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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA
10

11 GREENBELT ALLIANCE)
12 Petitioner,)
13 v.)
14 CITY OF OAKLEY, CITY COUNCIL)
OF CITY OF OAKLEY, and DOES 1-20)
15 Respondents,)
16 and)
17)
18 KB HOME SOUTH BAY, INC.,)
D.R. HORTON, BETHEL ISLAND,)
19 LLC, SHEA HOMES, and DOES 21-40)
20 Real Parties in Interest.)
21 _____)

Case No.
PETITION FOR WRIT OF MANDATE
[CCP §§ 1085 & 1094.5; California
Environmental Quality Act ("CEQA"), Pub.
Res. Code §§ 21168 & 21168.5]

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INTRODUCTION

1. This action challenges the decision of the City of Oakley City Council ("the City") to certify the East Cypress Corridor Specific Plan Environmental Impact Report ("EIR"), adopt the East Cypress Corridor Specific Plan ("Specific Plan"), approve related amendments to the Oakley 2020 General Plan, approve and adopt pre-zoning of the East Cypress Corridor Expansion Area as "SP-1", and approve an application to the Contra Costa County Local Agency Formation Commission ("LAFCO") for boundary reorganization (together, "the Project"). The Project will effectively result in the creation of a new city in the middle of a floodplain currently protected only by a series of patently inadequate, unengineered levees constructed almost a century ago. This new city will involve approximately 5,600 residential units, three public schools, man-made lakes, proposed gas well sites, light industry, commercial space, and a new system of ill-defined "interior" levees with dramatic, yet largely unanalyzed, environmental impacts. The Project also will ultimately result in the conversion of approximately 2,200 acres of farmland into urban development without providing any mitigation for this loss of agricultural resources.

2. As set forth in detail below, the City's actions in approving the Project were illegal in that they violated the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines (Title 14, California Code of Regulations, § 15000 et seq.). In certifying the EIR for the Project, the City, among other things, relied upon an inadequate, misleading, and changing project description, failed to adequately analyze, disclose, and mitigate the Project's significant adverse direct and cumulative impacts on traffic, water resources, biological resources, geologic resources, loss of agricultural lands and other environmental resources; and failed to adequately consider alternatives that could feasibly mitigate the Project's significant adverse impacts.

PARTIES

1
2 3. Petitioner Greenbelt Alliance (“Petitioner” or “Greenbelt Alliance”)
3 is a nonprofit, public benefit corporation organized under the laws of the State of
4 California with offices in San Francisco, San Jose, Walnut Creek, Fairfield, and Santa
5 Rosa, California. Greenbelt Alliance has approximately four thousand members in and
6 around the San Francisco Bay Area. Greenbelt Alliance is dedicated to protecting open
7 space and promoting livable communities in the nine counties of the Bay Area. Greenbelt
8 Alliance actively supports effective enforcement of CEQA on behalf of its members.

9 4. Respondent City of Oakley (“City”) is a municipal corporation
10 organized and existing under and by virtue of the laws of the State of California, and is
11 located within Contra Costa County. The City initiated the applications for the Project
12 approvals listed in paragraph 1.

13 5. Respondent City Council of the City of Oakley is the governing body
14 for the City responsible for exercising its municipal powers, regulating land use within
15 the City, and planning for areas within the City’s ultimate planning area.

16 6. Real Party in Interest KB Home South Bay, Inc. (“KB Home”) is a
17 California corporation headquartered in Los Angeles, California. The EIR identifies KB
18 Home as a “developer” of the Project.

19 7. Real Party in Interest D.R. Horton, Inc. (“D.R. Horton”) is a
20 corporation headquartered in Fort Worth, Texas. The EIR identifies D.R. Horton as a
21 “developer” of the Project.

22 8. Real Party in Interest Bethel Island LLC (“Bethel Island”) is a
23 Nevada limited liability company headquartered in Las Vegas, Nevada. The EIR
24 identifies Bethel Island as a “developer” of the Project.

25 9. Real Party in Interest Shea Homes, Inc. (“Shea Homes”) is a
26 California corporation headquartered in Walnut, California. The EIR identifies Shea
27 Homes as a “developer” of the Project.
28

1 17. On or about September 12, 2005, the City Council adopted a
2 resolution providing Notice of Intent to LAFCO and local water Districts of the City's
3 plan to initiate boundary reorganization proceedings to, among other things, annex the
4 Project Site into the City.

5 18. In furtherance of the boundary reorganization request, the City
6 prepared the Specific Plan described above. On March 13, 2006, the City approved the
7 Specific Plan and certified an EIR purportedly analyzing the environmental impacts of the
8 Specific Plan, and the boundary reorganization. This action challenges the City's
9 certification of the EIR and its adoption of the Specific Plan and related approvals.

10 19. The Specific Plan envisions the development of up to 5,759
11 residential units, approximately 90 acres of land designated for commercial use, three
12 elementary schools, one middle school, approximately 150 acres of man-made lakes,
13 proposed gas well sites, approximately 120 acres of wetlands/dunes, the construction and
14 repair of flood control levees, approximately 100 acres of parks, and a six-acre beach
15 club.

16 20. The Specific Plan divides the Project Site into six Planning Areas as
17 follows:

- 18 a. Planning Area 1 consists of approximately 704 acres proposed
19 for development by KB Home. KB Home proposes to
20 develop approximately 1,700 residential dwelling units, a 40-
21 acre commercial center, and an elementary school in Planning
22 Area 1. Planning Area 1 would also include approximately
23 108.1 acres of wetlands/dunes areas and 31.8 acres of man-
24 made lakes.
- 25 b. Planning Area 2 consists of approximately 409 acres proposed
26 for development by Shea Homes. Shea Homes proposes to
27 develop up to 816 residential dwelling units, a 1.7-acre
28 commercial center, a fire station and sewer lift station, and a

1 middle school. Planning Area 2 also includes a 62.6-acre
2 man-made lake and 5.7 acres of light industrial use.

3 c. Planning Area 3 consists of approximately 182 acres proposed
4 for development by D.R. Horton. D.R. Horton proposes to
5 develop 400 residential dwelling units, a 12.2. acre
6 community park, 11 acres of neighborhood parks, a 10.4-acre
7 man-made lake and a 2.4-acre gas well site.

8 d. Planning Area 4 consists of approximately 351 acres proposed
9 for development by Bethel Island. Bethel Island proposes to
10 develop 1,120 residential dwelling units, an elementary
11 school, 13.5 acres of neighborhood parks, 22.6 acres of man-
12 made lakes, and a 3.5 acre water tank site.

13 e. Planning Area 5 consists of approximately 269 acres. In
14 1993, Contra Costa County approved the development of
15 Summer Lake homes by Shea Homes within Planning Area 5.
16 Shea Homes is constructing the Summer Lake residential
17 planned community with 628 residential dwelling units, parks,
18 open space, and an elementary school.

19 f. Planning Area 6 consists of approximately 631 acres. This
20 Planning Area includes approximately 544 existing residential
21 units (single-family residences, apartments, and mobile
22 homes), as well as commercial and vacant properties. The
23 Specific Plan envisions development of another 355,500
24 square feet of commercial/commercial recreation, 9.3 acres of
25 community park, 12.1 acres of community facilities, and 551
26 new residential units.

27 21. The Project Site is part of the Hotchkiss Tract, which was reclaimed
28 by Reclamation District 799 ("RD 799") from the Sacramento/San Joaquin Delta for

1 agricultural purposes in the early 20th century. Almost all of the land within the Project
2 Site is below the local mean tide elevation and is within the one-percent chance
3 floodplain designated by Federal Emergency Management Agency ("FEMA"). The
4 Hotchkiss Tract is protected from flooding by a perimeter levee system. The perimeter
5 levees surrounding the Project Site generally do not meet FEMA standards for Urban
6 Standard Levees. They were constructed as non-engineered fill, i.e., earth was stacked
7 directly on top of the native ground without first preparing and pre-compacting the
8 underlying soils.

9 22. The Project also purports to provide for the repair and improvement
10 of an existing system of channels and pump stations maintained by RD 799 to prevent
11 flooding from stormwater runoff and seepage from groundwater. Development on the
12 Project Site would create new impervious surfaces and thus increase the amount and
13 adverse impacts of stormwater runoff. This runoff poses a threat to the water quality in
14 the Delta, which is the source of drinking water for 20 million Californians.

15 23. The EIR purports to serve as a program EIR for the entire Specific
16 Plan and as a project-level EIR for development proposals that, on information and belief,
17 Real Parties in Interest have submitted or will be submitting. Petitioner is informed and
18 believes that the City has not yet approved any specific development applications to
19 implement the Specific Plan.

20 24. Petitioner Greenbelt Alliance has brought this action solely in the
21 public interest. Greenbelt Alliance does not seek any relief greater than or different from
22 the relief sought for the general public. If successful, this action would enforce the
23 mandates of CEQA and thus enforce the public's right to adequate environmental review
24 of all projects as defined under that statute. Because the State has insufficient resources
25 to enforce CEQA with respect to each and every project approval in the state, private
26 enforcement is necessary and places a disproportionate financial burden on Petitioner in
27 relation to Petitioner's stake in the matter.

28 ENVIRONMENTAL REVIEW OF THE PROJECT

1 25. The City issued its first Notice of Preparation (“NOP”) indicating its
2 intent to prepare a draft EIR for the Project in or around September 2004. Petitioner
3 Greenbelt Alliance submitted written comments on this first NOP, requesting that the
4 draft EIR fully address the Project’s myriad potentially significant environmental impacts.

5 26. The Project description included in the first NOP was subsequently
6 revised. The City issued its second NOP for the Project in or around December 2004.
7 Petitioner Greenbelt Alliance again submitted written comments objecting to the
8 adequacy of the NOP and to the Project.

9 27. The Project description was again revised to include proposed
10 revisions to the northern portion of the Summer Lake project, located in Planning Area 2,
11 which had previously been approved by Contra Costa County. A third NOP and an Initial
12 Study were issued in or around April 2005.

13 28. The City prepared a Draft EIR (“DEIR”) and circulated it for public
14 review on or around August 29, 2005. The DEIR purported to analyze the Specific Plan
15 and the development of Planning Areas 2 and 6 at the programmatic level. It purported to
16 analyze the specific development projects proposed by KB Homes, D.R. Horton, and
17 Bethel Island within Planning Areas 1, 3, and 4 at the project level. The DEIR also
18 purported to be the “Programmatic Supplemental EIR to the Cypress Lake and Country
19 Club Project Final EIR,” insofar as it analyzed the environmental impacts of the changes
20 proposed by Shea Homes to its development of the Summer Lake project within Planning
21 Area 2.

22 29. The DEIR identified scores of potentially significant impacts,
23 including impacts to aesthetics, water quality, biological resources, cultural resources,
24 geology and soils, hydrology, land use and planning, noise and vibration, public services
25 and utilities, transportation/traffic, and hazards and hazardous materials, but claimed that
26 such impacts would be substantially lessened by proposed mitigation measures.

27 30. The DEIR recognized that the ongoing operations of the Project
28 would have significant, adverse impacts on air quality, but claimed that, despite

1 implementation of some mitigation measures, this impact was allegedly "unavoidable."
2 The DEIR failed, however, to consider many potentially feasible mitigation measures to
3 offset this impact.

4 31. The DEIR concluded that the Project would not have a significant
5 impact on agricultural resources, even though the DEIR recognized that over 80 percent
6 of the land (approximately 2,200 acres) within the Project Site is agricultural land, and
7 that the purpose of the Project was to facilitate urban development on that land.

8 32. In response to the DEIR, Petitioner Greenbelt Alliance, along with
9 other environmental groups, concerned residents, neighboring towns, and responsible
10 state agencies, raised numerous concerns about the Project's significant impacts on the
11 environment and on the health, safety, and quality of life of the residents in the Project
12 Area. Greenbelt Alliance and others also demonstrated that the DEIR underestimated and
13 failed to adequately disclose, analyze, and mitigate these impacts.

14 33. Petitioner demonstrated, for example, that the Project would have
15 significant impacts on agricultural resources. As discussed above, approximately 80
16 percent of the Project Site is currently farmland. Although the development envisioned
17 by the Specific Plan would remove most, if not all, of this farmland from agricultural use,
18 the DEIR claimed that the Project would have a less than significant impact on
19 agricultural resources.

20 34. Greenbelt Alliance also demonstrated that the DEIR consistently
21 misrepresented the potentially significant impacts of allowing development on the Project
22 Site, which is located on a floodplain, and of constructing a new interior levee system.
23 Among other things, the DEIR failed to adequately analyze the potential impacts that
24 could be caused by levee failure due to an earthquake or earth subsidence. Also, the
25 DEIR states that the construction of an interior levee system would significantly reduce
26 the amount of time it would take for the area between the perimeter levees and the interior
27 levees to flood: without the interior levees, this area would flood within 16 hours; with
28 the interior levees, it would flood within 4 hours. Shockingly, the only mitigation

1 measure proposed in the DEIR was to update the City's emergency response plan. The
2 DEIR concluded that such a mitigation measure reduced the potentially significant impact
3 of rapid flooding in the inter-levee area to a less than significant level.

4 35. Another example of the DEIR's inadequacy noted by Greenbelt
5 Alliance was the failure of the DEIR to adequately analyze and disclose mitigation for the
6 Project's ongoing air quality impacts. In particular, the DEIR expressly limited its
7 consideration of mitigation measures to those that could address increased emissions from
8 vehicles. Greenbelt Alliance noted numerous examples of impacts to air quality caused
9 by area emissions, such as gas appliances, wood stoves, fireplaces, and landscape
10 maintenance equipment, and suggested a number of mitigation measures used in other
11 jurisdictions to reduce these impacts. The City declined to adopt or analyze any of the
12 mitigation measures aimed at area emissions because, the City claimed, the measures
13 would not reduce the project emissions below the applicable threshold of significance.
14 This claim is not supported by any substantial evidence. The City further indicated that it
15 would only consider mitigation measures aimed at reducing emissions from vehicles
16 because vehicles were the "main" source of air pollution in the area. Despite this lack of
17 analysis, the DEIR concluded that air quality impacts from ongoing Project operations
18 were significant and, allegedly, unavoidable.

19 36. The DEIR similarly failed to adequately analyze and mitigate the
20 Project's significant impacts on traffic, biological resources, and water quality. The
21 Project will dump thousands of new daily trips onto a road system designed for rural use,
22 creating significant traffic congestion. The Project will also develop many acres of
23 wetlands and other habitat for special status species. Likewise, runoff from the
24 Project—and the pollutants in that runoff—will likely end up in the Delta, which provides
25 drinking water for approximately 20 million Californians.

26 37. Although the DEIR claimed to provide a project-specific analysis of
27 the environmental impacts within Planning Areas 1, 3, and 4, the Project Description in
28 the DEIR described these projects only in the most general terms. There are no figures

1 detailing the lay-out of these projects, for example. The DEIR describes each
2 development in only one paragraph. For instance, the description of the Bethel Island
3 development—which includes 1,120 residential units, two man-made lakes, three gas well
4 sites, a water tank site, an elementary school, and neighborhood parks with open space
5 and trails—is only three sentences long. The absence of any concrete details about these
6 developments made it impossible for the DEIR to accurately identify and analyze their
7 environmental impacts.

8 38. In response to public comments on the DEIR, the City revised and
9 recirculated the DEIR for public review from December 23, 2005 to February 6, 2006.
10 The recirculated DEIR identified nine new intersections that would be significantly
11 impacted by the Project, and added or revised numerous mitigation measures relating to
12 the Project's impact on water supply, hydrology, water quality, and public utilities.

13 39. Petitioner and others submitted extensive additional comments in
14 response to the recirculated DEIR. Among other things, Greenbelt Alliance noted that the
15 recirculated DEIR still failed to adequately address and mitigate the Project's significant
16 impacts to water supply, traffic, wetlands, and water quality.

17 40. The City prepared and issued its Final EIR ("FEIR") for the Project
18 in or around February 2006. The FEIR failed to correct the numerous deficiencies in the
19 DEIR.

20 41. Despite the FEIR's continuing inadequacies, on February 28, 2006,
21 the City's Planning Commission approved a resolution recommending that the City
22 Council certify the EIR, amend the General Plan, approve the Specific Plan, and approve
23 pre-zoning of the Specific Plan area to "SP-1."

24 42. On March 13, 2006, the City Council certified the EIR for the
25 Project, adopted the Specific Plan, approved related amendments to the Oakley General
26 Plan, approved the pre-zoning of the Project Site as "SP," and made Findings of Fact and
27 Statement of Overriding Considerations ("Findings") for the EIR and the Project.
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1 48. Petitioner hereby realleges and incorporate paragraphs 1 through 47,
2 inclusive.

3 49. The Project is a "project" within the meaning of CEQA.

4 50. Approval of the Project is a discretionary action subject to CEQA.

5 51. The City violated CEQA by certifying an EIR that is inadequate and
6 fails to comply with the requirements of CEQA and the CEQA Guidelines, and by
7 approving the Project on the basis of this inadequate environmental review. Among other
8 things, the City:

- 9 a. Relied on an incomplete, misleading, and changing project
10 description that lacks or obfuscates key details about the Project,
11 undermining any analysis of Project-related and cumulative impacts
12 and rendering some environmental impacts impossible to determine;
- 13 b. Failed to describe an accurate environmental baseline for the Project;
- 14 c. Failed to adequately disclose, analyze, and mitigate, or consider
15 feasible mitigation measures for, the Project's significant impacts to
16 air quality;
- 17 d. Failed to adequately disclose, analyze, and mitigate, or consider
18 feasible mitigation measures for, the Project's significant impacts to
19 aesthetics;
- 20 e. Failed to adequately disclose, analyze, and mitigate, or consider
21 feasible mitigation measures for, the Project's significant impacts to
22 hydrology and water quality;
- 23 f. Failed to adequately disclose, analyze, and mitigate, or consider
24 feasible mitigation measures for, the Project's significant impacts to
25 biological resources;
- 26 g. Failed to adequately disclose, analyze, and mitigate, or consider
27 feasible mitigation measures for, the Project's significant impacts to
28 geology and soils;

- 1 h. Failed to adequately disclose, analyze, and mitigate, or consider
2 feasible mitigation measures for, the Project's significant impacts to
3 traffic and circulation;
- 4 i. Failed to adequately disclose, analyze, and mitigate, or consider
5 feasible mitigation measures for, the Project's significant impacts to
6 wastewater and other utilities;
- 7 j. Failed to adequately disclose, analyze, and mitigate, or consider
8 feasible mitigation measures for, the Project's significant impacts to
9 public services;
- 10 k. Failed to adequately disclose, analyze, and mitigate, or consider
11 feasible mitigation measures for, the Project's significant impacts to
12 public safety including impacts associated with hazardous materials
13 and flooding;
- 14 l. Failed to adequately disclose, analyze, and mitigate, or consider
15 feasible mitigation measures for, the Project's significant impacts
16 due to conversion of agricultural land;
- 17 m. Failed to adequately disclose, analyze, and mitigate, or consider
18 feasible mitigation measures for, the Project's significant impacts to
19 land use and planning;
- 20 n. Failed to adequately disclose, analyze, and mitigate, or consider
21 feasible mitigation measures for, the Project's significant growth-
22 inducing impacts;
- 23 o. Failed to adequately disclose, analyze, and mitigate, or consider
24 feasible mitigation measures for, the Project's significant cumulative
25 impacts;
- 26 p. Approved the Project despite the availability of feasible mitigation
27 measures that would substantially lessen the Project's significant
28 environmental impacts;

- 1 q. Failed to evaluate and analyze a reasonable range of project
2 alternatives that would substantially lessen the Project's significant
3 environmental impacts;
- 4 r. Approved the Project despite the availability of feasible alternatives
5 that would avoid the Project's acknowledged significant adverse
6 impacts;
- 7 s. Failed to exercise independent judgment in certifying the EIR and
8 making the Findings regarding the EIR and the Project; and
- 9 t. Adopted Findings in support of their approval of the Project that are
10 not supported by substantial evidence in the record and are thus
11 inadequate as a matter of law.

12 52. As a result of the foregoing defects, the City prejudicially abused its
13 discretion by certifying an EIR and issuing Findings that do not comply with the
14 requirements of CEQA. As such, the City's certification of the EIR and approval of the
15 Project are invalid as a matter of law and must be set aside.

16 **PRAAYER FOR RELIEF**

17 WHEREFORE, Petitioner prays for judgment as follows:

- 18 1. For alternative and peremptory writs of mandate directing the City to vacate
19 and set aside its certification of the EIR and approval of the Project;
- 20 2. For alternative and peremptory writs of mandate directing the City to
21 comply with CEQA and the CEQA Guidelines and to take any other action as required by
22 Public Resources Code section 21168.9;
- 23 3. For a temporary stay, a temporary restraining order, and preliminary and
24 permanent injunctions restraining the City and its agents, servants, and employees, and all
25 others acting in concert with the City on its behalf, from issuing any grading, building, or
26 other permits or approvals, permitting or undertaking any construction, or taking any
27 other action to implement in any way the Project pending full compliance with the
28 requirements of CEQA and the CEQA Guidelines;

