that it was inconsistent with Project Objective 1. The County found that "the inclusion of such an inflexible policy into a General Plan for a county with widely varying conditions could result in needless economic impacts in particular areas ...." The court found, in its 1999 Ruling, that the County's failure to provide any reasoned analysis or facts to support this conclusion violated CEQA. (Ruling, p. 108, l. 23 - 109, l. 7.)

As to the current policy or policies regarding narrow road standards, Petitioners contend that the County's failure to adequately define its terms undermines public understanding of contemplated mitigation measures. Petitioners cite, as an example, DEIR Appendix G, where the County discusses compliance with the writ and discusses Mitigation Measure 5.3-2. The County indicates there that the measure would apply to "new streets and improvements to existing rural roads". (SAR 34:14405-06.) Petitioners contend that the measure is limited to rural roads and that the County has still failed to indicate why the narrower street standards are not applied to "Community Regions." However, a review of the record shows that Mitigation Measure 5.3-2—Policy TC-1w—is not limited to rural roads. (SAR 2:1392, 2:1407, 44:18706, 29:12221, 33:13856.) The County has not failed to comply with the Writ of Mandate or CEQA in this regard.

--Scenic Corridor Combining Zone: In the previous environmental process, the County rejected a mitigation measure calling for a Scenic Corridor Combining Zone to be applied to all lands *including the foreground areas in Community Regions and Rural Centers* within an identified scenic corridor. The County rejected it as infeasible based on alleged conflicts with several project objectives, but explained only that the proposed measure would limit development. (Ruling, p. 105, l. 22 - p. 106, l. 15 [emphasis added].)

Petitioners now contend that the County has failed to adopt findings of infeasibility explaining the County's failure to establish a Scenic Corridor Combining Zone. However, the record shows that the County has adopted the mitigation measure as Policy 2.6.1.6. (SAR 1:1367.) Petitioners complain that the County will implement this policy via a Scenic Corridor Ordinance (SAR 1:1366-67, 1:1371) and that the Scenic Corridor Combining Zone has not been established in the General Plan itself. However, the 1999 Ruling provided that the planning and zoning law does not require the specific designation of particular parcels of land for scenic corridors. (Ruling, p. 9.) This court finds that the County has not failed to comply with the Writ of Mandate or the law with regard to the Scenic Corridor Combining Zone.

--Lower densities for certain land use categories: In the previous environmental process, the County rejected "a mitigation measure that would have applied ... the land use designations of Rural Residential and Rural Residential Low Density *as defined in the lower-density General Plan*

Alternative." (Ruling, p. 109, l. 23-26 [emphasis added].) The court, in its 1999 Ruling, found that the County violated CEQA by making a finding that merely stated that such a measure would conflict with certain project objectives, without providing any facts or analysis to support that conclusion. (Ruling, p. 110, ll. 1-5.)

Petitioners now contend that the County fails to address the feasibility of this mitigation measure of lower densities in the DEIR and the 2004 General Plan. Petitioners, citing SAR 1:1370-1376, appear to state that rather than providing a satisfactory explanation for not using the lower densities, the County has omitted any mention of them at all.

However, in Appendix G, and in the response to comments, the County explained in some detail that the DEIR analyzed various alternatives and mitigation measures that would result in reduced densities, both at a general county-wide level and in specific areas where a density reduction could lessen particular environmental impacts. (SAR 34:14406-14407; 33:13856-58.) The EC Alternative included a new Agricultural (A) designation that cut the maximum density in half, or in some areas by 3/4, for almost 60,000 acres; the EC and RC Alternatives scaled back the areas covered by residential designations which allowed higher densities. Mitigation Measure 5.4-1(b) allows changes in development intensities to reduce traffic. Mitigation Measure 5.12-3(b) allows increased minimum parcel size for lands within Important Biological Corridor overlay. The County adopted the Agricultural land use designation from the EC Alternative. The County declined to adopt the full EC Alternative or the other reduced-density project alternatives based on extensive findings that those alternatives were infeasible on a number of grounds. (SAR 1:1188-1212.) In light of the new environmental review process, the alternatives and mitigation measures considered in that process, and the findings made by the County, this court concludes that there has been no violation of the Writ of Mandate or CEQA.

--"Limiting" parcel size in areas of deer habitat: In the 1999 Ruling, the court found that the County had violated CEQA by rejecting a mitigation measure calling for a General Plan designation establishing a 40-acre minimum lot size "in critical summer and winter deer range, fawning areas and major migration corridors." (Ruling, p. 111, ll. 5-11.) The rejection violated CEQA because the County had simply stated that the measure was infeasible in that it was in conflict with certain plan objectives. The County failed to provide any facts or analysis to support that conclusion. (Ruling, p. 111, ll. 11-14.)

Petitioners, in their opening brief, contend that the County now fails to provide any reasoned analysis to support the current DEIR's conclusion that deer can successfully migrate through parcels as small as 10 acres. (See Appendix G at SAR 34:14408.) They contend that the Important

Biological Corridor overlay will not mitigate impacts because all but one run north-south rather than east-west.

The County's expert biologists relied on a 1996 report by the University of California, Davis, that found that, in general, wildlife can successfully avoid structures on parcels one acre or larger. (SAR 46:19590B, 19709, 19719.) The EIR states in detail its reasons for not proposing a 40-acre minimum lot size—primarily because existing designations and restrictions, and other policies and measures would provide a comparable level of protection. Those include mandatory clustering and setbacks, the implementation of an INRMP, adoption of a no net loss policy, and establishment of an Important Biological Corridor overlay. The vast majority of critical deer habitat is within areas already designated for minimum parcel sizes of 40-160 acres, and the small areas of deer habitat outside this designation have already been developed, and most have been subdivided into parcels of 10 acres or smaller. Discussions of these issues are found in Appendix G, in Section 5.12 (Biological Resources), and in the response to comments. The County made findings on these issues. (SAR 1:1302.)

Petitioners contend that a report by the California Department of Fish and Game recommended minimum parcel sizes of 40-80 acres for "prime deer ranges" for the several deer herds. This report is not in the Supplemental Administrative Record, and its placement at Tab 59 of petitioners' excerpts is inappropriate. Petitioners request judicial notice of the El Dorado National Forest Land and Resources Management Plan, which they state adopts those plans. This request for judicial notice is denied, as the plan is not part of the administrative record, and petitioners have not met the standards for augmentation of an administrative record.

This court finds that the County has complied with the Writ of Mandate's directions concerning a minimum 40-acre lot size and with CEQA.

--Oak woodland canopy coverage standards: The 1996 policy was one of "retention or replacement" rather than just "retention" as originally proposed. The court in its 1999 Ruling found that the County had not explained why a retention-only policy for specified percentages of existing trees would be infeasible. (Ruling at pp. 110-111.)

The County has now provided a new analysis of the impacts of replacement versus retention and has eliminated the "replacement" option from the policy as approved in 1996.

Petitioners contend that the County's current proposal to substitute a "Mitigation Fee" for the previous deficient "replacement" policy represents an egregious departure from CEQA's requirements.

The court finds that the County has complied with the 1999 ruling and the Writ of Mandate's directions concerning the oak woodland canopy coverage standards and has complied with CEQA.

--Parcel size adjacent to grazing land: The court in its 1999 Ruling found that the County's rejection of a mitigation measure calling for 20-acre minimum parcel size adjacent to grazing lands violated CEQA by failing to provide facts or reasoned analysis in support of the conclusion that the measure was infeasible. (Ruling, p. 112, l. 13-17.)

The current EIR also rejects a 20-acre minimum lot size for parcels adjacent to grazing land and substitutes a 10-acre minimum. Petitioners contend this is without any factual analysis and therefore violates CEQA.

However, in addition to a 10-acre minimum parcel size, the new EIR proposed, and the County adopted, additional mitigation measures. Such measures would require a minimum 200-foot setback, allow the County to require a greater setback if necessary based on site-specific conditions, and prohibit the creation of new parcels adjacent to agricultural lands unless the size of the parcel is large enough to allow for an adequate setback. (SAR 2:1660, 1664.) The County discussed these additional measures in the EIR (SAR 44:18642-44), and it found them to be more effective than a blanket 20-acre minimum parcel size. (SAR 1:1222.) The County has complied with the Writ of Mandate and CEQA.

-- Parks/open space standard: In 1996 the County found that a 30 percent standard for parks and open space was infeasible. The court in its 1999 Ruling stated that this finding violated CEQA. "The finding does no more than express a preference for a lower standard and state that the proposed standard conflicts with project objectives without providing any reasoned analysis." (Ruling, p. 113, ll. 3-6.)

Petitioners contend that the County's current EIR fails to explain why the 2004 General Plan provides no specific standards for neighborhood and community parks, except within Cameron Park, El Dorado Hills, and unidentified "planned communities." At SAR 2:1680, it presents guidelines, but no specific standards, for parks outside the specified districts. Petitioners contend this violates the prior ruling and Writ of Mandate.

Respondent explains that this portion of the 1999 ruling concerned a Planned Community land use overlay designation, that the projects that had been under consideration when the 1996 General Plan was adopted were ultimately approved, and that the designation has been replaced. (SAR 34:14409.) The 2004 General Plan contains policies authorizing Planned Development Combining Zone Districts, but those policies apply the previously-rejected 30 percent open space requirement to any new planned developments. (SAR 1:1353-53A [Policy 2.2.3.1.].) The guidelines which

petitioners refer to, Policy 9.1.1.1, are targets for park acquisition in the Parks and Recreation Element.

Petitioners have not shown that the County violated the Writ of Mandate or CEQA in this regard.

7. WHETHER THE COUNTY'S EIR IMPERMISSIBLY RELIES ON DUBIOUS MITIGATION MEASURES

In the 1999 Ruling, the court upheld the challenge to Policy 6.3.2.3., which called for an avalanche overlay zone to be established and applied to all residential areas subject to avalanche. The policy provided that "[a]ll new structures located within avalanche susceptible areas shall be designed to withstand the expected forces of such an event."

In its 1999 Ruling, the court "concur[red] with petitioners that this policy seems to be dubious on its face. There is no reference to any design standards or other evidence that would establish that it is even possible to design structures to withstand the expected forces of an avalanche. . . . Accordingly, the adoption of this measure violated CEQA." (Ruling at p. 114.)

The court directed the county as follows:

> "2.7.2 Direction to County
> "'[T]he County must void the adoption of this particular mitigation measure. Thereafter ... the County may exercise its discretion with respect to mitigation measures in avalanche prone areas in any manner consistent with [the Court's] Ruling and the provisions of CEQA.' (Ruling, pp. 114-115.)" (Writ of Mandate, 6:17-21.)

Discussion

Petitioners contend that there is no difference between Policy 6.3.2.3. in the 1996 General Plan and the current avalanche overlay zone. (See SAR 2:1594.) However, the County also adopted measures in the current plan which prohibit development on lands for which such potential hazards have been identified unless either the identified hazard can be avoided or adequate mitigation can be provided. The burden will be on the applicant to affirmatively demonstrate that the hazard can be avoided or mitigated. (SAR 45:19239A-B, SAR 2:1594 [Policy 6.3.2.5], SAR 1:1360A [Policy 2.2.5.20], SAR 1:1372 [Implementation Measure LU-C].)

The court finds that the County has adequately complied with the Writ of Mandate in this regard.

Petitioners further contend that there are numerous other dubious mitigation measures which they criticized during the administrative process and which the County should either delete or support with tangible, reliable data and analysis. The court finds that petitioners have failed to establish that other specific mitigation measures warrant this relief.

Petitioners have not established that there are "dubious mitigation measures" which violate the Writ of Mandate or CEQA.

8. WHETHER THE COUNTY'S EIR FAILS TO PROVIDE ANY ENVIRONMENTAL REVIEW OF PROJECTED WATER SUPPLIES

The court, in its 1999 Ruling, found that the EIR failed to disclose or discuss the impact that the development of future water supplies will have on Caples, Aloha and Silver Lakes. (Ruling at pp. 116-122.)

The court directed the county as follows:

> "2.8.2 Direction to County
> "The County is directed that, in any reanalysis or supplemental analysis prepared by the County in response to this writ and the related judgment, the County must 'make findings, consistent with this Ruling and supported by substantial evidence, that the adoption of the General Plan will not result in any environmental impacts on Caples, Silver or Aloha Lakes, or, in the alternative, perform a full environmental review of such impacts pursuant to CEQA.' (Ruling, p. 122.)" (Writ of Mandate, 7:1-6.)

Discussion

Petitioners contend that, contrary to the ruling, the current DEIR ignores the potentially deleterious impacts of its projected rapid urban growth on the upper watershed communities that depend on Caples, Silver, Echo and Aloha Lakes for recreation, domestic water supply and other community purposes.

The County contends that it has complied with the Court's direction by preparing a new water supply analysis that addresses the issue of potential impacts on Caples, Aloha and Silver Lakes in the event that the waters drawn from these lakes for a hydroelectric project ("Project 184") are put to consumptive use by the El Dorado Irrigation District. The DEIR acknowledges that consumptive use of Project 184 water to serve future development could have impacts on the lakes. (SAR 44:18835-36.) A draft

Environmental Impact Study has been prepared for FERC for Project 184. The DEIR summarizes the draft EIS's assessment of the impacts of Project 184 on Caples, Aloha and Silver Lakes. (SAR 44:18913-18915.) It identifies lowered lake levels as a potential impact and also identifies indirect impacts associated with lowered lake levels, such as degradation of macro-invertebrate habitat in project lakes, impacts to terrestrial species, impacts to recreational opportunities, impacts to cultural resources caused by fluctuating lake levels, and impacts to aesthetic resources. (SAR 44:18913-15; see SAR 76B:37562-901 [FERC draft EIS].)

Petitioners contend that the EIR fails to analyze the impacts as they relate to the alternatives. However, this court finds that the EIR does analyze and compare the projected water demand and associated shortages under each alternative. (SAR 44:18813-28; 18909 [Table 5.5-1].) It ranks the environmental effect of each of the alternatives. (SAR 44:18832.) Petitioners contend that the analysis is inadequate because it relies on an incomplete EIS and fails to identify actual impacts of each alternative on lake levels and related environmental concerns.

However, the best and most detailed information available at the time the analysis was prepared was contained in the FERC DEIS. That is what the County presented. The County is not required to defer review and approval of the General Plan EIR until the planning for the El Dorado Project and other water supply projects are completed and the impacts more precisely known.

The County adopted Mitigation Measure 5.5-1(c) to reduce future water demand, but the EIR concluded that even with this mitigation measure, the need for new water supply projects would not be eliminated. (SAR 44:18830-31.) The decision of what water supply projects to pursue and how to mitigate their impacts is not within the control of the County. With respect to Project 184, those decisions rest with El Dorado Irrigation District and the state and federal agencies that have approval authority over Project 184. The County adopted Mitigation Measure 5.5-2, which directs the County to encourage water purveyors to reduce the environmental impacts of water supply and infrastructure projects to the maximum extent feasible, but the EIR acknowledges that the impacts from future water infrastructure would remain significant and unavoidable. (SAR 44:18842-43; 1:1244.)

The court finds that the County has sufficiently complied with the direction of the 1999 Writ of Mandate and with CEQA.

9. WHETHER THE COUNTY IMPROPERLY DEFERRED ANALYSIS OF BIOLOGICAL RESOURCES

Petitioners contend that the County has deferred devising important mitigation measures to some time in the future, such as when the Integrated Natural Resources Management Plan is developed.

Petitioners contend that the INRMP will delineate habitat for special status species, migratory deer herds, and aquatic species, and will also delineate large expanses of native vegetation. For this reason, petitioners contend the County has violated CEQA in that it is a failure to comply with CEQA Guidelines section 15126.2(a) and Appendix G, Section IV and V which require full disclosure of a project's potential adverse impacts on these resources. Petitioners contend that by deferring delineation of these biological resources, the County's EIR defeats CEQA's primary purpose of disclosing potential adverse environmental impacts before project approval to facilitate mitigation or avoidance of those impacts.

This court finds that the County did not improperly defer analysis of biological resources. There is extensive analysis in the EIR. (SAR 46:19437-19551.) Existing resources are documented and described. The DEIR analyzes in detail the effects of future growth under each alternative.

Petitioners focus on certain mitigation measures adopted by the County that require the future development of more specific information, standards, and requirements in the form of studies, guidelines and ordinances. Petitioners contend that the analysis required by those measures should have been included in the General Plan EIR itself.

This court finds petitioners' contentions to be without merit. The general plan is a broad planning-level document and does not involve approval of a specific development project. (Guidelines § 15146(b). Thus, the EIR must focus on secondary effects of adoption, but need not be as precise as an EIR on the specific projects which might follow. (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 374; *Atherton v. Board of Supervisors* (1983) 146 Cal.App.3d 346, 351.) Similarly, because generalized mitigation measures are "consistent with the general nature of the Plan," they are appropriate in a general plan EIR. (*Rio Vista Farm Bureau Center, supra*, 5 Cal.App.4th at 376-77.). The analysis and mitigation provided in the EIR is consistent with the general policy framework that general plans are meant to provide.

In addition, there are mitigation measures adopted by the County which establish numerous specific requirements immediately applicable to new development, such as the no-net-loss requirements. The General Plan establishes an Important Biological Corridor overlay. Policy 7.3.3.4. imposes a specific interim setback pending the adoption of a riparian setback ordinance. The development of an Oak Resources Management Plan is only one part of a larger oak mitigation strategy that includes immediately applicable requirements. The Board adopted measures to mitigate impacts on cultural resources.

This court finds that the County has not improperly deferred analysis or mitigation of environmental effects.

10. WHETHER THE COUNTY'S STATEMENT OF OVERRIDING CONSIDERATIONS IS DEFICIENT

In its 1999 Ruling, the court found that several of the challenged statements were either express general policy goals, and thus not particularly susceptible to proof by evidence in the record, or were in fact supported by the record. The court concluded that a finding by the County that the plan will increase the County's revenues was a statement of fact that may be tested against the record, and that it was not supported by substantial evidence. (Ruling at pp. 135-137.)

The court directed the county as follows:

> "2.12.2 Direction to the County
> "The County is directed that, in any reanalysis or supplemental analysis prepared by the County in response to this writ and the related judgment, the County must 'consider and adopt a new Statement of Overriding Considerations based on the final environmental review of the General Plan.' (Ruling, pp. 134-135.) The County is further directed to use as guidance the Court's analysis of Petitioners' specific challenges to the present Statement of Overriding Considerations. (Ruling, pp. 135-137.)" (Writ of Mandate, 8:24-9:3.)

Discussion

Petitioners contend that the County's current Statement of Overriding Considerations is woefully deficient and conclusory. Petitioners contend that the County has improperly failed to address any of the plan's significant adverse impacts, such as impacts on Caples, Aloha and Silver Lakes, impacts on fish and wildlife habitat, impacts on oak woodland canopy retention, impacts on attainment of state and federal ambient air quality standards, and impacts on the streams that will be culverted.

However, CEQA does not require the statement of overriding considerations to restate the significant impacts of the project. Its function is to document the reasons for proceeding with the project notwithstanding the significant impacts of the project. (Pub. Resources Code § 21081; Guidelines § 15093(a). The significant impacts were properly set forth in the CEQA Findings of Fact. (Guidelines § 15091; see SAR 1:1214.)

Petitioners contend that two statements are not supported by the evidence: First, petitioners challenge the statement that the General Plan "encourages a balance between population growth, economic development, and the need to protect the environment." (SAR 1:1158.) As the court in 1999 found with regard to the previous Statement of Overriding Considerations (Ruling, p. 136), it is clear from a review of the General Plan that it makes an effort to balance those matters. Second, petitioners challenge the statement that the General Plan "[b]alances the protection of property interests and the need for economic development with strong commitments to environmental protection." (SAR 1:1160.) Although the County rejected alternatives that would reduce density, again, it is clear from a review of the General Plan that it makes an effort to balance those interests.

The County has adequately complied with the Writ of Mandate and CEQA in this regard.

11. WHETHER THE COUNTY'S 2004 GENERAL PLAN VIOLATES THE CALIFORNIA PLANNING AND ZONING LAW

Petitioners contend that the General Plan lacks the inventory of open space resources required by the Open Space Lands Act (Gov. Code §§ 65560 et seq.). The court's 1999 ruling rejected petitioners' challenges to the 1996 General Plan based on this Act. The County contends that the challenge to the 2004 General Plan's open space element is barred by the prior ruling. Petitioner contends that it is not, because it is a new challenge to a new General Plan under changed circumstances

This court finds that petitioners' challenge fails on the merits. The Open Space Element includes maps of all major plant communities and of important mineral resource areas. Inventories of open space resources are also provided in other elements. The Open Space Element provides that its policies will be implemented in part through the Land Use Element's designations and map; and the land use map identifies the location of critical open space resources.

Petitioners contend that unless and until an Integrated Natural Resources Management Plan is completed, the Open Space Element is deficient. However, the Open Space Lands Act does not call for an inventory of that level of detail.

Petitioners' challenge based on the Open Space Lands Act is without merit.

12. CONCLUSION

Respondents' request for judicial notice is denied. It consists of improper extra-record materials. (*Western States Petroleum Assn. v.*

Superior Court (1995) 9 Cal.4th 559.) Petitioners' request for judicial notice is denied on the same ground.

Petitioners' Motion for Review of County's Return to Writ of Mandate, requesting that the court reject as inadequate the County's return to the Writ of Mandate issued July 19, 1999, is DENIED. The other challenges raised in the motion are also DENIED. The Writ of Mandate is discharged. Respondents shall prepare an order consistent with this ruling and in accordance with California Rules of Court, rule 391.

Dated: AUG 31 2005

GAIL D. OHANESIAN

Honorable GAIL D. OHANESIAN,
Judge of the Superior Court of California,
County of Sacramento

CASE NUMBER: 96CS01290 **DEPARTMENT: 11**
CASE TITLE: EL DORADO COUNTY TAXPAYERS, ET AL. VS. EL DORADO COUNTY, ET AL.
PROCEEDINGS: MOTION FOR REVIEW OF COUNTY'S RETURN TO WRIT OF MANDATE-RULING

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

STEPHAN C. VOLKER
MARNIE E. RIDDLE
436 14th Street, Suite 1300
Oakland, CA 94612

LOUIS B. GREEN
PAULA F FRANTZ
EL DORADO COUNTY COUNSEL
330 FAIR LANE
PLACERVILLE CA 95667

WILLIAM J. WHITE
SHUTE MIHALY & WEINBERGER
396 HAYES ST.
SAN FRANCISCO CA 94102

Dated: AUG 31 2005

Superior Court of California,
County of Sacramento

By: C. LEWIS, C Lewis
Deputy Clerk