



**Contra
Costa
County**

To: Board of Supervisors
From: Catherine Kutsuris, Conservation & Development Director
Date: February 3, 2009

Subject: Rescission of Approval of Subdivision 8533 and Certification of Environmental Impact Report Pending
Certification of Supplemental EIR

RECOMMENDATION(S):

A. RESCIND the Board's determination of April 11, 2006, to approve Subdivision 8533 in El Sobrante, California, and to certify the Environmental Impact Report ("EIR") for the project, pending consideration and certification of a Supplemental EIR consistent with the Superior Court's Peremptory Writ of Mandate in *Friends of Garrity Creek v. County of Contra Costa, et al.*, Case No. N06-0770.

B. DIRECT the Department of Conservation and Development to prepare a Supplemental EIR that addresses the deficiencies in the EIR's analysis of cumulative traffic impacts, as set forth in the October 15, 2008 unreported minute order of Superior Court Judge Barbara A. Zuniga in the above-referenced case, and collect fees from the project applicant for the processing cost.

FISCAL IMPACT:

None. There will be no impact on the General Fund. The applicant is responsible for all processing costs.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **02/03/2009** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I
Supervisor
Gayle B. Uilkema, District II
Supervisor
Mary N. Piepho, District III
Supervisor
Susan A. Bonilla, District IV
Supervisor
Federal D. Glover, District V
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 3, 2009

David Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

Contact: Bob Drake, (925)
335-1214

BACKGROUND:

On June 8, 2004, the County Planning Commission approved an application by Brilliant Management, LLC, to subdivide a 10-acre residential parcel in the El Sobrante area into 40 lots, subject to conditions. The approval of Subdivision 8533 was based on a Mitigated Negative Declaration determination for satisfying the requirements of the California Environmental Quality Act. The Friends of Garrity Creek and the El Sobrante Valley Planning and Zoning Advisory Committee appealed that decision to the Board of Supervisors.

At the Board's hearing on the appeal, the Board directed that the Commission decision be overturned and that an Environmental Impact Report be prepared for the project. An EIR was then prepared, and the matter resubmitted to the Board for hearing and consideration.

On April 11, 2006, the Board certified the EIR, and approved the project for a maximum of 35 lots, subject to conditions.

The Friends of Garrity Creek then filed a Petition for Writ of Mandate with the Contra Costa County Superior Court. A hearing on the merits was held on October 1, 2008. After the hearing, Judge Zuniga issued an unreported minute order on October 15, 2008, rejecting the Petitioner's claims that the EIR (1) failed to acknowledge a significant impact of the project on the public's alleged "historical access" to the Garrity Creek watershed; (2) failed to acknowledge a significant impact on the "aesthetic viewshed" of the project site; and (3) failed to consider a reasonable range of project alternatives, including a reduced density project that would avoid development on steep slopes. The Court did find, however, that the EIR's approach to cumulative traffic impacts was improper, and granted the petition for writ of mandate on that basis. A judgment was issued on November 5, 2008, directing a writ of mandate to be issued, ordering the County and Board to rescind the April 11, 2006, determination to approve Subdivision 8533 and certify the EIR.

A Peremptory Writ of Mandate, attached hereto as Exhibit A, was issued on January 5, 2009, and served on the County on January 14, 2009. The writ commands the County and Board, immediately upon receipt of the writ, to (1) rescind the determination of April 11, 2006, to approve Subdivision 8533 and to certify the EIR for the project; and (2) prepare a Supplemental EIR that addresses the deficiencies in the EIR's analysis of cumulative traffic impacts, as set forth in the Court's minute order.

The recommended action will set aside the Board's April 11, 2006 determination to approve the subdivision and certify the EIR, pending certification of the Supplemental EIR. The recommended action also directs the Department of Conservation and Development to prepare the Supplemental EIR to address deficiencies in the EIR's analysis of cumulative traffic impacts. Costs of the Supplemental EIR will be borne by the project applicant.

CONSEQUENCE OF NEGATIVE ACTION:

The County and Board would not be in compliance with the Peremptory Writ of Mandate.

ATTACHMENTS

Exhibit A - 1-5-09 Peremptory Write of Mandate