




Planning Commission Staff Report

Date: March 9, 2021

TO: Chair Quinn and Planning Commissioners

FROM: Raffi Boloyan, Community Development Director 

SUBJECT: **Addition Correspondence for March 9, 2021 Planning Commission Adoption Hearing of Dixon General Plan 2040 and Associated Final Environmental Impact Report (FEIR)**

Attached is an additional letter received by Fax after the last distribution of public comments in the Tuesday 3/9 Memo

ATTACHMENTS

- Solano County, Office of County Counsel

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March 8, 2021

City of Dixon Planning Commission
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Re: Dixon General Plan 2040 Environmental Impact Report

Honorable Chair and Members of the Dixon Planning Commission:

The County of Solano supports the City of Dixon's efforts to update its general plan, but the potential environmental impacts of that update must be fully evaluated in compliance with the California Environmental Quality Act (CEQA; Pub. Res. Code, § 21000, et seq.) before the City takes action to approve that project. The County has reviewed the Environmental Impact Report (EIR) prepared for the City's proposed General Plan 2040 and found the EIR's evaluation of certain potential environmental impacts to the unincorporated area adjacent to the City to be woefully inadequate. The County requests that the Planning Commission postpone its consideration of the proposed Final EIR and General Plan, and instead direct its staff to revise and recirculate the EIR in a manner that fully complies with CEQA.

As currently written, the EIR fails to comply with CEQA and should not be certified due to its inadequate evaluation of the project's potential hydrological impacts, particularly Impact 3.9-4. Without evidentiary support and contrary to law, the EIR incorrectly concludes that development under the proposed General Plan would have a less than significant impact on existing or planned stormwater drainage systems and would not provide substantial additional sources of polluted runoff. While this conclusion may be valid for some areas of the City, its validity is not demonstrated by the EIR for the Northeast Quadrant (NEQ) area.

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At page 3.9-40, the DEIR describes Watersheds D as including about 2,700 acres of agricultural land in the unincorporated area north of the City and 580 acres of urban and agricultural lands mostly within the City's NEQ area. The DEIR discloses that drainage facility improvements are needed to mitigate the drainage impacts caused by anticipated development within this watershed, both within the County's unincorporated Agricultural Industrial Services Area and within the City's NEQ area. The DEIR further discloses that these needed improvements "are currently being evaluated in a drainage study by the Dixon Regional Wastewater Joint Powers Authority (DRWJPA) and in a study being sponsored by the Solano County Water Agency" and that "these ongoing studies will identify the needed drainage improvements to eliminate impacts from the Proposed Plan."

This description and evaluation of the potential drainage impacts of development within Watershed D fails to comply with CEQA in two ways. First, CEQA requires the City's EIR to discuss and evaluate the direct and reasonably foreseeable indirect drainage impacts that may be caused by the City's General Plan project, and to discuss separately the cumulative drainage impacts of the City's project together with the drainage impacts caused by other projects, such as development in the County's Agricultural Industrial Services Area. By describing only the cumulative drainage impact of new development within all of Watershed D, the EIR fails to describe how development within the NEQ area under the updated general plan will impact drainage within that area and within the unincorporated area downgradient.

Second and more importantly, the EIR fails to comply with CEQA because it relies entirely on studies not yet completed, projects still being designed, and environmental reviews of those projects yet to be undertaken in order to evaluate the potential significance of these unquantified drainage impacts. An EIR cannot rely on optimism and hypotheticals to evaluate the potential significance of project impacts or to judge the effectiveness of potential mitigation measures.

New development within the NEQ area under the updated general plan *will* cause drainage impacts within both the NEQ area and the downgradient unincorporated area. The EIR must discuss these project impacts and evaluate their potential significance based on solid evidence rather than mere hope. If the project would have significant adverse impacts, the EIR must identify feasible measures which could minimize those adverse impacts. Because the proposed project is a general plan, the mitigation measures must be fully enforceable through explicit policies in the general plan or through other mechanisms identified in the Mitigation Monitoring and Reporting Plan. If implementation of a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the environmental impacts of the mitigation measure must be discussed in the EIR. Chapter 3.9 of

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the EIR and its discussion and evaluation of Impact 3.9-4, as currently written and proposed for certification, does not satisfy these legal requirements of CEQA.

At pages 3.9-8 and 3.9-9, the Draft EIR (DEIR) states that DRWJPA has identified several major drainage projects intended to reduce flooding in and downstream of the City, including the NEQ Detention Pond and the Eastside Drain Project, the latter of which consists of three components. The DEIR discloses that both the NEQ Detention Pond and the Eastside Drain Project are still being designed and that a full evaluation of the potential environmental impacts of those facilities has not been completed. In a letter dated August 24, 2020, the Dixon RCD commented that the Eastside Drain Project "is no longer a viable project and new projects and drainage limits are in development." (Final EIR, comment A5-3.) In response to this comment, the Final EIR deleted the DEIR's disclosure that design and environmental review of the NEQ Detention Pond was still incomplete. Sweeping this critical fact under the rug does not make it go away. Utilization of the unstudied and unapproved NEQ Detention Pond to mitigate the drainage impacts caused by new development in the NEQ area cannot be said to have a less-than-significant impact or no impact on the environment unless construction of that new facility will have also have a less-than-significant impact or no impact, which is an unknown at this time.

At page 3.9-8, the DEIR makes the following disclosure regarding funding for construction of the NEQ Detention Pond: "It has been assumed that this pond will be funded and constructed by development in and near the NEQ. However, this pond is a large regional facility, and it may be difficult for a single developer to successfully implement the NEQ Detention Pond." Despite this disclosure of uncertainty, the DEIR makes the following statement at page 3.9-40: "The City is implementing a Northeast Quadrant Finance District Infrastructure Phasing and Reimbursement Schedule and has a development impact fee that will generate the funds needed to construct the required drainage improvements." The NEQ area is described on both pages as approximately 580 acres. The EIR does not describe whether the NEQ Detention Plan can be constructed in phases, as each new development project within the NEQ area contributes its fair share towards funding, or whether the first new developer in the NEQ area is expected to fund construction of the entire pond and be reimbursed from development impact fees paid by subsequent developers.

In *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, the California Supreme Court articulated a four-part test for evaluating whether an EIR for a community plan adequately evaluated the potential impacts of relying on uncertain water sources to support new development within the plan area. By substituting the words "drainage" and "drainage facilities" for "water" and "water supplies," the Supreme Court's test is directly applicable to the City's General Plan EIR, as follows:

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First, CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying [drainage] to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to evaluate the pros and cons of supplying the amount of [drainage] that the project will need.

Second, an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the [drainage facilities] for the first stage or the first few years. While proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval, CEQA's demand for meaningful information is not satisfied by simply stating information will be provided in the future.... An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need [drainage], and must analyze, to the extent reasonably possible, the impacts of providing [drainage] to the entire proposed project.

Third, the future [drainage facilities] identified and analyzed must bear a likelihood of actually proving available; speculative [facilities] ... are insufficient bases for decisionmaking under CEQA. An EIR for a land use project must address the impacts of likely future [drainage facilities], and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the [facility's] availability.

Finally, where even a full discussion leaves some uncertainty regarding actual availability of the anticipated future [drainage facilities], CEQA requires some discussion of possible replacement [facilities] or alternatives ... and of the environmental consequences of those contingencies. The law's informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated [drainage facility] fails to materialize. But when an EIR makes a sincere and reasoned attempt to analyze the [drainage facilities] the project is likely to use, but acknowledges the remaining uncertainty, a measure for curtailing development if the intended [facilities] fail to materialize may play a role in the impact analysis.

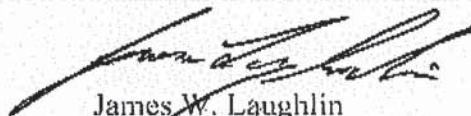
It is uncertain whether the NEQ Detention Pond will be available when needed to take the drainage that will be generated by new development in the NEQ area. This uncertainty exists because that facility is still being designed, has not yet undergone environmental review or been

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approved, and there is no clear mechanism in place to ensure that construction can be funded when the facility is needed.

Under the Supreme Court's four-part test, the General Plan 2040 EIR is legally inadequate and should not be certified. The County respectfully request that the Planning Commission postpone taking action on the proposed EIR and General Plan while you give these comments consideration. We anticipate you will recognize the need to revise and recirculate the EIR, and possibly revise the proposed General Plan, before taking action. The Planning Commission's role is to make a fully informed recommendation to your City Council regarding the merits of the proposed General Plan, and you are unable to perform that vital function in the absence of a complete and legally adequate EIR.

Sincerely,



James W. Laughlin
Deputy County Counsel

cc: Supervisor John Vasquez
Birgitta Corsello
Bill Emlen
Terry Schmidtbauer

Jim Lindley, City Manager
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