



CAA PLANNING

Memorandum

To: Colby Cataldi
From: Shawna Schaffner
Date: November 7, 2016
Subject: Esperanza Hills Revised Environmental Impact Report

A question has been raised related to whether the Revised Environmental Impact Report (REIR) for Esperanza Hills is required to be recirculated. To clarify, the Writ of Mandate Protect Our Homes and Hills v. County of Orange, Orange County Superior Court Case No. 30-2015-00797300-CU-TT-CXC, did not require recirculation, rather, the Writ required revision of the EIR to address two specific errors. Those errors included improper deferral of Greenhouse Gas (GHG) Mitigation Measures and the arbitrary limitation of GHG emissions reductions to 5%.

The County, as Lead Agency, has determined that the Esperanza Hills REIR does not require recirculation due to the GHG Emissions section (Chapter 5.6) revisions. CEQA Guidelines Section 15088.5 - Recirculation of an EIR Prior to Certification, provides criteria to determine when an EIR must be recirculated. All pertinent sections of 15088.5 and restated below followed by a corresponding response.

15088.5 (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. 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 (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043)

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

Conclusion

The REIR does not meet the thresholds identified in CEQA Guidelines Section 15088.5 requiring recirculation because no significant new information has been introduced in the REIR which has not been previously analyzed. The new information added to the REIR consists of refinement and further clarification by way of 40 new GHG mitigation measures. The new GHG measures do not deprive the public of meaningful opportunity to comment upon substantial adverse environmental effects of the project because the measures reduce GHG emissions thereby reducing environmental effects of the project. In addition, the REIR includes an analysis of each mitigation measure to determine whether any of the measures would result in a new environmental impact not previously disclosed in the FEIR. The analysis in the REIR confirms that the new mitigation measures will reduce GHG emissions and will not result in any new or more significant impacts from what was already analyzed in the FEIR. The revisions to the Greenhouse Gas Emissions section of the REIR do not:

- Result in a new significant environmental impact as no new environmental impacts will occur related to the amplification of mitigation measures in the GHG section of the REIR. Rather, identification of specific mitigation results in a reduction in total GHG emissions of 7.93%, which is above the 5% reduction anticipated in the FEIR. The Judge determined that the anticipated 5% reduction was an arbitrary limit on GHG emissions reductions established in the FEIR. In addition, the Judge considered the GHG mitigation to be deferred mitigation because a “menu” of available measures was provided rather than a mandate to implement specific mitigation measures. Therefore, the Judge mandated implementation of specific mitigation measures to clarify how the reduction would be achieved. Mitigation Measures GHG-1 through GHG-40 respond to the Writ of Mandate requirement for a more specific list of proposed mitigation to achieve a

reduction in GHG emissions, and the reduction based on the specific mitigation measures exceeds the 5% identified in the FEIR.

- Result in a substantial increase in the severity of an environmental impact requiring mitigation measures that reduce the impact because no new or more significant impacts would result from implementation of Mitigation Measures GHG 1 through GHG-40. The Mitigation Measures amplify and clarify proposed mitigation as required by the Court judgment and are based on current residential mitigation strategies suggested by the CAPCOA Quantifying Greenhouse Gas Mitigation Measures document (August 2010). Identifying and quantifying the CAPCOA mitigation measures resulted in a reduction of 7.93%, which was above the assumed 5% reduction in the FEIR. Therefore, the GHG revisions result in a lessening of potential impacts and do not result in an increase in the severity of GHG emissions.
- Include a feasible project alternative or mitigation measure considerably different from others previously analyzed which the project's proponents declined to adopt. Mitigation Measures GHG 1 through GHG-40 clarify the specific mitigation intended for the reduction of GHG emissions which will exceed the 5% reduction included in the FEIR. All feasible mitigation measures have been incorporated in the REIR and the project proponent has agreed to adopt and implement the measures. In addition, all feasible project alternatives have been analyzed.
- Result in a draft EIR that is so fundamentally and basically inadequate that meaningful public review and comment were precluded. The REIR was updated to analyze the GHG reduction measures identified in CAPCOA as germane to residential projects. All relevant measures were detailed and analyzed for applicability to the proposed project. The emissions reductions pertaining to the selected 40 project specific Mitigation Measures were then detailed in the REIR. The only changes to the REIR relate to GHG mitigation measures and clarification of information related to GHG emissions and mitigation measures. The conclusions of the FEIR remain the same in the REIR, which is that the project will result in a significant impact in the area of GHG emission. The public has been given an opportunity to review the REIR and to respond through the County's public hearing process which is duly noticed to all agencies and interested parties.

Therefore, in response to the Writ of Mandate requiring clarification and amplification of specific mitigation to achieve reductions in GHG emissions, the Project can provide a 7.93% reduction in GHG emissions which is greater than the 5% reduction included in the FEIR. No significant new information has been introduced in the REIR. No new or more severe impacts will result from the addition of specific mitigation measures and the REIR, as revised, does not meet the CEQA criteria for recirculation.