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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CALIFORNIA NATIVE PLANT SOCIETY 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 and Respondent.	B258090 (Los Angeles County Super. Ct. No. BS138001)

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 California Native

Plant Society, Friends of the Sara Clara River, Santa Clarita Organization for Planning and the Environment, and Center for Biological Diversity.

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

Mary C. Wickham, County Counsel, Lawrence L. Hafetz, Assistant County Counsel and Joseph M. Nicchitta, Deputy County Counsel for Defendants and Respondents The County of Los Angeles and its Board of Supervisors.

Gatzke Dillon & Ballance, Mark J. Dillon and David P. Hubbard; 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 an appeal from a June 9, 2014 judgment by plaintiffs: California Native Plant Society; Friends of the Santa Clara River; Center for Biological Diversity; Santa Clarita Organization for Planning and the Environment; and Wishtoyo Foundation and its Ventura Coastkeeper Program. Defendants are the County of Los Angeles (the county) and its Board of Supervisors (supervisors board). The real party in interest is The Newhall Land and Farming Company (the developer). At issue are environmental approvals of the developer's Mission Village Project located in an unincorporated portion of the county. 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.

The June 9, 2014 judgment denied plaintiffs' first amended verified mandate petition and injunctive and declaratory relief complaint. The judgment upheld defendants' October 25, 2011 certification of the environmental impact report and approval of an overriding considerations statement. The judgment upheld the following May 15, 2012 administrative actions by defendants: approval of two conditional use permits; returning findings there was substantial conformity with the certain grading and set back requirements imposed by the Newhall Ranch Specific Plan which was approved in 2003; issuance of two oak tree permits; issuance of a

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

parking permit; and approval of a vesting tentative tract map.

We affirmed the judgment in an unpublished opinion. (*California Native Plant Society v. County of Los Angeles* (Sept. 29, 2015, B258090) [nonpub. opn.] (*California Native Plant Society,* hereafter).) 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*, hereafter.) 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 December 9, 2015, our Supreme Court granted review in the present case. (*California Native Plant Society* (Dec. 19, 2015, S230336).) 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).)" (*California Native Plant Society* (Mar. 23, 2016, S230336) [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 project's approval on the greenhouse gas emissions issue 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 county's general plan. (*California Native Plant Society, supra*, typed opn. at pp. 3-34.) Second, we held defendants' discussion of sediment analysis was not flawed and satisfied statutory requirements for good-faith investigation and disclosure. (*Id*. at typed opn. at pp. 34-64.) Third, we held that the environmental impact report sufficiently discussed and approved mitigation measures designed to protect the slender mariposa lily, a "special status" plant. (*Id*. at typed opn. at pp. 55-59.) Fourth, we held that the environmental impact report could properly adopt the goals of Health and Safety Code section 38550 as the significance criterion for evaluating greenhouse gas emission effects. Further, we held that there was nothing illusory about the selection of

this criterion. (*California Native Plant Society*, *supra*, typed opn. at pp. 59-63.) Fifth, we held the environmental report sufficiently analyzed and provided mitigation of the effect of copper runoff on juvenile steelhead in the Santa Clara River. (*Id*. at typed opn. at pp. 63-72.) All issues concerning the Development Monitoring System, sediment analysis, the mariposa lily and dissolved copper runoff 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, supra*, 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, supra.* 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.)

We now turn to our Supreme Court's actual discussion of the greenhouse gas emission issue as distinguished from its summary of its holding. 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 significance criterion 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, supra.*

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 remaining challenges to the environmental impact report are the greenhouse gas emission significant impact substantial evidence and reasoned discussion questions we have described. Once the remittitur issues, there is no need to decertify any other portion of the environmental impact report. Rather, 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 page 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.

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 on appeal.

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TURNER, P. J.

We concur:

KRIEGLER, J.

KUMAR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.