

RESOLUTION NO. 2006-__

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE TOWN OF TIBURON CERTIFYING THE FINAL ENVIRONMENTAL
IMPACT REPORT (FEIR) FOR THE KOL SHOFAR SYNAGOGUE
EXPANSION PROJECT (FILE #10404)
ASSESSOR PARCEL NO. 38-351-34**

WHEREAS, the Planning Commission of the Town of Tiburon does resolve as follows:

Section 1. General Findings.

Whereas, a Draft Environmental Impact Report (DEIR) evaluating the proposed Congregation Kol Shofar expansion project (Conditional Use Permit) has been prepared and was transmitted by the Town of Tiburon to concerned parties for review and comment; and

WHEREAS, a notice of the availability of the DEIR was given as required by law; and

WHEREAS, written comments on the DEIR were accepted from the public from July 1, 2005 to August 15, 2005; and

WHEREAS, the Planning Commission held a public hearing and accepted testimony on the DEIR on August 10, 2005; and

WHEREAS, on August 24, 2005, after the close of the public comment period, the Planning Commission held another meeting, determined that no evidence requiring immediate recirculation had been submitted to date, and directed that responses to comments and a Final Environmental Impact Report (FEIR) be prepared; and

WHEREAS, the FEIR was prepared in accordance with the provisions of the California Environmental Quality Act and local CEQA Guidelines; and

WHEREAS, the Planning Commission held duly noticed hearings on April 24, 2006 and May 10, 2006 at which it heard and considered the FEIR, including the FEIR Alternative 7 Analysis, and received public testimony; and

WHEREAS, the Planning Commission determined that no significant new information had been received that required recirculation of the EIR.

Section 2. Findings of No Recirculation Requirement

The Planning Commission makes the following findings based on evidence in support of its conclusion that recirculation is not required.

A. Requirements under CEQA

Only if a lead agency adds “significant new information” to an EIR subsequent to the commencement of public review and interagency consultation but prior to final EIR certification, must the agency “recirculate” a revised EIR, or portions thereof, for additional commentary and consultation. (Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5; *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California* (1993) 6 Cal.4th 1112 (*Laurel Heights II*).)

The “significant new information” standard was clarified in *Laurel Heights II*. There the court held that recirculation was only required when new information was added to an EIR that changed it in such a way that the public was deprived of meaningful comment on a new adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) *that project proponents have declined to implement*. (*Laurel Heights II, supra*, 6 Cal.4th at p. 1129; CEQA Guidelines 15162, subd. (a)(1).) The court reasoned that by codifying the “significant new information” language, the Legislature did not intend to promote endless rounds of revision and recirculation of EIRs. (*Laurel Heights II, supra*, 6 Cal.4th at p. 1132.) Instead, recirculation was intended to be an *exception*, rather than the general rule. (*Ibid.*)

Examples of how the “recirculation” standard should be applied are included in CEQA Guidelines section 15088.5. For example, recirculation is required when “a new significant environmental impact would result from the project.” (CEQA Guidelines, § 15088.5, subd. (a)(1).) This section is particularly relevant here, because Alternative 7 is a new alternative that proposes to reduce the potential impacts associated with the project as compared to the project initially proposed. Specifically, Alternative 7 is the same as the proposed Project but with limits on the number of new events and a revised circulation plan. (FEIR, p. 3.)

There is no basis for recirculating an EIR when changes in the proposed project will only reduce impacts. (See Remy et. al., Guide to the California Environmental Quality Act (10th ed. 1999) pp. 304-305.) In other words, where a new alternative is similar to one already outlined in an EIR, the time and expense associated with recirculation would not be justified. (*Ibid.*)

Here, Alternative 7 does not result in a significant change to the Project. Indeed, Alternative 7 is the same as the proposed Project with two simple

modifications: (1) the number of Saturday and Sunday evening events is substantially reduced from what was originally proposed, and attendance at those events would be limited; and (2) the circulation plan is revised to reflect existing entry and exit patterns, reduce the number of “turnarounds” in the street, and reduce project-generated left-turn movements onto Reedland Woods Way from Blackfield Drive. The net result of Alternative 7, therefore, will be a reduction in potentially significant impacts associated with the Project.

B. Substantial evidence supports the Town’s decision to not recirculate the EIR

Traffic

Commenters contend that recirculation of the final EIR is required because Alternative 7 added new events with extended hours and increased attendance to the EIR, which constituted “significant new information” within the meaning of Public Resources Code section 21092.1. (Volker comment letter, dated May 8, 2006.)

Contrary to what commenters suggest, Alternative 7 did not add new events, or propose extended hours and increased attendance beyond what was already proposed and analyzed in the Final EIR’s discussion of the proposed Project. (FEIR, p. 3.) Commenters confuse the fact that the number of events associated with Alternative 7 is more events than what occurs under currently existing conditions or the baseline; however, Alternative 7 actually proposes far fewer events than what was proposed and analyzed under the proposed Project. Proposing a new alternative that reduces the number of impacts identified for the proposed Project does not constitute significant new information that triggers recirculation.

Accordingly, despite what the commenters suggest, this is not a case where the physical description or scope of the project has changed. Rather, Alternative 7 merely minimizes the existing described environmental impacts from the estimated increase in traffic circulation by proposing further reductions in the number of allowed weekend events, the hours of those events, and the attendance at those events. For example, the potential traffic impacts associated with weekend events that were initially identified in the DEIR were based on a conservative estimated maximum attendance of 300 people. (DEIR, p. 13, FEIR, p. 3) Under Alternative 7, however, the applicant will limit attendance to a maximum of 250 people, and this number of guests will only be allowed 4 times per year. Thus, the minor modifications proposed in Alternative 7 do not reveal a new or more severe adverse environmental impact warranting recirculation of the EIR.

Similarly, the Draft EIR stated that “Increased numbers of turnarounds in driveways or in front of homes and increased frequency of event-related

turnarounds on these residential streets is considered by the EIR traffic engineer to be a potentially significant safety concern.” (Draft EIR, p. 67.) Alternative 7 includes two modifications to the project that will mitigate this potentially significant impact further than what was originally provided in the Draft EIR. Alternative 7 reduces the potential that people will “turn around” in the street by revising the circulation and parking plan. According to the revised circulation and parking plan, the Reedland Woods Way driveway would be an exit only, and all guests would enter the site from Via Los Altos. Additionally, signs would be posted at the intersection of Reedland Woods Way and along Via Los Altos, directing visitors to follow this circulation plan. Rather than create new significant impacts, as commenters suggest, Alternative 7’s proposed modifications serve to return the circulation plan to its existing entry and exit pattern, reduce the potential impact of mid-street turnarounds, and reduce project-generated left turns onto Reedland Woods Way.

Noise

Commenters contend that Alternative 7 would increase nighttime noise in a quiet residential neighborhood and that the extent of such impact has not been adequately assessed. (Volker comment letter, dated May 8, 2006.) Again, commenters are inappropriately comparing Alternative 7 to the existing environment, which is not the proper analysis when determining whether to recirculate an EIR. As explained above, the proper consideration is whether the *changes* in the project would create new significant impacts. Instead of increasing events or their duration, Alternative 7 reduces the number of events in a manner that reduces the impacts related to noise. As such, Alternative 7 does not reflect significant new information that creates potentially significant new impacts on the environment, and is not a basis for recirculation of the EIR.

Environmentally benign project changes are a desirable and foreseeable byproduct of the CEQA process. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737, citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199 (CEQA process is not designed to freeze the ultimate proposal in the precise mold of the initial project; new and unforeseen insights may emerge during investigation).) In short, a project must be open for public discussion and subject to agency modification during the CEQA process. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936.) This is because the CEQA process is meant to result in changes to projects that benefit the environment. (See *Id.*) Consistent with this goal, Alternative 7 implements CEQA’s purposes because it promotes an alternative that reduces impacts to the environment in comparison with the project analyzed in the Draft EIR.

The substantial evidence discussed above adequately supports the finding that no “significant new information” was added following the Town’s consideration of Alternative 7 that changed the EIR in manner that deprived the

public of meaningful comment on a new adverse environmental effect or a new alternative that was not implemented. Comments requiring the EIR to be recirculated are, therefore, unfounded and inconsistent with CEQA.

Section 3. Certification of EIR.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Congregation Kol Shofar Final Environmental Impact Report:

1. Consists of:
 - a. Congregation Kol Shofar Draft Environmental Impact Report, dated June 2005; and
 - b. Congregation Kol Shofar Final Environmental Impact Report, dated February 2006.
 - c. Final EIR for the Congregation Kol Shofar Conditional Use Permit Application: Alternative 7 Analysis, dated April 18, 2006.
 - d. Kol Shofar Final EIR Errata Sheet
2. Is hereby certified by the Planning Commission to have been completed in compliance with the California Environmental Quality Act and local CEQA guidelines.
3. Has been presented to the Planning Commission of the Town of Tiburon, which has reviewed and considered the information contained in the Final EIR.
4. Reflects the independent judgment and analysis of the Planning Commission.
5. Is hereby adopted as the Environmental Impact Report for the Congregation Kol Shofar expansion project (File #10404).

PASSED AND ADOPTED at a _____ meeting of the Planning Commission of the Town of Tiburon on _____, 2006, by the following vote:

AYES:

NOES:

ABSENT:

JOHN KUNZWEILER, CHAIRMAN
Tiburon Planning Commission

ATTEST:

SCOTT ANDERSON, SECRETARY