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17 Attorneys for Respondents
18 EL DORADO COUNTY BOARD OF SUPERVISORS et al.

ENDORSED
JUL 28 1996
By R. ROUSE, Deputy

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 IN AND FOR THE COUNTY OF SACRAMENTO

21 EL DORADO COUNTY TAXPAYERS FOR QUALITY)
22 GROWTH, LEAGUE TO SAVE SIERRA LAKES,)
23 ENVIRONMENTAL PLANNING AND)
24 INFORMATION COUNCIL OF WESTERN)
25 EL DORADO COUNTY, INC., FRIENDS AWARE OF)
26 WILDLIFE NEEDS, SAFEGROW, CALIFORNIA)
27 NATIVE PLANT SOCIETY, PLASSE HOMESTEAD)
28 HOMEOWNERS' ASSOCIATION, CAPLES LAKE)
HOMEOWNERS ASSOCIATION, KIT CARSON)
LODGE, PLASSE'S RESORT, CAPLES LAKE)
RESORT, SORENSEN'S RESORT, KIRKWOOD)
MEADOWS PUBLIC UTILITIES DISTRICT,)
NORTHERN SIERRA SUMMER HOMEOWNERS')
ASSOCIATION, SOUTH SILVER LAKE)
HOMEOWNERS' ASSOCIATION, ALPINE)
COUNTY, CALIFORNIA SPORTFISHING)
PROTECTION ALLIANCE, and SIERRA CLUB,)

Petitioners,

v.

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

Respondents.

Case No. 96CS01290

**NOTICE OF ENTRY OF
JUDGMENT GRANTING
PETITION FOR WRIT OF
MANDATE**

Dept: 45

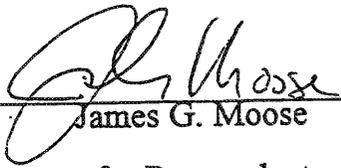
Honorable Cecily Bond

Complaint Filed:
February 26, 1996

1 NOTICE IS HEREBY GIVEN that on July 19, 1999, the Court entered its Judgment
2 Granting Petition for Writ of Mandate in the above-entitled matter. Said Judgment is
3 attached hereto as Exhibit "A."

4 Dated: July 28, 1999

5 REMY, THOMAS and MOOSE, LLP

6
7 By 
James G. Moose

8 Attorneys for Respondents
9 EL DORADO COUNTY
10 BOARD OF SUPERVISORS
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17 Attorneys for Respondents
18 EL DORADO COUNTY BOARD OF SUPERVISORS *et al.*

ENDORSED
JUL 19 1999
By, K. WELLS Deputy

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 IN AND FOR THE COUNTY OF SACRAMENTO

21 EL DORADO COUNTY TAXPAYERS FOR QUALITY
22 GROWTH, LEAGUE TO SAVE SIERRA LAKES,
23 ENVIRONMENTAL PLANNING AND
24 INFORMATION COUNCIL OF WESTERN
25 EL DORADO COUNTY, INC., FRIENDS AWARE OF
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NORTHERN SIERRA SUMMER HOMEOWNERS'
ASSOCIATION, SOUTH SILVER LAKE
HOMEOWNERS' ASSOCIATION, ALPINE
COUNTY, CALIFORNIA SPORTFISHING
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the governing body of El Dorado County,
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Dept: 45
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APPENDIX A-3

1 This matter came on regularly for hearing on November 5, 6, and 9, 1998, before the
2 Honorable Cecily Bond in Department 45 of the above-entitled court. Stephan C. Volker and
3 Thomas P. Infusino appeared on behalf of Petitioners EL DORADO COUNTY TAXPAYERS FOR
4 QUALITY GROWTH et al.; and Louis B. Green and James G. Moose appeared on behalf of
5 Respondents EL DORADO COUNTY BOARD OF SUPERVISORS and COUNTY OF EL
6 DORADO ("County"). Thomas D. Cumpston also appeared on behalf of the County during the
7 proceedings on November 9, 1998.

8 Having reviewed the Record of Proceedings, the parties' briefs and other submissions, and
9 oral argument in this matter,

10 IT IS ORDERED, ADJUDGED, AND DECREED that:

11 1. Judgment be entered in part in favor of Petitioners and in part in favor of Respondents,
12 in accordance with the "Ruling on Submitted Matter: Petition for Writ of Mandate" ("Ruling") issued
13 by the Court on February 5, 1999.

14 2. A Writ of Mandate shall be directed to County forthwith under seal of this Court in
15 the form attached hereto as *Exhibit A*.

16 3. The Writ of Mandate shall order the County, pursuant to Public Resources Code
17 section 21168.9, subdivision (a)(1), to void and rescind certain approvals pertaining to the El Dorado
18 County General Plan ("General Plan").

19 4. Petitioners are awarded their costs of suit.

20 5. The Court retains jurisdiction with respect to all matters relating to the potential
21 recovery of costs and attorneys' fees, including any discovery disputes, and over the return on the
22 Writ of Mandate.

23 Dated: July 19, 1999

CECILY BOND

CECILY BOND

Judge of the Superior Court

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27 9030356.007

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APPENDIX A-4

Rec'd 7-16

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21 EL DORADO COUNTY TAXPAYERS FOR QUALITY)
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COUNTY, CALIFORNIA SPORTFISHING)
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Case No. 96CS01290
~~RECEIVED~~
WRIT OF MANDATE

Dept: 45

Honorable Cecily Bond

Complaint Filed:
February 26, 1996

29 Petitioners,

30 v.

31 EL DORADO COUNTY BOARD OF SUPERVISORS,
32 the governing body of El Dorado County,
33 California, and EL DORADO COUNTY,

34 Respondents.

1 A judgment having been entered in this action ordering that a writ of mandate be issued from
2 this Court, and in consideration of the judgment and the Court's "Ruling on Submitted Matter:
3 Petition for Writ of Mandate" ("Ruling"),

4 IT IS ORDERED that:

5 1. Respondents EL DORADO COUNTY BOARD OF SUPERVISORS and COUNTY
6 OF EL DORADO ("County") shall void and set aside Resolution No. 7-96 by which the County
7 certified the final environmental impact report ("EIR") for the El Dorado County General Plan
8 ("General Plan") and conditionally adopted the General Plan. This resolution is remanded to the
9 County for reconsideration.

10 2. The County shall void and set aside Resolution No. 10-96 by which the County
11 adopted Findings of Fact, a Statement of Overriding Considerations, and the General Plan. This
12 resolution is remanded to the County for reconsideration.

13 Having found in Petitioners' favor on those issues raised in the Petition for Writ of Mandate
14 described below, the Court finds that the County must take the following actions, also set forth in
15 the Court's Ruling, in order to fully comply with the provisions of the California Environmental
16 Quality Act.

17 **2.1 Point II(B)(2) of the Ruling: "Changes in Land Use Maps"**

18 **2.1.1 Court Finding and Decision**

19 "[T]he finding that the changes in the land use maps did not require
20 further environmental review was not supported by substantial
21 evidence. Accordingly, the Court grants the petition for writ of
22 mandate on this issue."

23 (Ruling, p. 68.)

24 **2.1.2 Direction to the County**

25 The County is directed that, in any reanalysis or supplemental analysis prepared by the
26 County in response to this writ and the related judgment, the County must "either make a finding,
27 based on substantial evidence, that the changes in the land use maps did not result in a new
28 significant environmental impact or a substantial increase in the severity of an environmental impact,

1 or it must review the environmental impacts of the changes pursuant to CEQA.” (See also Ruling,
2 pp. 68-69.)

3 **2.2 Point II(B)(4) of the Ruling: “Change in Oak Woodland Canopy**
4 **Coverage Policies”**

5 **2.2.1 Court Finding and Decision**

6 “The Draft EIR contained a policy, proposed as an ‘additional
7 mitigation measure’, that established ‘canopy cover retention
8 standards’ expressed as stated percentages of existing canopy cover
9 that must be retained on sites under development. This policy was
10 added to the General Plan in the Annotated Project Description dated
11 August 17, 1995. By the time the Final EIR and the Annotated
12 General Plan were issued on December 21, 1995, however, this policy
13 had been altered to establish ‘canopy coverage *retention or*
14 *replacement standards*’.

15 “.....
16 “[The County] offers no substantial evidence to show that there is no
17 significant environmental impact stemming from the change.
18 Accordingly, the failure to disclose and discuss this change in an EIR,
19 or even to make findings demonstrating that the change would have
20 no significant environmental impact, was a violation of CEQA. The
21 petition for writ of mandate is granted on this issue.”

22 (Ruling, pp. 70, 72-73 (footnotes omitted; emphasis in original).)

23 **2.2.2 Direction to the County**

24 The County is directed that, in any reanalysis or supplemental analysis prepared by the
25 County in response to this writ and the related judgment, the County must

26 “either: 1) readopt its original policy of retention of specified percentages of canopy
27 coverage as proposed in the Annotated Project Description dated August 17, 1995;
28 2) make a finding, based on substantial evidence, that the change in the oak
29 woodland canopy coverage policies did not result in a new significant environmental
30 impact or a substantial increase in the severity of an environmental impact previously
31 disclosed; or 3) review the environmental impacts of the change pursuant to CEQA.”

32 (Ruling, p. 73.)

33 **2.3 Point II(B)(5) of the Ruling: “Changes in Acceptable Levels of Traffic**
34 **Congestion”**

35 **2.3.1 Court Finding and Decision**

36 “[P]etitioners allege that [the County] changed the General Plan
37 during the process of environmental review to permit a higher level
38 of [traffic] congestion—and did so in a manner that evaded meaningful
39 environmental review.
40 “.....

1 "At the very least, the County's discussion of traffic impacts was
2 unnecessarily complex and obscure. The Court is persuaded that it
3 violated CEQA because it did not fairly disclose one of the significant
4 environmental impacts of the General Plan."

(Ruling, pp. 73, 79.)

2.3.2 Direction to the County

5 The County is directed that, in any reanalysis or supplemental analysis prepared by the
6 County in response to this writ and the related judgment, the County must "perform a full
7 environmental review of the traffic impacts of the General Plan in compliance with the provisions
8 of CEQA." (Ruling, p. 80.)

2.4 Point II(C)(2) of the Ruling: "Range of Alternatives Considered"

2.4.1 Court Finding and Decision

11 "[I]t is not clear how the Low Growth Alternative offered 'substantial
12 environmental advantages over the project proposal'. * * * While
13 CEQA does not, as the Supreme Court has said, impose a 'categorical
14 legal imperative' as to the scope of alternatives, its purposes can be
15 served only where the discussion of alternatives effectively discloses
16 to the public the analytic route the County traveled in arriving at its
17 conclusion that an alternative would offer significant environmental
18 advantages. [¶] Here, the County's discussion of alternatives failed to
19 make that disclosure. Accordingly the Court finds that the County's
20 discussion of alternatives violated CEQA by failing to demonstrate
21 that it had considered a reasonable range of alternatives. The petition
22 for writ of mandate is granted as to this issue."

(Ruling, p. 90 (footnotes and citations omitted).)

2.4.2 Direction to the County

23 The County is directed that, in any reanalysis or supplemental analysis prepared by the
24 County in response to this writ and the related judgment, the County must "make a finding,
25 supported by substantial evidence, which adequately discloses the analytic route it traveled in
26 arriving at its conclusion that the 'Low Growth Alternative' offered significant environmental
27 advantages over the General Plan, or, in the alternative, the County shall consider at least one new
28 alternative that does so." (Ruling, p. 91.)

2.5 Point II(C)(3) of the Ruling: "Consideration of a 'No Project' Alternative"

2.5.1 Court Finding and Decision

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“The ‘No Project’ alternative here was faulty, petitioners assert, because it was based on buildout under the existing area plans, and not on the current conditions in the County.

“* * * Although the EIR does discuss current environmental conditions in a number of areas, it does not clearly address the issue of population growth. Instead, the EIR obscures that issue by focusing 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, pp. 91, 94.)

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.)

2.6 Points II(D)(3)-D(4) of the Ruling: “Rejection of Specific Proposed Mitigation Measures”

2.6.1 Court Finding and Decision

“[T]he Court has 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’s Ruling as to these findings should not be construed, however, as a ruling that no findings of infeasibility could be made, only that such findings were not made properly here. Accordingly, pursuant to Public Resources Code section 21168.9(a)(1) and (2), the Court grants the petition for writ of mandate as to the findings described under headings II.D.3. (a) [Establishment of a Fifth Rare Plant Preserve], (b) [Establishment of a Scenic Corridor Combining Zone], (c) [Contiguous Blocks of Habitat], (d) [Prohibition on Piping, Culverting or Lining of Streams] (e) [Street Standards], (g) [Lower Densities for Certain Land Use Designations], (h) [Oak Woodland Canopy Coverage Standards], (i) [Limiting Parcel Size in Areas of Deer Habitat], (k) [Mineral resource Land Parcel Size], (l) [Parcel Size Adjacent to Grazing Land], and (n) [Parks/Open Space Standard] of [the Court’s] Ruling.”

(Ruling, p. 113.)

2.6.2 Direction to the County

1 The County is directed that, in any reanalysis or supplemental analysis prepared by the
2 County in response to this writ and the related judgment, the County must “either take action to make
3 proper findings of infeasibility according to the standards set forth [in the Court’s Ruling], adopt the
4 proposed mitigation measures, or otherwise comply with the requirements of CEQA.” (Ruling, p.
5 113.)

6 **2.7 Point II(E) of the Ruling: “Adoption of ‘Dubious’ Mitigation Measures”**

7 **2.7.1 Court Finding and Decision**

8 “Petitioners’ next challenge focuses on the adoption of several
9 mitigation measures, asserting that those measures are of dubious
10 efficacy and unsupported by substantial evidence. [¶] The first of
11 these measures is found in the General Plan as Policy 6.3.2.3. It calls
12 for an avalanche overlay zone to be established and applied to all
13 residential areas subject to avalanche. Petitioners complain
14 specifically about the second sentence of the policy: ‘All new
15 structures located within avalanche susceptible areas shall be
16 designed to withstand the expected forces of such an event.’

17 “The Court concurs with petitioners that this policy seems to
18 be dubious on its face. There is no reference to any design standards
19 or other evidence that would establish that it is even possible to
20 design structures to withstand the expected forces of an avalanche. *
21 * * Accordingly, the adoption of this measure violated CEQA.”

22 (Ruling, p. 114.)

23 **2.7.2. Direction to County**

24 “[T]he County must void the adoption of this particular mitigation measure. Thereafter, ..
25 the County may exercise its discretion with respect to mitigation measures in avalanche prone areas
26 in any manner consistent with [the Court’s] Ruling and the provisions of CEQA.” (Ruling, pp. 114-
27 115.)

28 **2.8 Point II(F) of the Ruling: “Environmental Review of Projected Water
Supplies”**

2.8.1 Court Finding and Decision

“Petitioners challenge the environmental review of the General Plan
... on ... grounds ... that the EIR fails to disclose or discuss the
impact that development of future water supplies will have ... on
Caples, Aloha and Silver Lakes.

“.....
[T]he petition for writ of mandate is granted as to this issue.”

(Ruling, pp. 116, 117, 122.)

APPENDIX A-10

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2.8.2 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 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.)

2.9 Point II(G)(1) of the Ruling: “Findings Regarding Insignificant Environmental Impacts; Impact on Wastewater Collection and Treatment Facilities”

2.9.1 Court Finding and Decision

“Given the lack of evidence that expansion [by the El Dorado Irrigation District] of the [wastewater treatment] system is actually likely to occur, and evidence that shows that the system may be creating an adverse impact on the environment now, the finding of insignificance was not supported by substantial evidence. The petition for writ of mandate is granted on this issue.”

(Ruling, p. 124.)

2.9.2 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 regarding the impact on wastewater treatment and collection facilities that is based on substantial evidence regarding the realistic expansion potential and current performance of existing facilities, or [] otherwise make a finding in compliance with CEQA.” (Ruling, p. 124.)

2.10 Point II(G)(2) of the Ruling: “Findings Regarding Insignificant Environmental Impacts; Impact on Hazardous Waste”

2.10.1 Court Finding and Decision

“There is no estimate or quantification of the amount of illegal hazardous waste disposal occurring at the household level, how that will be impacted by future development, or any quantified discussion of the actual effect of the cited programs in reducing improper disposal. Some such analysis should have been provided to support the finding of insignificance. The petition for writ of mandate is granted on this issue.”

(Ruling, p. 125.)

2.10.2 Direction to the County

1 The County is directed that, in any reanalysis or supplemental analysis prepared by the
2 County in response to this writ and the related judgment, the County must “make a finding regarding
3 the impact on hazardous waste that is based on substantial evidence regarding the effect of existing
4 programs on the illegal disposal of household hazardous waste and discloses the analytic route by
5 which it was reached, or [] otherwise make a finding in compliance with CEQA.” (Ruling, p. 125.)

6 **2.11 Point II(H) of the Ruling: “Analysis of Cumulative Impacts”**

7 **2.11.1 Court Finding and Decision**

8 “[T]he Court finds that the County’s ‘achievable density’ population
9 figure is not supported by substantial evidence. The use of that figure
10 as the basis for environmental review violated CEQA. [Fn. omitted.]
Accordingly, the petition for writ of mandate is granted as to this
issue.”

11 (Ruling, p. 127 (footnote omitted).)

12 **2.11.2 Direction to the County**

13 The County is directed that, in any reanalysis or supplemental analysis prepared by the
14 County in response to this writ and the related judgment, the County must “perform an analysis of
15 the cumulative effects of the General Plan based on assumptions regarding future County population
16 that are supported by substantial evidence.” (Ruling, p. 128.)

17 **2.12 Point II(J) of the Ruling: “Statement of Overriding Considerations”**

18 **2.12.1 Court Finding and Decision**

19 “[T]he Court notes that the Statement of Overriding Considerations
20 here has been undermined and, to some extent, invalidated by the
21 Court’s findings that the environmental review process was defective
22 as set forth [elsewhere in the Court’s Ruling]. [¶] Thus, the Court
23 grants the petition for writ of mandate to require the County to void
the existing Statement of Overriding Considerations pursuant to
Public Resources Code section 21168.9(a).”

24 (Ruling, pp. 134-135.)

25 **2.12.2 Direction to the County**

26 The County is directed that, in any reanalysis or supplemental analysis prepared by the
27 County in response to this writ and the related judgment, the County must “consider and adopt a new
28 Statement of Overriding Considerations based on the final environmental review of the General

1 Plan.” (Ruling, pp. 134-135.) The County is further directed to use as guidance the Court’s analysis
2 of Petitioners’ specific challenges to the present Statement of Overriding Considerations. (Ruling,
3 pp. 135-137.)

4 3. Under Public Resources Code section 21168.9, subdivision (c), this Court does not
5 direct the County to exercise its lawful discretion in any particular way.

6 4. Under Public Resources Code section 21168.9, subdivision (b), this Court will retain
7 jurisdiction over the County’s proceedings by way of a return to this writ of mandate. The County
8 shall accomplish the return to the writ of mandate in two steps. First, the County shall make and file
9 a return to this writ within 70 days after entry of judgment either by tendering evidence that it has
10 rescinded Resolution Nos. 7-96 and 10-96 or by filing a notice of appeal. Second, if the County does
11 not appeal or is unsuccessful on appeal in avoiding the issuance of a peremptory writ of mandate,
12 and the County proceeds to re-approve a General Plan, the County must prepare an environmental
13 document to remedy the CEQA deficiencies identified above and in the Court’s Ruling. The Court
14 retains jurisdiction over the second step of the return to entertain any timely objections filed by
15 Petitioners challenging the adequacy of the County’s efforts to comply with CEQA taken pursuant
16 to this writ, as well as any other issues relative to the adoption of a General Plan as are timely raised
17 and are determined by the Court to be appropriate for review. Petitioners may undertake such a
18 challenge by filing a motion with a memorandum of points and authorities of no more than 40 pages
19 (absent court permission) within 30 days from the date of the posting by the County Clerk of El
20 Dorado County of a Notice of Determination evidencing the County’s action in approving a general
21 plan in conformance with this writ. If Petitioners file such a motion and memorandum, Respondents
22 shall file a responsive memorandum of points and authorities of no more than 40 pages (absent court
23 permission) within 30 days of receiving Petitioners’ documents. *Petitioners shall file a*
Reply Memoranda of no more than 20 pages within 15 days of receipt of
the aforementioned period, the Court will deem the County’s compliance with this writ satisfactory.
County’s responsive Memoranda.

25 5. Until the County makes a return to this writ that is deemed satisfactory by the Court
26 after a challenge or by the absence of a timely challenge as described above (the “Interim Period”),
27 the Court determines that it is appropriate to curtail the County’s authority to approve or undertake
28 land use and development projects. Public Resources Code section 21168.9, subdivision (c),

1 provides that, in fashioning relief in a CEQA case, a court enjoys broad equitable discretion, except
2 to the extent that the statute itself limits that discretion. (See also *Laurel Heights Improvement*
3 *Association v. Regents of University of California* (1988) 47 Cal.3d 376, 422-425; *City of Santee v.*
4 *County of San Diego* (1989) 214 Cal.App.3d 1438, 1455-1457.) In the instant case, the Court relies
5 on that discretion in order to fashion a remedy that serves the ends of justice. Unlike the typical case,
6 in which a writ requiring the voiding of a specific project approval will return the parties to a legally
7 and environmentally acceptable status quo and will not have severe jurisdiction-wide consequences,
8 this case is different. Setting aside approval of a general plan affects not only the general plan itself,
9 but also affects secondarily a wide range of building and planning approvals and other projects which
10 are required to be consistent with the general plan. To set aside a general plan without providing
11 judicial guidance as to the nature of land use activities which may or may not be approved or
12 undertaken during the Interim Period would have widespread, deleterious impacts on the County,
13 its economy and its citizens.

14 Every county must have a general plan. (Gov. Code, § 65300.) Various types of land use
15 approvals, and other projects undertaken by the County, must be consistent with the general plan.
16 In every county, routine planning and building approvals permit homeowners, businesses, and other
17 persons and entities to improve or use their properties in ways that generally do not lead to
18 significant county-wide environmental effects, or that merely contribute to a small degree to larger
19 significant effects attributable to planning decisions addressing much larger geographic areas than
20 are implicated by the approvals themselves. Many such projects would not significantly impact the
21 ability of the County to otherwise comply with this writ and adopt a new General Plan in a manner
22 consistent with the Court's Ruling. The Court therefore is unwilling to impose a remedy that would
23 leave El Dorado County without the ability to approve or undertake projects which would not have
24 such adverse impacts on compliance with this writ. In setting forth the guidance below, this Court
25 has endeavored to place the greatest restrictions on those categories of projects which, based on the
26 allegations in this case and on the conclusions in the Court's Ruling, may have more pervasive
27 County-wide impacts and impacts upon the County's ability to comply with this writ and adopt a
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1 General Plan consistent with the Court's Ruling, while allowing the County broader discretion with
2 respect to other categories of projects.

3 The Planning and Zoning Law (Gov. Code, § 65000 et seq.) recognizes these realities and
4 dilemmas, and thus provides courts with different options for fashioning relief in cases in which
5 courts find general plans to violate some provision of that Act. In this case, though the Court found
6 no violations of the Planning and Zoning Law, the Court finds that section 65755 provides guidance
7 by analogy regarding how the Court may exercise its discretion in fashioning relief pursuant to
8 CEQA. In light of all of these considerations, the Court determines that, while the County takes the
9 necessary steps to comply with CEQA prior to adopting a new General Plan, permissible
10 development approvals shall be limited as follows:

- 11 (1) Except as may be otherwise allowed by subparagraphs (2) through (7) below, the
12 Court suspends the County's authority to issue any discretionary land use approvals
13 or entitlements for residential housing development, including (i) general plan
14 amendments, (ii) specific plans authorized by Government Code section 65450 et
15 seq., (iii) rezones, (iv) development agreements authorized by Government Code
16 section 65864 *et seq.*, (v) tentative subdivision and tentative parcel maps or
17 extensions thereof, and (vi) planned development or design review. For purposes
18 of this writ, the term "residential housing development" means the construction of
19 buildings which contain one or more dwelling units and which have as their primary
20 purpose providing housing for individuals. The term "residential housing
21 development" does not include commercial establishments which provide for
22 transient occupancy, such as hotels and motels, nor does it include otherwise non-
23 residential uses, such as churches, schools or commercial establishments, because of
24 the inclusion of residential facilities for a caretaker, manager or similar personnel.

25 Notwithstanding the foregoing, the Court permits the County to issue any
26 discretionary approvals, permits and entitlements for residential development if: (1)
27 pursuant to a development agreement authorized by Government Code Sections
28 65864 *et seq.*, or a vesting tentative map pursuant to Government Code Sections
66498.1 *et seq.*, which was approved by the County before February 5, 1999, if the
development agreement or vesting map (i) provides, expressly or by operation of law,
that subsequent project approvals shall be evaluated for consistency with a general
plan in effect on a specified date, whether or not that General Plan was later affected
by the judgment of this Court in this matter, or (ii) otherwise vests in the applicant
the right to subsequent approvals notwithstanding changes in the General Plan; and,
(2) the discretionary approvals, permits and entitlements comply with subparagraph
(8) below, where applicable in accordance with the terms of that subparagraph. In
making this order, the Court is cognizant of the fact that several development projects
with development agreements were approved pursuant to the 1996 General Plan and
are the subject of currently pending litigation. In some instances, that litigation
involves allegations to the effect that project approvals were invalid due to the
assertion that the 1996 General Plan was invalid. The outcome of that litigation may
affect the status of those development agreements. Nevertheless, this writ does not
distinguish among projects depending upon whether litigation against such projects
is pending. It is the conclusion of this Court that those courts in which the project-

1 specific litigation is pending are the most appropriate forums in which to determine
2 whether preliminary relief affecting those projects' ability to move forward, if sought
by petitioners in those cases, should be granted.

3 (2) The Court permits the County to issue any approvals, permits or entitlements which
4 are ministerial in nature, including, but not limited to, building permits, grading
5 permits, final subdivision maps and parcel maps, and certificates of compliance; and
to issue any approvals, permits or entitlements which do not require, by statute,
ordinance or case law, a finding of consistency with the general plan.

6 (3) The Court permits the County to issue any approvals, permits or entitlements,
7 whether or not discretionary, for non-residential development; provided, that such
8 approvals, permits, or entitlements comply with subparagraph (8) below, where
9 applicable in accordance with the terms of that subparagraph, and the property on
10 which such development is proposed meets any one of the following criteria: (i) the
11 property is currently zoned for the proposed use; or, (ii) the property is designated for
the proposed use on both the 1996 General Plan which is the subject of this litigation,
as adopted and amended to February 5, 1999, and the proposed project would have
been consistent with the Public Review Draft General Plan utilized pursuant to the
extension granted by the Office of Planning and Research which governed land use
approvals prior to the adoption of the 1996 General Plan.

12 Notwithstanding any other provisions of this writ, County shall not approve any
13 application for a permit or entitlement, whether discretionary or ministerial, for any
14 use, facility or structure if the primary purpose of the use, facility or structure is to
serve, provide access to or otherwise accommodate a non-residential use which is not
located in an area which meets the criteria set forth above in this subparagraph (3).

15 (4) Notwithstanding the prohibition contained in subparagraph (1), and in addition to
16 the authority conferred in subparagraphs (2) and (3), above, the Court permits the
17 County to issue any approvals, permits or entitlements, whether or not discretionary,
and whether for residential or non-residential development, which comply with
18 subparagraph (8) below, where applicable in accordance with the terms of that
subparagraph, and which constitute any of the following:

19 (a) Authority for the repair, remodel, reconstruction or replacement of existing
20 structures, or for a change in the form of ownership of an existing structure
such as a condominium conversion, which does not expand or increase the
intensity of the use of the structure;

21 (b) Modifications of previously issued approvals; provided, that the
22 modifications do not expand the use, or increase the intensity of the use, as
originally approved;

23 (c) Minor approvals which do not have any significant environmental impacts
24 and do not represent any significant change to nature, extent or intensity of
25 use, including, but not limited to, (i) projects subject to categorical exemption
under the California Environmental Quality Act, (ii) lot line adjustments, (iii)
26 lot mergers, (iv) acceptance or abandonment of easements, (v) temporary use
permits, (vi) variances, (vii) approval of architectural features, signs,
27 accessory structures, (viii) rezones which consist of the application of Planned
Development or design review overlays which establish additional regulatory
control by the County, and (ix) any approvals which do not have the effect
of allowing the commencement, expansion or intensification of any new use

28 APPENDIX A-16

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on property, and do not result in a significant increase in traffic or water consumption;

(d) Approvals or regulatory actions taken to comply with federal or state law, or to provide for the protection or enhancement of the environment or natural resources, including, but not limited to, approval of mine reclamation plans under the Surface Mining and Reclamation Act, establishment of agricultural preserves, approval of Williamson Act contracts and Timber Preservation Zone contracts, and approval of resource management plans such as the County's proposed River Management Plan update;

(e) Projects submitted to the County for review by government agencies other than the County pursuant to requirements of law, including, but not limited to, capital projects, mitigation fee programs and annual fee reviews, as well as the adoption or modification of fees by County for agencies on whose behalf the County acts;

(f) Approvals for replacement of existing uses within an existing facility which do not intensify the nature of the use in the structure and do not expand the area of the facility being used;

(g) Any approvals, permits or entitlements within the South Lake Tahoe watershed within El Dorado County, as delineated on the official maps of the Tahoe Regional Planning Agency, in light of regulatory and environmental control exercised by the Tahoe Regional Planning Agency;

(h) Any project statutorily exempt from CEQA.

(5) The Court permits the County to approve and execute any acquisition or disposition of property by the County which complies with subparagraph (8) below in accordance with the terms of that subparagraph, where applicable; provided, that development of such property shall otherwise be subject to the provisions of this writ.

(6) The Court permits the County to process, approve and carry out any capital improvement projects of the County which comply with subparagraph (8) below, where applicable in accordance with the terms of that subparagraph, except any projects which are for the sole or primary purpose of serving future development which would require approvals which are prohibited by the terms of this writ. Capital improvement projects shall not be deemed to be for the primary purpose of serving future, yet to be approved development, if the County finds, based on substantial evidence, that such improvement would be warranted in the absence of such future development. Capital improvements may be for any purpose other than those expressly prohibited by this paragraph, including, but not limited to, preservation of the public health and safety, hazard elimination, serving existing needs and those anticipated as a result of approved development or development not requiring discretionary approval, and improving operating efficiency of existing facilities.

(7) The Court permits the County to process, approve and carry out any actions which comply with subparagraph (8) below, where applicable in accordance with the terms of that subparagraph, and are ancillary to, but do not constitute final approval, or actual performance, of development projects; provided, that the actual development shall be subject to the requirements of this writ. Such ancillary actions include, but are not limited to, matters such as submission of grant applications, establishment of financing districts or mechanisms, preparation for issuance of debt financing, conduct

1 of planning studies, and joint or regional planning and coordination efforts and
2 agreements between County and other public entities, which may be necessary to the
3 accomplishment of coordinated planning efforts and of development projects but do
4 not themselves commit the County to a particular course of action with respect to
5 such development inconsistent with the terms of this writ.

- 6 (8) In approving or carrying out any project allowed pursuant to this paragraph 5, which
7 action requires a finding of consistency with the general plan, the County shall not
8 approve or undertake any such project unless it finds, on substantial evidence, that:
- 9 (a) The approval or project will not significantly impair the County's ability to
10 adopt and implement a new General Plan after complying with CEQA;
 - 11 (b) The approval or project complies with all other requirements of law; and,
 - 12 (c) The approval or project is consistent with the text and maps of the 1996
13 General Plan as amended through February 4, 1999, or such other general
14 plan text and maps as may be vested through a development agreement or
15 vesting tentative map, though in all other respects that General Plan will
16 cease to have legal standing after the Board of Supervisors, pursuant to this
17 Writ, sets aside its approval thereof.

18 For purposes of applying subparagraph (8)(a), above, an approval or project shall be
19 deemed to significantly impair the County's ability to adopt and implement a new
20 General Plan after complying with CEQA if it would (1) prejudice the consideration
21 or implementation of those particular mitigation measures identified in Points
22 II(D)(3)-D(4) of the Court's Ruling as set forth in subparagraph 2.6.1, above, or (2)
23 otherwise prevents the County from carrying out the directions of the Court set forth
24 in paragraph 2 of this Writ with respect to curing specific determinations of
25 noncompliance with CEQA as described in paragraph 2, above. In making the
26 determinations required under subparagraph (8)(a), the County shall be guided by the
27 following principles:

- 28 (d) An approval or project shall be deemed to prejudice the consideration or
implementation of a mitigation measure if the impacts of the approval or
project would prevent or substantially reduce the effectiveness of the
mitigation measure in achieving its purposes;
- (e) Impacts of an approval or project shall be evaluated in the context of their
significance on a County-wide basis over the life of the future general plan;
- (f) Impacts of an approval or project shall be evaluated in the context of the
anticipated cumulative effects, over the life of the future general plan, of the
approval or project and other development previously approved under this
Writ or its predecessor Interim Order; and,
- (g) An approval or project shall not be deemed to significantly impair the ability
of the County to adopt a new general plan after complying with CEQA if the
subject project has vested rights to development pursuant to a development
agreement or vesting tentative map, or otherwise, and the mitigation
measures, alternatives, policies or regulations under consideration could not
be applied to the project by reason of those vested rights.

To facilitate a process for conducting these evaluations of project impacts, the
County shall provide to petitioners, on a quarterly basis, the following information

APPENDIX A-18

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about projects approved since April 22, 1999 which are subject to the requirements of subparagraph (8) of paragraph 5 of this Writ:

- (h) Acreage of lands approved for residential, commercial and industrial development;
- (i) Floor area (square footage) of commercial space approved;
- (j) Number of dwelling units of residential use approved;
- (k) Miles of new public County roads, or of new lanes added to existing public County roads, approved;
- (l) Vehicle trips anticipated from approved development.

6. The provisions of paragraph 5, above, are intended to curtail the County's authority in the areas of land use control, property development and construction. The County is not prevented from approving or undertaking other categories of actions, programs, or projects; provided, that, with respect to any actions which otherwise require findings of consistency with a general plan, such actions shall not be undertaken unless the findings contained in paragraph 5 subparagraph (8) are made on substantial evidence. Nothing in this writ shall be deemed to prevent the County from taking any action determined by the County, based on substantial evidence and consistent with otherwise applicable law, to be necessary for the immediate preservation of public health or safety, or to prevent immediate threat to property.

7. The development approvals described in paragraph 5 are not "project activities" within the meaning of Public Resources Code section 21168.9, subdivision (b), in that they are not components of the challenged General Plan, but rather constitute the kinds of routine building and planning approvals that must occur in every county if homeowners and businesses are to avoid needless hardship as they improve their properties.

8. For the period commencing February 5, 1999, and continuing until County has made a satisfactory return to this writ, any time periods within which the County is required to act on any land use application, including, but not limited to, time limits contained in the Subdivision Map Act and the Permit Streamlining Act, shall be tolled. In addition, any time periods established within which an individual having development approvals or entitlements is required to, or may, take any

1 actions, shall be tolled for that same period if the action required or allowed is prohibited by this
2 writ.

3 9. Recognizing the wide range of applications and projects which are addressed or
4 executed by the County, and the potential that this writ may not explicitly address some such
5 applications or projects, County or Petitioners may at any time move this Court for further
6 clarification or direction with respect to the County's discretion to act on applications or projects not
7 falling within the categories set forth herein, or with respect to any disputes regarding whether or not
8 a particular proposal falls within any specified categories.

9 Approved as to Form:

CVB
2/19/99

~~Stephan C. Volker
Attorney for Petitioners~~

Dated: _____

14 Dated: July 19, 1999

Michael Roddy
Clerk of the Superior Court,
Sacramento County, California

By *[Signature]*
Deputy Clerk

19 THE FOREGOING WRIT SHALL ISSUE BY ORDER OF THE HONORABLE CECILY
20 BOND.

APPENDIX A-20

1 RE: El Dorado County Taxpayers for Quality Growth, et al. v. El Dorado County Board
2 of Supervisors, et al.; Sacramento County Superior Court Case No. 96CS01290

3
4 PROOF OF SERVICE

5 I am a citizen of the United States, employed in the City and County of Sacramento.
6 My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am
7 over the age of 18 years and not a party to the above-entitled action.

8 I am familiar with Remy, Thomas and Moose, LLP's practice whereby the mail is
9 sealed, given the appropriate postage and placed in a designated mail collection area. Each
10 day's mail is collected and deposited in a U.S. mailbox after the close of each day's
11 business.

12 On July 28, 1999, I served the following:

13 **NOTICE OF ENTRY OF JUDGMENT GRANTING**
14 **PETITION FOR WRIT OF MANDATE**

15 on the parties in this action: by causing a true copy thereof to be placed in a sealed
16 envelope with postage thereon fully prepaid in the designated area for outgoing mail
17 addressed as below:

18 STEPHAN VOLKER
19 BRECHER & VOLKER, LLP
20 436 -14TH STREET, SUITE 1300
21 OAKLAND, CA 94612

22 THOMAS INFUSINO
23 ATTORNEY AT LAW
24 P.O. BOX 4
25 GARDEN VALLEY, CA 95633-0004

26 LOUIS B. GREEN, COUNTY COUNSEL
27 COUNTY OF EL DORADO
28 330 FAIR LANE
PLACERVILLE, CA 95667

I declare under penalty of perjury that the foregoing is true and correct and that this Proof
of Service was executed this 28th day of July, 1999, at Sacramento, California.


Jean I. Seaton