

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 03/03/2022

TIME: 01:57:00 PM

DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal

CLERK: Cecilia Boyle

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00038168-CU-WM-CTL** CASE INIT.DATE: 10/21/2020

CASE TITLE: **Preserve Wild Santee vs City of Santee [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

APPEARANCES

The Court, having taken the above-entitled matter under submission on 02/04/2022 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioners' petition for writ of mandate is **GRANTED**.

Preliminary Matters

The request for judicial notice by Preserve Wild Santee, Center for Biological Diversity, California Chaparral Institute, and Endangered Habitats League's ("petitioners") of exhibit 1, the maps of Mast Boulevard in Santee, and of exhibit B are granted. The relevancy objection by City of Santee and City of Santee City Council's ("respondents") to petitioners' request for judicial notice of exhibit A, the judgment in *Elfin Forest Harmony Grove Town Council v. County of San Diego*, 37-2018-42927-CU-TT-CTL ("*Harmony Grove*"), is sustained as irrelevant extra-record evidence.

Respondents' request for judicial notice of exhibits A through E is granted. Respondents' request for judicial notice of exhibit 1, the appellate court's decision in *Harmony Grove*, is denied as irrelevant.

Background

Petitioners' petition for writ of mandate and complaint alleges three causes of action: (1) violation of the California Environmental Quality Act ("CEQA") – inadequate environmental impact report ("EIR"); (2) violation of CEQA – failure to recirculate the EIR; and (3) violation of CEQA – inadequate findings and statement of overriding considerations. ROA # 1. Respondents and Real Party in Interest Homefed Fanita Rancho, LLC answered and request the petition and complaint be dismissed and denied. ROA ## 10-11.

Discussion

In reviewing an agency's compliance with CEQA, the Court's inquiry extends "only to whether there was

a prejudicial abuse of discretion." *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512. An agency may abuse its discretion under the CEQA by either: "failing to proceed in the manner CEQA provides" or "by reaching factual conclusions unsupported by substantial evidence." *Id.* Whether the agency employed correct procedures is reviewed de novo, whereas the agency's substantive factual conclusions are accorded "greater deference." *Id.*

- Adequacy of EIR (1st COA)

Petitioners challenge the adequacy of the EIR's wildfire safety and evacuation impacts, arguing that the EIR (1) failed to analyze or disclose project-specific evacuation impacts (e.g., the number of vehicles that would need to be evacuated from the project site, the number of hours it might take to empty the project site, and the extent to which the additional traffic from the site might affect existing residents' evacuation times) (Opening Brief ("OB") at 9-11); (2) failed to analyze a key threshold of significance, in the Appendix G CEQA Guidelines, and thus did not consider mitigation or a determination on the significance for that threshold (OB at 13-15); (3) provided inadequate responses to public comments (OB at 15-16); and (4) failed to disclose significant impacts to the wildfire-related evacuation and safety that resulted from the last-minute change of removing from the project the plan to extend Magnolia Avenue roadway for evacuation (OB at 17-19).

Analysis and Disclosure of Evacuation Impact

A claim that challenges the adequacy of discussion regarding environmental impacts is generally subject to independent review; but where factual questions predominate, a more deferential review under the substantial evidence standard may apply. *Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 519-521 ("adequacy of discussion claims are not typically amenable to substantial evidence review").

Here, respondents' Wildland Fire Evacuation Plan environmental impact analysis is nearly forty pages long. AR 12903-40. The Wildland Fire Evacuation Plan ("Plan") identifies three primary roadways for its evacuation routes. AR 12909, 12924. The record shows one of the identified routes -- of using Mast Boulevard to evacuate to Highway 67 -- is not possible because Mast Boulevard does not connect to Highway 67 and instead dead-ends in a park, rendering the Plan's evacuation routes unclear. Pet. RJN, Ex. 1; AR 2177. At the hearing, counsel for respondents/real party in interest argued that while Mast Boulevard does not directly connect to Highway 67, it can be seen as an indirect connection because although drivers would need to take other streets, sheriff deputies would be there to direct traffic accordingly. On the other hand, the record is clear that there are currently "no plans to connect Mast Boulevard" between the City, where it terminates, with the side where it "picks up" in the County. AR 2176.

The CEQA Guidelines provide that impacts in wildfire risk areas and a project's potential to cause substantial adverse effects on humans must be evaluated. Cal. Code Regs., tit. 14 ("Guidelines") §§ 15126.2(a); 15065. Although the Final REIR and Plan contain thematic responses regarding evacuation (AR 13190-13194), the methodology the City chose to assess the evacuation impacts does not contain a sufficient analysis of the Project-related impacts. For example, any assessment of evacuation timing under traffic scenarios is missing.

Respondents argue a myriad of potential modeling scenarios exist; modeling them all would provide little to no value due to variable factors that would make such modeling results unreliable. Response Brief ("R.B.") at 13, citing final REIR (16:13457-13458, 13194-13195). The Court is directed to reject challenges to the methodology used "unless the agency's reason for proceeding as it did are clearly

