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SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SACRAMENTO

CLOVER VALLEY FOUNDATION, et al., Case No. 34-2007-00002871-CU-WM-GDS

Petitioners/Plaintiffs,

v.

RULING ON SUBMITTED MATTER

CITY OF ROCKLIN,

Respondents/Defendants.

TOWN OF LOOMIS,

Petitioner,

v.

CITY OF ROCKLIN et al.,

Respondents.

ROCKLIN 650 VENTURE et al.,

Real Parties in Interest.

On August 27, 2007, respondent City Council of respondent City of Rocklin approved a project proposed by real parties in interest for the development of a residential subdivision on property on 662 acres in Clover Valley, in the northeast corner of Rocklin. Specifically, the Council approved a Large Lot Tentative Map subdividing the project site into 46 large lots with major streets; a Small Lot Tentative Subdivision Map subdividing the large lots into a total of 558 single-family residential lots, 82 landscape lots and related interior roadways;

1 and a number of related entitlements. The proposed project includes construction of 558
2 residential lots, a five-acre commercial area, a five-acre park and 366 acres of open space areas.

3 Concurrently, the City Council approved an environmental impact report ("EIR"),
4 analyzing the environmental effects of the Clover Valley project under the California
5 Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq. Two
6 separate petitions challenging the adequacy of the EIR analyses were filed separately by
7 petitioner Town of Loomis and by petitioners Clover Valley Foundation and Sierra Club and then
8 consolidated. The respective claims of petitioners are reviewed and determined below.

9 Cultural Resources

10 The EIR discusses a total of 33 prehistoric period resources and one historic period
11 site located within the project property which are documented in studies, surveys and inventories
12 performed primarily by Peak and Associates.¹ (AR 3:696, 3:716-718, 3:725-726, 6:1355ff.)² In
13 2002, the U.S. Army Corps of Engineers ("Corps") and the State Historic Preservation Officer
14 ("SHPO") determined that the 33 documented prehistoric resources form an archaeological
15 district eligible for the National Register of Historic Places, a determination based on *A*
16 *Determination of Eligibility and Effect on Cultural Resources within the Clover Valley Lakes*
17 (*DOE*) prepared by Peak and Associates under the National Historic Preservation Act
18 (NHPA). (AR 3:716, 8:1915, 19:5026-5027, 64:17216-17218 (Exhibit A to respondents' and
19 real parties' joint supplemental opposition brief).) The Corps and SHPO concurred with the
20 determination of Peak and Associates in the *DOE* that the documented prehistoric resources
21 would be adversely affected by the construction of the Clover Valley project, and the Corps
22 initiated a process with the project developer and its archaeological consultant (i.e., real party and
23 Peak and Associates) for the development of a memorandum of understanding and a
24 management or treatment plan under section 106 of the NHPA to mitigate the adverse effects or
25 impacts of the project on the resources. (*Ibid.*) In this regard, an Historic Properties

26
27 ¹ A 34th cultural site was identified in May 2007 when a site visit was conducted with representatives of the
United Auburn Indian Community ("UAIC"). (AR 19:5000.)

28 ² References to the administrative record ("AR") include the volume number followed by a colon and the
page number(s).

1 Management Plan ("HPMP") has been drafted in consultation with respondent City, the United
2 Auburn Indian Community ("ULAC"), and the Corps, and in July 2007, it was submitted to the
3 Corps for review in the section 106 process and approval by the Corps and the SHPO.³ (AR
4 3:728, 19:5125.)

5 The EIR describes the documented cultural resources in a table which refers to each
6 prehistoric resource by an identifying number and indicates whether the resource contains
7 bedrock mortars, midden, circular-shaped depressions, human remains, projectile points, ground
8 stone, lithic tools, and obsidian debitage. (AR 3:717-718.) The EIR indicates that the project
9 site design has been revised a number of times to avoid and protect the documented cultural
10 resources from adverse project impacts, consistent with CEQA Guidelines indicating that
11 preservation in place is the preferred manner of mitigating impacts to archaeological sites and
12 may be accomplished by planning construction to avoid sites. (AR 3:728, 19:5124-5125. See
13 CEQA Guideline 15126.4(b)(3)(A, B).) Thus, the majority of the resources are located in areas
14 with open space and conservation easements and will be managed under a formal Open Space
15 Management Plan ("OSMP") which is being drafted and which will be approved in the section
16 106 process of the NHPA. (AR 1:115-117, 8:1917.) However, not all of the resources can be
17 avoided through project design. (AR 3:728.)

18 To mitigate potentially significant project impacts on the documented resources to a
19 less-than-significant level, the EIR specifies, and respondent City Council has adopted (AR 1:36-
20 37, 1:38-39), the following measures:

- 21 • Mitigation measures to reduce impacts resulting from project construction activities include
22 cultural resource sensitivity training of construction personnel by a qualified archaeologist
23 prior to issuance of a grading permit, monitoring of earth-moving activities by qualified
24 monitors, enclosing cultural resources with orange construction fencing in consultation with a

25 ³ The Corps initiated the process under section 106 of the NHPA in conjunction with real party's
26 application for a permit under section 404 of the Clean Water Act to impact waters of the United States, including
27 wetlands on the project site, in the course of constructing the project and filling Clover Valley Creek, Antelope
28 Creek and riparian areas. (AR 12:3112 (Mitigation Measure 4.81-4).) Pursuant to NHPA section 106, the Corps
must, prior to the issuance of the permit, "take into account the effect of the undertaking [i.e., project construction]
on any district, site, building, structure, or object that is included in or eligible for inclusion in the National
Register."

1 qualified archaeologist prior to issuance of a grading permit, and requiring Corps approval of
2 preliminary test results from data recovery excavations before grading activities begin in
3 eight resource sites which cannot be avoided by project construction. (AR 3:728-729,
4 12:3107-3108.)

- 5 • Mitigation measures to mitigate impacts resulting from increases in vandalism and artifact
6 collecting due to additional residences in the immediate vicinity of cultural resources include
7 preservation of cultural resources with permanent fencing designed to minimize access to the
8 resources prior to issuance of improvement plans, annual monitoring by an archaeologist in
9 compliance with the OSMP and checks throughout the year by the OSMP manager. (AR
10 3:730, 12:3109-3110.)
- 11 • Mitigation measures to protect prehistoric or historic resources or human remains
12 inadvertently discovered during construction of the project or off-site sewer line include the
13 cessation of construction within 100 feet of the discovery while a qualified archaeologist
14 evaluates whether the discovery is a historic or unique archaeological resource and makes
15 recommendations to the City regarding possible avoidance or mitigation measures. On the
16 basis of the recommendations, consultation with the Indian Community and other specified
17 criteria, the City then determines what mitigation is appropriate. Human remains are referred
18 to the Coroner, and the Native American Heritage Commission is consulted if the coroner
19 determines that the remains are of Native American descent, as required by Health and Safety
20 Code section 7050.5. (AR 3:730C-730E, 12:3110-3111.)

21 The EIR indicates that detailed information about the location and contents of each
22 documented cultural resources identified in the table and about the measures to avoid and
23 mitigate project impacts is contained in the Peak and Associates' *DOE* and the draft HPMP
24 which must be approved by the Corps and the SHPO in the process being conducted under
25 section 106 of the NHPA. (AR 3:728, 8:1915.) The EIR explains that the *DOE* and HPMP are
26 not available for public review due to concerns for the security and integrity of the cultural
27 resource sites and observes that disclosure of a detailed description of site contents and the
28 precise project impacts could result in increased trespassing and vandalism or looting even

1 without specific location information. (AR 8:1915-1917, 19: 5126.) The EIR notes that the
2 section 106 process develops highly detailed management documents -- an HPMP and/or an
3 Historic Properties Treatment Plan ("HPTP") -- using a higher standard than the CEQA review
4 process to preserve, mitigate and manage cultural resources: development of the section 106
5 management documents is overseen by cultural resource professionals of the Corps and the
6 SHPO and involves extensive impact analysis, project re-design, consultations with other
7 agencies and Native Americans, and public hearings to ensure the best possible protection and
8 preservation of the cultural resources from adverse project impacts. (*Ibid.*)

9 In response to public comments requesting disclosure of the HPMP, respondents
10 maintained that the EIR provides sufficient information about the documented cultural resources
11 for informed decisions and meaningful public comment about the mitigation of the project's
12 environmental impacts while complying with CEQA's prohibition on disclosure of sensitive
13 archaeological information and the NHPA's restriction on disclosure of information about the
14 location and character of an historic property which would risk harm to the property. (AR
15 8:1915, 19:5124-1526, 1927-1928. See CEQA Guideline 15120(d); 36 C.F.R. ,§ 800.1.) To
16 clarify or explain this response to public comments, respondents provided additional information
17 as to those cultural resources where data recovery will take place. (AR 19:5126.) The additional
18 information consists of a table containing eight redacted site descriptions from the DOE and
19 mitigation measures included in the Clover Valley HPMP and HPTP which have not yet been
20 approved by the Corps. (*Ibid.* AR 19:5134-5141.)

21 Petitioners Clover Valley Foundation and Sierra Club contend that the EIR fails to
22 adequately describe and disclose information about the cultural resources which may be impacted
23 by the project, the specific impacts to the resources and the Clover Valley archaeological district
24 as a whole, and measures to mitigate those impacts, thereby depriving the public of any
25 meaningful opportunity to intelligently and accurately assess and comment about the project
26 impacts and mitigation measures. Petitioners further contend that the EIR improperly defers
27 mitigation of project impacts on cultural resources, in violation of CEQA Guideline
28 15126.4(a)(1)(B) by relying on future federal review of a draft HPMP under section 106 of the

1 NHPA to identify and implement measures to mitigate project impacts. In petitioners' view, the
2 section 106 review process merely requires inter-agency consultation but imposes no substantive
3 performance standards for the formulation of measures to mitigate project impacts to a level of
4 insignificance.⁴

5 Contrary to petitioners' contentions, the disclosure of information in the EIR about
6 the documented cultural resources is sufficient for purposes of CEQA. Using information drawn
7 from *DOE*, the EIR identifies the characteristics establishing the cultural significance of the
8 resources, their eligibility for listing on the National Register of Historic Places and their need for
9 protection and preservation from project development. Further information about the contents
10 and location of the cultural resources would not change, and serve only to confirm, the
11 substantive import of this information and conclusions that the resources are culturally
12 significant and in need of protection from project development. Notably, the additional
13 information released by respondents about the eight cultural resources requiring data recovery
14 excavations adds narrative detail about the resources' characteristics but not new substantive
15 information which would militate against the resources' cultural significance and need for
16 preservation.⁵

17 The EIR also sufficiently identifies the adverse impacts to which development of the
18 proposed project potentially subjects the documented cultural resources: physical damage or
19 alteration to the resources which would diminish or eliminate their cultural significance,
20 including damage or destruction by project construction and by increases in vandalism and
21 artifact collecting due to additional residences in the immediate vicinity of the cultural resources.

22
23 ⁴ Petitioner contends, on the basis of a July 2007 letter from the SHPO (AR 17:4564-4565, 17:4566), that
24 the *DOE* is an inadequate survey of the historical resources on the project site and that new study must be conducted.
25 This contention is raised by petitioner in supplemental briefs filed in this proceeding, is untimely, and will not be
26 considered by the court. In any event, the SHPO's concern that the *DOE* is inadequate is appropriately addressed in
27 the EIR's responses to additional public comments. (AR 19:5126-5127. See also AR 64:17216 (letter from the
28 Corps to the SHPO in 2002, characterizing *DOE* as an "intensive cultural resources inventory".))

⁵ Thus, the information disclosed at the end of the CEQA review process about the eight cultural resources
requiring data recovery excavation did not add significant new information about a significant project impact or
feasible mitigation measure, hence did not deprive the public of a meaningful opportunity to comment about such an
impact or mitigation measure, and did not require recirculation of the EIR for public comment pursuant to Public
Resources Code section 21166 and CEQA Guideline 15088.5. The additional information about the eight cultural
resources merely clarified or amplified information in the EIR. (*Ibid.*)

1 These impacts adequately make specific the CEQA principle in Public Resources Code section
2 21084.1 and delineated in Guideline 15064.5(b): "A project that may cause a substantial adverse
3 change in the significance of an historical resource is a project that may have a significant effect
4 on the environment."

5 Finally, the EIR sufficiently specifies feasible mitigation measures to protect the
6 documented cultural resources from damage or destruction by project construction or increases in
7 vandalism. Consistent with the CEQA provisions in subdivision (b) of Public Resources Code
8 section 21083.2 and CEQA Guideline 15126.4(b)(3), reasonable efforts were made to preserve
9 the documented cultural resources in place by planning project development in locations that
10 avoid the resource sites. The project has been redesigned a number of times, substantially
11 reducing its residential units to 558, substantially increasing its open space and landscaped areas
12 to 366 acres or 59 percent of the project acreage, and incorporating the resource sites within the
13 open space protected by conservation easements. For cultural resources still located within areas
14 of project development, measures are specified to preserve the resources in place during
15 construction, including temporary fence enclosures and cultural resource sensitivity training of
16 construction personnel prior to issuance of a grading permit, and monitoring of earth-moving
17 activities by qualified monitors. And prior to issuance of improvement plans, the cultural
18 resources will be permanently preserved in place from vandalism and artifact collection with
19 permanent fencing designed to prevent vehicular and limit pedestrian access to the resources,
20 annual monitoring by an archaeologist in compliance with the OSMP, and checks throughout the
21 year by the OSMP manager. Implementation of each mitigation measure is performed and/or
22 overseen by archaeological and cultural professionals.

23 Consistent with subdivision (d) of Public Resources Code section 21083.2 and
24 Guideline 15126.4(b)(3)(C), data recovery excavations will be performed, as detailed in the
25 IIPMP, for eight cultural resources which cannot be wholly or partially preserved in place
26 because they are located where house pads and infrastructure are to be constructed. Grading
27 activities will not be permitted to begin until preliminary testing results are accepted by the
28 Corps.

