

Maywan Krach
July 16, 2015
Page 111

CEQA requires that an EIR analyze these impacts. California courts have established a framework for considering population-related impacts. When analyzing these impacts,

[an EIR] should, at a minimum, identify the number and type of housing units that persons working within the [p]roject area can be anticipated to require, and identify the probable location of those units. The [EIR] also should consider whether the identified communities have sufficient housing units and sufficient services to accommodate the anticipated increase in population. If it is concluded that the communities lack sufficient units and/or services, the [EIR] should identify that fact and explain that action will need to be taken

09-261
cont.

Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 370. Once the EIR determines the action needed to provide sufficient housing and services, CEQA then requires it to examine the environmental consequences of such action. For example, as discussed previously, the California Supreme Court held that where a new development would need an increased water supply, CEQA requires the agency to analyze the environmental impacts of providing that water supply. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 438-47.

A complete analysis of population growth thus requires two distinct, logical steps. First, an EIR must accurately estimate the population growth that a project would cause, both directly and indirectly. Specifically, in this case, the DEIR must estimate the population growth accommodated by new housing and the number of employees that the Project would require, including whether those employees are likely to be new to the region. Guidelines Appx. G § XII(a) (directing analysis of whether project would induce substantial population growth). The DEIR also must consider the growth that a project would *indirectly* cause, whether through stimulating the local economy so that new employment opportunities draw new population or by providing infrastructure that allows new residential construction. Guidelines § 15126.2(d) (“Discuss the ways in which the proposed project could foster economic or population growth”).

09-262

The second step in analyzing the impacts of population growth is to consider the environmental impacts of serving that estimated new population. Thus, the EIR must not only evaluate whether a project would “[i]nduce substantial population growth,” but also whether such growth would require construction of new housing. Guidelines Appx. G

SHUTE, MIHALY
WEINBERGER LLP

Maywan Krach
 July 16, 2015
 Page 112

§ XII(a), (c). If new construction will occur, then the EIR must analyze the environmental impacts of that construction. *See, e.g., Napa Citizens*, 91 Cal.App.4th at 373 (EIR must disclose “environmental consequences of tapping” water resources needed to serve growing population). The EIR must also consider whether the new population would place demands on public services, such as fire protection, law enforcement services, or schools. Guidelines Appx. G § XIII(a). The EIR then must consider the environmental impacts of providing such facilities if they are necessary. *See Napa Citizens*, 91 Cal.App.4th at 373.

Here, the DEIR failed to estimate and analyze indirect population growth caused by the Project. While the DEIR identifies the Project’s direct population impacts—the growth from people moving into the housing provided by the Project and from people moving to the area to work at the Project’s facilities—it does not disclose that the Project would also indirectly induce additional people to move to the area, which could result in additional potentially significant environmental impacts.

The DEIR incorrectly states that the Project would not indirectly cause population growth because “it would be developed in locations where there is already access to urban services.” DEIR at 5-12. However, access to these services does not mean that they would be sufficient to satisfy the demands of the new population. The DEIR acknowledges that both the increased population of short-term vacation residents and the Project’s employees “may result in additional demands for housing, goods, and services.” *Id.* at 5-12. But then it jumps to the conclusion that the Project would have no indirect impacts on population because “the project would not remove obstacles to additional growth outside of the plan area.” *Id.* This is too simplistic of a conclusion, as no single factor determines whether a project will indirectly trigger population growth.

For example, in this case, the population increase—even a seasonal one—would almost certainly require new and expanded services and would inject new money into the local economy. A larger population would increase demand on both emergency services (as discussed below in Section I.B.14) and commercial services like restaurants, grocery stores, and medical care. This increased demand would induce businesses to expand and new businesses would crop up to serve the larger population. This would require new employees and could draw new residents to the area, who would need housing. Indeed, Squaw Valley President and CEO Andy Wirth has touted the fact that the Project will eventually create more than 2,300 jobs. *See* “Squaw Valley ski resort scales back expansion plan,” *The Denver Post* (Dec. 17, 2013), available at http://www.denverpost.com/news/ci_24741340/squaw-valley-ski-resort-scales-back-

09-262
 cont.

SHUTE, MIHALY
 & WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 113

expansion-plan. This is far more than the 574 FTE jobs the Project would directly create—the number that serves as the basis of the DEIR’s analysis.

09-262
cont.

The DEIR errs in not considering the impacts from the Project’s indirect job creation. Instead, it states in conclusory fashion that “the economic activity generated by visitors would be largely contained within the commercial components of the project” and thus “induced growth from economic activity . . . would be more limited than if the project did not include commercial development.” DEIR at 5-12. While the Project may indeed cater to more of the visitors’ needs than if it contained no commercial development, the DEIR does not explain how many or which demands would be met. Nor does it make any mention of how the Project’s employees’ commercial and service needs would be satisfied. The DEIR should have identified the Project’s indirect impacts on population—which would likely expand to meet demands from the Project’s new residents and employees—and the environmental impacts of such growth.

09-263

Also, the assumptions underlying the DEIR’s analysis of the Project’s impacts on housing are flawed. Specifically, as discussed previously in Section I.B.1 above, the 55 percent occupancy rate used throughout the DEIR is questionable. For example, the DEIR’s occupancy rate assumption is based on historical use of the area, which exhibited some fluctuation in population seasonally. See Exhibit 1 at p. 2; see also Village at Squaw Valley Economic Impact and Urban Decay Analysis (“EIDA”) at Table B-2. However, the DEIR itself belies its own claims that the Project’s occupancy will mirror the past, seasonally fluctuating occupancy pattern. Throughout the DEIR, the Project is described as one that will attract year-round visitors, offering both winter and summer recreational opportunities. See, e.g., DEIR at 18-60. The DEIR cannot rely on those historic seasonal occupancy rates to estimate future occupancy of a year-round resort development. Also, seasonal fluctuations in population are irrelevant to determining whether the Project would have a significant impact on housing supply. The analysis must be based on the busiest times of year, when there would be the highest demand for housing because the area would need to have housing available for every person living there at any one time.

09-264

With regard to housing for employees, the DEIR states that while the Project is expected to “generate an additional 574 FTE employees annually,” assuming 300 employees would reside in on-site housing, there would only be “an average overnight population increase of 111 [employees], assuming a 55 percent occupancy rate on average for the year.” DEIR at 5-11. But the assumed 55 percent occupancy rate is based on data about hotel/motel occupancy, not on occupancy of employee housing and

09-265

SHUTE, MIHALY
WEINBERGER LLP

Maywan Krach
 July 16, 2015
 Page 114

area long-term residential housing. See EIDA at Table B-2. The DEIR must explain how it came to a 55 percent occupancy rate assumption for housing for employees.

09-265
 cont.

Finally, the DEIR recognizes that the Project does not include enough housing for employees to meet the housing requirement set by the County’s General Plan, which constitutes a potentially significant impact. DEIR at 5-13. However, the DEIR improperly defers mitigation for this impact. As discussed previously, agencies may only defer mitigation under narrowly defined conditions and such condition do not exist here. The DEIR states that to mitigate the impacts of the Project on housing in the area, the project applicant “shall develop a detailed ‘VSVSP Employee/Workforce Housing Plan’ for Placer County review and approval.” *Id.* This plan will “assure” there will be adequate employee housing by “a combination of one or more” actions, including developing on-site or off-site employee housing, dedicating land for needed units, or paying an in-lieu fee. *Id.* The DEIR provides no explanation as to why the applicant cannot now prepare a plan that demonstrates adequate employee housing.

09-266

Further, there are no assurances that the future mitigation would be “feasible and efficacious.” Merely listing a handful of options that may or may not be selected is not sufficient for decision-makers to determine whether the applicant would provide adequate employee housing. For example, a provision calling for the applicant to pay an in-lieu fee provides no assurance employee housing would in fact be built. CEQA does not condone vague and ineffective mitigation measures.

Finally, the proposed mitigation, if actually implemented, would necessarily involve construction of new housing for employees, which would have a significant impact on the environment in its own right. CEQA requires that if a mitigation measure will cause its own significant effects in addition to the ones caused by the project, the EIR must discuss the mitigation measure’s effects. Guidelines § 15126.4(a)(1)(D). Here, the DEIR fails to evaluate the impacts of constructing more employee housing, nor could it without giving any information about the location, size, or design of the buildings.

09-267

The DEIR’s failure to adequately evaluate the Project’s impacts on population, employment, and housing constitutes a serious flaw. The DEIR should be revised to include a comprehensive analysis of these impacts and identify effective and enforceable mitigation for those impacts that are determined to be significant,

09-268

SHUTE, MIHALY
 & WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 115

13. The DEIR’s Analysis of the Project’s Growth-Inducing Impacts is Flawed.

CEQA requires that an EIR include a “detailed statement” setting forth the growth-inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal.App.3d 1325, 1337. A proposed project is either directly or indirectly growth-inducing if it: (1) fosters economic or population growth or requires additional housing; (2) removes obstacles to growth; (3) taxes community services or facilities to such an extent that new services or facilities would be necessary; or (4) encourages or facilitates other activities that cause significant environmental effects. Guidelines § 15126.2(d). While the growth-inducing impacts of a project need not be labeled as adverse, the secondary impacts of growth (e.g., loss of open space/habitat/agricultural lands, air quality, transportation, etc.) may be significant and adverse. In such cases, the secondary impacts of growth inducement must be disclosed as significant secondary or indirect impacts of the project.

09-269

In this case, the DEIR acknowledges that the Project is “relatively large and is intended to generate substantial economic activity” and would draw an overnight population of up to 3,625 and up to 574 FTE staff to the Valley. DEIR at 18-60. As discussed previously, these occupancy numbers are questionable and may significantly underestimate the population the Project would bring to Squaw Valley. But even if these numbers are accurate, such a substantial development with the capacity to attract a large population would undoubtedly induce growth in the area, but the DEIR fails to adequately analyze this impact.

09-270

First, the DEIR attempts to downplay the significance of bringing new employees to the area, claiming that “the nature of the [on-site employee] housing suggests demands for goods and services would follow what is typical for a transient population versus a permanent residential population, because the employment would be mostly seasonal.” DEIR at 18-60. But the claim that employment would be predominantly seasonal is directly contradicted by the immediately preceding paragraph in the DEIR, which states that the “project is intended to be a year-round resort.” *Id.* The DEIR fails to explain how a year-round resort would attract only seasonal employees.

09-271

Nor does the DEIR explain why it assumes the employees’ demands for goods and services would be akin to those of a short-term, recreational visitor. The DEIR claims that the Project’s on-site amenities, like a convenience store, are “anticipated to serve the employee population by providing access to necessities and limiting the need to frequent off-site retailers.” DEIR at 18-60. But the DEIR does not explain what goods and

09-272

SHUTE, MIHALY
WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 116

services would be provided on site and whether they are sufficient to fully meet the needs of its employee population. Nor does it elaborate on its theory that employees would not want to go off-site, especially in light of the fact that the employees would be long-term residents, who would have different needs than those of the transient resort visitors for whom the Project’s commercial development is designed.

09-272
cont.

Also, the DEIR focuses too narrowly on those employees who would live on-site. It does not discuss the needs of those employees who would not live on-site in the Project’s employee housing but who the DEIR recognizes would live elsewhere in the area, including outside of Squaw Valley. See DEIR at 18-60. The DEIR provides no rationale for so limiting its analysis. CEQA specifically requires an agency to assess all environmental impacts of a project, even if “the project’s effect on growth and housing will be felt outside of the project area.” *Napa Citizens*, 91 Cal.App.4th at 369. As the court in *Napa Citizens* stated, “the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area.” *Id.*

09-273

Second, the DEIR fails to discuss the impacts of growth induced by expanding infrastructure. The Project would expand water supply and sewer capacities in the area, thereby removing obstacles to expanding development. The DEIR recognizes as much. DEIR at 18-61. However, the DEIR’s discussion of growth-inducing impacts does not describe the potential impacts of removing these obstacles. Instead, it refers readers to the DEIR’s cumulative impacts section, which it says describes the impacts of that growth. *Id.* But the cumulative impacts analysis considers the impacts only of likely future projects and does not discuss the likely impacts of currently unplanned growth that would be made newly possible by the Project’s infrastructure improvements. The revised EIR must take into account the growth-inducing impacts from the expansion of infrastructure. As part of this analysis, the EIR must include an evaluation of the growth-inducing impacts associated with the eight-mile water supply pipeline to Martis Valley.

09-274

Finally, the DEIR fails to consider the likelihood of inducing further recreational and tourism growth in the area. Though the DEIR consistently attempts to minimize the Project’s impacts, it also touts the fact that the Project would be a world-class, luxury, year-round recreational destination. Drawing thousands more visitors annually to the area, during all seasons, is very likely to induce development of more recreational opportunities in the area to meet burgeoning demands. The DEIR must disclose the potential impacts of this future tourism-oriented development.

09-275

SHUTE MIHALY
WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 117

Along these same lines, the DEIR must evaluate the precedent-setting nature of the Project. If approved, the Project would allow a level and intensity of development unanticipated by the Placer County General Plan. Other resorts in the County such as Donner Ski Ranch, Boreal, Sugar Bowl and, of course, Alpine Meadows may request authorization from the County to substantially expand their resorts. The EIR must be revised to analyze the environmental impacts resulting from the potential expansion of these other resorts.

09-276

14. The DEIR Fails to Adequately Analyze the Project’s Impact on Public Services and Utilities.

The DEIR’s discussion of the Project’s impacts on public services and utilities is also deficient. First, the DEIR fails to evaluate the environmental impacts of proposed mitigation for the Project’s significant impacts on sewer infrastructure and emergency services. CEQA requires that when “a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed,” though it need not be in as great of detail as required when analyzing the effects of the Project as proposed. Guidelines § 15126.4(a)(1)(D).

Here, the DEIR does not discuss *at all* the environmental impacts of constructing wastewater detention facilities to mitigate the Project’s potentially significant effect of overloading the Truckee River Interceptor during peak flow times. *See* DEIR at 14-36. The DEIR states that the Tahoe-Truckee Sanitation Agency is “currently studying” whether a part of the area’s sewer infrastructure (an “interceptor”) will accommodate the Project’s peak flows, explaining that it may not be able to. *Id.* As an initial matter, this “study” should have been conducted as part of this EIR. Wastewater service is not a mere technicality; without adequate wastewater service the Project cannot proceed. Equally important, if the Project’s peak wastewater flows would overwhelm the existing interceptor, the DEIR states that construction of new wastewater detention facilities “shall be incorporated into the Specific Plan.” *Id.* But the DEIR fails to disclose the environmental impacts associated with the construction of these new wastewater detention facilities.

09-277

Likewise, the DEIR fails to analyze the environmental impacts of constructing a new fire station, which it recognizes as necessary mitigation to ensure the Project does not overtax the area’s existing emergency services. *See* DEIR at 14-44. Because the Project would put too great a demand on the existing fire station, by the time the Project is about half completed, a new station must be constructed. DEIR at 14-43. The station

09-278

SHUTE MIHALY
WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 118

may be built outside the Project area, but the DEIR does not disclose any of its possible environmental effects. These impacts are likely to be significant, as with any new building construction. Instead, it states, vaguely, that building a new station “would have similar environmental effects to other relatively small development projects in Olympic Valley.” DEIR at 14-44. Though an EIR may provide somewhat less detail when discussing the environmental impacts of proposed mitigation, the DEIR here provides no useful information at all. Without reference to or description of what impacts those other “small development projects” had, the DEIR fails to disclose information necessary to informed decision-making.

09-278
cont.

Second, the DEIR’s analysis of the Project’s impact on parks and recreational facilities is flawed. The DEIR states that because the Project includes new recreation facilities, it will not significantly increase the use of existing ones. DEIR at 14-42. The DEIR makes this claim despite the fact that the Project would draw thousands of new visitors at a time to the area, in addition to the hundreds of employees who would call the area home and seek recreation in their free time. Yet the DEIR does not explain how the Project’s planned recreation would satisfy all of these recreational needs without impacting existing facilities.

09-279

Further, the DEIR reveals that the Project will actually likely increase use of existing recreational facilities by enhancing public access to backcountry trails, improving trailheads, and connecting paths at the Project to existing trails. DEIR at 14-42. The DEIR nonetheless concludes, perplexingly, that these improvements will have no impact on those recreational resources. If anything, connecting existing trails to the Project’s own trail system and improving trailheads and access would encourage *more* people in the area to use existing recreational resources. The DEIR should have analyzed this potential impact.

09-280

Third and finally, the DEIR’s analysis of cumulative effects on public services and utilities fails to adequately explain how the cumulative impacts of this and other projects would not together significantly contribute to the overtaxing of existing public services and utilities. *See* DEIR at 18-46. Indeed, as discussed above, the DEIR admits that the Project, alone, will significantly impact emergency services in the area. It is basic logic that if the Project would significantly impact a service, the Project together with more projects would also have an impact—a more severe one.

09-281

The DEIR’s cumulative impacts analysis merely states, vaguely, that utility and public service “providers employ various programs and mechanisms to support provision of these services to new developments.” DEIR at 18-46. As examples, the DEIR

SHUTE MIHALY
WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 119

references development fees levied by the County on new developments and utilities' connection fees. *Id.* at 18-46. But the DEIR fails to explain how the County's and utilities' fees would be used and whether they would suffice to completely mitigate the cumulative impacts of development in the area. The DEIR cannot rest its analysis on these fees without explaining how they would be used and their projected efficacy.

09-281
cont.

In sum, the DEIR's approach to analyzing the Project's impacts on public services is lackluster, at best. The revised EIR must include a thorough analysis of these impacts and identify feasible mitigation measures for those impacts determined to be significant.

09-282

15. The DEIR's Analysis of the Project's Energy Impacts is Legally Deficient.

The CEQA's Guidelines declare that "[t]he goal of conserving energy implies the wise and efficient use of energy." CEQA Guidelines Appx. F. To achieve this goal, a Project should "(1) decreas[e] overall per capita energy consumption, (2) decreas[e] reliance on fossil fuels such as coal, natural gas and oil, and (3) increas[e] reliance on renewable energy sources." *Id.* Thus, CEQA requires that an EIR discuss the potential impacts of proposed projects on energy conservation. *Id.*; *see also* Pub. Res. Code § 21100(b)(3). In considering the Project's potential impacts on energy resources, a DEIR must discuss the energy consumption that will occur during both construction and operation of the Project. CEQA Guidelines Appx. F(II)(A). Failure to include an analysis of energy impacts and mitigation measures "preclude[s] informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process." *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 212 (citations omitted).

09-283

Here, the DEIR fails to adequately analyze the Project's energy impacts, as required by Appendix F to the CEQA Guidelines. The DEIR's first mistake was basing its determination that Project was sufficiently energy efficient on a comparison of the Project's projected energy consumption to existing developments in the area. DEIR at 14-39. Because the Project would be more energy efficient than those developments, the DEIR concludes that the Project would not wastefully or inefficiently use energy. This is not a workable standard. The DEIR provides no information about when those developments were built nor what sort of technology or procedures are in place there to conserve energy. Without this information, it is impossible to tell whether the Project is energy efficient by today's standards. The DEIR should have measured the Project's energy consumption against only recently constructed or updated, similar developments

09-284

SHUTE, MIHALY
WEINBERGER LLP

Maywan Krach
 July 16, 2015
 Page 120

that use modern, energy-efficient technology or against a hypothetical model development that uses the latest technology in energy efficiency.

09-284
 cont.

The DEIR also fails to provide an accurate analysis of the Project’s transportation energy impacts or provide adequate mitigation, for a number of reasons. First, the DEIR did not identify the number of vehicle trips associated with *construction*—not just operation—of the Project or how much transportation energy would be needed by those trips. Because this impact was not identified, the DEIR could not determine its significance, nor could it “include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy”; this renders the DEIR “fatally defective.” *California Clean Energy*, 225 Cal.App.4th at 209.

09-285

Second, though the DEIR claims to have identified the energy use associated with vehicular trips generated by the Project (at 14-40), as discussed above in Section I.B.4 (Transportation), the DEIR relies on an inaccurate estimate of trip generation and vehicle miles travelled. Consequently, the DEIR very likely underestimates the extent of the Project’s transportation energy impacts. Without an accurate assessment of the Project’s transportation-related energy impacts, it is impossible to identify mitigation measures to reduce these energy impacts. *See California Clean Energy*, 225 Cal.App.4th at 210.

09-286

Third, the DEIR cannot rely on mitigation for the Project’s *greenhouse gas* impacts to satisfy its obligations to mitigate the Project’s *energy use* impacts. The DEIR states that “[e]nergy efficiency would be further encouraged through implementation of Mitigation Measures 10-2 and 16-2, which limit emission of ozone precursors and [greenhouse gases].” DEIR at 14-40. But as the court in *California Clean Energy* recognized, “[a]ir quality mitigation is not a substitute for an energy analysis” and it cannot be “assume[d] that] the overlap is sufficient under CEQA’s study and mitigation requirements.” *California Clean Energy*, 225 Cal.App.4th at 208 fn.6.

09-287

Another problem with the DEIR’s discussion of energy impacts is that it failed to discuss “renewable energy options that might be available or appropriate for the project.” *See id.* at 213. In *California Clean Energy*, the court held that CEQA was violated when the “EIR contains no discussion of a potentially significant environmental consideration” like a “discussion or analysis of renewable energy options for [the Project].” *Id.* at 213. Here, the DEIR just states, vaguely, that the Project will “encourage use of alternative energy with the goal of using 25 percent renewable energy,” but it provides no explanation of what sort of renewable energy is available nor how it could be used. This

09-288

SHUTE, MIHALY
 & WEINBERGER LLP