Filed 10/4/04

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

ASSOCIATION FOR SENSIBLE DEVELOPMENT AT NORTHSTAR, INC. et al., Plaintiffs and Respondents, v. PLACER COUNTY et al., Defendants and Appellants; NORTHSTAR MOUNTAIN PROPERTIES, LLC et al., Real Parties in Interest and Appellants.	C044364 (Super. Ct. No. SCV12744)

APPEAL from a judgment of the Superior Court of Placer County, James Garbolino, Judge. Affirmed.

Law Offices of Donald B. Mooney and Donald B. Mooney, for Plaintiffs and Respondents.

Anthony J. La Bouff, County Counsel, Valerie D. Flood, Deputy County Counsel, for Defendants and Appellants.

Remy, Thomas, Moose & Manley, Whitman F. Manley and William C. Burke, for Real Parties in Interest and Appellants.

---

* Under California Rules of Court, rules 976(b) and 976.1, only the Introduction, part I of the Discussion, and the Disposition are certified for publication.

INTRODUCTION

On December 4, 2001, Placer County adopted a mitigated negative declaration for the construction of a three-building apartment complex at the Northstar Ski Resort. The developers of this project, collectively Northstar,[1] designed this complex to provide affordable housing for the employees of the ski resort and other businesses in the adjoining areas. The Association for Sensible Development at Northstar, Inc. (ASDAN), challenged the adoption of the mitigated negative declaration. The trial court set aside the adoption of the mitigated negative declaration because Placer County failed to meet the requirements of the California Environmental Quality Act. (Pub. Resources Code,[2] § 21000 et seq. (CEQA).)

Northstar contends the trial court erred in failing to dismiss ASDAN's CEQA petition because ASDAN failed to properly and timely request a hearing on its petition under section 21167.4. In the unpublished portion of this opinion, we discuss Northstar's remaining contentions. First, the trial court erred in concluding the description of the project contained in the mitigated negative declaration was improper because it omitted major project elements. Northstar also argues that the trial

---

[1] The parties we refer to as Northstar include Northstar Mountain Properties, LLC; Booth Creek Ski Holdings, Inc.; East West Partners-Tahoe, Inc.; Trimont Land Company; and Corum Real Estate Group.

[2] All further statutory references are to the Public Resources Code unless otherwise indicated.

court erred in concluding a fair argument existed that the project would have significant environmental impacts in the areas of land use, growth, water and drainage, traffic, and cumulative impacts. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2000, Northstar submitted an application to Placer County for the necessary approvals to develop the Sawmill Heights Project (the project) on the Northstar Ski Resort property. The proposed project was a three-building apartment complex that originally would include 110 units ranging in size from studio apartments to 4 bedroom units for a total of 300 bedrooms. The project also included parking and a 500,000-gallon water storage tank. The project was to be located on a six- to seven-acre site, six miles south of Truckee near the southwest corner of Northstar Drive and State Route 267. That site is moderately sloping and has fairly dense tree coverage of Jeffrey pine and white fir.

The project originally contemplated a single-access road. Comments from the California Department of Forestry and Northstar Fire Department, however, required the project proponents to include a secondary access road.

As originally conceived, the project was designed to provide housing only for employees of Northstar and as such required only a minor use permit and minor variances. Northstar decided to alter some of the components of the project to include an affordable housing component. As ultimately proposed, the project was a three-building apartment complex

with 96 units and was projected to have 380 beds. The project proposed the installation of 120 parking spaces and two access roads, Highland Drive (the primary access road which connects directly to State Route 267) and Sawmill Flat Road (the secondary access road which accesses State Highway 267 via Northstar Drive). The proposal also incorporated improvements to State Route 267. The project continued to be primarily designed for Northstar employees, but would also house employees of other neighboring businesses. As a result, shuttle service would be provided from the project to the Northstar Resort and it would be mandatory for employees to utilize that service.

The change in the project from Northstar employee housing to affordable housing meant the project required additional discretionary approvals from Placer County. These additional approvals included: (1) a general plan amendment for the property changing the general plan designation for the property from "Forestry" to "Multi-family residential, 15.2 dwelling units/acre"; (2) a change in the zoning of this property from "Forestry" to "High Density Residential, 15.2 units/acre"; (3) a conditional use permit to construct the project; (4) a variance from the applicable maximum building height restrictions; (5) a parcel map to create the 6.3-acre parcel for the project; and (6) a conditional use permit for the 500,000-gallon water tank.

Northstar and Placer County officials concluded a mitigated negative declaration was the appropriate method of environmental review for the project. The mitigated negative declaration was circulated for public comment on July 13, 2001. On

September 27, 2001, the Placer County Planning Commission adopted the mitigated negative declaration and approved the other related applications, i.e., general plan amendment, zoning change, use permits, and variances. ASDAN and other interested parties appealed that approval to the Placer County Board of Supervisors. On November 30, 2001, a revised mitigated negative declaration was released consisting of a memorandum from county staff, the mitigated negative declaration, the initial study, and various parcel maps. On December 4, 2001, the board of supervisors affirmed the planning commission's decisions and granted the approvals sought by Northstar.

On January 7, 2002, ASDAN filed a petition for writ of mandate in the Placer County Superior Court. After briefing, the trial court issued its decision granting the writ. In its decision, the trial court concluded the project description failed to properly identify the project because it did not list the proposed roads, the parking, or the 500,000-gallon water tank. The trial court, however, rejected ASDAN's claim the project proponents had improperly segmented the project to evade environmental review. On the merits of the CEQA challenge, the trial court concluded the mitigated negative declaration was inappropriate for this project because a fair argument existed that the project may cause the following potentially significant environmental impacts: (1) growth-inducing impacts of roads in this previously pristine forest area; (2) land use impacts due to the change in the land use designation for the property; (3) impacts from runoff and drainage from water discharged from

the project; and (4) impacts to traffic from the project. The trial court set aside the approvals for the project. Placer County and Northstar appeal.

DISCUSSION

I

Request For Hearing -- Section 21167.4

Northstar contends the trial court erred when it refused to dismiss this case because ASDAN failed to take the appropriate steps to request a hearing within 90 days of the filing of its petition under section 21167.4. We disagree.

ASDAN filed its petition in the trial court on January 7, 2002. Within 90 days, ASDAN filed a document entitled "Notice of Request and Request for Hearing" requesting a hearing under section 21167.4. On April 5, 2002, which is also within 90 days of the filing of the petition, ASDAN filed a second document entitled "Notice of Scheduling Hearing" noticing a hearing date of May 6, 2002, to schedule the matter for a hearing.

Northstar filed a motion to dismiss the action based on the contention ASDAN failed to properly request a hearing date within 90 days under section 21167.4.

In opposing Northstar's motion, counsel for ASDAN submitted a declaration stating that he had been advised by the trial court and its staff that the trial court "prefers to have the parties come before the Court in a case management conference setting to discuss the status of the case and set a briefing schedule." Further, counsel averred "[t]he Court has requested that a request for hearing be submitted and that the Court's

staff would then notify the parties as to when they should appear for a case management conference." Counsel also informed the court that in several prior CEQA cases, the court had informed him that the hearing date on the merits of CEQA petitions was routinely set at the case management/status conference.

The trial court denied Northstar's motion because ASDAN "timely filed a request for hearing under [section] 21167.4, subd. (a) in the format required by Placer County Superior Court."

We start our analysis of this issue with section 21167.4 which provides: "(a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding. [¶] (b) The petitioner shall serve a notice of the request for a hearing on all parties at the time that the petitioner files the request for a hearing. [¶] (c) Upon the filing of a request by the petitioner for a hearing and upon application by any party, the court shall establish a briefing schedule and a hearing date. In the absence of good cause, briefing shall be completed within 90 days from the date that the request for a hearing is filed, and the hearing, to the extent feasible, shall be held within 30 days thereafter. Good cause may include, but shall not be limited to, the conduct of discovery, determination of the completeness of the record of proceedings, the complexity

of the issues, and the length of the record of proceedings and the timeliness of its production. The parties may stipulate to a briefing schedule or hearing date that differs from the schedule set forth in this subdivision if the stipulation is approved by the court."

The seminal case on the requirements of section 21167.4 is *McCormick v. Board of Supervisors* (1988) 198 Cal.App.3d 352 (*McCormick*). In *McCormick,* the challenger to a project filed a document entitled "'Request for Hearing'" and did nothing more to secure a hearing in the trial court on its petition challenging a zoning action. (*Id.* pp. 355, 356.) The court noted that the policy behind section 21167.4 is to ensure that mandate proceedings challenging environmental approvals are conducted expeditiously and squarely places the burden on the challenger to tender their claim for resolution at an early point in the proceedings or lose it altogether. (*McCormick*, at p. 358.) The *McCormick* court held, "section 21167.4 requires the petitioner to take affirmative steps sufficient to place the matter on the court's docket for a hearing, either by filing and serving a notice of hearing or utilizing some other method authorized by the local rules of the court in which the matter is pending. A mere advisory pleading stating that the petitioner requests a hearing is inadequate." (*Ibid.*)

We conclude the trial court correctly denied Northstar's motion. ASDAN's filing of the original document "Request for Hearing" complied with the letter of section 21167.4. We conclude *McCormick's* requirement that the petitioner do

something more than this is no longer good law in light of the 1994 amendment to section 21167.4.

At the time *McCormick* was decided in 1988, section 21167.4 read, in its entirety, "In a writ of mandate proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days of filing the petition or otherwise be subject to dismissal on the court's own motion or on the motion of any party interested therein." (Stats. 1980, ch. 131, § 3, p. 304.) In the former statute, there was no mechanism for any party other than the petitioner to demand that the matter be set for hearing. Thus, the *McCormick* court's construction of the statute's language "request a hearing" to mean that the petitioner must take affirmative steps to put a CEQA challenge on the court's trial calendar for an early resolution was sensible based on the statute's prior language and the policy reason behind it.

In 1994, the Legislature amended section 21167.4 to add subdivision (c) which provides, in part, that "[u]pon the filing of a request by the petitioner for a hearing and upon application by any party, the court shall establish a briefing schedule and a hearing date." (§ 21167.4, subd. (c); Stats. 1994, ch. 1294, § 21, pp. 8325-8326.)[3] While the amendment did

---

[3] We grant Northstar's request that we take judicial notice of the legislative history concerning this amendment. (Evid. Code, § 452, subd. (c); *People ex rel. Foundation for Taxpayer & Consumer Rights v. Duque* (2003) 105 Cal.App.4th 259, 264, fn. 3.)

not alter the language of subdivision (a), we can only conclude that the addition of this language in section (c) altered the meaning of subdivision (a).

Under the current version of the statute, after the petitioner files a request for a hearing, "any party" may file an "*application*" for a hearing date at which point in time the court *must* set the hearing. Thus, the petitioner controls the timing of the filing of the "request [for] a hearing" but must file that request within 90 days of the filing of the petition. Immediately after filing that document, the petitioner must serve it on all parties. Now, however, either the petitioner *or* the respondent can force the trial court to set a hearing by filing an "application" as soon as the petitioner completes this first step. Either party may move the petition to a hearing on the merits, swiftly satisfying the legislative intent that these proceedings be conducted expeditiously. (*McCormick, supra,* 198 Cal.App.3d at p. 358.)

In making this determination that subdivision (a) of section 21167.4 requires only the filing of a request, we are mindful that the Legislature is presumed to have approved the judicial construction of a statute when it amends the statute without changing the language of the provision that has been construed. (*People v. Allen* (1993) 20 Cal.App.4th 846, 852.) We also are mindful, however, that it is our duty to construe statutes in a manner that gives meaning to the statute as a whole and to each word contained in that statute. (See *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 659 ["'The

meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation]].'") We must "give effect to the usual, ordinary import of the words used in the statute, giving significance to each word, phrase and sentence in context with the purpose of the statute and avoiding a construction which would make some words surplusage." (*In re Parker* (1998) 60 Cal.App.4th 1453, 1464.) Our construction of section 21167.4 gives meaning to the language of subdivision (c) and furthers the policy goals behind the statute. If *McCormick* were still good law and the "request a hearing" language of subdivision (a) required the petitioner to do something more than file a request for a hearing, the words "and upon application by any party" and the request that the "court shall establish a briefing schedule and a hearing date" in subdivision (c) would be rendered surplusage -- a result we must avoid if possible. We conclude a petitioner satisfies the requirement of the statute by filing a request for hearing. ASDAN met that burden here.

II

CEQA Evaluation

A

Project Description -- Omission Of Project Components

We now turn to the merits of ASDAN's challenge to the approval of the mitigated negative declaration. The trial court concluded Northstar improperly omitted reference to the two access roads, the parking, and the 500,000-gallon water tank in

the description of the project contained in the mitigated negative declaration approved by Placer County. ASDAN urges us to conclude this is sufficient to uphold the trial court's judgment. We, however, agree with Northstar that the documents circulated adequately described the project and fulfilled the purpose of CEQA.

CEQA is to be interpreted "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. [Citation.] Central to CEQA is the EIR [environmental impact report], which has as its purpose informing the public and government officials of the environmental consequences of decisions before they are made." (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1315.)

Section 21064 defines a negative declaration as "a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report." Section 15071 of the Guidelines For Implementing the California Environmental Quality Act (Guidelines[4]), provides: "A negative declaration circulated for public review shall include: [¶]

---

[4] The Guidelines are the regulations that implement CEQA and are located in title 14 of the California Code of Regulations starting at section 15000. "[C]ourts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2.)

(a) A brief description of the project, including a commonly used name for the project, if any; [¶] (b) The location of the project, *preferably shown on a map*, and the name of the project proponent; [¶] (c) A proposed finding that the project will not have a significant effect on the environment; [¶] (d) An attached copy of the initial study documenting reasons to support the finding; and [¶] (e) Mitigation measures, if any, included in the project to avoid potentially significant effects." (Italics added.)

As explained by *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406, "The negative declaration is inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action. 'Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.'" (Fns. omitted.) It is the major purpose of circulating the negative declaration to give the public and public agencies notice of the proposed project and to provide input into the public process of reviewing the environmental effects of that project. (*Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133, 1141; see also

§ 21091, subd. (b) ["The public review period for a proposed negative declaration or proposed mitigated negative declaration may not be less than 20 days"]; Guidelines, § 15073 [requiring public review of the mitigated negative declaration].)

Here, the brief description of the project contained in the mitigated negative declaration was sufficient to fulfill CEQA's purpose of presenting the major components of the project to the public for review and input. Northstar described the project in words as: "Proposal to change the General Plan Designation from Forestry to High Density Residential, 15.2 units/acre, to develop a proposed employee housing project consisting of approximately 96 residential units in three 4-story buildings, which contain 380 beds. The units in each building are designed primarily for the seasonal employees of Northstar and to [*sic*] other employees in the region." Moreover, the one-page mitigated negative declaration containing this description was circulated to the public with the 12-page initial study and eight pages of parcel maps depicting the project.[5]

The initial study specifically mentions that roads and parking are a part of this project and discusses the environmental impacts of these items, the mitigation measures implemented, and the potential traffic impact anticipated from

---

[5] While the administrative record does not explicitly demonstrate that this entire package was circulated to the public, ASDAN acknowledges Northstar's argument and does not refute this claim. We accept this as a concession that this entire set of documents was circulated.

these items. More importantly, the maps attached to these documents depict all three of these major project components that were not expressly spelled out in the written description on the first page of the mitigated negative declaration. These drawings give full and meaningful descriptions of the roads, the parking, and the water tank. In addition, in the revised mitigated negative declaration released on November 30, 2001 -- before the board of supervisors held its hearing -- the staff memorandum incorporated into the mitigated negative declaration gave an exhaustive listing of each of the components of the project.

This is not a case where the project proponent attempted to hide major portions of the project from public view and scrutiny. If this were really a case where, in the words of ASDAN's counsel, interested members of the public would have had to "comb through the environmental document[s] to determine a project's basic components," we might come to a different conclusion. In this case, however, the project (the construction of the apartment complex) and its major elements were readily identifiable from the mitigated negative declaration and its attached descriptions and maps, actually circulated for public comment and more explicitly stated in the revised mitigated negative declaration submitted to the board of supervisors for its consideration. The project description is adequate.

B

Mitigated Negative Declaration

Findings -- Growth-Inducing Impacts

Northstar argues the trial court erred in concluding the "construction of two new roads into an [*sic*] currently undeveloped area will have obvious growth-inducing potential, especially since the County is requiring that the roads be built to handle the anticipated traffic of the Highlands development." We do not agree.

1. *CEQA's Requirements*

We start with the basic requirements of CEQA. CEQA requires government agencies to prepare an environmental impact report (EIR) for any project carried out or approved that "may have a significant effect on the environment." (§ 21151, subd. (a); Guidelines, § 15064, subd. (a)(1).) Because "the preparation of an EIR is the key to environmental protection under CEQA--indeed constituting the very heart of the CEQA scheme--accomplishment of CEQA's high objectives requires the preparation of an EIR 'whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.'" (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 880.) "'[T]he word "may" connotes a "reasonable possibility."' [Citation.] The phrase 'significant effect on the environment' is defined to mean 'a substantial, or potentially substantial, adverse change in the environment.' [Citation.]" (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309.) "Substantial

evidence" is evidence that is credible, reasonable in nature, and of solid value. (*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 152.) The Guidelines define "'[s]ubstantial evidence'" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." (Guidelines, § 15384, subd. (a).) The Guidelines continue: "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (Guidelines, § 15384, subd. (b).)

"If there is no substantial evidence a project 'may have a significant effect on the environment' or the initial study identifies potential significant effects, but provides for mitigation revisions which make such effects insignificant, a public agency must adopt a negative declaration to such effect and, as a result, no EIR is required. [Citations.] However, the Supreme Court has recognized that CEQA requires the preparation of an EIR 'whenever it can be fairly argued on the basis of substantial evidence that the project may have

significant environmental impact.' [Citations.] Thus, if substantial evidence in the record supports a 'fair argument' significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified." (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602).)

This "fair argument determination poses a question of law that does not contemplate a weighing of evidence and a discretion to determine a fact: if there is substantial evidence to support a fair argument, that is the end of the matter even if there is substantial evidence in opposition." (*Natural Resources Defense Council v. Fish & Game Com.* (1994) 28 Cal.App.4th 1104, 1116.) "Upon a challenge of an agency's decision no EIR is required, the reviewing court's 'function is to determine whether substantial evidence supported the agency's conclusion as to whether the prescribed "fair argument" could be made.' [Citation.] . . . 'Stated another way, the question is one of law, i.e., "the sufficiency of the evidence to support a fair argument." [Citation.] Under this standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. [Citation.]'" (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas, supra,* 29 Cal.App.4th at p. 1602, italics & fn. omitted.)

"[T]he issue before the trial court is whether the agency abused its discretion. Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the

determination is not supported by substantial evidence. [Citations.]" (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1375.) "On appeal, the appellate court's 'task . . . is the same as that of the trial court: that is, to review the agency's actions to determine whether the agency complied with procedures required by law.' [Citation.]" (*Id.* at p. 1375.)

2. *Growth-Inducing Impacts*

A project will have growth-inducing impacts when it will "[i]nduce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)." (Guidelines, appendix G, § XII.) On the subject of the growth-inducing impact of a project, the Guidelines direct the project proponent to "[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas)." (Guidelines, § 15126.2, subd. (d).) Further, the Guidelines direct the proponent to "discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment." (*Ibid.*) Thus,

growth-inducing impacts may occur when a project: (a) provides additional housing or infrastructure; (b) removes primary obstacles to growth; or (c) encourages and facilitates other activities that could significantly affect the environment.

3. *There Is Substantial Evidence To Raise A Fair Argument Of Significant Growth-Inducing Impacts*

We turn to the question of whether substantial evidence in this record supports a fair argument this project may have significant growth-inducing impacts. ASDAN directs us to several pieces of evidence in the record that support the trial court's conclusion that substantial evidence exists to support a fair argument that the housing project and its attendant roads may have growth-inducing impacts by facilitating the construction of a separate residential project called the Highlands.

First, ASDAN points to the traffic study commissioned by Northstar. Northstar hired the traffic engineering firm LSC Transportation Consultants, Inc., to provide a traffic study concerning the impact of this project on traffic and circulation. LSC's traffic study analyzed the future impact of the proposed Highlands residential development in its analysis of future traffic conditions. In that analysis, LSC stated the proposed Highlands residential development is "expected to consist of approximately 1,650 multi-family dwelling units, 200 lodging units, and 10,000 square feet of limited commercial land uses to serve the residential area." More importantly, the study stated, "Access to the Highlands future development area

will be provided both via Highland Drive directly to SR 267, as well as via Sawmill Flat Road and Northstar [D]rive to SR 267." These are the access roads constructed as a part of this project.

Next, ASDAN points to the June 15, 2001 newsletter, prepared by East West Partners and Northstar Resort. That newsletter discusses the future plans for the Northstar Resort, including the "Northstar Highlands: Future Slope-Side, Ski-in/Ski-out Neighborhood." In that document Northstar describes the Highlands project that it is planning: "The Highlands is situated with slope-side on the ski mountain, with distinctive, ski-in/ski-out residential and lodging units planned. The Highlands will be served by its own separate access road and entry. Lifts will start at the doorstep and whisk residents to the ski slopes, or to charming Northstar Village. Close proximity of residences to lifts will help minimize traffic and preserve the pedestrian orientation of the Village."

The initial study document states that the project itself "would change the present use of the land from undeveloped forest" and "does represent a minor increase in population growth in an area that is undeveloped." Thus, these roads are being placed in previously undeveloped forest areas.

Finally, the maps attached to the negative declaration and initial study show a road configuration that appears to have the future Highlands project precisely in mind. The proposed Highland Drive deviates a significant distance away from the

project and in the direction of the Highlands before hooking back into Sawmill Flat Road.

We conclude these items constitute substantial evidence that supports a fair argument that the project may have significant growth-inducing impacts. These two roads add infrastructure and are designed to accommodate the future development of the Highlands residential project of 1,650 multi-family dwelling units, 200 lodging units, and 10,000 square feet of limited commercial land uses. The project removes obstacles to development by placing these roads in an undeveloped forest setting and facilitates the development of the future residential/commercial development called the Highlands that will have a significant impact on the environment of the Sierra Nevada.

4. *The Highlands Development Is Reasonably Foreseeable*

Northstar argues that the mitigated negative declaration need not analyze the Highlands project because it is purely speculative. In fact, in the mitigated negative declaration, Placer County rejected the contention the proposed project would have significant growth-inducing impacts because "Whether and when the County may receive such applications [for future development] is a matter of speculation." Placer County also concluded these growth impacts need not be considered because the road was not Northstar's idea, but rather came at the direction of the Northstar Fire Department and Department of Forestry for safety purposes not development purposes. These conclusions were prejudicial abuses of discretion.

a. *Reasonably Foreseeable Or Speculative?*

The record demonstrates to us that the development of the Highlands residential project is reasonably foreseeable and not speculative.

As explained by the Guidelines, "In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." (Guidelines, § 15064, subd. (d).) "An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable." (*Id.*, subd. (d)(3).)

The subject of what is reasonably foreseeable was analyzed in *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325. There, a developer proposed to construct a road, a sewer system, a culvert, a storm drain system, a water distribution system, and underground utility lines through a large undeveloped area. (*Id.* at pp. 1328-1329.) The proposed road was not connected to any other street and the project did not involve the construction of any buildings. (*Id.* at p. 1329.) The court held the city's approval of a negative declaration for this project was improper and that an EIR was required because the project may have a significant impact on the environment in terms of inducing future growth and development in the immediate area. (*Id.* at pp. 1337-1338.) The court rejected the

developer's argument "a negative declaration [was] appropriate here [because] the proposed roadway will not at this stage connect with an existing street and thus will generate no traffic or impacts upon circulation and that the utilities also will remain unconnected." (*Id.* at pp. 1333, 1338.) The court also rejected the developer's contention "that the proposals for future development will be subject to further environmental review at the time of development of the surrounding land." (*Id.* at p. 1333.) The court reasoned that CEQA requires environmental review to be undertaken as early in the planning process as possible to enable environmental considerations to influence the project. (*Ibid.*) The court stated, "Construction of the roadway and utilities cannot be considered in isolation from the development it presages. Although the environmental impacts of future development cannot be presently predicted, it is very likely these impacts will be substantial." (*Id.* at p. 1336.) The court concluded, "In sum, our decision in this case arises out of the realization that the sole reason to construct the road and sewer project is to provide a catalyst for further development in the immediate area. Because construction of the project could not easily be undone, and because achievement of its purpose would almost certainly have significant environmental impacts, construction should not be permitted to commence until such impacts are evaluated in the manner prescribed by CEQA. . . . [T]he fact that a particular development which now appears reasonably foreseeable may, in fact, never occur does not release it from the EIR process.

[Citation.] Similarly, the fact that future development may take several forms does not excuse environmental review." (*Id.* at pp. 1337-1338.)

We agree with Northstar that the instant case is distinguishable from *City of Antioch*, because the sole purpose of the *Antioch* project was to construct a road that would assist in further development. The essential principle of that case -- that a project proponent must evaluate the growth-inducing impacts of its project for future development that is "reasonably foreseeable" -- however, remains viable and applicable even to a "stand alone" project like this one.

Stanislaus Audubon Society, Inc. v. County of Stanislaus, *supra*, 33 Cal.App.4th 144, is instructive on this point. There, the County of Stanislaus approved a mitigated negative declaration for the construction of a stand-alone, 27-hole golf course and attendant country club facilities on 600 acres of the 2500-acre Willms Ranch. (*Id.* at pp. 146-147, 149.) The ranch consisted of rolling foothills and was predominately used for dry land grazing with limited residential development. (*Id.* at pp. 147-148.) The Audubon Society challenged that approval arguing that substantial evidence in the record demonstrated the golf course would have a significant growth-inducing impact on the environment. (*Id.* at pp. 149-150.) The appellate court agreed concluding, "the record is replete with evidence supporting a fair argument the proposed country club may have a significant adverse growth-inducing effect on the surrounding area and that the County avoided evaluation of this impact by

specifically deferring consideration thereof until the expected housing developments are actually proposed." (*Id.* at p. 152.) In the original initial study document, county staff stated "'quite often a golf course project of this nature acts as a catalyst which triggers requests for residential development.'" (*Id.* at p. 153.) The record contained other evidence that the construction of a golf course would create pressure for residential development: comments from the county's department of environmental resources, comments from a planning commissioner at the hearing on the application, a comment from the California Department of Conservation, and the fact that when other golf courses were constructed, development followed. (*Id.* at pp. 154-156.) The developer argued the negative declaration did not need to discuss this potential growth-inducing impact because the future development was "too 'remote' and 'speculative.'" (*Id.* at p. 158.) The appellate court rejected this contention. (*Ibid.*) The appellate court concluded, "the central principle of [*City of Antioch, supra,* 187 Cal.App.3d 1325], that environmental review cannot be deferred until reasonably foreseeable future development is, in fact, proposed, is directly applicable. '[T]he fact that future development may take several forms,' or that it may never occur, 'does not excuse environmental review' of the project which is the catalyst for the projected future growth. [Citation.] The record here clearly contains substantial evidence supporting a fair argument the proposed country club may induce housing development in the surrounding area. The fact that the exact

extent and location of such growth cannot now be determined does not excuse the County from preparation of an EIR. Just as in *Antioch*, review of the likely environmental effects of the proposed country club cannot be postponed until such effects have already manifested themselves through requests for amendment of the general plan and applications for approval of housing developments." (*Stanislaus Audubon Society, Inc. v. County of Stanislaus*, *supra,* 33 Cal.App.4th at pp. 158-159, fn omitted.) Thus, the reasonably foreseeable future development required Stanislaus County to prepare an EIR. (*Id.* at p. 159.)

Here, the record demonstrates the Highlands project is reasonably foreseeable and not merely a developer's dream. (See *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 162 ["[t]he dreams of the rabbis and others for expansion, and past outreach efforts, are not substantial evidence that future expansion of the project, *as presented to the Board*, is reasonably foreseeable"].) Contemporaneously with the processing of this application, Northstar published a newsletter discussing its "plan" to develop the Highlands project. Further, Northstar's own traffic consultant indicated not only that this development was contemplated, but laid out specific expectations for the number of houses and the anticipated square footage of the commercial uses proposed, and the proposed access through the roads constructed from the instant project. That same traffic study analyzed the cumulative impacts of the traffic from this future project and

further pointed out that the two access roads constructed for this project would be the ones serving the Highlands project.

Northstar contends the development of this project does not presage future development because the approvals for the Highlands residential project have not been "guaranteed." Again, this is not the relevant question. Rather, as noted above, the relevant question is whether this future development is reasonably foreseeable. On this record, it is.

Northstar also cites *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712[6] as support for the proposition that Placer County need not analyze the reasonably foreseeable future development that might result from the roads proposed as part of the instant project. In that case, the City of San Diego certified an EIR for the construction of a 1.8-mile section of State Route 56. (*Id.* at pp. 719-720.) Portions of the highway outside of that 1.8-mile segment for the proposed highway passed through a "Future Urbanizing Area" (FUA) where the electorate through the initiative process had declared that no development would be allowed until a future citywide vote approved it. (*Id.* at pp. 720-721.) As a result, the city could not commit to any alignment for the freeway through that area. (*Ibid.*) The appellate court rejected a challenge that the project proponent had impermissibly omitted the sections of the

---

[6] Disapproved by *Western States Petroleum Assoc. v. Superior Court* (1995) 9 Cal.4th 559, 570, footnote 2, 576, footnote 6, as to *Del Mar's* holding the court could consider extra-record material.

freeway that passed through the FUA from consideration in the EIR on three grounds. (*Id.* at pp. 729-737) First, the court concluded the FUA initiatives had created a situation where development in this area was speculative and uncertain and therefore not reasonably foreseeable. (*Id.* at pp. 731-732.) Second, the court concluded that a freeway segment may be separately analyzed without regard to its connections if four conditions were met: (a) it is of substantial length and between logical termination points defined as major crossroads, population centers, major traffic generators, or similar major high control elements; (b) the highway has independent utility; (c) whether the length selected assures adequate opportunity for the consideration of alternative; and (d) the segment under consideration seems to fulfill important state and local needs. (*Id.* at pp. 732-733.) The 1.8-mile stub of a freeway met these requirements. (*Id.* at p. 734.) Third, and most importantly, the EIR prepared did take into account the probable future development of this freeway segment in analyzing noise impacts, air quality impacts, and cumulative impacts. (*Id.* at pp. 735-737.)

Del Mar Terrace Conservancy, Inc., does not assist Northstar here. First, on this record, the potential development of the Highlands residential/commercial project is not speculative, but rather is reasonably foreseeable. Here, the parties direct us to nothing similar to the San Diego initiative that barred future development until a future vote of the electorate. Second, these two proposed roads do not fit the

requirements of separate consideration to the exclusion of future connections. These roads are neither of substantial length (Sawmill Flat Road is proposed to be 750 feet and Highland Drive is proposed to be approximately 2,212 feet) nor are they proposed between logical termination points. From the drawings of the project, these roads show a deviation that appears to accommodate future development up the mountain. Finally, except for the traffic impacts, the negative declaration completely discounted the possibility that future growth would occur here.

b. *That The Road Was The Fire Department's Idea Is Irrelevant*

Placer County's conclusion that they need not analyze the growth-inducing impacts of the road because it was included at the fire department's insistence is also wrong. The relevant question is whether a fair argument exists that the proposed project and its roads may have significant growth-inducing impacts. (*Stanislaus Audubon Society, Inc. v. County of Stanislaus*, *supra*, 33 Cal.App.4th at pp. 158-159) It is simply irrelevant who suggested the road. Whether it was the project proponent or the fire department, the ultimate environmental effect of the road will remain the same and must be analyzed accordingly.

c. Conclusion

Because the trial court did not err in concluding that there is a fair argument based upon substantial evidence in the record that this project would have growth-inducing impacts, we

shall affirm the trial court's judgment. We decline to address the court's findings of impacts in the areas of land use, traffic, water and drainage, and cumulative impacts. (*Stanislaus Audobon Society, Inc. v. County of Stanislaus*, *supra*, 33 Cal.App.4th at p. 159.)

DISPOSITION

The judgment is affirmed. ASDAN shall recover its costs on appeal. (Cal. Rules of Court, rule 27(a).)

ROBIE, J.

We concur:

DAVIS, Acting P.J.

NICHOLSON, J.