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Dec. 6, 2004 - Initiative invalid, says counsel

By NOEL STACK Staff writer

The California Legislature's Office of Legislative Counsel issued a legal opinion Friday deeming the proposed El Dorado County Charter amendment invalid and opening the door to a court challenge.

Legislative Counsel determined in its review that the initiative is invalid because it does not directly amend the adopted General Plan.

"Rather, the initiative measure outlines certain conceptual objectives, but makes no provisions for how various elements of the General Plan are to be modified to achieve these goals," according to a press release issued by Assemblyman Tim Leslie, R-Tahoe City. "And lastly, the initiative imposes an arbitrary constraint upon the county to help meet regional affordable housing needs."

The amendment, set to be on the March 2005 ballot, limits what kind of General Plan the El Dorado County Board of Supervisors can adopt by permanently placing policies in the county's charter.

The first policy would preclude the Board of Supervisors from adopting any General Plan that would worsen the level of service on Highway 50 to gridlock during peak hours. The second policy would prevent the board from approving single-family residential subdivisions of three parcels or more until Highway 50 is widened to eight lanes between Cameron Park Drive and the Sacramento County line.

Assemblyman Leslie, who represents El Dorado County, requested the legal review and states in the press release that the findings will carry weight in court.

"A legally flawed initiative helps no one," said Leslie. "It only delays implementation of an approved General Plan, and costs taxpayers more money in the long run."

No Gridlock Committee member Bill Center said the opinion is just another attempt to sway voters.

"Tim Leslie has already gone on record as opposing this initiative," Center said. "This is just a cynical attempt to intimidate the voters by a state politician ... who has clearly allied himself with the developers."

Ultimately, he continued, the committee believes the voters will support the initiative and prevent gridlock traffic on the county's roadways.

Supervisor Helen Baumann said the board would have to let its legal counsel review the opinion prior to taking any action. The legislative counsel's opinion could lead to possible legal challenges by the board or other groups opposing the initiative.

"There's been so many questions we have not been able to answer," Baumann said. "It's just real hard to ascertain what's going to happen with this initiative. We'll have to see how it all plays out."

While a significant opinion, El Dorado County Counsel Lou Green said, the Legislative Counsel's opinion isn't enough to stop the initiative in its tracks.

"The issues raised in here are not particularly surprising or new," Green said. "If you go back to the report I did ... I identified all of these things as significant issues."

What could happen, Green explained, is that the Board of Supervisors or another group or individual could use the Legislative Counsel's opinion as backing to take the initiative to court. The court could either hear the matter and rule before the March election, he added, or refuse to address the matter until after the election.

In addition to the charter initiative, voters will also vote on a General Plan referendum on the March 2005 ballot. A "yes" vote will affirm the Board of Supervisor's adoption of the 2004 El Dorado County General Plan. A "no" vote would rescind the board's adoption.

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