



Minute Orders

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Case CIVBS800607 - BIOLOGICAL DIVERSITY-V-TOWN OF YUCCA VALLEY,ETAL

Action:

HEARING RE: WRIT OF MANDATE 05/14/2009 - 1:30 PM DEPT. R9

BARRY L PLOTKIN PRESIDING.
CLERK: GINA ZAMUDIO
COURT REPORTER ROCIO GONZALEZ ROCIO GONZALEZ
COURT ATTENDANT PHILIP COOPER

-
APPEARANCES:

ATTORNEY MATTHEW VESPA PRESENT FOR PLAINTIFF/PETITIONER.
ATTORNEY TED A GEHRING AND HENRY SHIELDS PRESENT FOR DEFENDANT/RESPONDENT.

-
PROCEEDINGS:

PREDISPOSITION HEARING HELD
ACTION CAME ON FOR FURTHER ARGUMENT ON WRIT OF MANDATE.
ORAL ARGUMENT PRESENTED BY ATTORNEY JOHN G MCCLENDON.
ORAL ARGUMENT PRESENTED BY ATTORNEY HENRY SHIELDS.
ORAL ARGUMENT PRESENTED BY MATTHEW VESPA.
THE COURT DENIES THE RESPONDENTS REQUEST FOR JUDICIAL NOTICE.

02:42

COURT IN RECESS.

-
02:52

COURT RECONVENES ALL COUNSEL PRESENT.
ARGUMENTS CONTINUE.

-
THE COURT HAVING CONSIDERED ORAL ARGUMENTS PRESENTED BY COUNSEL RULES AS FOLLOWS:

THE COURT ADOPTS THE WRITTEN TENTATIVE RULING ISSUED ON 04/28/09 AS MODIFIED.
PETITIONERS COUNSEL TO PREPARE WRIT.

ACTION - COMPLETE

=== MINUTE ORDER END ===

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

Coalition for Environmental Integrity
in Yucca Valley;
Center for Biological Diversity

Petitioners,

vs.

Town of Yucca Valley, Town Council of the
Town of Yucca Valley

Respondents,

Wal-Mart Stores, Inc.,

Real Party.

Case No. CIVBS 810232
Case No. CIVSS 800607

NOTICE OF TENTATIVE
RULING

The court has read and considered the briefing submitted in these matters and
makes the following tentative ruling:

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1 Grant each request for judicial notice.

2 Deny petition for writ of mandate on grounds that the Town's failure to timely
3 update its housing element does not invalidate its General Plan in this case or the
4 adoption of the subject commercial Specific Plan.

5 Deny petition for writ of mandate on grounds that the Town's failure to meet the
6 CEQA Guidelines (14 CCR § 15108) time deadline for certification of the Project's final
7 EIR is not a failure to proceed in a manner required by law constituting a prejudicial
8 abuse of discretion warranting the setting aside of that certification on petitioners'
9 behalf.

10 Deny petition for writ of mandate as substantial evidence supports the EIR's
11 analysis and findings regarding traffic impact significance and required mitigation and
12 the EIR's traffic baseline does not violate CEQA.

13 Grant petition for writ of mandate to set aside the approvals herein and to order
14 the Town to revise the EIR's urban decay discussion (Chapter 4.17) based on
15 significant new information submitted by Dr. King and TNDG and recirculate that
16 portion of the EIR.

17 Deny petition for writ of mandate as the EIR's reliance on the CAT report to
18 conclude that the Project's cumulative global climate change impact is less than
19 significant does not violate CEQA as a direct contravention of Guidelines, §
20 15064(h)(3).

21 Grant petition for writ of mandate to set aside approvals herein and order the
22 Town to revise the EIR's cumulative global climate change analysis on grounds that
23 the EIR is violative of CEQA since the findings that the Project complies with all
24 applicable CAT strategies is not supported by substantial evidence; on grounds of
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1 abuse of discretion in that the EIR simply ignores the CAPCOA scientific and factual
2 analysis regarding attainment of California GHG emission targets in its discussion of
3 the cumulative impact of the Project; and on grounds that the EIR fails to consider the
4 entire GHG emission output of the Project as required by the OPR and recirculate that
5 portion of the EIR.
6

7 Grant petition for writ of mandate to set aside the approvals herein and to order
8 the Town to revise the EIR discussion of alternatives on grounds of failure to include
9 the feasible and environmentally superior "green" Wal-Mart Supercenter alternative
10 and recirculate that portion of the EIR.
11

12 Grant petition for writ of mandate to set aside approvals herein until Town
13 makes the required finding of infeasibility of the environmentally superior alternative
14 under Pub. Res. Code, § 21081(a)(3) supported by substantial evidence in the record
15 as the Town has not made that finding and such constitutes prejudicial error.
16

17 Grant petition for writ of mandate to set aside approvals herein and to order
18 Town to revise the EIR discussion of significant air quality impacts on grounds of
19 failure to include discussion of all feasible mitigation measures and failure to make the
20 required findings of infeasibility for rejected mitigation measures and recirculate that
21 portion of the EIR.
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24 DATED: APR 28 2009

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26 **Barry Plotkin**

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Barry L. Plotkin
28 Judge of the Superior Court