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6 Friends of Greater Ione

FILED
AMADOR SUPERIOR COURT

FEB - 4 2021

Clerk of the Superior Court
B. MORRIS

By: _____

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF AMADOR

9 FOOHILL CONSERVANCY, a non-profit)
10 corporation, FRIENDS OF GREATER IONE, a)
11 mutual association,)

12 Petitioners)

13 vs.)

14 COUNTY OF AMADOR, and DOES 1 through)
15 10, inclusive)

16 Respondents)

17 EDWIN LANDS LLC. a Delaware limited)
18 liability company; and ROES 1 through 10,)
19 inclusive)

20 Real Parties in Interest)
21)
22)
23)
24)
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Case No. **21-CV-12012**

**VERIFIED PETITION FOR WRIT
OF MANDATE**

**[Action Contains Claims under the
California Environmental Quality Act,
Pub. Res. Code § 21001 et seq.]**

CASE ASSIGNED FOR ALL PURPOSES TO
HON. J.S. HERMANSON
CCP 170.6

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I. INTRODUCTION

1. Petitioners Foothill Conservancy and Friends of Greater Ione (“Petitioners”) challenge Respondent County of Amador’s (“County”) December 15, 2020 approval of a zoning change on five parcels totaling 1,150 acres near the town of Ione (“Project”) based on an application filed by Edwin Lands, LLC (“Real Party”). The Project changes the zoning from a combination of Agriculture and Residential to manufacturing, and adds a new ‘X-overlay,’ although such an overlay zone is not permitted under the General Plan’s Industrial designation for this area.

2. In approving the Project, the County prepared a negative declaration under the California Environmental Quality Act (CEQA), Pub. Res. Code §§ 21000 *et seq.* The negative declaration found that the Project would have no significant environmental impacts, including no impacts due to the potential for increased groundwater and/or surface water demand due to the manufacturing uses that will now be permitted on the 1,150 acres. To support this conclusion, the County relied on the Environmental Impact Report (EIR) prepared for the 2016 General Plan, which found that groundwater depletion due to future development would have impacts that were significant and unavoidable. In the meantime, a new and unprecedented comprehensive study has showed that the groundwater depletion is more than twice as much as previously estimated in 2016.

3. Petitioners challenge the County’s approval of the Project as contrary to CEQA. Here, the County’s Negative Declaration states that the zoning change allowing for new manufacturing uses will have no significant groundwater impacts, even though the Negative Declaration identifies that groundwater is the foreseeable source for new development pursuant to the zoning change. However, the General Plan EIR already identified these impacts as significant. Under CEQA, an agency may not avoid further CEQA review by tiering to a prior EIR that found impacts to be significant and unavoidable. Further, the new information and circumstances demonstrate the potential for the Project to contribute to an overall cumulative groundwater depletion impact that was not previously addressed and mitigated in the prior General Plan EIR.

4. Petitioners also challenge the County’s approval of the Project as contrary to the County’s General Plan. The Project is located in an area designated as Industrial, which does not allow an X-overlay as part of the designation. Here, however, the new zoning includes an X-overlay in violation of the General Plan.

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5. Petitioners seek a writ of mandate directing the County to set aside its Project approval until it has complied with CEQA and its General Plan. *See* Code Civ. Proc. § 1085.

II. PARTIES

6. Petitioner Foothill Conservancy, is a 501(c)(3) nonprofit organization based in Jackson California with members who live and work in Amador County. The Foothill Conservancy works to restore, protect, and sustain the natural and human environment in and around Amador County. The Foothill Conservancy's vision for this area includes protected scenic quality, conservation of rural lands, water resources and natural diversity of native plants and animals, free-flowing rivers, coordinated land use planning, and balanced economic development that is ecologically and socially sustainable. The Foothill Conservancy and its members have submitted public comments and oral testimony in the administrative process for the Project.

7. Petitioner Friends of Greater Ione (FOGI) is a mutual association comprised of members who live in the area affected by the Project. FOGI was formed after the County's approval of the Project, and is composed of members who provided oral and written testimony voicing objections to the County's proposed Project approval. FOGI's members are volunteers promoting well-planned growth and development in a manner that protects the local environment and neighborhood community and the health and safety of its citizens.

8. Respondent County of Amador is and was at all relevant times the governmental entity responsible for reviewing and approving the Project challenged in this action.

9. Real Party in Interest Edwin Lands, LLC is a Delaware limited liability company with a California mailing address of 4370 Town Center Blvd, Ste 100, El Dorado Hills, California 95762, and is the applicant for the Project.

10. The true names and capacities of Respondent Does 1-10 are not known to Petitioners. The true names and capacities of Real Party Roes 1-10 are not presently known to Petitioners. Petitioners may amend this Petition to add said Does and/or Roes at such time as they are discovered.

III. JURISDICTION AND EXHAUSTION OF REMEDIES

11. Jurisdiction of this Court is invoked pursuant to Code of Civil Procedure § 1085 & Public Resources Code §§ 21168 & 21168.5.

12. Petitioner Foothill Conservancy has performed all conditions precedent to filing this instant

1 action and has exhausted any and all available administrative remedies to the extent required by law,
2 including providing written and oral comments to the County during the administrative phase of this
3 Project related to each of the claims raised in this Petition. Members of Petitioner Friends of Greater
4 Ione have also performed all conditions precedent to filing this instant action and has exhausted any
5 and all available administrative remedies to the extent required by law, including providing written
6 and oral comments to the County during the administrative phase of this Project related to each of the
7 claims raised in this Petition.

8 13. On February 3, 2021, Petitioner's attorney faxed a Notice of Commencement of Action letter
9 pursuant to Public Resources Code § 21167.5 informing the County of its intent to file a legal action
10 challenging the County's approval of the Project. (See Exhibit 1, attached hereto.)

11 14. On February 4, 2021, Petitioner's attorney mailed a copy of its Verified Petition to the
12 Attorney General's office to give notice of Petitioner's intent to bring this proceeding as a private
13 attorney general under Code of Civil Procedure section 1021.5. (See Exhibit 2, attached hereto.)

14 15. Petitioners have no other adequate remedy in the course of law unless this Court grants the
15 requested writ of mandate. In the absence of such remedy, the County's Project approval will remain
16 in effect in violation of law.

17 IV. FACTUAL BACKGROUND

18 A. SETTING AND PROJECT DESCRIPTION

19 16. The Project is located in western Amador County, between the Ione city limits and the
20 Sacramento County boundary. Land uses adjacent to the Project area are predominantly grazing and
21 crop production, scattered dwellings, and various mining and mineral processing operations.

22 17. The Project site is dominated by open rangeland with discontinuous oak woodlands. The
23 property has historically been, and is currently, used for cattle ranching. There are no structures on
24 the property. Up until the 1920s, the Project area was mined for lignite coal.

25 18. Historically the Project parcels were zoned as a combination of Agriculture and Residential.
26 In 2016, the County updated its General Plan, which changed the land use designation to Industrial
27 (I), which does not include Agriculture and Residential as allowable zoning districts.

28 19. The Project approves a zoning change on the parcels from Agriculture and Residential to
manufacturing (M), which is one of four acceptable districts in the Industrial GP designation. This

1 zoning change is portrayed as a need to make the zoning on the five parcels consistent with the
2 General Plan.

3 20. The zoning change also adds an X overlay for mining and other heavy industrial uses allowed
4 in the manufacturing zone. The X overlay makes these uses conditional, subject to a discretionary
5 review process, including application of CEQA.

6 21. The new Manufacturing zone for the rezoned parcels permits all uses allowed in C-2 districts,
7 service stations, repair garages, manufacture, assembly, repair, processing, storage and shipping of
8 vegetable and mineral products, not including hydrocarbons, and excepting those uses listed in the
9 discretionary uses section of the "M" district regulations. In addition, discretionary uses allowed in
10 the M zone subject to the X-overlay include: Mining and quarrying, excavation of earth and minerals,
11 distillation of bones; fat rendering; dumping, disposal, incineration or reduction of garbage, sewage,
12 offal, dead animals or refuse, drilling for and removal of oil and natural gas, junk yards, wrecking
13 yards, commercial hog raising, manufacture of acids, explosives, fertilizer, gas, glue, gypsum,
14 inflammable fluids or gases, refining of petroleum and petroleum products; tank farms, ore smelting,
15 stockyards, slaughterhouses, tanneries, temporary labor camps, other uses which might be
16 objectionable by reason of production or emission of noise, offensive odor, smoke, dust, bright light,
17 vibration, radiation, or which involve the handling of explosives or dangerous materials.

18 22. The County staff report characterizes the intent and history of the Project as follows: "This
19 application is a request for a Zone Change to allow for future commercial and manufacturing uses (no
20 specific uses have been proposed with this application). The application previously included a zone
21 change request to the Manufacturing district and Parcel Map request for 8 parcels; the request was
22 later reduced to 2 parcels, then both were eventually withdrawn."

23 23. The County staff report characterizes the zoning as consistent with Government Code Section
24 65860, which requires that zoning ordinances shall be consistent with the General Plan.

25 **B. 2016 GENERAL PLAN AND EIR'S TREATMENT OF GROUNDWATER ISSUE.**

26 24. The 2016 General Plan acknowledges the groundwater overdraft situation. It states that
27 "[g]roundwater from individual wells represents a major water source in the county. In most of
28 Amador County, groundwater-bearing units and aquifers are poorly defined. The majority of
available groundwater is transient and found in fractured rock. This fractured bedrock aquifer has not

1 been adequately studied, and no information is available concerning the capacity of the aquifer. The
2 Cosumnes Groundwater Subbasin underlies southwestern Amador County. The Cosumnes Subbasin
3 is in overdraft; in other words, more water is leaving the groundwater basin than entering it.”

4 25. The General Plan EIR analyzes overdraft as a continuing significant impact. It states: “The
5 Board finds that the provisions of Mitigation Measures 4.9-4a, 4.9-4b, 4.9-4c, and 4.9-1c have been
6 required in, or incorporated into, the General Plan. Implementation of Mitigation Measures 4.9-4a,
7 4.9-4b, 4.9-4c, and 4.9-1c would reduce the potential for impacts on groundwater levels, but not to
8 a less-than-significant level because the General Plan could still substantially deplete groundwater
9 supplies and interfere substantially with groundwater recharge.”

10 26. The GP EIR concludes: “[Since the majority of groundwater use in the planning area would
11 continue to come from individual private wells, and data concerning groundwater yield is not
12 consistently available, and no additional feasible mitigation is available to reduce this impact to a
13 less-than-significant level, this impact would remain significant and unavoidable. Pursuant to CEQA
14 Guidelines Section 15091 (a)(3), the Board finds that specific economic, legal, social, technological,
15 or other considerations...make infeasible certain mitigation measures or project alternatives identified
16 in the Final EIR.”

17 **C. INITIAL STUDY AND NEGATIVE DECLARATION**

18 27. In July 2020, the County issued an initial study and negative declaration (IS/ND), which
19 found that the Project would have no potential for significant impacts. The IS/ND declines to find any
20 significant impacts occurring from the zoning change, stating that “no environmental factors [are]
21 potentially affected” and finds that “the proposed project COULD NOT have a significant effect on
22 the environment, and a NEGATIVE DECLARATION will be prepared.”

23 28. Specific to groundwater and surface water supply, the IS/ND asks whether the Project will
24 “[s]ubstantially decrease groundwater supplies or interfere substantially with groundwater recharge
25 such that the project may impede sustainable groundwater management of the basin?” and answers:
26 “The project is unlikely to significantly impact groundwater supplies via extraction or the creation
27 of extensive hard surfaces which pose a barrier to recharge. At this time, there are no impacts to
28 groundwater.” The IS/ND also states that the Project does not “[c]onflict with or obstruct
implementation of a water quality control plan or sustainable groundwater management plan” because

1 “Amador County does not have a water quality control plan or sustainable groundwater management
2 plan” and thus “[n]o impact would result.”

3 29. The IS/ND finds that “sufficient water supplies” are “available to serve the Project and
4 reasonably foreseeable future development during normal, dry and multiple dry years,” because the
5 Project “is not located in an area of the County recognized as challenging in terms of groundwater
6 yield,” and that the Project is unlikely to demand unusually high amounts of water.” Based on the this,
7 the IS/ND find that, “[a]t this time, there are no impacts” due to a lack of available water supplies.

8 30. The IS/ND finds that the Project will have no cumulative impacts based on findings that “the
9 project is consistent with the County’s General Plan land use projections. The land use and density
10 has been considered in the overall County growth. The analysis demonstrated that the project is in
11 compliance with all applicable state and local regulations. In addition, the project would not produce
12 impacts that considered with the effects of other past, present, and probable future projects, would
13 be cumulatively considerable because potential adverse environmental impacts were determined to
14 have no impact.”

15 **D. PROJECT APPROVAL AND COUNTY’S ADOPTION OF TIERING UNDER CEQA.**

16 31. As part of the public review process, Petitioners submitted comments and new information
17 showing that the Cosumnes Subbasin (“Basin”) is in a 10,000 acre feet (“AF”) annual overdraft, that
18 the Foothills Plains subarea that includes Amador County and the Project area is in an estimated 1,000
19 AF annual overdraft, that the Foothills and Plains subareas are all part of one interconnected ‘primary
20 aquifer,’ in the which the Foothills subarea flows into the Plains subarea, and that alternative surface
21 water supply would require new or enlarged facilities, including a water treatment plant.

22 32. On October 13, 2020, the County Planning Commission held a public hearing on the Project,
23 and voted to recommend denial of the zoning change to the Board of Supervisors based on the
24 Commission’s assessment that the negative declaration was inadequate and that the Project needed
25 a master plan for the entire 1,150 acres.

26 33. On December 12, 2020, County Counsel in a memo identified a new tiering approach as the
27 basis for not doing any analysis of the foreseeable environmental impacts from the zoning change.
28 County Counsel memo stated: “The Mitigated Negative Declaration (MND) is tiered off the General
Plan Environmental Impact Report (EIR). The General Plan EIR already identifies the uncertainty of

1 water resources as a significant impact. The EIR mandates measures to mitigate these impacts, but
2 acknowledges that the impacts would remain significant and unavoidable.” The County Counsel
3 memo adds that “the approval of the zone change would give rise to a CEQA violation only if the
4 Board finds (1) there are substantial changes to the project or to the circumstances under which the
5 project is being undertaken or new information not known at the time of the General Plan EIR (2) that
6 would require major revisions to the General Plan EIR.” County Counsel concluded that “because
7 the groundwater impacts are already addressed and identified as significant and unavoidable in the
8 General Plan EIR, the two requirements triggering further environmental review are not met here.”

9 34. On December 15, 2020, the Board held a hearing on the Project and approved an Ordinance
10 to change the zoning of the affected parcels from the R1A, Single Family Residential and Agricultural
11 District, to M-X, Manufacturing zoning district with Special Use X-combining district. In addition,
12 the Board found the negative declaration to be adequate under CEQA.

13 35. The Board’s approval contains findings that “there is no substantial evidence that the project
14 will have a significant effect on the environment,” “[t]here is no substantial new information which
15 was not known at the time of the General Plan Environmental Impact Report certification that
16 supports findings of new or more severe impacts than those addressed in the General Plan” and that
17 “[t]here are no identified significant impacts caused by this project, and therefore no corresponding
18 feasible mitigation measures identified in the General Plan Environmental Impact Report.”

19 **E. PETITIONERS’ EXHAUSTION AND SERVICE ON ATTORNEY GENERAL.**

20 36. During the administrative phase, Petitioners and their members, as well as other citizens,
21 submitted written and oral comments to the Planning Department, Planning Commission and Board
22 objecting to the Project and highlighting the deficiencies in the County’s review of the Project’s
23 environmental impacts and compliance with the County’s General Plan.

24 37. On February 3, 2021, Petitioner’s attorney faxed a Notice of Commencement of Action letter
25 to the County informing the County of Petitioners’ intent to file a legal action challenging the
26 County’s approval of the Project. (*See Exhibit 1, attached hereto.*)

27 38. On February 4, 2021, Petitioners’ attorney mailed a copy of its Verified Petition to the
28 Attorney General's office to give notice of Petitioner’s intent to bring this proceeding as a private
attorney general under Code of Civil Procedure section 1021.5. (*See Exhibit 2, attached hereto.*)

V. FIRST CAUSE OF ACTION
(Violation of CEQA: Pub. Res. Code § 21168)

39. Petitioners incorporate by reference the allegations in the paragraphs set forth above.

40. The IS/ND does not actually conduct any CEQA cumulative impact analysis. Instead the County's position is that because the GP EIR already found significant impacts, there is no need to revisit the issue. However, here new information shows that a comprehensive study of the groundwater basin shared by the Project reveals a large annual groundwater decline, that the Project proposes manufacturing uses on over 1,000 acres, which will result in additional water demand, and that there is no guarantee of surface water capacity for the area and that, since the 2016 General Plan was enacted, the County has failed to follow through with promised mitigation.

41. The County's decision to tier off the General Plan EIR for water supply and groundwater impacts as a way to not do any more review is contrary to CEQA, which does not allow an agency to tier to a program EIR to avoid doing further CEQA review for an impact that the prior CEQA review had found to be significant and unavoidable. Further, the new information shows the potential for significant impacts that were not adequately addressed in the 2016 EIR for the General Plan. *See* Pub. Res. Code § 21166. For both these reasons, the County's failure to conduct further CEQA analysis of the groundwater and overall water demand issues violates CEQA.

VI. SECOND CAUSE OF ACTION
(Inconsistency with General Plan)

42. Petitioners incorporate by reference the allegations in the paragraphs set forth above.

43. The County's approval of the Project violates the General Plan. The Project creates a zoning district, an MX, manufacturing with an overlay zone, which is not designated as one of the allowable zoning districts in the General Plan, which instead lists acceptable zones as M, MM, LM & MR.

VII. PRAYER FOR RELIEF

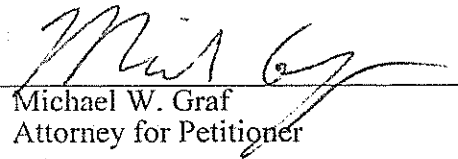
WHEREFORE, Petitioners pray for judgment as follows:

1. For a Writ of Mandate ordering the County to (a) set aside its decision approving the Project; (b) comply with CEQA and the County General Plan with respect to any further action taken with respect to the Project; (c) take whatever additional action is necessary in conformance with the Court's decision; and (d) file a return with the Court showing compliance with the writ of mandate. Code Civ. Proc. § 1085.

2. For preliminary and permanent injunctive relief precluding any development allowed by the Project until the County has complied with applicable law;
3. For reasonable attorney's fees under Code of Civil Procedure § 1021.5;
4. For costs of suit; and
5. For such other and further relief as the Court deems proper.

DATED: February 4, 2021

By: _____


Michael W. Graf
Attorney for Petitioner

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VERIFICATION

Foothill Conservancy et al v. County of Amador et al.,
Amador County Superior Court, Case No. _____.

I, Michael W. Graf, declare that:

1. I am an attorney at law duly admitted and licensed to practice before all courts of this State.

I have my professional office at 227 Behrens Street, El Cerrito California, 94530.

2. I am the attorney of record for Petitioners Foothill Conservancy and Friends of Greater Ione, which each have their principal place of business in Amador County. Petitioners are absent from Contra Costa County in which I have my office. For that reason, I make this verification on their behalf.

4. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 4th day of February 2021 at El Cerrito, California.

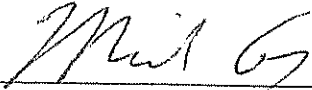


EXHIBIT 1

**Michael W. Graf
Law Offices**

227 Behrens St.,
El Cerrito CA 94530

Tel/Fax: 510-525-1208
mwgraf@aol.com

February 3, 2021

Via Facsimile

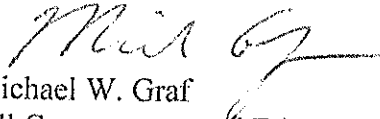
County of Amador
Clerk of the Board of Supervisors
810 Court St
Jackson, CA 95642
Fax: (209) 257-0619

**RE: Notice of Commencement of Action Challenging the County of Amador's
December 15, 2021 approval of a zoning change on five parcels totaling 1,150
acres near the town of Ione from a combination of Agriculture and
Residential to manufacturing with an X-overlay.**

To Whom it May Concern:

Pursuant to California Public Resources Code § 21167.5, please take notice that Foothill Conservancy and Friends of Greater Ione intend to file a Petition for Writ of Mandate challenging County of Amador's December 15, 2021 approval of a zoning change on five parcels totaling 1,150 acres near the town of Ione from a combination of Agriculture and Residential to manufacturing with an X-overlay. Petitioners' actions will include claims under CEQA, Public Resources Code §§ 21000 *et seq.*

Sincerely,



Michael W. Graf

Attorney for Petitioners Foothill Conservancy and Friends of Greater Ione

EXHIBIT 2

**Michael W. Graf
Law Offices**

227 Behrens St.,
El Cerrito CA 94530

Tel/Fax: 510-525-1208
email: mwgraf@aol.com

February 4, 2021

Via Regular Mail

California Attorney General's Office
1300 I Street
Sacramento, CA 95814-2919

Re: Verified Petition for Writ of Mandate Challenge to the County of Amador's
December 15, 2021 approval of a zoning change on five parcels totaling 1,150
acres near the town of Ione from a combination of Agriculture and Residential to
manufacturing with an 'X-overlay.'

To Whom it May Concern:

Pursuant to Public Resources Code § 21167.7 and Code of Civil Procedure 388, enclosed
please find a copy of Petitioner's Verified Petition for Writ of Mandate in the above referenced
matter.

Please let me know if you have any questions.

Very truly yours,



Michael W. Graf