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Opinion following transfer from Supreme Court

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FRIENDS OF THE SANTA CLARA RIVER et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents; NEWHALL LAND AND FARMING COMPANY, INC., Real Party in Interest.	B256125 (Los Angeles County Super. Ct. No. BS136549)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Affirmed in part; reversed in part with directions.

Adam Keats, John Buse and Aruna Prabhala; Dean Wallraff for Plaintiffs and Appellants Friends of the Santa Clara

River, Santa Clarita Organization for Planning and the Environment, and Center for Biological Diversity.

Jason Weiner and Christina Snider for Plaintiffs and Appellants Wishtoyo Foundation and its Ventura Coastkeeper Program.

Office of the County Counsel, Mark J. Saladino, County Counsel and Joseph M. Nicchitta, Deputy County Counsel for Defendant and Respondent The County of Los Angeles and its Board of Supervisors.

Gatzke Dillon & Balance and Mark J. Dillon and David P. Hubbarb; Nielsen Merksamer Parinello Gross & Leoni and Arthur G. Scotland; Morrison & Foerster and Miriam A. Vogel for Real Party in Interest and Respondent The Newhall Land and Farming Company.

This is an appeal from the February 26, 2014 judgment denying the first amended mandate petition and declaratory and injunctive relief complaint of plaintiffs: Friends of the Santa Clara River; Santa Clarita Organization for Planning and the Environment; Center for Biological Diversity; and Wishtoyo Foundation and its Ventura CoastKeeper Program. Defendants are the County of Los Angeles (the county) and its Board of Supervisors (supervisors board) and the real party in interest is Newhall Land and Farming Company (the developer). This appeal involves one of the five villages where residential and commercial development are to occur as part of the Newhall Ranch Specific Plan. We conclude the February 26, 2014 judgment must be affirmed except as to the discussion concerning greenhouse gas emissions. Upon remittitur issuance, the trial court is to issue a writ of mandate pursuant to Public Resources Code[1] section 21168.9.

This case arises from the October 4, 2011 supervisors board certification of the final environmental impact report for the Landmark Village project. In addition, the supervisors board approved: a Vesting Tentative Tract Map No. 00-196-(5); amendment No. 00-196-(5) to the county's general plan; an amendment to the local plan No. 00-106-(5); conditional use permits Nos. 00-196 (5) and 2005-00112-(5); and Oak Tree Permit No. 00-196(5). On February 21, 2012, the supervisors board adopted the Landmark Village findings and conditions.

Defendants appealed from the February 26, 2014 judgment denying plaintiffs' first amended mandate petition and declaratory and injunctive relief complaint. We affirmed the

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[1] Future statutory references are to the Public Resources Code.

judgment in an unpublished opinion. (*Friends of the Santa Clara River v. County of Los Angeles* (Apr. 21, 2015, B256125) [nonpub. opn.] (*Friends of the Santa Clara River*).) Our Supreme Court granted review. (*Friends of the Santa Clara River v. County of Los Angeles* (Aug. 19, 2015, S226749).) On November 30, 2015, our Supreme Court issued its opinion in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204 (*Center for Biological Diversity*). A portion of that opinion discussed greenhouse gas emissions and is directly pertinent to our decision here. (*Id.* at pp. 213, 215-231, 246.) On March 23, 2016, our Supreme Court transferred the appeal to us, stating: "The above-captioned matter is transferred to the Court of Appeal Second Appellate District, Division Five, with directions to vacate its decision and to reconsider the cause in light of *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204. (Cal. Rules of Court, rule 8.528(d).)" (*Friends of the Santa Clara River v. County of Los Angeles* (Mar. 23, 2016, S226749) [nonpub. order].) Upon return of the case to us, the parties filed briefs and we set the matter for argument. Further argument was necessary because one of the panel members who sat on this case in 2015 had died. (*Moles v. Regents of University of California* (1982) 32 Cal.3d 867, 873-874; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 10:5, p. 10-1.)

Defendants and the developer argue that we should affirm the judgment except as to the greenhouse gas emissions question. Defendants and the developer further argue that we should issue a writ of mandate returnable to this court as purportedly authorized by section 21168.9. Plaintiffs argue that we should: issue a new opinion; hold that the approval of the project was not

supported by substantial evidence; and remand the case *to the trial court* to issue a writ of mandate. Plaintiffs argue that the writ of mandate must comply with our Supreme Court's holding in *Center for Biological Diversity, supra*, 62 Cal.4th at pages 215-231 and 240.

In our unpublished opinion, we reached several conclusions. First, we concluded that defendants' Development Monitoring System did not violate the requirement it be consistent with the general plan. (*Friends of the Santa Clara River, supra*, B256125.) Second, we held that the environmental impact report's discussion of greenhouse gas emissions could properly adopt the goals of Health and Safety Code section 38550 as the significance criterion. Further, we held that there was nothing illusory about the selection of this criterion. (*Friends of the Santa Clara River, supra*, B256125.) Third, we upheld the cultural resources discussion in the environmental impact report. (*Ibid*.) Fourth, we held defendants' discussion of sediment analysis was not flawed and satisfied statutorily required requirements for good-faith investigation and disclosure. (*Ibid*.) All issues concerning the Development Monitoring System, the cultural resources discussion and sediment analysis are now final. The only remaining issue involves certain other aspects of the greenhouse gas emissions discussion in the environmental impact report. We now turn to our Supreme Court's analysis in *Center for Biological Diversity, supra*, 62 Cal.4th at pages 215-231 and 240.

In *Center for Biological Diversity*, our Supreme Court reached three conclusions concerning the greenhouse gas omission analysis in the environmental impact report before it. The parties agree that the discussion in the present

environmental impact report parallels that of the planning document in *Center for Biological Diversity*. In the introduction to the opinion, our Supreme Court identified two of the three greenhouse gas emissions issues it was deciding: "We conclude, first, that as to greenhouse gas emissions the environmental impact report employs a legally permissible criterion of significance—whether the project was consistent with meeting statewide emission reduction goals—but the report's finding that the project's emissions would not be significant under that criterion is not supported by a reasoned explanation based on substantial evidence." (*Center for Biological Diversity, supra*, 62 Cal.4th at p. 213.) At issue was the requirement that an environmental impact report classify adverse ecological effects as significant or less than significant. (§ 21100, subd. (b)(1); Cal. Code Regs., tit. 14, § 15064, subd. (b); 2 Kostka & Zischke, Cal. Environmental Quality Act (Cont.Ed.Bar 2d ed. 2014) § 13.8, p. 13-10.)

First, our Supreme Court concluded that the selection of the Health and Safety Code section 38850 greenhouse gas omissions reduction goals as a significance criterion was not an abuse of discretion. (*Center for Biological Diversity, supra*, 62 Cal.4th at pp. 222-223.) In light of our Supreme Court's ruling on the Health and Safety Code section 38850 greenhouse gas omissions reduction goals issue, this portion of the trial court's judgment must be affirmed.

Second, our Supreme Court further concluded that comparing the project's expected emissions to a hypothetical business-as-usual scenario was appropriate. (*Center for Biological Diversity, supra*, 62 Cal.4th at pp. 224-225.) Our Supreme Court ruled: "The percentage reduction from business

as usual identified by the Scoping Plan is a measure of the reduction effort needed to meet the 2020 goal, not an attempt to describe the existing level of greenhouse gas emissions. Similarly, the [environmental impact report] employs its calculation of project reductions from business-as-usual emissions in an attempt to show the project incorporates efficiency and conservation measures sufficient to make it consistent with achievement of [the Health and Safety Code section 38850] reduction goal, not to show the project will not increase greenhouse gas emissions over those in the existing environment. As discussed earlier, distinctive aspects of the greenhouse gas problem make consistency with statewide reduction goals a permissible significance criterion for such emissions. Using a hypothetical scenario as a method of evaluating the proposed project's efficiency and conservation measures does not violate Guidelines section 15125 or contravene our decision in *Communities For A Better Environment* [*v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310].)" (*Center for Biological Diversity, supra*, 62 Cal.4th at p. 225.) The trial court's ruling is consistent with our Supreme Court's baseline calculation analysis. Thus, that portion of the trial court's ruling must be affirmed.

Third, our Supreme Court held that the environmental impact report's finding of no significant ecological impact under that criterion was not supported by substantial evidence. Our Supreme Court articulated its analysis on several occasions. For purposes of completeness, we identify the core analysis of our Supreme Court: "[W]e agree with plaintiffs that [the department] abused its discretion in finding, on the basis of the [environmental impact report's] business-as-usual comparison,

that the project's greenhouse gas emissions would have no cumulatively significant impact on the environment. We reach this conclusion because the administrative record discloses no substantial evidence that Newhall Ranch's *project-level* reduction of 31 percent in comparison to business as usual is consistent with achieving [Health and Safety Code section 38850]'s *statewide* goal of a 29 percent reduction from business as usual, a lacuna both dissenting opinions fail to address. Even using the [environmental impact report]'s own significance criterion, the [environmental impact report]'s analysis fails to support its conclusion of no significant impact." (*Center for Biological Diversity, supra*, 62 Cal.4th at p. 225.)

At another point, our Supreme Court summarized the scope of its holding: "At bottom, the [environmental impact report]'s deficiency stems from taking a quantitative comparison method developed by the Scoping Plan as a measure of the greenhouse gas emissions reduction effort required by the state as a whole, and attempting to use that method, without consideration of any changes or adjustments, for a purpose very different from its original design: To measure the efficiency and conservation measures incorporated in a specific land use development proposed for a specific location. The [environmental impact report] simply assumes that the level of effort required in one context, a 29 percent reduction from business as usual statewide, will suffice in the other, a specific land use development. From the information in the administrative record, we cannot say that conclusion is wrong, but neither can we discern the contours of a logical argument that it is right. The analytical gap left by the [environmental impact report]'s failure to establish, through substantial evidence and reasoned explanation, a quantitative

equivalence between the Scoping Plan's statewide comparison and the [environmental impact report]'s own project-level comparison deprived the [environmental impact report] of its "'sufficiency as an informative document.'" (*Laurel Heights Improvement Assn v. Regents of University of California*[(1988) 47 Cal.3d 376,] 392.)" (*Center for Biological Diversity, supra*, 62 Cal.4th at p. 227.) In its conclusion, our Supreme Court summarized its holding, "We conclude . . . that [the department] abused its discretion by making the determination, without the support of substantial evidence, that the project's greenhouse gas emissions would have no significant impact, . . ." (*Id.* at p. 240.) Thus, the no significant impact portions of the trial court's greenhouse gas emissions ruling must be reversed. It bears emphasis that the parties agree that the greenhouse gas emissions discussion in our case parallels that before our Supreme Court in *Center for Biological Diversity*.

We now turn to the terms of the writ of mandate that must issue in this case. The writ of mandate is to state that defendant's finding the project's greenhouse gas emissions will have no significant impact is not supported by substantial evidence and reasoned discussion. (*Center for Biological Diversity*, *supra*, 62 Cal.4th at pp. 225, 227, 240.) Plaintiffs' first amended mandate petition and declaratory and injunctive relief complaint is to be denied in all other respects. The only challenge to the environmental impact report that remains to be resolved once the remittitur issues is the no greenhouse gas emission significant impact question we have described. The trial court is to proceed pursuant to the provisions of section 21168.9. The post-remittitur issuance actions to be taken,

including the extent of any injunctive relief, are matters we leave in the trial court's good hands.

Defendants and the developer argue we should: issue our own writ of mandate; retain jurisdiction over the filing of the return to the writ of mandate; and set hearing dates to supervise the adequacy of the supplemental environmental impact report. Defendants and the developer reason that we have the authority to do so pursuant to the provisions of section 21168.9. And defendants and the developer rely on certain language in *Center for Biological Diversity, supra*, 62 Cal.4th at p. 240. We have previously rejected these arguments in *Center for Biological Diversity v. California Department of Fish and Wildlife* (2016) 1 Cal.App.5th 452, 469-470. We are reviewing this matter on direct appeal and the correct course of action direct the trial court to proceed pursuant to section 21168.9 and issue a remittitur. (*Center for Biological Diversity v. California Department of Fish and Wildlife, supra*, 1 Cal.App.5th at pp. 469-470.)

The judgment is reversed to the sole extent that the environmental impact report states the no significant greenhouse gas impact finding is supported by substantial evidence and reasoned discussion. The judgment is affirmed in all other respects. Upon remittitur issuance, the trial court is to proceed pursuant to the provisions of section 21168.9. All parties are to bear their own costs incurred on appeal.

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TURNER, P. J.

We concur:

KRIEGLER, J.

BAKER, J.