

A CASE WHERE CEQA WORKED

Clower Valley Foundation et al. v. City of Rocklin et al., C061808, 2011 WL 2671250 (Cal. Ct. App. July 8, 2011)

August 22, 2011 by **James Pugh, Alexis Pelosi and Kira Teshima**

In this case, the Third District Court of Appeal rejected claims raised by Clover Valley Foundation, the Sierra Club and the Town of Loomis that the City abused its discretion in certifying an environmental impact report on a residential project because the EIR failed to adequately analyze the project's impact on cultural, biological and visual resources and failed to adequately consider the project's growth-inducing impacts and water supply. The court also rejected opponents' claims regarding the project's consistency with the City's General Plan, deciding in favor of the City and its analysis on all counts. The first line of the decision says it all: "This is a case where CEQA worked."

The project, a residential development in an undeveloped area of the City known as Clover Valley, was first proposed in 1991, with the environmental review starting in 1995. An EIR was prepared and certified for the project in 1997. In 2000, after annexing the property into the City, new owners proposed subdividing the property and a second environmental document was prepared starting in 2000. Based on the results of that review, the project changed, shrinking by almost half and increasing the open space by a factor of five. With these changes incorporated and after a detailed and thorough review, in 2007 the City approved the project, which now included only 558 homes instead of the 974 homes originally proposed. After its approval, the petitioners filed suit challenging the City's actions.

The opponents claimed the City abused its discretion in certifying the EIR because the EIR failed to adequately analyze the project's impact on cultural, biological and visual resources as well as failing to adequately consider the project's growth-inducing impacts and water supply. Claims were also raised regarding the project's consistency with the City's General Plan. The court rejected the opponents claims on all grounds and upheld the City's decision and analysis regarding the project.

Specifically, when the petitioners claimed the EIR failed to properly describe the cultural resources existing on the site and to identify any mitigation measures to diminish impacts to the resource, the court rejected petitioner's argument, stating, "Indisputably, the City complied with the requirements of CEQA . . . [when it] made a remarkably good faith effort at full disclosure of the existence of archaeological resources on the site, but did so in recognition of, and submission to, express prohibitions in CEQA not to disclose information regarding the location, use and character of the resources." Indeed, CEQA does not require the public to know, at the risk of vandalism and destruction of the resources, the exact nature and location of the resources being protected.

With regard to petitioner's claims that the EIR failed to analyze the growth-inducing impacts from construction of an off-site sewer pipeline to serve the project's 558 homes, the court rejected the argument, finding no additional detail or analysis was required. The court found the sole reason for constructing the sewer pipeline was to meet the needs of the current project and that any future additional housing would require additional environmental review that would analyze its development impact. Moreover, future growth had already been expressly contemplated in the City General Plan and General Plan EIR. As such, no further analysis by the City was required.

Claims regarding the project's impacts to oak trees and special status species were similarly rejected. In support of its conclusion that the EIR's analysis of the project's impacts on oak trees was adequate, the court found the EIR

adequately disclosed the loss of all oak trees affected by the project and determined that, notwithstanding proposed mitigation on a city wide basis pursuant to the General Plan and the City's Oak Tree Preservation Ordinance, the impact remained significant and unavoidable. Relying on *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 392 (1988), the court stated, "An EIR, when looked at as a whole, must provide a reasonable, good faith disclosure and analysis of the project's environmental impacts." The EIR satisfied that standard. With regard to special status species, the court upheld the mitigation measures in the EIR to protect against impacts to the California Black Rail, a protected bird species, concluding they were not deferred mitigation because the EIR clearly stated the performance standard (i.e., they are "fully protected birds" that cannot be taken incidentally or otherwise) and required the real parties in interest to obtain all necessary permits for any project impacts to the site's wetlands.

Continuing to reject the opponents' claims, the court relied on long standing precedent to conclude the EIR's analysis of visual and traffic impacts was adequate because CEQA does not require analysis of every imaginable alternative or mitigation measure, or performance of every recommended test or research. The opponents had claimed the EIR failed to discuss possible mitigation measures to reduce the project's visual impacts, but the court noted the final EIR's mitigation measures included landscaping and specific design features to help decrease aesthetic impacts which is sufficient for CEQA. Claims the EIR was inadequate because it did not analyze traffic impacts at two particular intersections and traffic impacts during school travel times were similarly rejected. The court found that the EIR had responded to those criticisms, determining that the changes in traffic volumes at the two intersections would be small, not warranting a formal analysis and that PM peak period was used instead of the school time period because traffic volumes were highest during the PM peak period hour. Because these issues were addressed in the EIR, decision makers had sufficient information of the project's impacts on traffic.

The petitioners also argued that the EIR violated CEQA by relying on the General Plan policy and the General Plan EIR without (1) incorporating any discussion in those documents by reference, (2) summarizing any portion incorporated, or (3) including a copy in the record. In rejecting this claim, the court simply stated that the EIR's quoted and summarized portions of the General Plan were sufficient to enable the decision makers and the public to render an environmentally informed judgment on the project.

The court also rejected petitioners' claim that the EIR failed to demonstrate sufficient water supply. In reaching its decision, the court relied on the standards set forth in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, and held the EIR complied with CEQA's requirements for analyzing water supply because the EIR had (1) identified future water supplies sufficient to satisfy the project's needs that had a likelihood of actually being available, (2) analyzed the circumstances affecting the likelihood of the water's availability, and (3) discussed possible replacement sources if the primary source proved to be unavailable. Given recent challenges to the water supply analysis in EIRs, the court's confirmation of the standard established in *Vineyard Area Citizens* is extremely important.

Finally, claims were also raised that the City had violated a policy in its General Plan that requires the City to apply open space designation to all land located within 50 feet of stream banks when it approved a road within the 50-foot buffer established for Clover Creek. The court rejected this claim, noting that a project is consistent with the General Plan if, considering all its aspects, it will further the objectives and policies of the General Plan and not obstruct their attainment. Here, placing the road outside the buffer would have resulted in additional hillside grading and clearing of oak trees. The court concluded that "[a] reasonable person, seeking to implement the general plan's policies of preserving habitat, open space, and scenic vistas, clearly would have concluded the deviation from the buffer zone requirement in this instance better fulfills the general plan's objectives and requirements." Thus, the court held the City did

not abuse its discretion in finding the project was consistent with the General Plan.

While this case does not set significant new precedent, it is one of several CEQA decisions this summer upholding EIRs that perhaps indicate a more conservative approach from the courts in reviewing CEQA cases.

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