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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SIERRA CLUB and FRIENDS OF THE WEST SHORE,

Plaintiffs,

v.

TAHOE REGIONAL PLANNING AGENCY,
COUNTY OF PLACER, and BOARD OF
SUPERVISORS OF THE COUNTY OF
PLACER,

Defendants.

NO. CIV. 2:12-0044 WBS CKD

MEMORANDUM AND ORDER DENYING
MOTION TO ALTER OR AMEND
JUDGMENT RE: CROSS MOTIONS FOR
SUMMARY JUDGMENT

HOMEWOOD VILLAGE RESORTS, LLC,
and JMA VENTURES, LLC,

Defendants and Real
Parties in Interest.

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Before the court is Tahoe Regional Planning Agency ("TRPA"), the County of Placer (the "County"), Homewood Village Resorts, and JMA Ventures' (collectively, "defendants") motion to alter or amend the judgment of the January 4, 2013, Memorandum

1 and Order Re: Cross Motions for Summary Judgment ("Order"),
2 (Docket No. 69), pursuant to Federal Rule of Civil Procedure
3 59(e). (Docket No. 71.) The Order granted in part and denied in
4 part cross motions for summary judgment. (Order at 113-14.)
5 Plaintiffs Sierra Club and Friends of the West (together,
6 "plaintiffs") oppose the motion.¹

7 Reconsideration is an "extraordinary remedy" which
8 should be used "sparingly in the interests of finality and the
9 conservation of judicial resources." Kona Enter., Inc. v. Estate
10 of Bishop, 229 F.3d 877, 890 (9th Cir. 2000); see also Sch. Dist.
11 No. 1J, Multnomah Cnty. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th
12 Cir. 1993) (stating that reconsideration should only be granted
13 in "highly unusual circumstances"). A motion for reconsideration
14 "should not merely present arguments previously raised, or which
15 could have been raised in the initial . . . motion." United
16 States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1130 (E.D.
17 Cal. 2001) (citing Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th
18 Cir. 1985)). It has been said that under Rule 59(e),
19 "[r]econsideration is appropriate if the district court (1) is
20 presented with newly discovered evidence, (2) committed clear
21 error or the initial decision was manifestly unjust, or (3) if
22 there is an intervening change in controlling law." Sch. Dist.
23 No. 1J, 5 F.3d at 1263.

24 Defendants argue that the court committed legal error
25 by requiring revision of the EIR-EIS after finding that the EIR-

27 ¹ The detailed factual background of this case may be
28 found in the Order. See (Docket No. 69); Sierra Club v. Tahoe
Reg'l Planning Agency, Civ. No. 2:12-0044 WBS, --- F.Supp.2d ---
, 2013 WL 79947 (E.D. Cal. Jan. 4, 2013).

1 EIS's analysis of Alternative 6 was inadequate and that
2 substantial evidence did not support the County and TRPA's
3 respective findings that Alternative 6 was economically
4 infeasible. Defendants point to the directive in California
5 Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code § 21000-
6 21176, case law that when the feasibility of an alternative
7 depends on economic factors, the evidentiary basis for the
8 agency's finding that the alternative is economically infeasible
9 need not be in the EIR itself, but must be in the administrative
10 record. See, e.g., Flanders Found. v. City of Carmel-by-the-Sea,
11 202 Cal. App. 4th 603, 618 (6th Dist. 2012). The court
12 acknowledged this requirement in its Order, explaining that "CEQA
13 does 'not require the EIR itself to provide any evidence of the
14 feasibility of . . . alternatives, much less an economic or cost
15 analysis of the various project alternatives and mitigating
16 measures identified by the EIR." (Order at 55 (quoting San
17 Franciscans Upholding the Downtown Plan v. City & Cnty. of S.F.,
18 102 Cal. App. 4th 656, 690-91 (1st Dist. 2002))). The court
19 cannot agree with defendants, however, that in requiring the
20 preparation of a legally adequate EIR-EIS it committed clear
21 error or that the remedy it ordered is manifestly unjust.

22 The "Guidelines," which flesh out CEQA's provisions,
23 prescribe that an EIR "include sufficient information about each
24 alternative to allow meaningful evaluation, analysis, and
25 comparison with the proposed project."² Cal. Code Regs., tit.
26 14, § 15126.6, subd. (d). An EIR-EIS must have "'detail

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28 ² The Guidelines are set forth in the California Code of
Regulations, title 14, section 15000 et seq.

1 sufficient to enable those who did not participate in its
2 preparation to understand and to consider meaningfully the issues
3 raised by the proposed project.'"³ Pres. Action Council v. City
4 of San Jose, 141 Cal. App. 4th 1336, 1355 (6th Dist. 2006)
5 (quoting Laurel Heights Improvement Ass'n v. Regents of Univ. of
6 Cal., 47 Cal. 3d 376, 405 (1988)). Further, "the agency
7 preparing the EIR may not simply accept the project proponent's
8 assertions about an alternative; the agency must 'independently
9 participate, review, analyze and discuss the alternatives in good
10 faith.'" Save Round Valley Alliance v. County of Inyo, 157 Cal.
11 App. 4th 1437, 1460 (4th Dist. 2007) (quoting Kings Cnty. Farm
12 Bureau v. City of Hanford, 221 Cal. App. 3d 692, 708 (5th Dist.
13 1990)).

14 At the outset of the Order's analysis of the EIR-EIS's
15 alternatives discussion, the court explained that one of the
16 project's objectives was to generate sufficient revenue to
17 support the project's proposed environmental and fire safety

19 ³ Defendants are correct that the quotation from Laurel
20 Heights cited in the Order's discussion of the sufficiency of the
21 EIR-EIS's analysis of Alternative 6 arose in the context of an
22 EIR's failure to adequately explain why it had declined to
23 further analyze certain alternatives. But, at the same time, the
24 Laurel Heights court was also disapproving the minimal attention
25 the EIR gave to the "no project" alternative. Laurel Heights
26 Improvement Ass'n, 47 Cal. 3d at 403. It therefore had occasion
27 to explain the importance of meaningful analysis of alternatives
28 that are considered in an EIR in equivalent terms to those stated
in the Order: "An EIR's discussion of alternatives must contain
analysis sufficient to allow informed decision making. . . .
Without meaningful analysis of alternatives in the EIR, neither
the courts nor the public can fulfill their proper roles in the
CEQA process." Id. at 404. The court went on to say, "An EIR
must include detail sufficient to enable those who did not
participate in its preparation to understand and to consider
meaningfully the issues raised by the proposed project." Id. at
405.

1 improvements, as well as the economic viability of the ski
2 operations. (Order at 30.) As noted in the Order, the EIR-EIS,
3 based on information provided by the project proponent, rejected
4 that Alternative 6 could meet that objective of economic
5 feasibility.⁴ (Order at 56-57; see also Administrative Record
6 3923 ("Alternatives consisting of fewer than the 282 units
7 included in Alternative 6 would likewise be financially
8 infeasible") (emphasis added).)

9 In Preservation Action Council v. City of San Jose, the
10 court ruled that the EIR's analysis of a reduced-size alternative
11 was inadequate because ambiguity regarding the size of the
12 alternative "would have made it difficult to compare the size of
13 the . . . alternative to the size of other home improvement
14 warehouses in the area in order to evaluate the validity of the
15 claim by [the project proponent] that the . . . alternative was
16 infeasible because it would produce a 'competitive
17 disadvantage.'" Pres. Action Council, 141 Cal. App. 4th at 1355.
18 In other words, the EIR made it impossible to determine whether
19 the alternative would achieve the project applicant's objectives.

20 The ambiguity in that case "meant that the public and
21 the City Council were not properly informed of the requisite
22 facts that would permit them to evaluate the feasibility of th[e]
23 alternative," id., and that the EIR "lacked 'detail sufficient to
24 enable those who did not participate in its preparation to
25

26 ⁴ Obviously the court did not intend to suggest that the
27 EIR-EIS rejected analyzing Alternative 6 wholesale. Indeed, the
28 court rejected plaintiffs' contention that the EIR-EIS needed to
analyze a further reduced-size alternative on the grounds that
analyzing one reduced alternative--Alternative 6--was sufficient.

1 understand and to consider meaningfully' the reduced-size
2 alternative," id. (quoting Laurel Heights Improvement Ass'n, 47
3 Cal. 3d at 404-05).

4 After explaining that the City also did not include
5 meaningful detail in the record regarding the project proponent's
6 claim that the reduced-size alternative was infeasible or make a
7 specific finding validating that claim, the court in that case
8 held that "[t]he City violated CEQA by failing to ensure that the
9 [EIR] adequately analyzed the potentially feasible and
10 environmentally superior reduced-size alternative and failing to
11 make a specific finding, based on substantial evidence, regarding
12 the feasibility of the reduced-size alternative." Id. at 1357.
13 The court therefore required revision of the EIR to remedy its
14 inadequate analysis of the reduced-size alternative. Id. at
15 1357-58 (also requiring adoption of appropriate findings based on
16 substantial evidence).

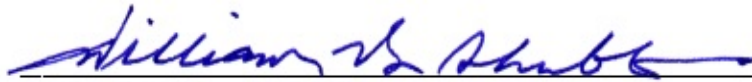
17 In the instant case, this court likewise ordered
18 revision of the EIR-EIS after making comparable rulings regarding
19 the EIR-EIS's analysis of Alternative 6's economic feasibility
20 and the County and TRPA's respective findings that Alternative 6
21 is economically infeasible.⁵ Not to have ordered revision of the
22 EIR-EIS would have ignored the distinction between the
23 feasibility determinations the County and TRPA are entitled to
24 make on the record and the analysis of a project's alternatives
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26 ⁵ The court found in its Order that the Tahoe Regional
27 Planning Compact, Pub. L. No. 96-551, 94 Stat. 3233 (1980); Cal.
28 Gov't Code § 66801 et seq.; Nev. Rev. Stat. § 277.200 et seq.,
requires a comparable analysis of alternatives to CEQA. (Order
at 57.)

1 that CEQA requires to be in the EIR-EIS. To properly compare
2 alternatives, information on how each alternative meets or fails
3 to meet the project's objectives must be adequate and accurate.
4 Because the project's economic feasibility is one of its key
5 objectives, simply redoing findings will not cure the defect in
6 the EIR-EIS identified by the court in its Order and ensure that
7 the EIR-EIS is the public informational document and guide for
8 the agencies it is intended to be. Accordingly, the court
9 neither committed clear error nor ordered a manifestly unjust
10 remedy.

11 IT IS THEREFORE ORDERED that defendants' motion to
12 alter or amend the judgment be, and the same hereby is, DENIED.

13 DATED: February 27, 2013

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15 WILLIAM B. SHUBB
16 UNITED STATES DISTRICT JUDGE
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