

Environmental Council of Sacramento v. County of Sacramento
(March 2, 2020) ___ Cal.App.5th ___

The case involved the EIR certified for the “Cordova Hills” development on the edge of urbanization in Sacramento County. The project encompasses a 2,669-acre site, currently vacant and used for cattle grazing. Proposed land uses include residential, office, retail, schools, parks, a trail network, and a future university. To put the project’s size into perspective, the future population of the development is estimated to be approximately 25,500 people, including the university population. The project included general plan amendments, zone changes, a tentative subdivision map, and a 30-year development agreement. Additional components of the project included an affordable housing plan, an urban services plan, a public facilities financing plan, an air quality mitigation plan, and a greenhouse gas emissions reduction plan.

ECOS brought suit, alleging that the EIR had an inadequate project description, inadequate impact analysis, including impacts to land use, and did not include feasible mitigation measures. A key argument was that the EIR failed to analyze a scenario in which the university would not be built. The trial court held in favor of the County and the Court of Appeal affirmed that judgment.

The Court found that the EIR properly examined the project with a university. Although no university was secured at the time the EIR was certified, the development agreement and other County assurances ensured that a university would be part of the project. In the Court’s words:

Environmental Council fails to present credible and substantial evidence to support its assertion that the proposed university is an illusory element of the project based on speculation and included only to minimize environmental effects. It is possible that the developer may fail to locate a university and will therefore return that portion of the Project land back to the County in 30 years. At that point, the County may decide to use the land for another purpose which would necessitate a subsequent EIR. CEQA does not require an EIR to discuss future developments which are unspecified or uncertain. “Such an analysis would be based on speculation about future environmental impact.” (*Kings County, supra*, 221 Cal.App.3d at p. 739.)

We find the Project description legally adequate. The EIR is not required to address the speculation that the university will not be built.

The Court examined ECOS’s assertion that the EIR analysis was inadequate and concluded that it was not. ECOS essentially based its argument on its prior assertion that the university would not be built and that therefore the air quality, climate change, and traffic analyses were inadequate. The Court dismissed these claims, noting that the adopted mitigation measures would substantially reduce the impacts, but that the EIR concluded the impacts would be significant and unavoidable.

ECOS also claimed that the EIR failed to address whether the project was consistent with the regional Sustainable Communities Strategy (SCS). The Court dismissed this claim on two grounds: first, ECOS failed to exhaust its administrative remedies by raising the issue during

the CEQA process, and second, ECOS could not “cite any evidence that a project must be evaluated under CEQA for consistency with an SCS.”

The Court dismissed ECOS’s claim that the EIR improperly excluded an mitigation measure that would have phased the development. The Court found that ECOS failed to present any evidence that phasing was feasible. The County properly found the phasing measure to be infeasible in its statement of overriding considerations.