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Environmental Impact Report That Describes Alternate Projects Under Consideration Does Not Satisfy CEQA.

In 1984, the Department of Parks and Recreation (“Department”) acquired 777 acres of land in the Lake Tahoe Basin. The land was divided into two contiguous units: 608 acres designated as the Washoe Meadows State Park to preserve and protect wet meadows and habitat (the “State Park”) and the remaining acreage for the continued operation of an existing golf course (the “Recreation Area”). The division was necessary because golf courses are not allowed in state parks.

In 2003, studies identified the portion of the Upper Truckee River that runs through the State Park and Recreation Area as one of the worst contributors to sediment running into Lake Tahoe. The layout of the golf course had altered the course and flow of the river, which in turn contributed to a deterioration of the habitat and water quality.

The Department began exploring restoration and reconfiguration options. In August 2010, the Department prepared and circulated a draft environmental impact report (“Draft EIR”) for the “Upper Truckee River Restoration and Golf Course Reconfiguration Project.” The stated purpose of the proposed project was to reduce the river’s discharge of nutrients and sediments that diminish Lake Tahoe’s clarity while providing access to public recreation opportunities. The Draft EIR described the following five alternatives for the project: Alternative #1: no project; Alternative #2: river restoration with reconfiguration of the 18-hole golf course; Alternative #3: river restoration with a 9-hole golf course; Alternative #4: river stabilization with continuation of the existing 18-hole golf course; and Alternative #5: restoration of the ecosystem and the decommissioning of the golf course. The Draft EIR did not identify a preferred alternative.

In September 2011, the Department released the final environmental impact report (“Final EIR”) for the project, in which it identified “a refined version of Alternative 2” as the proposed preferred alternative. In January 2012, the Department certified the adequacy of the Final EIR and approved the project.

A citizens group filed a lawsuit challenging the approval of the project under the California Environmental Quality Act (“CEQA”). The group argued the Draft EIR violated CEQA because it did not identify a proposed project, but described five very different alternatives. The trial court agreed with the citizen’s group and directed the Department to set aside its approval of the project.

The Department appealed the trial court’s decision. On appeal, the Court affirmed the trial court’s decision. The Court stated that an EIR is the “heart” of CEQA and confirmed that an accurate, stable, and finite project description is the threshold requirement of an informative and legally sufficient EIR. The Court found that the Draft EIR, in this case, functioned more as a scoping plan, which should be formulated *before* completion of a draft EIR. The Court explained: “To ensure informed public participation in the CEQA process, agencies are required to circulate a draft EIR for public comment. The draft EIR, in this case, did not identify a proposed project but described five very different alternative projects then under consideration. Consequently, the public was not provided with an accurate, stable and finite project description on which to comment.”

Washoe Meadows Community v. Department of Parks and Recreation (Nov. 15, 2017)
__Cal.App.5th __ (2017 WL 5476487)

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