

Maywan Krach
July 16, 2015
Page 61

unsurprisingly, finds that the Project would have fewer emissions than the artificially inflated BAU scenario.

Because the Project would have to comply with existing GHG-related laws and regulations anyway (including CEQA’s requirement for mitigation), it is misleading for the DEIR to state that the Project would cause a 25% reduction in GHG emissions due to particular Project features, when in fact these features are required anyway. Likewise, it is misleading and inappropriate to compare the Project emissions against an artificially inflated baseline of alleged BAU or NAT conditions. Courts have recognized that comparing project impacts to such an artificially inflated baseline results in “illusory comparisons that can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts, a result at direct odds with CEQA’s intent.” *Communities for a Better Env’t v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 322. A proper comparison in year 2020 would be to the Project site as it currently exists. Guidelines §§ 15126.2(a), 15064.4(b)(1).

09-143
cont.

An accurate comparison with existing conditions is particularly important with regard to climate change because existing conditions are such that we have already exceeded the capacity of the atmosphere to absorb additional GHG emissions without risking catastrophic and irreversible consequences. Therefore, even seemingly small additions of GHG emissions into the atmosphere must be considered cumulatively considerable. *See Communities for Better Env’t v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 (“the greater the existing environmental problems are, the lower the threshold for treating a project’s contribution to cumulative impacts as significant.”); *see also Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007) (“we cannot afford to ignore even modest contributions to global warming.”). The County may not ignore the Project’s contribution to climate change simply by choosing an inappropriate BAU/NAT threshold.

09-144

The DEIR claims it is relying on a so-called two-tiered threshold standard set by the Placer County Air Pollution Control District (“PCAPD”) to reach its finding of no significance for 2020. *See* DEIR at pp. 16-9, 16-15. However, that GHG threshold, which was developed in collaboration with the Sacramento Metropolitan Air Quality Management District (“SMAQMD”) and is set forth in SMAQMD’s CEQA Guide, says nothing about a two-tiered standard. Rather, it recommends a bright line operational threshold of significance of 1,100 metric tons of CO2 per year, which the Project far exceeds with its anticipated emissions of 45,403 metric tons of CO2 per year. Exhibit 20 at pp. 6-10 (SMAQMD CEQA Guide (November 2014)); DEIR at 16-16. It’s not clear if the Project’s projected operational emissions include the current Squaw Valley

09-145

SHUTE, MIHALY
& WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 62

emissions, or are in addition to them. However, even when compared against the baseline of 13,765 metric tons of CO2 per year (see DEIR at 16-3), the Project would still add 31,638 metric tons of CO2 per year into the atmosphere, which far exceeds the significance threshold.

09-145
cont.

Even if the DEIR could legitimately use the BAU/NAT threshold (which as explained, it cannot), the DEIR is still required to consider this evidence that the Project may cause a significant GHG-related impact. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (“in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met”). For example, in a November 2013 EIR prepared for the Northstar Mountain Master Plan, the County found that the project at issue there—which would generate only *one quarter* of the annual CO2 emissions of the present Project—would result in a significant impact on global climate change and required mitigation. Exhibit 21 at pp. 16-20 to 16-21 (Northstar Mountain Master Plan EIR, Chapter 16). The problem of climate change has not been solved in the last year and a half. Therefore, there is no logical rationale why the current Project would not similarly have significant GHG emissions in 2020 requiring mitigation. The County may not hide behind a self-serving threshold and fabricated baseline to avoid this significant impact.

09-146

(ii) Even If the County Could Use a “Business As Usual” Approach, the DEIR Misapplies the Approach.

Even if BAU were a legitimate means for determining significance, which it is not, there is no evidence supporting the DEIR’s assumption that new development that is 21.7% below BAU will help achieve California’s emission reduction objectives. The DEIR’s significance determination mistakenly presumes, without any support, that emission reduction expectations are the same for existing and new sources of emissions to meet AB 32 targets. However, the Scoping Plan is silent as to the obligation of new development to mitigate GHG emissions under CEQA. Contrary to the DEIR’s naked assumptions, as opportunities for reducing emissions from the built environment are more limited and present greater challenges, expectations for minimizing emissions from new development, through energy efficiency, renewables, increased density, mixed use and siting close to transit, should be greater than that of existing development, where emission reduction opportunities may be more constrained.

09-147

SHUTE, MIHALY
& WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 63

As recognized by the California Air Pollution Control Officers Association (“CAPCOA”) in its CEQA & Climate Change White Paper, “greater reductions can be achieved at lower cost from new projects than can be achieved from existing sources.” Exhibit 22 at p. 33 (CAPCOA, CEQA & Climate Change).⁶ Similarly, as one of its reasons for finding that a proposed 29% below BAU threshold of significance “will not withstand legal scrutiny,” the Attorney General noted that “it seems that new development must be more GHG efficient than this average, given that past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit.” Exhibit 18 at 3. The DEIR even further skews the results by making unfounded assumptions about GHG emissions in its hypothetical scenario. For example, in the hypothetical 2020 build-out scenario, the DEIR assumes annual construction emissions at a rate amortized over 40 years. DEIR at 16-17. If the Project is completed by 2020, construction emissions should only be amortized over a maximum four year period.

09-147
cont.

Accordingly, there is no scientific or factual basis supporting the DEIR’s unsubstantiated opinion that new development that is 21.7% below a hypothetical BAU baseline will not interfere with California’s near-term emission reduction objectives. See Pub. Res. Code § 21082.2(c) (“[a]rgument, speculation, unsubstantiated opinion or narrative, [and] evidence which is clearly inaccurate or erroneous” does not constitute substantial evidence); see also *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal. App. 4th 1, 17 (“[C]onclusory statements do not fit the CEQA bill.”). By simply assuming that AB 32 emission reduction targets would be achieved because Project emissions are purportedly 25.3% below a hypothetical “business as usual,” the EIR’s significance criteria does not reflect “careful judgment . . . based to the extent possible on scientific and factual data.” Guidelines § 15064(b).

09-148

While it is important to assess the Project’s consistency with the goals of AB 32, to reduce statewide GHG emissions to 1990 levels by 2020 through maximum economically and technologically feasible measures without limiting economic growth (see Health & Saf. Code §§ 38501, 38550), the BAU approach is inappropriate for a proposed new development project. See CEQA Guidelines § 15064.4(b)(3)). Instead, the

09-149

⁶ As explained on its website, CAPCOA “is a non-profit association of the air pollution control officers from all 35 local air quality agencies throughout California. CAPCOA was formed in 1976 to promote clean air and to provide a forum for sharing of knowledge, experience, and information among the air quality regulatory agencies around the State.”

SHUTE, MIHALY
& WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 64

EIR should compare the Project’s projected emissions in 2020 with those in the Project area in 1990. *See* Exhibit 24 at 4.8-25 (SANDAG EIR taking this approach). If the projected emissions would exceed those in the Project area, this should be considered a significant impact. *See id.*

09-149
cont.

(b) The DEIR Fails to Properly Analyze Whether the Project Conflicts with Applicable Plans for GHG Reduction.

The DEIR recognizes CEQA’s mandate to evaluate whether the Project complies or conflicts with applicable plans and policies for GHG reduction. DEIR at 16-8 (citing CEQA Guidelines § 15064.4(b)(3)); *see also* Exhibit 23; Exhibit 20 at pp. 6-10. However, the DEIR fails to conduct the requisite analysis. Rather, it dubs the Project’s GHG impacts after 2020 as “potentially significant” and largely defers analysis to a later date. This approach is unacceptable. In addition to properly analyzing consistency with the reduction goals set under AB 32 as described above, the DEIR must analyze the Project’s consistency with the following plans and policies for GHG reduction:

09-150

- Sacramento Council of Government’s (“SACOG”) Metropolitan Transportation Plan/Sustainable Communities Strategy (“MTP/SCS”)
- Executive Order S-3-05
- Executive Order B-30-15

(i) The Metropolitan Transportation Plan/Sustainable Communities Strategy

SACOG’s MTP/SCS is an applicable plan for GHG reduction, and thus the DEIR must analyze the Project’s consistency with this plan. The MTP/SCS was adopted to comply with the requirements of SB 375 and covers the Project area. SB 375 sets regional reduction targets for 2020 and 2035, both of which would occur prior to full build-out of the Project. Furthermore, SMAQMD’s CEQA Guide specifically identifies the MTP/SCS as an applicable plan that should be analyzed in a CEQA analysis for a project. Exhibit 20 at pp. 6-10.

09-151

The DEIR recognizes the existence of the MTP/SCS and its target of 9 percent per capita reduction in vehicle emissions by 2020 and 16 percent per capita reduction by 2035, as compared to 2012 emissions. DEIR at 16-18. However, the DEIR claims “this

SHUTE, MIHALY
& WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 65

target cannot be directly translated into an overall threshold, given it is geared toward GHG emissions from transportation only.” *Id.* This is no reason not to address the Project’s consistency with the MTP/SCS. To begin, the DEIR could conservatively assume that the per capita reduction targets should apply to the Project as a whole, and determine whether the Project would meet these goals in 2020 and 2035. It is clear that the Project would not. Further, even if the DEIR focused on transportation-related GHG emissions, the analysis would be useful, as the DEIR estimates that vehicle trips account for 14,241 metric tons of the Project’s annual CO2 emissions, or over 31% of the Project’s total GHG emissions. This total is greatly underestimated (see discussion *infra*), but even so demonstrates the value in analyzing the necessary reduction in transportation emissions. Thus, the DEIR can and should analyze the Project’s consistency with the thresholds set in the MTP/SCS.

09-151
cont.

Additionally, the DEIR should analyze the Project’s inconsistency with the MTP/SCS’s plan for growth. As the DEIR acknowledges, the Project area is shown in the SCS as “Lands Not Identified for Development.” DEIR at 16-18. However, the DEIR fails to recognize this inconsistency as a significant impact. The MTP/SCS sets forth a regional plan for growth in order to meet its SB 375 GHG reduction targets. If the area grows in a way that is inconsistent with this Plan, such as if the County approves the proposed Project, the region may no longer be able to meet the targets. This would be a significant impact under CEQA. See CEQA Guidelines § 15064.4(b)(3); CEQA Guidelines Appendix G. The DEIR must provide the requisite analysis and mitigation for this potentially significant impact.

09-152

(ii) Executive Orders S-3-05 and B-30-15

Executive Order (“EO”) S-3-05 also sets forth state policy related to GHG reduction, including that it is the policy of the state to reduce GHG emissions to 80% below 1990 levels by 2050. EO B-30-15, signed by the Governor in 2015, establishes a new interim target to reduce GHG emissions by 40 percent below 1990 levels by 2030. The DEIR acknowledges EO S-3-05, but never analyzes the Project’s consistency with EO S-3-05, and does not mention EO B-30-15.

09-153

The DEIR claims it would be “speculative” to analyze consistency with long term goals. DEIR at 16-18. Yet, other agencies have been readily able to utilize the Executive Orders as thresholds of significance for long-term projects. For example, likely in response to a Court of Appeal decision on the subject, the San Diego Association of Governments (“SANDAG”) utilized the following threshold of significance in the EIR for its most recent Regional Transportation Plan/Sustainable Communities Strategy:

SHUTE, MIHALY
& WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 66

“GHG-4: Be inconsistent with the State’s ability to achieve the Executive Order B-30-15 and S-3-05 goals of reducing California’s GHG emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050.” Exhibit 24 at pp. 4.8-33; *see Cleveland National Forest Foundation v. SANDAG* (November 24, 2014) 180 Cal.Rptr.3d 548 (Review Granted, 343 P.3d 903).

The SANDAG RTP/SCS EIR evaluated the project’s impacts by calculating a 40 percent and 80 percent reduction from the region’s 1990 emissions and utilizing that as a target reference point for the RTP. It then compared the region’s expected GHG emissions in the years 2035 and 2050 to the emissions that would be necessary to meet the EO trajectories. It included charts showing that the Plan will not come close to meeting the EO goals. It concluded: “Because the total emissions in the San Diego region of 25.5 MMT CO₂e in 2035 would exceed the regional 2035 GHG reduction reference point of 14.5 MMT CO₂e (which is based on EO-B-30-15 and EO-S-3-05), the proposed Plan’s 2035 GHG emissions would be inconsistent with state’s ability to achieve the Executive Orders’ GHG reduction goals. Therefore, this impact (GHG-4) in the year 2035 is significant.” Exhibit 24 at pp. 4.8-34. It has a similar conclusion for the year 2050 goal. This analysis is easily adaptable to the proposed Project’s emissions.

09-153
cont.

The DEIR’s failure to compare the Project’s emissions—which would continue for decades if not in perpetuity—against long-term GHG emission reduction policies such as those in EO S-3-05 and B-30-15 is unlawful. While the DEIR recognizes it will likely be unable to meet future targets, it should not defer analysis and mitigation until a later date. The County has access to state-wide reduction goals, which reflect the levels that climate scientists have concluded are needed to provide a 50-50 chance of limiting global average temperature rise to 2°C above pre-industrial levels. The DEIR should reveal the severity of the impacts of adopting a long-term development plan that contravenes these reduction goals. In other words, the public should understand just how far the Project would set the area off course from state-wide reduction goals.

09-154

(c) The DEIR Underestimates the Project’s GHG Emissions.

As described in the comments on the DEIR’s traffic analysis (*see supra/infra*, Section I.B.4), as well as in the MRO Engineers’ Report, the DEIR does not accurately analyze the Project’s transportation impacts. It substantially underestimates the number of trips that would be generated by the Project because it relies on an incorrect methodology used to calculate trips that would be generated by the retail uses on the East Parcel, from the Project’s condo hotel uses, and from the Mountain Adventure Camp.

09-155

SHUTE, MIHALY
WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 67

The DEIR also substantially underestimates the Project’s increase in vehicle miles travelled (“VMT”). As the MRO Report explains, inaccurate trip generation figures necessarily result in inaccurate VMT estimates. The DEIR also appears to use unreasonably short trip lengths in its calculation of VMT. In addition, it appears that the DEIR only included VMT from the Project’s summer and winter trips, ignoring entirely the VMT that would be generated in spring and fall. DEIR at 10-15. *See* Exhibit 4. Because the DEIR underestimates vehicular trips and VMT, it also underestimates the Project’s transportation-related GHG emissions.

09-155
cont.

Finally, we can find no indication that the GHG emissions inventory includes emissions from air travel. Inasmuch as the applicant intends to ensure that Squaw Valley becomes a “world class” resort, it is likely that some percentage of visitors would arrive via air. The EIR must account for the emissions associated with this air travel.

09-156

The County must revise its GHG analysis to include an accurate and thorough accounting of the Project’s GHG emissions.

(d) The DEIR Fails to Analyze and Adopt All Feasible Mitigation.

Because the DEIR concludes that the Project’s GHG-related impacts will be less than significant in 2020, the DEIR does not recommend any immediate mitigation measures related to GHG impacts. Further, the DEIR punts on the issue of mitigation after 2020, finding it will only be necessary if a “comparison between No Action Taken and the subdivision as proposed scenarios” reveals that the Project does not achieve or exceed reduction targets. DEIR at 16-19. However, if the DEIR had utilized the proper thresholds as discussed above, it would demonstrate that the Project’s actual GHG emissions would cause a significant impact throughout the life of the Project, which should be mitigated in conjunction with Project approval. *See* Exhibit 20 at p. 6-10 (SMAQMD’s CEQA Guide stating, “[f]or projects that exceed the District’s threshold of significance, lead agencies shall implement all feasible mitigation to reduce GHG emissions.”). An agency may not defer mitigation except under specific circumstances not present here. Guidelines § 15126.4(a)(1)(B). Even if the DEIR could defer mitigation (which it can’t), the standard for future mitigation is not supportable because it uses the same flawed BAU approach as described above.

09-157

The County can and should adopt all feasible mitigation for the Project’s known and significant GHG impacts at the time of Project approval (if the Project is approved). The DEIR sets forth several mitigation measures, including making GHG policies in the

09-158

SHUTE, MIHALY
& WEINBERGER LLP

Maywan Krach
 July 16, 2015
 Page 68

Specific Plan mandatory rather than “encouraged” or otherwise optional. *See* DEIR at 16-19. The DEIR provides no rationale why this mitigation could not be adopted if/when the Project is approved, and there is none.

In addition, numerous agencies and organizations have documented other types of mitigation that are appropriate and feasible for residential and commercial development projects. The County should adopt all feasible mitigation to reduce the Project’s true GHG impacts. As just a few examples, the EIR should evaluate the following additional measures for the Project:

- Use low or zero-emission vehicles, including construction vehicles.
- Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading and waiting areas for ride sharing vehicles, and providing a web site or message board for coordinating rides.
- Create car sharing programs. Accommodations for such programs include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.
- Create local “light vehicle” networks, such as neighborhood electric vehicle (NEV) systems.
- Provide the necessary facilities and infrastructure to encourage the use of low or zero-emission vehicles (e.g., electric vehicle charging facilities and conveniently located alternative fueling stations
- Provide zero emission shuttle service to public transit and Project buildings/amenities.
- Provide public transit incentives such as free or low-cost monthly transit passes.
- Provide information on energy management services for large energy users.
- Install light emitting diodes (LEDs) for traffic, street and other outdoor lighting.
- Limit the hours of operation of outdoor lighting.

09-158
 cont.

SHUTE, MIHALY
 & WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 69

- Provide education on energy efficiency.
- Reduce the use of pavement and impermeable surfaces;

09-158
cont.

There are additional guidance documents that provide a full suite of GHG mitigation measures. The County must review and consider all of the measures listed in these documents in a recirculated EIR, and it must adopt all feasible measures in order to reduce the Project’s impacts to a level below significance, or as much as feasible:

- Governor’s Office of Planning and Research. 2008. Technical Advisory. CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, “Examples of GHG Reduction Measures.” Available: <http://www.opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf>.
- California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, “Mitigation Strategies for GHG.” Available: <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf>.
- California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.
- Attorney General of the State of California. 2008 (December). The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

09-159

These documents, in addition to lists of mitigation measures and design features maintained by other organizations cover a wide range of topics, including (1) land use, urban design, transportation measures; (2) shade and sequestration, including using trees to shade buildings; (3) energy conservation; (4) water Conservation; and (5) carbon offset credits. The County must consider all of these types of mitigation measures for the Project’s significant GHG impacts.

SHUTE, MIHALY
& WEINBERGER LLP

Maywan Krach
July 16, 2015
Page 70

Finally, when the County revises and recirculates the DEIR’s GHG impacts analysis, the revised document must also include a full comparison of the Project’s GHG-related impacts to the same impacts of the alternatives. When it does so, the County may be inclined to adopt an alternative with far less GHG emissions. This could have numerous benefits, including maintaining the character and values of this bucolic mountain community, reduced VMT (and concomitant reductions in not only GHG emissions, but also other air pollutant emissions), preservation of wildlife habitat, and less traffic on local and regional roads.

09-160

(e) The DEIR Fails to Adequately Examine the Effects of Climate Change on the Project.

The DEIR notes that climate science predicts a 25 to 40% decrease in snowpack in the Sierras by 2050 (not too long after anticipated Project buildout). DEIR at 16-2. *See also* Natural Resources Defense Council, *California Snowpack and the Drought Fact Sheet*, April 2014, attached as Exhibit 25. This could have drastic impacts for a residential and commercial development Project, the main objective of which is to be a world class ski resort. *Id.* at p. 3-7. Yet, the DEIR finds that there would be no significant impacts from climate change on the Project. There are several potential impacts that the DEIR fails to examine at all.

09-161

For example, as explained above regarding the DEIR’s failure to adequately evaluate the Project’s water supply and quality impacts, the DEIR and WSA fail to adequately account for the impacts of climate change on Squaw Creek and the Olympic Valley Groundwater Basin. As explained in the report from Dr. Tom Myers, climate change can drastically lengthen dry or no-recharge periods, thereby affecting the water supply of the aquifer, as well as Squaw Creek and wetlands in the area.

09-162

Further, the DEIR fails to acknowledge that if snowpack decreases by the anticipated amount, in order to maintain a viable ski operation, Squaw Valley would need to make much more of its own snow. Snow making requires energy and hence more potential GHG impacts. Snow making also requires water, which could result in additional significant water supply impacts. The DEIR must evaluate these issues and determine the extent of the potential environmental impacts from a potential 40% reduction in snow pack.

09-163

Reduced snow pack could also ultimately make skiing at Squaw Valley less desirable, and hence the Project less profitable and potentially the Project objectives less achievable. This outcome could affect the range of alternatives to be looked at, as well as

09-164

SHUTE, MIHALY
& WEINBERGER LLP