

**Department 29
Superior Court of California
County of Sacramento
720 Ninth Street
Timothy M. Frawley, Judge
Frank Temmerman, Clerk**

Hearing Held: Friday, October 23, 2009, 1:30 p.m.

<p>ROCKLIN RESIDENTS FOR RESPONSIBLE GROWTH</p> <p style="text-align: center;">v.</p> <p>CITY OF ROCKLIN, et al.</p> <hr/> <p>TOWN OF LOOMIS</p> <p style="text-align: center;">v.</p> <p>CITY OF ROCKLIN, et al.</p> <hr/> <p>ROCKLIN CROSSINGS, et al.</p>	<p>Case Number: 34-2008-80000236 [consolidated with Case No. 34-2009-00043599]</p>
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Proceedings: Petition for Writ of Mandate

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On October 23, 2009, the matters came on for hearing with counsel present as indicated on the record. The matters were argued and submitted. Subsequently, the Court requested and received supplemental briefing, and took the matter back under submission. Having taken the matters under submission, the Court now rules as follows:

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CONSOLIDATED RULING AFTER HEARING

Introduction

Petitioners Rocklin Residents for Responsible Growth ("Rocklin Residents") and Town of Loomis ("Loomis," and collectively with Rocklin Residents, "Petitioners") challenge Respondent City of Rocklin's (the "City's") approval and certification of the Final Environmental Impact Report ("EIR") for the Rocklin Crossings regional shopping center development project (the "Rocklin Crossings Project" or "Project"). Petitioners allege that the City's approval of the Project should be set aside because the City failed to comply with the substantive and procedural requirements of the California Environmental Quality Act ("CEQA").

For the reasons described below, the Court concludes that the inconsistency between the EIR's traffic and economic impacts (urban decay) analyses renders the EIR inadequate as an informational document. Accordingly, the Court shall grant the Rocklin Residents petition, in part, and issue a peremptory writ of mandate commanding the City to set aside its certification of the EIR for the proposed Project and all related Project approvals pending compliance with CEQA.

Background Facts and Procedure

The Rocklin Crossings Project consists of the construction of a regional shopping center on approximately 55 acres at the southeast corner of Interstate 80 and Sierra College Boulevard. The Project will consist of approximately 21 buildings totaling 543,500 square feet of commercial space with 2,463 parking stalls. A variety of retail uses are proposed for the shopping center, including two major "big box" tenants (expected to be a Wal-Mart Supercenter and a Home Depot), smaller retail tenants, and restaurants. The Project is anticipated to generate approximately 19,000 vehicle trips per day in the region.

The Project site is bordered on the northwest by Interstate 80, a 6-lane freeway. Directly to the east of the Project site is a parcel of approximately 57 acres which is the proposed site for a residential development consisting of approximately 179 single family units (the "Rocklin 60 Residential Development"). Immediately east of the Rocklin 60 Residential Development is a residential street, Dias Lane, which is within the Town of Loomis. Sierra College Boulevard, a major north-south arterial roadway, forms the western boundary of the Project site. Access to the Project would be provided via three locations on Sierra College Boulevard.

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The City has anticipated retail commercial development at the Project site for almost 30 years. The City zoned the majority of the property for retail commercial uses in May of 1979. Since that time, zoning maps for the property have reflected City's anticipation of retail commercial uses on the property.

On December 6, 2007, the City circulated a Draft Environmental Impact Report ("Draft EIR") for the Project. Rocklin Residents provided comments on the Draft EIR, asserting numerous alleged procedural and substantive inadequacies in the Draft EIR.

In April of 2008, the City issued its Final EIR for the Project, which included responses to public comments.

On May 27, 2008, the City Council held a public hearing on the Project. Rocklin Residents and Loomis both presented comments on the Final EIR in letters dated May 27, 2008, raising additional objections to the City's environmental review.

The City did not certify the Final EIR or approve the Project at its meeting on May 27, 2008. Instead, the City decided to recirculate portions of the Draft EIR related to traffic and circulation.

In August of 2008, the City released for public review the Partially Recirculated Draft EIR, which included a revised traffic analysis and revised cumulative and growth-inducing impact analysis. Loomis provided comments on the Partially Recirculated Draft EIR.

On November 13, 2008, the City issued a Supplement to the Final EIR, which responded to public comments on the Partially Recirculated Draft EIR.

On November 25, 2008, the City Council held another public hearing on the Project. At the close of the public comment period on November 25, the City Council certified the Final EIR and approved the Project. The City filed a Notice of Determination with the Placer County Clerk on November 26, 2008.

Two lawsuits followed: one by Rocklin Residents and the other by Loomis. The parties stipulated to consolidate the two cases for purposes of trial and to have them transferred from Placer to Sacramento County Superior Court.

Summary of Petitioners' Arguments

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Petitioner Rocklin Residents contends the Final EIR for the Project violates CEQA because (1) it excludes the Clover Valley development project from the analysis of the Project's traffic impacts; (2) its traffic analysis and its economic impacts (urban decay) analysis are inconsistent and contradictory; and (3) its urban decay analysis is inadequate and the City's corresponding findings that the Project would not result in urban decay impacts are not supported by substantial evidence and were procedurally improper because the City failed to account for the profound economic downturn that occurred in the second half of 2008.

Petitioner Loomis contends the Final EIR violates CEQA because (1) it fails to adequately analyze the Project's impacts to Global Warming, traffic, air quality, noise, and urban decay in surrounding communities; and (2) the range of project alternatives evaluated in the Final EIR was unreasonable and insufficient to allow informed decisionmaking and informed public participation.

Standard of Review

In a mandate proceeding to review an agency's decision for compliance with CEQA, the court reviews the administrative record to determine whether the agency abused its discretion. Abuse of discretion is shown if the agency has not proceeded in the manner required by law, or the determination is not supported by substantial evidence. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1106.) Judicial review differs significantly depending on whether the claim is predominantly one of improper procedure or a dispute over the facts. (*Ebbets Pass Forest Watch v. California Dept. of Forestry & Fire Prot.* (2008) 43 Cal.4th 936, 945.)

Where the alleged defect is that the agency has failed to proceed in the manner required by law, the court's review is de novo. (*Id.*) A failure to comply with the requirements of CEQA which results in an omission of information necessary to informed decisionmaking and informed public participation constitutes a prejudicial abuse of discretion, regardless whether a different outcome would have resulted if the agency had complied with the disclosure requirements. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198; *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392.)

Where the alleged defect is that the agency's factual conclusions are not supported by substantial evidence, the reviewing court must accord deference to the agency's factual conclusions. The reviewing court may not weigh conflicting evidence to determine who has the better argument and must resolve all reasonable doubts in favor of the administrative decision. The court may not set

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aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. (*Ebbets Pass, supra*, at p.945; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

Regardless of what is alleged, an EIR approved by a governmental agency is presumed legally adequate, and the party challenging the EIR has the burden of showing otherwise. (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 158; *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 919.)

Motion to Augment and Request for Judicial Notice

The motion of Real Parties in Interest Rocklin Crossings, LLC, Rocklin Holdings, LLC, and Wal-Mart Stores, Inc. to augment the Administrative Record ("AR") with the email correspondence between David Mohlenbrook and Pritam Deshmukh (dated June 12, 2008) is granted.

Respondents' request that the Court take judicial notice of the proposed amendments to the CEQA Guidelines for the mitigation of greenhouse gas emissions is denied, as not relevant.

Discussion

A. Rocklin Residents' Challenges to the EIR

1. The Adequacy and Scope of the Project's Cumulative Traffic Impacts Analysis

Rocklin Residents claims that the City has violated CEQA's procedural information disclosure mandate by failing to include the Clover Valley development project in the EIR's analysis of cumulative traffic impacts.

The City approved the Clover Valley project in August of 2007, one year prior to the release of its Partially Recirculated Draft EIR, which included the City's revised traffic analysis and revised cumulative and growth-inducing impact analysis. In connection with the Clover Valley project, the City amended its General Plan circulation element to contain a new regional east-west roadway connecting Highway 65 at Whitney Ranch Parkway to Sierra College Boulevard north of the Town of Loomis ("Valley View Parkway"). (See AR 5980-5986, 6008.) According to the Clover Valley EIR, the Clover Valley project will generate approximately 6,900 vehicle trips in the region per day. (AR 6006-

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6007.) Rocklin Residents contends that the City violated CEQA's information disclosure requirements by failing to disclose and analyze the ways in which the Clover Valley project, and its establishment of a new east-west regional connector road (Valley View Parkway), may contribute to a cumulatively considerable traffic impact.

Respondent City and Real Parties in Interest Rocklin Crossings, LLC, Rocklin Holdings, LLC, and Wal-Mart Stores, Inc. (hereinafter collectively referred to as "Respondents") jointly oppose the relief requested by Petitioners. Respondents contend that no prejudicial abuse of discretion has occurred in this case because substantial evidence shows that the traffic impacts associated with the Clover Valley project (and the associated Valley View Parkway) were adequately addressed in the EIR's cumulative traffic analysis. Even if the Clover Valley project was not mentioned specifically by name in the EIR's "cumulative projects" list, Respondents contend that the traffic impacts associated with the Clover Valley project were considered in the EIR's cumulative impacts analysis because the Clover Valley project was included in the City's General Plan traffic projections.

The Administrative Record shows that the traffic impacts associated with the Clover Valley project (and Valley View Parkway) were taken into account in the City's cumulative traffic analysis.

Rocklin Residents argues that the Clover Valley project's traffic impacts were not considered because the Clover Valley project was not specifically mentioned in any of the EIR's lists of other approved projects. (See, e.g. AR 2210-2211, 2240, 2495-2524.) However, the City's cumulative impacts analysis did not rely exclusively on the "list" approach to analyzing cumulative impacts. In addition to the "list" approach, the City also relied on a summary of projections contained in its adopted General Plan (i.e., the "summary" approach). (See AR 928, 2237; see also Cal. Code of Regs., title 14 (hereinafter "CEQA Guidelines"), section 15130(b)(1).) As a result, the EIR not only includes a specific list of probable future projects producing related or cumulative impacts, but also takes into account the anticipated traffic growth based on the land use and circulation system included in the City's adopted General Plan.¹ (See AR 2240, 3158.)

¹ Notwithstanding the language in the Guidelines suggesting that an adequate discussion of significant cumulative impacts must be based on *either* the list approach *or* the summary approach, the Court finds nothing improper about the concurrent use of both approaches. (See *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 632-633 [concluding the Guidelines are not strict standards which require a rigid and precise application, but rather are general indications or outlines allowing for flexibility of action and conduct of governmental agencies faced with complex and difficult decisions].)

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The City's General Plan traffic model takes into account anticipated traffic growth based on new development in the region, including Lincoln, Roseville, Penryn, Loomis, Rocklin, and unincorporated Placer County. (AR 2240, 3158.) In this manner, the Clover Valley development project and Valley View Parkway were considered in the City's cumulative traffic impacts analysis, even if not specifically mentioned by name in the "list" of specific land use projects considered. (AR 3161, 5657, 5747, 6018.)

As Rocklin Residents concedes, the City was not required to include the Clover Valley project in the list of "approved" projects forming the basis of the "Existing Plus Approved Projects" baseline of existing environmental conditions. (See AR 2208, 2495-2524, 3158-3159, 5747; CEQA Guidelines, section 15125(a) ["An EIR must include a description of the physical environmental conditions in the vicinity of the project, *as they exist at the time the notice of preparation is published.*"] (emphasis added).)

Nor was the City required to issue a new Notice of Preparation to update the baseline conditions when the traffic sections of the Draft EIR were revised and recirculated. (Compare CEQA Guidelines, sections 15375 and 15082, with sections 15088.5 and 15087.)

The only remaining question, therefore, is whether the failure to explicitly disclose and discuss the effects that Valley View Parkway will have on future regional traffic patterns rendered the EIR inadequate as an informational document.

In reviewing the sufficiency of the information disclosed in an EIR, the CEQA Guidelines provide that an EIR should be prepared with "a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." (CEQA Guidelines, section 15151.) An evaluation of the environmental effects of a proposed project need not be exhaustive. (*Id.*) The sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. (*Id.*) Courts look not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. (*Id.*; *Gilroy Citizens for Responsible Planning, supra*, 140 Cal.App.4th at p.919.)

The absence of information in an EIR does not *per se* constitute a prejudicial abuse of discretion. (Cal. Pub. Res. Code § 21005; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.) A prejudicial abuse of discretion occurs only if the failure to include relevant information precludes

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informed decisionmaking and informed public participation. (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p.1198.)

It follows that the question presented here is whether the absence of any discussion of Valley View Parkway precluded informed decisionmaking and informed public participation in regard to the Rocklin Crossings Project. Based on the location of the proposed Valley View Parkway in relation to the Project, and the Project's projected trip distributions, among other things, the Court concludes it did not. (AR 2210, 6008.) Accordingly, Rocklin Residents' claim regarding the adequacy and scope of the Project's cumulative traffic impacts analysis is denied.

2. The Alleged Inconsistency of the EIR's Traffic and Economic Impacts (Urban Decay) Analyses.

Rocklin Residents next alleges that the EIR is defective because the EIR's traffic analysis and economic impacts (urban decay) analysis are factually inconsistent in that the EIR's discussion of the "market area" that will be served by the Project contradicts the EIR's traffic distribution calculations.

Respondents do not dispute that the methodologies used for the traffic and economic analyses are different, but Respondents deny this is improper.² Respondents argue that the lead agency is afforded substantial discretion in determining how to evaluate a particular impact, and that challenges to the scope or methodology employed must be rejected if the agency's reasons for proceeding as it did are supported by substantial evidence. Respondents contend that the traffic study and economic impact analysis are each supported by substantial evidence and therefore each is independently adequate.

Respondents are correct that a reviewing court does not have the duty of independently judging the validity of conclusions expressed in an EIR. On the other hand, a court is not required to uncritically accept every study or analysis presented in support of an EIR. The relevant issue is whether the studies are sufficiently credible and reliable to be considered as part of the total evidence that supports the EIR's findings. (*Laurel Heights Improvement Assn. v. Regents of University of California* ["*Laurel Heights I*"] (1988) 47 Cal.3d 376, 409.) A clearly inadequate or unsupported study is entitled to no judicial deference. (*Laurel Heights I, supra*, at p.409 n.12; *Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p.1212 n.8.)

² Although the City argues that consistency between analyses is not required, it is noteworthy that the EIR discusses the consistency of the economic impacts analysis with the Global Warming analysis. (See AR 2316.)

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Further, an inconsistency in an EIR may render the EIR inadequate as an informational document. (See *Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p.1198 [EIR must include detail sufficient to enable those who did not participate in its preparation to understand and meaningfully consider the issues raised by the project].)

The fundamental purpose of an EIR is to provide public agencies and the public with information about the effects which a proposed project is likely to have on the environment. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 660; see also *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1449 [purpose of EIR is to serve as "environmental alarm bell" alerting the public and its responsible officials to environmental changes before they reach ecological points of no return].) Only through an accurate view of the project may the public and public agencies balance the proposed project's benefits against its environmental costs, consider appropriate mitigation measures, and properly weigh the alternatives. (*San Joaquin Raptor Rescue Center, supra*, at p.655; see also *Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p.1198 [an EIR must include detail sufficient to enable those who did not participate in its preparation to understand and meaningfully consider the issues raised by the project].)

If an EIR, on its face, contains substantial contradictions and inconsistencies, meaningful public participation is stultified. Rather than bringing clarity to the project, the EIR only fosters confusion, thwarting its purpose to alert the public and its responsible officials to environmental changes before they reach ecological points of no return. (See *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1449; *San Joaquin Raptor Rescue Center, supra*, at pp.656-657.)

Thus, where an EIR contains substantial inconsistencies regarding the scope, magnitude, or effects of the proposed project, the discrepancy must be explained and the agency's reason for proceeding as it did must be supported by substantial evidence. (See *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259 [determinations as to scope or methodology of analysis must be supported by substantial evidence]; *Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p.1198 [same]; see also *San Joaquin Raptor Rescue Center, supra*, at p.667 [in case of disagreement among experts, EIR must summarize main points of disagreement and explain

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the agency's reasons for accepting one set of judgments instead of another.]
Otherwise, the EIR may be found inadequate.³

In this case, Respondents concede the traffic and economic analyses are based on different assumptions, but deny that the analyses are inconsistent. The Court does not agree.

The Court is persuaded that there is a substantial inconsistency between the Draft EIR's discussion of the "market area" that will be served by the Project and the (revised) Draft EIR's traffic distribution calculations. Whereas the Draft EIR's market area study essentially concludes that the Project is not expected to generate significant sales from Roseville shoppers, the traffic study nevertheless assumes that significant amounts of the Project-related traffic (approximately 40%) will travel on Interstate 80 to/from the direction of Roseville. (AR 780, 2196-2199, 2210, 2219-2220, 5972-5975; *see also* AR 925.)

Respondents contend that Rocklin Residents is mischaracterizing the traffic study. According to Respondents, the traffic study does not conclude that 40% of the Project traffic will originate in Roseville; it merely states that approximately 40% of the Project traffic will come or go along the I-80 corridor from the *direction* of Roseville. Because the Rocklin city limit extends two miles southwest of Rocklin Road, Respondents argue the traffic study is not inconsistent with the economic study's definition of the market area from which most of the Project's potential customers would be drawn.

Respondents contend the analyses simply show that a significant percentage of the Project-generated trips will be residents of Rocklin traveling to the Project (along the I-80 corridor) from the direction of Roseville.

The flaw in this argument is that it contradicts the fundamental premise of the economic analysis, which is that patrons are unlikely to travel to the Project to visit Wal-Mart or Home Depot if they already have the same or similar stores nearby in Roseville. To reconcile the economic and traffic analyses, the Court would have to accept the premise that residents of Roseville are unlikely to travel to the Project if they have the same or similar stores nearby, but that the same is

³ This is not to say that experts in different disciplines cannot employ different assumptions in their methodologies to ensure "conservative" results. Respondents' hypothetical about using different assumptions for "water supply planning purposes" and "flood control planning purposes" is unobjectionable as far as it goes, but it is not analogous to the situation here. A more fitting hypothetical might be an agency assuming a project will include a sound wall for purposes of analyzing noise impacts, but assuming the project will not include a sound wall for purposes of analyzing aesthetic impacts.

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not true for residents of Rocklin. In other words, the Court would have to accept that Rocklin residents will bypass the existing retail outlets (which include Wal-Mart, Home Depot, and Lowe's) located along the I-80 corridor in Roseville and travel several additional miles to visit the same or similar stores at the Project in Rocklin. This is an untenable position.

It thus becomes clear that there is a substantial inconsistency between the Draft EIR's discussion of the market area that will be served by the Project and the Draft EIR's traffic distribution calculations. Based on the Draft EIR's market area analysis, one would expect only a small percentage of the Project's patrons to travel to/from the Project along the I-80 corridor from points southwest of Rocklin Road – because these shoppers already have "the same or similar stores nearby" in Roseville. However, the Draft EIR's traffic distribution analysis concludes that approximately 40% of the vehicle trips to/from the Project will travel on I-80 southwest of Rocklin Road. The traffic distribution analysis is, therefore, inconsistent with the market area study's conclusion that shoppers will not bypass the same or similar stores in Roseville to visit the Project.

The City's reasons for proceeding as it did are not adequately explained in the EIR or supported by substantial evidence.

Respondents have attempted to defend this discrepancy (after-the-fact) by asserting that the economic impacts analysis focused only on the draw of the Project's big box anchor stores while the traffic analysis analyzed the impacts of traffic drawn by the entire shopping center. There are two problems with this argument.

First, it is not true that the economic impacts analysis was focused only on the draw of the big box anchor stores. The purpose of the study was to assess the economic impact of the entirety of the proposed "Rocklin Crossings Shopping Center." (AR 1079, 1085.)

Second, in performing its economic impacts analysis, the City assumed the big box anchor stores would be the "primary draw" to the Project. (AR 1088.) If approximately 40% of the Project's traffic is generated by the non-anchor tenants, the City unreasonably limited the scope of its analysis of the Project's potential to cause urban decay in Roseville.

Respondents also attempt to explain the discrepancy as an anomaly resulting from the fact that the economic analysis focused on shopping center patrons while the traffic analysis considered trips attributable to a variety of shopping

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center visitors, including employees and vendors.⁴ This argument too lacks merit. Even if all of the Project's vendors and employees were traveling to the Project from the direction of Roseville, there is nothing in the record to support a finding that nearly 40% of the Project's trips can be attributed to employees and vendors. This is no surprise since the suggestion that 40% of a regional shopping center's traffic is attributable to employees and vendors defies credulity.

The Court concludes, therefore, that the traffic distribution analysis is inconsistent with the economic analysis. Based on the evidence in the record, it appears to this Court that the economic analysis is supported by substantial evidence whereas the traffic analysis is not, but for purposes of this writ petition, it is sufficient to find that the two analyses have irreconcilable inconsistencies that render the EIR inadequate as an informational document.

By relying on inconsistent analyses, the EIR either has understated the amount of traffic that will be using roadways within the Project's market area, or it has improperly excluded consideration of the Project's potential to cause urban decay outside the Project's market area. If the EIR's discussion of the "market area" is correct, then, by distributing the Project's traffic to areas outside the Project's market area, the EIR has understated potentially significant traffic impacts at intersections within the Project's "market area." If, on the other hand, the EIR's traffic distribution analysis is correct, then the EIR's economic analysis has understated the potential economic impacts (and therefore potential urban decay) at existing retail stores along the I-80 corridor. In either case, the City's EIR has failed to include sufficient information to enable those who did not participate in its preparation to understand and meaningfully consider the environmental issues raised by the Project. (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p.1198.) Accordingly, the EIR is inadequate.

3. The Adequacy of the Urban Decay Analysis

In addition to challenging the inconsistencies between the EIR's traffic and economic impacts (urban decay) analyses, Rocklin Residents alleges that the EIR's urban decay analysis is inadequate because (1) it contains no mitigation of retail impacts exceeding the specified 5% threshold of significance for urban decay environmental impacts; (2) the City employed the wrong legal standard in

⁴ In their Supplemental Brief, Respondents appear to include "pass-by trips" in this list, suggesting the economic study made no attempt to address visits attributable to pass-by trips. This is not correct. The economic study explicitly considered "tertiary demand", which it defined as demand originating from locations outside the primary and secondary market area, and concluded that such demand would represent less than 5% of the sales generated at the Project. (See AR 1079.)

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asserting that it owed no duty to analyze urban decay impacts absent a showing that such impacts "necessarily" will occur; and (3) the City failed to disclose and account for the profound changes in the national and regional economies that occurred between the time the City released its Final EIR in April of 2008, and its certification of the EIR in November of 2008.

Contrary to what Rocklin Residents contends, the Final EIR does not state that a 5% sales diversion should be considered significant for purposes of its urban decay environmental analysis. Rather, the 5% sales diversion figure was selected to identify significant *economic* impacts. If the Project was expected to exceed the 5% sales diversion figure, the City asked two questions: 1) would the Project result in sales losses sufficiently large to cause stores to close, and, if so, 2) would the closed stores remain vacant long enough to create physical changes that could be defined as urban decay. The EIR concluded that while the Project would result in some diverted sales, and closures of some primary market area stores may occur, these events are not expected to result in urban decay. (AR 927.) The Final EIR further concluded that while the Project will likely result in diverted sales in excess of 5% for Roseville big box retailers, the Project is unlikely to cause the closure of any big box stores in Roseville and, even if it did, such closures are unlikely to result in urban decay. (See AR 1952-1955, 4786-4792, 5592-5599.) Because the EIR does not state that a 5% sales diversion should be considered significant, the City was not required to identify feasible alternatives or mitigation measures to avoid or lessen such effects.

Neither did the City employ an improper legal standard in concluding that the Project would not result in urban decay impacts. The City's economic consultant did not state that it owed no duty to analyze urban decay impacts absent a showing that such impacts "necessarily" will occur. Rather, his point was that diverted sales do not "necessarily" cause store closures, and that store closures do not "necessarily" cause urban decay. Such a statement is consistent with CEQA case law relating to analysis of economic impacts that could result in urban decay. (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at pp.1205-1207 [proposed new shopping centers do not trigger conclusive presumption of urban decay]; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019-1020 [question under CEQA is not whether a project will affect particular persons, but whether it will produce changes in the physical environment]; see also *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1182-1186 [substantial evidence supports City's conclusion that urban decay was speculative and thus City was not obligated to further analyze the issue]; CEQA Guidelines §§ 15064(e) and (f)(6), 15131(a).)

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The City also did not violate CEQA by failing to prepare and circulate a revised economic impact/urban decay analysis to account for the changes in economic conditions in the second half of 2008. A lead agency is required to recirculate an EIR prior to certification only when "significant new information" shows the project will have new or more severe adverse effects on the environment that were not previously disclosed in the EIR. (See *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* ["*Laurel Heights II*"] (1993) 6 Cal.4th 1112, 1127; *Federation of Hillside Canyon Assocs. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259.) New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project's proponents have declined to implement. (CEQA Guidelines § 15088.5.) In this case, the deteriorating economy was certainly significant from an economic standpoint, but there is substantial evidence in the record to support the City's determination that the deteriorating economy would not cause new or more severe *environmental* impacts triggering an obligation to recirculate the EIR. (See AR 5596-5599.)

B. Loomis' Challenges to the EIR

1. Adequacy of the EIR's Analysis of Cumulative Global Warming Impacts

Loomis alleges that the City violated CEQA because the EIR did not identify or quantify a significance threshold for greenhouse gas (GHG) emissions.⁵ This claim is rejected. The EIR's analysis of the Project's contribution and impacts to Global Warming is adequate and is supported by substantial evidence.

CEQA permits an agency to develop a threshold of significance for a particular impact. (See *Nat'l Parks & Conservation Ass'n v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1356.) Nothing in CEQA requires that a significance threshold be quantitative. (CEQA Guidelines § 15064.7 ["A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect."])

In this case, because of the challenges associated with determining a proper quantitative threshold, the City chose to use a qualitative threshold of significance for GHG emissions. The City determined that the Project's potential

⁵ To the extent Loomis alleges that the City also violated CEQA by failing to quantify the Project's GHG emissions, such claim is rejected. As Loomis concedes in its Opening Brief, the City did quantify the Project's GHG emissions. (See Opening Brief, p. 15; see also AR 992-995, 3142.)

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for creating an impact on Global Warming should be based on a comparative qualitative analysis of the Project against the GHG emission reduction strategies contained in the California Climate Action Team ("CAT") Report to the Governor. (AR 993, 3142-3143.) The City determined that if the Project was determined to be compatible or consistent with the CAT strategies, the Project's cumulative contribution to Global Warming would be considered less than significant. If the Project was not compatible or consistent with those strategies, the Project could potentially be deemed to have a significant impact on Global Warming. (AR 993, 3142.)

Using the Project's CO₂ emissions as a proxy for all GHG emissions, the EIR modeled CO₂ emissions associated with Project construction and operation. (AR 992, 995, 2315-2316.) The EIR then included a six and a half page table describing the CAT strategies and evaluating the Project's consistency with such strategies. The EIR concludes that the Project would be substantially consistent with the emission reduction strategies contained in the CAT Report and, therefore, the Project's Global Warming impacts were found to be less than significant. (AR 996-1003.)

The City explained its rationale for employing a qualitative threshold for analyzing GHG emissions. In short, the City determined that although it is possible to estimate a project's incremental contribution of CO₂ into the atmosphere, it is generally not possible to determine whether or how an individual project's incremental contribution of CO₂ might translate into physical effects on the environment. (AR 991.) The City's determination is supported by substantial evidence in the record. (AR 982, 991, 3185-3186.)

2. Adequacy of the EIR's Analysis of Cumulative Traffic Impacts

Loomis alleges that the EIR's analysis of the Project's cumulative traffic impacts is inadequate because the City adopted an arbitrary threshold of significance for intersections already operating at an unacceptable Level of Service ("LOS").

The City's EIR provides that the City strives to maintain a minimum LOS of "C" for all streets and intersections, except intersections located within one-half mile from direct access to an interstate freeway, where an LOS of "D" is acceptable. According to the City's General Plan Circulation Element, mitigation is required for any intersection or roadway segment where project traffic will cause the intersection to deteriorate from a satisfactory LOS to an unsatisfactory LOS. (AR 2194.) The City did not have an adopted criterion that defines a significant impact at an intersection or roadway segment already operating at an unacceptable LOS, so criterion were adopted for purposes of the EIR. The City

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determined that a 5% threshold of significance would be appropriate. If an intersection or roadway segment was already operating at an unsatisfactory LOS, an increase of 5% to the volume-to-capacity ratio would be considered a significant impact. (AR 2194.)

Loomis alleges the 5% threshold, which is applied across the board, regardless of whether the current LOS is "D," "E," or "F," is not supported by substantial evidence and is contrary to the general rule that "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution . . . as significant." (See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120.)

Loomis' claims are rejected. The City's five percent threshold of significance for roadways and intersections that already operate at an unacceptable LOS (i.e., LOS "D," "E," or "F") is supported by substantial evidence in the record. (AR 2194, 3139.) The City relied on the expert views of the City's staff and consultants to determine that 5% degradation is significant because it would be "noticeable to the average driver." (AR 3139; see also AR 6634.)

Because the City's threshold of significance is reasonable and supported by substantial evidence, nothing in CEQA precludes the City from applying its threshold of significance across the board to intersections already operating at an unacceptable LOS. In essence, the City determined that regardless of whether the existing LOS is D, E, or F, unless there is an increase of at least five percent, the increase generally will go unnoticed, and therefore will not be significant.

The opinions in *Communities for a Better Environment* and *Kings County Farm Bureau* are addressing a different issue -- namely, the "comparative" approach for assessing whether a proposed project's incremental effects should be considered cumulatively considerable -- and do not compel a different result. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721.) There is nothing in the *Kings County* or the *Communities for a Better Environment* decisions to suggest CEQA requires an agency to adjust its threshold of significance on an intersection-by-intersection basis. Of course, an agency's decision to apply the same threshold of significance to intersections with different existing (unacceptable) levels of service must be reasonable and supported by substantial evidence, but, as described above, the City's decision meets this requirement.

3. Adequacy of the EIR's Analysis of Cumulative Air Quality Impacts

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Loomis alleges that the City's EIR fails to adequately address the Project's cumulative impacts on air quality. Specifically, Loomis contends the EIR's conclusion that short-term, construction-generated PM₁₀ emissions have been reduced to "less than significant" levels by the incorporation of Mitigation Measure 4.3-1 is unsupported by substantial evidence, and alleges that the EIR is therefore inadequate.

While the EIR's discussion of Mitigation Measure 4.3-1 is not perfect, perfection is not required. (CEQA Guidelines § 15151; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 713 [courts look not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure].) The EIR's discussion of Mitigation Measure 4.3-1 is adequate, and the City's conclusion that compliance with the Placer County Air Pollution Control District's pollution control measures would reduce the worst-case fugitive PM₁₀ dust emissions by a minimum of 50% is supported by substantial evidence in the record. (AR 1950-1951; see also AR 822, 824, 829-832; *Gilroy Citizens for Responsible Planning, supra*, 140 Cal.App.4th at p.918.)

4. Adequacy of the EIR's Analysis of Noise Impacts

Loomis alleges that the EIR failed to adequately analyze the Project's noise impacts because no noise measurements were taken within the vicinity of existing residences on Dias Lane within the Town of Loomis.

Loomis' contention that the EIR could not adequately assess the Project's noise impacts without taking measurements on Dias Lane lacks merit. The EIR includes an extensive analysis of noise impacts on adjacent neighborhoods, which study is adequate for predicting noise impacts in the vicinity of Dias Lane in Loomis. The noise study included an assessment of the Project's potential noise impacts on the proposed Rocklin 60 Residential Development project, which is to be constructed on the adjacent property immediately to the east of the Project site. Dias Lane is located to the east of the Rocklin 60 project. After mitigation, the EIR determined that noise impacts at the Rocklin 60 project site would be less than significant. Due to standard reduction of sound with distance, noise levels at residences even farther to the east, such as the residences on Dias Lane, would be even lower than at the Rocklin 60 site. Thus, the EIR's noise analysis was adequate to evaluate the Project's noise impacts on Dias Lane. (See AR 837-857, 1266-1302, 1636, 1653, 1714, 1721, 4816-4817.)

5. Adequacy of the EIR's Analysis of Urban Decay Impacts

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Like Rocklin Residents, Loomis also challenges the adequacy of the EIR's economic impacts (urban decay) analysis. Loomis contends that the EIR's urban decay analysis does not adequately address the economic impacts to (and potential for urban decay in) Loomis. Loomis further contends that the methodology relied upon by the City's economic consultant (CBRE) contains serious flaws as CBRE failed to recognize that new households (particularly those formed between 2000 and 2009) are on average more affluent than established households.

The Court rejects Loomis' separate challenges to the scope of the EIR's urban decay analysis. The EIR's urban decay analysis includes Loomis within the primary market area for the Project and adequately addresses the Project's potential urban decay impacts in Loomis.⁶ (AR 925-927, 1088, 1097, 1099-1100, 1103-1104, 1114, 4789-4790.)

In regard to Loomis' challenges to the methodology relied upon by CBRE, this dispute is nothing more than a disagreement among experts regarding the methodology for studying urban decay and the reliability and accuracy of the data underlying CBRE's analysis.

Because these determinations are based on factual issues, the question for a reviewing court is limited to whether the agency's reasons for proceeding as it did are supported by substantial evidence. (See *Federation of Hillside & Canyon Associations, supra*, 83 Cal.App.4th at p.1259.) Where there is conflicting evidence and conflicting opinion, an agency is entitled to choose to believe one side more than the other. (*Browning-Ferris Indus. v. City Council* (1986) 181 Cal.App.3d 852, 863.) Disagreement among experts does not make an EIR inadequate. (CEQA Guidelines § 15151; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413.)

In summary, even if the Court were to find the analysis of Applied Development Economics ("ADE") more persuasive, it would be unavailing to the Town of Loomis here because a reviewing court may not weigh conflicting evidence to determine who has the better argument. The reviewing court must resolve all reasonable doubts in favor of the administrative decision. The only relevant issue is whether the City's reasons for proceeding as it did are based on substantial evidence. In regard to this issue, the Court concludes that they are.

⁶ To the extent Loomis is contending that the EIR was required to analyze the impact of the Project on the Town of Loomis' sales tax revenue, such contention is flatly rejected. (See CEQA Guidelines § 15064(d), 15064(f)(6), 15131(a); see also *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1185-1186 [substantial evidence supports conclusion that urban decay is speculative and agency was not obligated to further analyze it].)

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6. Adequacy of the EIR's Alternatives Analysis

Loomis alleges that the EIR's alternatives analysis is legally inadequate because it failed to include a "Reduced Operating Hours" alternative to the Project.

CEQA requires an EIR to consider and analyze project alternatives that would reduce adverse environmental impacts. (*Citizens of Goleta Valley v. Bd. of Supervisors* [hereafter "*Goleta I*"] (1990) 52 Cal.3d 553, 564.)

There is, however, no ironclad rule governing the range of alternatives to be analyzed in an EIR. (CEQA Guidelines § 15126.6(a).) Rather, the range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. (CEQA Guidelines § 15126.6(f).) Each case must be evaluated on its facts. (*Goleta II, supra*, at p.566.) The key issue is whether the selection and discussion of alternatives fosters informed decisionmaking and informed public participation. (See *Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143, 1150-1151.)

In this case, in addition to the required "No Project" alternative, the City's EIR discussed five alternatives to the proposed Project: a "Reduced Size" alternative, a "Building Realignment" alternative, and three different "Offsite" alternatives. (AR 1006-1029.)

The "Reduced Size" alternative consisted of a 50% reduction in the Project's proposed square footage (to approximately 272,000 square feet) and the elimination of one of the two primary anchor tenants. The total developed area would be reduced to approximately 35 acres. (AR 1009.) The EIR identifies the "Reduced Size" alternative as an environmentally superior alternative, but because this alternative would create a much smaller shopping center, the EIR concludes that this alternative would conflict with the objectives of developing a regional shopping destination with two major anchor tenants to maximize the economic benefit to the City. (See AR 1013; see also AR 666 [describing Project objectives].)

The "Building Realignment" alternative includes the same total building square footage as the proposed Project, but realigns the buildings on the Project site so as to relocate the loading dock areas away from the eastern site boundary. (AR 1014.) The EIR concludes that this alternative generally would have the same impacts as the proposed Project, except that its aesthetic/visual resource impacts would be more adverse and the anticipated operational noise impacts for

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existing and future residents to the east of the Project site would be reduced to a less-than-significant level. The EIR also concludes that this alternative would directly conflict with the Project objective of providing a shopping facility that maximizes visibility from Interstate 80. (AR 1017; see also AR 666.)

All three "Offsite" alternatives consider moving the Project to alternative locations within the same general vicinity as the Project site. (AR 1017, 1020, 1024.) All three alternatives were assumed to include roughly the same building square footage as the proposed Project. (*Id.*) The EIR concluded that some environmental impacts would be increased and some would be decreased, depending on the location. (AR 1020, 1024, 1028.) The EIR concluded that "Offsite Alternative #1" would meet the objectives of the proposed Project, but that the site is not likely to be feasible. (AR 1020.) The EIR concluded that "Offsite Alternative #2" would generally meet the objectives of the Project, but not as effectively as the Project. The EIR also concluded that "Offsite Alternative #2" would conflict with the objective of developing regional shopping facilities on commercially-designated land within the City, and noted that the alternative site may not be feasible. (AR 1024.) The EIR concluded that "Offsite Alternative #3" would conflict with the objectives of developing regional shopping facilities on commercially-designated land within the City and constructing a facility near a major freeway interchange, and noted that the alternative site may not be feasible. (AR 1028.)

Loomis does not challenge the EIR's discussion of the alternatives that were considered in the EIR. Instead, Loomis contends the City violated CEQA by failing to also consider in-depth a "Reduced Operating Hours" alternative to the proposed Project. Although a close question, the Court finds the City's alternatives analysis to be adequate.

An EIR need not consider every conceivable alternative to a project. (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491; *Village Laguna of Laguna Beach, Inc. v. Bd. of Supervisors* (1982) 134 Cal.App.3d 1022, 1029.) Rather, it must consider a reasonable range of potentially feasible alternatives sufficient to foster informed decisionmaking and public participation. In this case, the Court finds that a reasonable range of alternatives was considered in the City's EIR. Nothing more was required. The "Reduced Operating Hours" alternative is not so different from the alternatives considered in the EIR that the range of alternatives stated in the EIR is "unreasonable" in its absence.

The only remaining question is whether the City presented sufficient information to explain its choice of alternatives and to support its reason for excluding the

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"Reduced Operating Hours" alternative from the range of alternatives considered in the EIR. (See CEQA Guidelines § 15126.6(c); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 737; *Goleta II, supra*, 52 Cal.3d at p.569; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1351, 1354, 1357; see also *San Bernardino Valley Audobon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 752-753 [grounds upon which agency acts must be disclosed]; *Laurel Heights I, supra*, 47 Cal.3d at p.404 [agency must disclose analytic route traveled from evidence to action].)

Although the City's explanation of its choice of alternatives is far from perfect, perfection is not required. (*El Morro Community Assn. v. California Dept. of Parks & Recreation* (2004) 122 Cal.App.4th 1341, 1349; *Gilroy Citizens for Responsible Planning, supra*, 140 Cal.App.4th at p.919; see AR 1653-1654.)

In sum, even if this Court might have preferred a more in-depth discussion of the "Reduced Operating Hours" alternative, the EIR approved by the City must be presumed adequate and the party challenging the EIR has the burden of showing it is not. The absence of information in an EIR does not render an EIR inadequate unless the failure to include the information precludes informed decisionmaking and informed public participation. (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p.1198.)

Here, Loomis has not established that the EIR omits information that is both required by CEQA and necessary to permit a reasoned choice of alternatives. Accordingly, Loomis' challenge to the adequacy of the EIR's alternatives analysis must be denied.

Conclusion

In conclusion, the Rocklin Residents petition is GRANTED in respect to the claim the EIR is inadequate as an informational document because the EIR's economic impacts (urban decay) analysis of the "market area" that will be served by the Project is internally inconsistent with the EIR's traffic distribution analysis. The unstable description of the Project's effects carried over into the impacts analysis, resulting in an inadequate discussion of the Project's impacts. This deficiency was prejudicial because it precluded informed decision-making and informed public participation.

A peremptory writ of mandate shall issue from this Court commanding Respondent City to set aside its certification of the EIR and all related Project approvals (Resolution Nos. 2008-294, 2008-295, 2008-296, 2008-297, 2008-298,

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and Ordinance Nos. 942 and 943) based on the CEQA violations as set forth herein, and to prepare, circulate, and certify a legally adequate EIR (consistent with views expressed in this ruling) before proceeding with the Project.

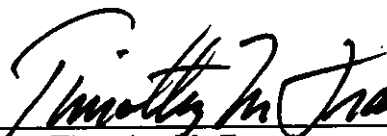
The peremptory writ shall further command City to file a return in this Court within six months after the issuance of the writ specifying what the City has done to comply with the writ.

In all other respects, the petitions are DENIED.

Petitioner Rocklin Residents and City are directed to prepare (separate) formal judgments consistent with this ruling, and (in the case of Rocklin Residents) a peremptory writ of mandate consistent with the judgment; submit them to opposing counsel for approval as to form; and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312. Rocklin Residents shall be entitled to recover its costs upon appropriate application.

Dated: February 19, 2010

Signed:


Hon. Timothy M. Frawley
Sacramento Superior Court Judge



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CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled RULING in notice envelopes addressed to each of the parties or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

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I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: February 19, 2010

Superior Court of California
County of Sacramento

By: 
Frank Temmerman, Deputy Clerk

