



Third District Addresses Significant CEQA Issues In Mixed Decision On Placer County's EIR For Specific Plan/Rezoning Allowing Development of Martis Valley Timberlands

By [Arthur F. Coon](#) on February 23, 2022

In a sprawling, 123-page published opinion filed on February 14, 2022, the Third District Court of Appeal affirmed in part, and reversed in part, judgments in consolidated CEQA actions challenging Placer County's EIR for its approval of a specific plan and rezoning to permit residential and commercial development and preserve forest land in the Martis Valley near Truckee and Lake Tahoe. *League to Save Lake Tahoe, Mountain Area Preservation, et al./California Clean Energy Committee v. County of Placer, et al. (Sierra Pacific Industries, et al., Real Parties in Interest) (2022) ___ Cal.App.5th ____*. Consistent with its impressive length, the opinion decides a number of significant issues, and contains a thorough exposition of established CEQA rules and principles, including, but not limited to, those governing: applicable standards of review; baseline/environmental setting description; lead agency discretion regarding thresholds of significance, methodology for impact study, and significance determinations; cumulative impacts (including GHG) analysis; and requirements for adequate mitigation measures.

Among its noteworthy aspects, the opinion provides significant and helpful guidance regarding what the Court found, on the County's cross-appeal, to be a CEQA-compliant emergency response/evacuation plan impact analysis in an EIR, and what types of evidence are relevant to that recently-mandated CEQA analysis. Another interesting portion of the opinion addresses CEQA's sometimes overlooked or underappreciated mandatory energy consumption impacts analysis, and its requirement to discuss a project's potential increased use of renewable energy sources as relevant in determining both the significance of, and potential mitigation for, impacts in this area. (While mostly addressing CEQA issues, the lengthy opinion also contains extensive analysis of the required findings and policies of the Timberland Productivity Act (TPA) that are relevant to "immediate rezonings," such as the County adopted here, but detailed discussion of that area is beyond this blog's subject matter.)

The Project and Its Background

Real Party Sierra Pacific Industries (SPI) owns two large parcels of land in Martis Valley (unincorporated Placer County) between Truckee and Lake Tahoe; a 1,052-acre parcel on the west side (West Parcel), and a 6,376-acre parcel on the east side (East Parcel) of state route (SR) 267. Both parcels are undeveloped coniferous forest and they border, and in small instances cross into, the Lake Tahoe Basin to their south. The West Parcel is designated Forest in the applicable general plan (called the Martis Valley Community Plan (“MVCP”)), and zoned as Timberland Production Zone (“TPZ”), which restricts allowable land uses to growing and harvesting timber and compatible uses. Most of the East Parcel is also designated Forest and zoned TPZ, except for a 670-acre portion zoned for development of up to 1,360 dwelling units and 6.6 acres of commercial uses.

After years of meetings between appellants/conservation groups Sierra Watch and Mountain Area Preservation Foundation, and SPI, to explore conservation opportunities focused mainly on the East Parcel, those entities signed a 2013 agreement to aid the conservation and development of both parcels, including facilitating transferring the East Parcel’s development rights to portions of the West Parcel and preserving all the East Parcel as permanent open space. Ultimately, cooperation between the parties ended, but real parties applied to County in 2013 for a specific plan and rezonings they believed were consistent with the agreement’s primary terms. The specific plan would amend the MVCP and related zoning to allow up to 760 units and 6.6 acres of commercial use on a 775-acre portion of the West Parcel and withdraw those lands from the TPZ zone, while designating the entire East Parcel as Forest and TPZ; upon approval, real parties would sell or restrict the East Parcel for conservation purposes in perpetuity.

These *legislative* approvals only, and not any specific development project, constituted the CEQA “project” at issue in the case. While County initially undertook to prepare a joint EIR/EIS with the Tahoe Regional Planning Agency (TRPA), real parties later removed the small Lake Tahoe Basin portions of their acreage from the proposed specific plan, thus eliminating TRPA’s approval authority over the project, and also amended the plan to reduce the West Parcel’s development area to 662 acres, which was 8 acres less than allowed on the East Parcel under the existing land use restrictions. Following release of an October 2015 draft and May 2016 final EIR, the County’s Planning Commission recommended denial, but the Board of Supervisors thereafter approved the specific plan, and the immediate rezoning of the 662-acre portion of the West Parcel out of the TPZ, by 4-1 vote.

The Litigation

League to Save Lake Tahoe, Mountain Area Preservation Foundation, and Sierra Watch (Sierra Watch) and the California Clean Energy Committee (Committee) filed separate writ petitions alleging numerous CEQA and TPA violations, which the trial court consolidated for hearing. The trial court found in favor of the County on all claims except that it found the EIR’s analysis of the project’s impacts on adopted emergency response and evacuation plans was inadequate. Sierra Watch and the Committee appealed and the County cross-appealed on the emergency evacuation analysis issue.

The Court of Appeal’s Opinion

As partly evidenced by the opinion’s length, the litigation raised far too many issues and sub-issues to cover in more than broad strokes here. On Sierra Watch’s appeal, the Court affirmed the judgment *except* to hold that: (1) the EIR’s analysis of project impacts on Lake Tahoe’s water quality was inadequate; (2) a greenhouse gas (GHG) mitigation measure, as written, did not comply with CEQA; and (3) the EIR’s analysis of project impacts on evacuation plans, which found no significant impact, was adequate and supported by substantial evidence.

On the Committee's appeal, the Court affirmed the judgment *except* as to the GHG mitigation measure mentioned above that it found invalid, and to the extent it also found that (1) no substantial evidence supported County's finding that no additional feasible mitigation measures existed to mitigate the project's traffic/transportation impacts on SR 267, and (2) the EIR's energy impacts discussion violated CEQA.

Some key points and takeaways from the Court of Appeal's lengthy opinion include:

County's Discretion to Formulate Thresholds of Significance

- The County did not err in failing to adopt and use as a threshold of significance for assessing air quality impacts the vehicle miles traveled (VMT) threshold used by TRPA to reduce VMT and protect air and water quality in the Tahoe Basin. When real parties removed the acreage within TRPA's jurisdiction from the proposed plan, the project was no longer within TRPA's approval jurisdiction, and there was no legal requirement that the County apply (or that the project satisfy) TRPA's environmental threshold carrying capacities.
- County, as lead agency, had discretion to determine whether to rely on TRPA's VMT threshold, and to formulate its own standards of significance, which may be based on, among other sources, quantitative, qualitative, or performance-level thresholds of significance adopted by itself or performance or significance standards adopted or recommended by other regulatory agencies. (Citing *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243; CEQA Guidelines, § 15064.7.)
- While TRPA had "jurisdiction by law" in that it exercises authority over resources affected by the project, it was not a responsible agency. Per the Court: "CEQA...does not require the lead agency to accept and utilize the threshold or significance standards which the jurisdiction-by-law agency used to determine the impact was significant. It grants the lead agency discretion not to utilize the other agency's thresholds and environmental standards and to formulate standards of significance of its own for determining the significance of a project's impact." Thus, "although TRPA stated [in its EIR comments that] the project would significantly impact the physical environment by increasing vehicle trips and [VMT] in the [Lake Tahoe] Basin, the County in this instance had discretion to reasonably disagree with the standards TRPA used to make its determination and with the determination itself even though the County was required to consult with TRPA." The Court further explained that, unlike the position of responsible agency occupied by the Coastal Commission in *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918 (my 3/31/17 post on which can be found [here](#)), TRPA had "no permitting authority" over the project here, and "the EIR was not required to integrate its review with TRPA's planning and environmental regimes." The EIR here complied with CEQA by summarizing the controversy between the County and TRPA over the project's Tahoe Basin impacts, and responding to comments on the DEIR by "addressing and applying TRPA's VMT threshold [to the limited extent of showing that project-generated VMT would not alone cause its exceedance] and explaining why it did not employ the threshold as a standard of significance."
- The County did not abuse its discretion by using, as its standard of significance for the project's *air emissions* impacts on the Tahoe Basin's air and water quality, the scientifically-based emissions thresholds of significance adopted by the Placer County Air Pollution Control District, which includes the Lake Tahoe Air Basin as well as the Mountain Counties Air Basin; substantial evidence also supported the EIR's analysis and conclusions as to those particular impacts.



- While the EIR adequately described the regional environmental setting and existing regional air quality, it failed to describe Lake Tahoe's existing physical *water* quality, which the Court held to be an abuse of discretion because substantial evidence showed the Lake's water may be potentially adversely affected by the effects of project-generated traffic. More specifically, the EIR did not adequately address "the impacts which crushed abrasives and sediment from project-generated traffic may have on the lake." By not using the VMT or some alternative threshold, such as total maximum daily load (TMDL), to measure this project impact, the EIR failed to determine its significance, either individually or cumulatively. While County claimed the required information and analysis on this impact was contained in the record, the Court stated it appeared only in a response by the County to *post-final EIR* comments, not in the EIR itself where it was required to be.

Recirculation Not Required

- Substantial evidence supported the County's decision not to recirculate the DEIR after adding information to the FEIR about the Project's impact to climate change. Specifically, while the DEIR was being circulated, the California Supreme Court issued its decision in *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204 ("*Newhall Ranch*") (my 12/2/15 post on which can be found [here](#)), addressing important issues including potential "pathways to compliance" on CEQA GHG analysis. The County addressed *Newhall Ranch* and its impact on the DEIR's GHG analysis in the FEIR, determining that the DEIR's significant and unavoidable impact conclusion regarding GHGs remained unchanged because (1) the project's long-term impacts had been evaluated under a numerical threshold consistent with *Newhall Ranch's* ruling; (2) an efficiency threshold was used only to determine if the project would conflict with the 2020 targets of CARB's Scoping Plan, not to determine the significance conclusion; and (3) very little of the project would be constructed before 2020. The FEIR reviewed other methods suggested by *Newhall Ranch* for determining the significance of GHG impacts, and modified and deleted portions of the DEIR's GHG analysis, but ultimately did not change the DEIR's significant-and-unavoidable impact conclusion, and the County therefore determined recirculation was not required.
- The Court agreed recirculation was not required because the FEIR did not show new or substantially more significant effects, but, rather, "the new information provided in the final EIR only clarified or amplified the [DEIR]'s discussion and conclusions and demonstrated the impact would be less than the [DEIR] had disclosed but would remain significant." Substantial evidence thus supported County's decision not to recirculate.

Inadequate And Deferred GHG Mitigation Measure

- The Court held GHG mitigation measure 12-2 to be applied to future development projects under the plan was invalid and improperly deferred mitigation. Per the Court: "As written, the mitigation measure requires the project to meet adopted [future] targets that are 'based on a substantiated linkage between the project (or Placer County projects in general if a countywide qualified GHG reduction plan is approved) and statewide GHG reduction goals.' In other words, the project must meet adopted state or county targets that, in compliance with *Newhall Ranch*, are based on a relation between the adopted statewide emissions reduction target and percentage reduction that would or should be required from the individual project."

- The problem with the measure as drafted was that no such “linked” targets currently exist and they may never exist, in which case the mitigation measure may never be triggered, and the significance of the project’s future GHG impacts never determined. Thus, “the mitigation measure [improperly] defers determining the significance of the impact and establishing appropriate mitigation to an undisclosed time in the future. ... [¶] Mitigation measure 12-2 makes a good-faith effort to satisfy the elements necessary to defer development of its specific details, but by relying on performance standards that do not exist and may never exist, the measure defers the determination of the impact’s significance to an unknown time and does not sufficiently commit the County and the project applicants to mitigating the impact.”

EIR’s Analysis Of Impacts On Emergency Evacuation Plan Was Adequate

- As noted above, with respect to the County’s cross-appeal, the Court *revised* the trial court’s judgment and held that the EIR adequately addressed the project’s impacts on adopted emergency response and evacuation plans and that substantial evidence supported its conclusion that such impacts would be less than significant. As relevant background, the project’s West Parcel is located in a Cal Fire-designated “Very High” risk fire hazard severity zone. County’s evacuation plan for the area, the Placer Operational Area East Side Emergency Evacuation Plan, coordinates and assigns responsibilities to federal, state, and local authorities for organizing and conducting an evacuation in the event of an emergency such as a forest, fire or flood. The plan designates Interstate 80 and SRs 267, 89, and 28 as the area’s major evacuation routes; in an emergency, the unified command will designate which will be used for evacuation and for emergency vehicle ingress and egress.
- In determining whether the project would “significantly interfere” with the County’s evacuation plan, the EIR relied on the CEQA Guidelines’ Appendix G checklist as a standard of significance, under which the project’s impact would be deemed significant if it would “impair implementation or physically interfere with an adopted emergency response plan or emergency evacuation plan[.]” Among the reasons the EIR determined the project’s impacts would be less than significant under this threshold were: the project would, in addition to its main entrance, provide two emergency vehicle access routes from SR 267 to the West Parcel’s development area; the project’s incremental vehicle trip increase on SR 267 at build out would not interfere with use of SR 267 under the evacuation plan; the project would not cut off or modify any existing evacuation routes; the project would develop a fire protection plan that would include an emergency and evacuation plan (Emergency Preparedness and Evacuation Plan) that would follow the County’s evacuation plan and Northstar Fire Department Procedures; the project’s emergency plan designates the secondary emergency access roads inside the project area and connects cul-de-sacs and dead-end streets such that every parcel will have two routes for emergency ingress and egress, and providing that signs will be posted identifying the emergency access routes; and a shelter-in-place “amenity” open to residents and the public will be required to be constructed by the HOA prior to constructing the 200th dwelling unit.
- The DEIR acknowledged that other nearby projects would also evacuate via local roads to SR 267, and that conditions on local roads and SR 267 would be congested during an emergency evacuation, but found that no known project or cumulative impacts “would prevent or impede evacuation, or result in physical interference with an evacuation plan such that evacuation could not occur” and that the project’s primary and two emergency vehicle access roads would also provide sufficient egress in an emergency evacuation.

- In responding to comments expressing concerns about the project increasing the risk of fire hazards, and that SR 267 would lack capacity to support a timely evacuation, the FEIR elaborated on the project emergency plan's enforcement of fire prevention regulations and measures that impose defensible space, fuel maintenance, and structural, infrastructure and building code requirements, and its imposition of requirements for water supply and flow, emergency access, evacuation signage, and other measures to address onsite hazards.
- The FEIR also discussed a study by County's transportation consultants that modeled how long it would take fully occupied West Parcel development (935 vehicles) to evacuate in a wildfire emergency using SR 267 north to the Truckee airport during peak summer tourist season; the consultant estimated the evacuation would take 1.3 hours under existing-plus-project conditions and 1.5 hours under cumulative-plus-project conditions, assuming some planned SR 267 intersection improvements are implemented, but *not* assuming that SR 267's widening from 2 to 4 lanes, as planned in County's CIP, will occur.
- The FEIR acknowledged that the project, like any project that adds people to an area, would increase evacuation time, but also that "this does not necessarily generate a safety risk." In discussing relevant facts and context, the Court noted that fires are tracked from the moment of discovery, and that emergency personnel issuing evacuation orders take into account the time needed to evacuate, and could have hours or days of lead time to assess risks and make evacuation determinations; further, during these periods peak occupancy normally does not occur due to drifting smoke, risk awareness, and other factors leading to people avoiding the area. In considering these facts, the Court of Appeal stated: "Developing new homes and stores in a very high fire hazard area risks exacerbating the hazard by putting more people and property in harm's way and increasing the chance of a wildfire starting. The development increases the number of people who may need to be rescued, rendered aid, and evacuated and the amount of property that may need to be protected. Thus, when we review for whether a project may interfere with implementation of an emergency response and evacuation plan, we are primarily concerned that the public and decision-makers understand the impact the project will have on the new residents' ability to evacuate and on emergency personnel's ability to protect and service the residents and their property consistent with the adopted plan. [¶] We conclude substantial evidence supports the EIR's conclusion that the project will not significantly impair implementation or physically interfere with an adopted emergency response plan or emergency evacuation plan."
- The Court grounded its conclusion in the County's evidence showing the project would not interfere with its evacuation plan's operation; would not cut off or modify any evacuation routes; would not (individually or cumulatively) "prevent or interfere with the ... evacuation plan such that an evacuation could not occur"; would provide three total routes that could be used for a combination of evacuation and emergency access; would provide each parcel with two routes for ingress/egress; would eventually provide a shelter-in-place amenity; and, while not expressly stated in the EIR, would facilitate, by one route's connection for an old logging road, evacuation to SR 267 or to the west away from it. Additionally, the County implicitly determined its transportation consultants' calculated times for an evacuation north on SR 267 to the airport were reasonable under the modeled circumstances, and the project would not significantly affect the Northstar Fire Department's response times, and would pay an impact fee to help fund additional equipment and two more firefighters. The project's fire prevention standards and requirements would also mitigate residents' exposure to wildfire hazards and reduce wildfire risk and spread, thus reducing risks that lead to the need to evacuate in the first place.

- The Court of Appeal rejected Sierra Watch’s numerous criticisms of the County’s evidence and reliance on the foregoing factors, noting the practical reality that numerous evacuation scenarios could be modeled and discussed, some of which would show a significant impact while others would not. It approvingly cited the County’s response to a comment on the FEIR pointing out the “inherent difficulty” of the emergency evacuation plan analysis and explaining “why [under CEQA] a more detailed analysis was not reasonable or required.” The County had concluded that, because of the numerous variables determining the behavior of any given fire event – including “wind speeds, direction, humidity and fuel moisture content considerations, topography, time of day, and fuel loadings (including brush)” – “the number of scenarios that could be defined would be so numerous that selection of any one or several would be speculative and not necessarily representative. The more tangible metric, and a reasonable indication of the effect of the project on emergency evacuation, is the time required for evacuation of the project itself, and the effect of the project on overall evacuation times, as described in the EIR.”
- In holding the County’s analysis was adequate, the Court observed that CEQA doesn’t require speculation or analysis of speculative impacts, or a perfect or exhaustive analysis, as opposed to a reasonably feasible one and a good faith effort at full disclosure. It found all these well-established CEQA principles to be relevant to an EIR’s review of a project’s potential to disrupt implementation of an evacuation plan, as well as to the lead agency’s discretion to select the methodology for studying an impact and to determine whether particular methods of analysis are reasonably feasible or would yield reliable and informative information. Per the Court: “The evidence here indicates that the County did not abuse its discretion in determining its methodology for evaluating the impact to its evacuation plan or selecting the standard of significance, and that substantial evidence supports the EIR’s conclusion. The EIR’s analysis provides a reasonable explanation under modeled circumstances of how the project will affect its residents’ ability to evacuate and emergency responders’ ability to access the area and the site.”
- Importantly, the Court observed that “[t]he EIR’s conclusion that the project’s traffic would in general significantly impact route 267 traffic but not significantly impact that route in an evacuation is not necessarily inconsistent. Whether a given impact is significant depends on the context.” Thus, “an agency might find *time* the sole relevant consideration when evaluating impacts to traffic conditions, but then find *public safety* the guiding criterion when evaluating impacts to emergency evacuation plans.” Thus, the County didn’t abuse its discretion “merely because its thresholds of significance for fire-related impacts were not equivalent to its thresholds of significance for transportation-related impacts.”
- In *rejecting* Sierra Watch’s criticism of County’s reliance on the project’s fire *prevention* measures as wholly irrelevant to the *evacuation* impact analysis, the Court observed that while such evidence “does not directly address impacts on an actual evacuation, it explains the measures the project is taking [such as clearing brush and thinning trees to decrease wildfire spread rate] to mitigate its impact on an evacuation by reducing the chances of wildfire occurring on its site and the need for an evacuation. ... The evidence is relevant for that purpose.”
- The Court also rejected Sierra Watch’s argument that providing two emergency access roads failed to lessen impact because each funneled to SR 267. It noted that “without knowing how the authorities will direct the use of route 267 and the project’s roads in an actual evacuation, it would be speculative to conclude that just because all roads lead to route 267 the impact is significant.” The Court similarly rejected Sierra Watch’s criticisms of County’s experts’ reliance on Northstar

Fire Department emergency call response times, noting that they were relevant and that Northstar Fire will not be the only responding agency in an on-site fire emergency.

Cumulative Impacts On Forest Resources

- The Court rejected the Committee’s arguments that the EIR’s analysis of the project’s cumulative impacts on forest resources was inadequate and lacked substantial evidence support. CEQA requires no cumulative impact analysis in an EIR if either (1) the combined impact is not significant or (2) the project’s incremental contribution to the impact is not “cumulatively considerable.” The County’s 1994 General Plan EIR determined that projected loss of 13,600 acres of commercial forest land within the County through year 2040 would not be a significant impact, and the EIR found the project’s conversion of 651.5 acres would not cause exceedance of this regional conversion projection and cumulative threshold of significance.
- The FEIR found that estimating additional climate-related forest loss due to drought, wildfire, or bark beetle, as the Committee urged County to do, would be speculative. The Court agreed that the County therefore reasonably relied on the General Plan projection and compliance therewith to assess cumulative impacts. Further, there was no improper “plan-to-plan” comparison, and the EIR properly analyzed the project’s impacts on the physical environment.
- The Court held that CEQA did not require the EIR need to consider “climate-driven tree mortality” as a *source* of forest conversion in the cumulative impacts analysis. CEQA requires cumulative impact analysis of impacts resulting from the proposed project in combination with those of “other *projects* causing related impacts.” Tree mortality is not a separate “project.” Further, the EIR addressed the project’s contribution to climate change’s adverse impact to forest resources adequately in its GHG emissions analysis, which is where CEQA required it to do so. The Court thus “conclude[d] the EIR’s analysis of the project’s cumulative impacts on forest resources, when considered with the analysis of the project’s [GHG] emissions, complies with CEQA’s procedures and is supported by substantial evidence.”

Failure To Consider Feasible Traffic Impacts Mitigation

- The Court found the EIR violated CEQA failing to review a number of *facially feasible* suggested transportation demand management (TDM) measures, and by essentially considering only payment of a traffic impact fee as mitigation to reduce the project’s significant and unavoidable impacts to traffic congestion and transit on SR 267. Without explaining why traffic congestion analysis remained relevant here after CEQA’s paradigm shift to VMT analysis as the method of transportation impact analysis, the Court focused on CEQA’s rules requiring consideration of feasible mitigation recommended to address significant impacts and the lack of substantial evidence to support County’s finding that no other feasible mitigation existed to address significant impacts on SR 267 traffic. In essence, it highlighted that a number of commenters, including TRPA, had made good faith suggestions for TDM mitigation measures that the EIR should have addressed under the principle that “an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is *facially infeasible*.” (Internal quotes and citations omitted.) In sum: “Because the project would significantly impact route 267, CEQA required the EIR to discuss the commenters’ suggestions in good faith and with a reasoned analysis if they were *facially feasible*, a point the County does not contest.”



- The Court also addressed and rejected the Committee’s related claim that the EIR violated CEQA because it failed to discuss the environmental impacts of paying the traffic impact fee the County adopted as mitigation, and specifically the impacts of widening SR 267, a separate project which the impact fee would help fund. While CEQA does require an EIR to discuss significant effects of mitigation measures, although in less detail than those of the project (CEQA Guidelines, § 15126.4(a)(1)(D)), the Court found no prejudicial error. The widening was approved as a policy matter in 2003 when County approved the MVCP, the EIR for which stated that there would be a separate environmental study in the future if and when Caltrans moved forward with the project. That EIR also stated that the extent of environmental effects anticipated to occur in various areas (including temporary water and air quality and noise impacts; operational noise and air quality impacts; and biological and cultural resources impacts) could not be known until the improvements were designed. Since nothing indicated circumstances had changed since the MVCP EIR, and the project EIR could add nothing to the prior analysis, the EIR’s reference to the community plan EIR satisfied CEQA; the Committee’s complaints that the EIR did not incorporate the prior MVCP EIR by reference or point to its location were not prejudicial errors, but only “insubstantial” or “technical omissions” providing no grounds for relief.

Inadequate Energy Consumption Analysis

- Finally, the Court agreed with the Committee’s argument that “an EIR’s analysis of a project’s impacts on energy resources must include a discussion of whether the project would increase its reliance on renewable energy sources to meet its energy demand as part of determining whether the project’s energy impacts are significant.” In doing so, it found the County’s EIR deficient in this regard, and stated it was following the Third District’s earlier decision in *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 209, my 4/14/14 post on which can be found [here](#).
- CEQA requires an EIR to analyze a project’s energy consumption, and to mitigate any significant impacts “due to wasteful, inefficient, or unnecessary use of energy, or wasteful use of energy resources[.]” (CEQA Guidelines, § 15126.2(b); see Pub. Resources Code, § 21100(b)(3); Guidelines, § 15126.4(a), (1), Appendix F.) The Guidelines state that the energy use analysis should include all project phases and components, and discuss, among other relevant considerations, “any renewable energy features that could be incorporated into the project[.]” (§ 15126.2(b).) Appendix F elaborates that relevant considerations include “decreasing reliance on fossil fuels such as coal, natural gas and oil” and “increasing reliance on renewable energy sources.” Per the Court: “If the project’s energy impacts are significant, Appendix F suggests mitigation measures” the lead agency could consider, including “[a]lternative fuels (particularly renewable ones) or energy systems.” (Quoting Appendix F, II. D.)
- The Guidelines and Appendix F indicate an EIR should address a project’s potentially increased use of renewable energy sources *both* for the purpose of determining the significance of its energy use impacts *and* for the purpose of mitigating any impacts found to be significant. The *City of Woodland* case concluded CEQA required analysis of renewable energy options even where the project’s impacts or energy resources were found to be less than significant, and the Court here followed that holding, treating it as a procedural requirement of CEQA which, as such, must be scrupulously followed. Per the Court: “Because the EIR did not address whether any renewable energy features could be incorporated into the project as part of determining whether the project’s impacts on energy sources were significant, it did not comply with CEQA’s procedural requirements, a prejudicial error.”

Conclusion And Implications

The opinion, like the case's forest setting, covers a lot of ground. It obviously provides useful guidance for development projects that, while located outside the Lake Tahoe Basin, will generate traffic inside the Basin with resulting potentially significant impacts on the unique regional resource of Lake Tahoe, including its water quality. In addition, the opinion provides useful guidance for consultants tasked with preparing a CEQA-compliant EIR analysis of emergency evacuation plan impacts for projects developed in very high fire risk areas, and also serves as a good reminder to EIR preparers not to neglect CEQA's mandatory energy consumption impacts analysis.

Questions? Please contact [Arthur F. Coon](#) of Miller Starr Regalia. Miller Starr Regalia has had a well-established reputation as a leading real estate law firm for more than fifty years. For nearly all that time, the firm also has written Miller & Starr, California Real Estate 4th, a 12-volume treatise on California real estate law. "The Book" is the most widely used and judicially recognized real estate treatise in California and is cited by practicing attorneys and courts throughout the state. The firm has expertise in all real property matters, including full-service litigation and dispute resolution services, transactions, acquisitions, dispositions, leasing, financing, common interest development, construction, management, eminent domain and inverse condemnation, title insurance, environmental law and land use. For more information, visit www.mslegal.com.