

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN - 7 2018

L. Hall

JUN 14 2018

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12 Sierra Club, and San Bernardino Valley Audubon Society.

13 [ADDITIONAL COUNSEL ON THE NEXT PAGE]

14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF RIVERSIDE

16 ALBERT THOMAS PAULEK; FRIENDS OF THE
17 NORTHERN SAN JACINTO VALLEY, et al.,

18 Petitioners/Plaintiffs,

19 v.

20 CITY OF MORENO VALLEY, a municipal
21 corporation; MORENO VALLEY COMMUNITY
22 SERVICES DISTRICT, a dependent special district of
23 the City of Moreno Valley; and DOES 1-20 inclusive,

24 Respondents/Defendants,

25 HIGHLAND FAIRVIEW; HIGHLAND FAIRVIEW
26 OPERATING COMPANY, a Delaware general
27 partnership; HF PROPERTIES, a California general
28 partnership; SUNNYMEAD PROPERTIES, a
29 Delaware general partnership; 13451 THEODORE
30 LLC, a California limited liability company; and DOES
31 21-40 inclusive

Real Parties in Interest.

Case No: RIC 1510967 [MF]

Consolidated with
Case No. RIC 1511118
Case No. RIC 1511195
Case No. RIC 1511213
Case No. RIC 1511279
Case No. RIC 1511327
Case No. RIC 1511421

(California Environmental Quality Act)

Dep't: 10
Judge: Hon. Sharon J. Waters

~~PROPOSED~~ JUDGMENT GRANTING
PETITIONS FOR A PEREMPTORY
WRIT OF MANDATE

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25 **Attorneys for Petitioner SoCal Environmental Justice Alliance**

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1 On January 22, 2018, this Court, Honorable Judge Sharon Waters presiding, heard the above-
2 captioned matter in Department 10. The following counsel appeared at the hearing: Adriano L. Martinez
3 and Oscar Espino-Padron appeared on behalf of petitioners Center for Community Action and
4 Environmental Justice, Center for Biological Diversity, Coalition for Clean Air, Sierra Club, and San
5 Bernardino Valley Audubon Society; Abigail Smith appeared on behalf of petitioner Residents for a
6 Livable Moreno Valley; Susan Nash appeared on behalf of petitioners Albert Thomas Paulek and Friends
7 of the Northern San Jacinto Valley; Richard T. Drury appeared on behalf of petitioner Laborers
8 International Union; and Craig Collins appeared on behalf of petitioner SoCal Environmental Justice
9 Alliance (collectively "Petitioners"). Further, Kenneth Bley appeared on behalf of real parties in interest,
10 HF Properties, Sunnymead Properties, Theodore Properties Partners, HL Property Partners, and 13451
11 Theodore LLC (collectively "Real Parties In Interest"); and Martin Koczanowicz appeared on behalf of
12 respondents, City of Moreno Valley and Moreno Valley Community Services District (collectively
13 "Respondents").

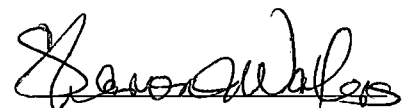
14 After hearing argument on the matter, the Court took the case under submission. The Court having
15 reviewed the record of proceedings in this matter, the briefs submitted by all parties, and the oral
16 argument of all counsel, on February 8, 2018, this Court issued a Ruling on Peremptory Writ of Mandate.
17 The Ruling is attached hereto as Exhibit A and incorporated into this judgment by reference. In
18 accordance with this Court's decision,

19 IT IS ORDERED and ADJUDGED that:

- 20 1. Judgment be entered in favor of Petitioners in this proceeding.
- 21 2. A peremptory writ of mandate directed to Respondents issue under seal of this Court, ordering
22 Respondents to comply with this Court's February 8, 2018, Ruling and to vacate remaining
23 approvals made in August 2015, as enumerated in the peremptory writ of mandate.
- 24 3. Respondents are required to file a return on the writ within 120 days following service of writ.
25 This Court retains jurisdiction for all purposes, including over return to writ and to issue any
26 orders necessary to ensure compliance with this judgment and writ.
- 27 4. Petitioners are the prevailing parties and may seek to recover costs incurred in litigating this case
28 and file a motion(s) to recover attorneys' fees.

29 IT IS SO ORDERED.

30 Date: June 7, 2018



31 SUPERIOR COURT JUDGE

1 APPROVED AS TO FORM ONLY:
2

3 COX, CASTLE & NICHOLSON LLP
4

5 Date:
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7 _____
8 Kenneth B. Bley
9 Attorney for Real Parties in Interest,
10 HF Properties, Sunnymead Properties, Theodore
11 Properties Partners, 13451 Theodore LLC, and
12 HL Property Partners (collectively "Highland Fairview")
13

14 OFFICE OF THE CITY ATTORNEY

15 Date:
16

17 _____
18 Martin D. Koczanowicz
19 Attorney for Respondents/Defendants,
20 City of Moreno Valley and Moreno Valley
21 Community Services District
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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE: PAULEK, et.al. vs. CITY OF MORENO VALLEY	DATE & DEPT: 02/08/18 D10	NUMBER: RIC1510967
COUNSEL: None present	REPORTER: None	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE
PROCEEDING: RULING ON PEREMPTORY WRIT OF MANDATE	FEB - 8 2018	

L. Hall 

SC
FEB 09 2018

The Court grants the petition, in part, as follows.

I. Energy Impacts: The FEIR must provide a comparison of feasible, cost-effective renewable energy technologies in the Energy Impacts analysis.

Petitioners argue that the City's response indicating that a comparison of feasible renewable energy technologies is "unnecessary" and its references to mitigation measures addressing other issues (i.e. GHG emissions) was a failure to provide adequate energy conservation analysis. The Court agrees.

"[C]ompressing the analysis of impacts and mitigation measures into a single issue ... disregards the requirements of CEQA." (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656-657.) Additionally, analysis of and mitigation for GHG emissions is not a substitute for energy conservation analysis and mitigation. The City failed to conduct "a good faith reasoned analysis" of cost-effective renewable energy in the FEIR. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

II. Biological Impacts: The FEIR should remove all references to and consideration of the 910 acres of SJWA and MSHCP lands as a "buffer zone" or "CDFW Conservation Buffer Area" in the Biological Resources and Habitat Impacts

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analysis.

Petitioners assert that the use of the term "CDFW Conservation Buffer Area" distorts CEQA analysis of the impacts of the Project on biological resources and habitat on adjacent San Jacinto Wildlife Area (SJWA) and Riverside County Multiple Species Habitat Conservation Plan (MSHCP) lands because it is not actually a buffer area. Petitioners assert that this "false labeling" is repeated numerous times in the EIR, and gives the false impression that the area can be considered mitigation of significant impacts on biological resources and habitat. The Court agrees.

All references to "CDFW Conservation Buffer Area" should be removed and the potential environmental impacts on biological resources and habitats should be re-analyzed without any consideration of said buffer area.

III. Noise Impacts: The FEIR must provide an analysis of construction noise over ambient levels; provide adequate analysis on construction noise impacts on nearby homes; address the inadequacy of mitigation measures, which fail to include performance standards or ways to reduce construction noise.

Analysis of Construction Noise Increases over Ambient Levels

Petitioners assert that in the FEIR, construction noise was only evaluated based on exceedances of Municipal Code levels. Respondents do not establish otherwise. The record does not show that respondents analyzed increases over ambient levels or considered mitigation to address those concerns. This is required.

Construction Noise Impacts on Nearby Homes

Petitioners also argue that the FEIR fails to disclose how severe noise impacts from construction will be on homes that are 50 feet or less from construction. Respondents have not

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cited to the record showing where this specific issue was discussed, other than the comment that it is "highly unlikely" that construction noise would occur within 50 feet of a residence because it is "highly unlikely" that a grader or other noise generator will be parked for an hour at that distance. Further analysis in the FEIR is required.

Mitigation Measures

Respondents acknowledge that the FEIR concluded impacts from construction noise would remain significant and unavoidable to residences near the development. They acknowledge that given the potential for construction noise on a 24/7 basis over nine years, mitigation is required.

An EIR is required to describe feasible mitigation measures that effectively minimize the project's significant impacts. (CEQA Guidelines §15126.4(a).) In general, courts defer to an agency's assessment of how effective mitigation measures are. (*Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011, 1027.) Petitioners take issue with the fact that of three mitigation measures that were proposed (4.12.6.1D; 4.12.6.1E; 4.12.6.1F), only one was implemented, and the other two are merely alternatives. As discussed above, the FEIR failed to analyze construction noise impacts on residences closer than 50-feet from the construction site. As a result, it is not clear how severe the noise impacts would be on those residences. Presuming the impacts are severe, it follows that all feasible mitigation measures should be utilized. Currently, the FEIR only adopted the mitigation measure that prevents grading within 2,800 feet of residences at night. The court finds that further analysis of mitigation measures is required.

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Deferred Mitigation for Construction Noise Impacts

Petitioners argue that the EIR improperly deferred mitigation for construction noise impacts. Specifically, they argue that MM 4.12.6.1A and MM 4.12.6.1F only require preparation of a Noise Reduction Compliance Plan and taking measurements, without performance standards or ways to reduce construction noise impacts. In response, Respondents assert that the applicable regulatory standards are the City of Moreno Valley's Municipal Code. Petitioners correctly argue that the subject mitigation measures do not require compliance with the Municipal Code.

IV. Agricultural Impacts: The FEIR and the resolution certifying the FEIR require clarification as to whether loss of locally important farmlands will have a significant direct or cumulative impact on agriculture and, if significant, the FEIR must either explain how proposed mitigation will reduced the impact or why other mitigation is not feasible.

The FEIR states that in addition to the FMMP designations, Riverside County has classified certain land in the County as "Locally Important Farmland." This is the category into which the remaining land (2,201 acres) falls. The FEIR provides that the County uses several factors to define "Locally Important Farmland." The FEIR provides that none of those factors support maintaining the remaining land as farmland.

However, as Petitioners note, the City made a finding in its Resolution certifying the FEIR that there would be permanent loss of the 2,201 acres of locally important farmland when the land was converted to nonagricultural uses, and "[t]herefore, the Project will cause significant impacts." Its further finding that implementation of MM 4.2.6.1A "reduces the impact to less than significant level" is without support. MM 4.2.6.1A only applies to the 25 acres of unique

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farmland. Thus, there is no mitigation discussed or adopted for the loss of 2,201 acres of local important farmland. As a result, the FEIR fails on this issue.

V. Cumulative Impacts: The FEIR should include consideration of recently constructed and proposed large warehouse projects in the summary-of-projections method, and should analyze whether individually insignificant impacts may be cumulatively significant.

Summary of Projections Method

A city may choose to analyze cumulative impacts based on a summary of projections method in an adopted plan, planning document or environmental document, and may use the projections in the plan or document for the for its cumulative impacts analysis. (CEQA Guidelines §15130(b)(1)(B).) The projections may be inadequate if they are outdated or inaccurate. (See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1217.)

The FEIR explained that there was a cumulative impacts analysis for each environmental topic in the DEIR, and that the City chose the "summary-of-projections" method rather than the "list" method due to the size, location, and development phasing or horizon of the project, and used the City's General Plan buildout projections, which were available at that time. Petitioners correctly pointed out that using the 2006 Update to the General Plan incorporated outdated information into the FEIR given the increase of large warehouse projects in Moreno Valley since 2006, and amendments to the General Plan. Thus, the FEIR fails as to cumulative impacts by failing to consider recently constructed and proposed warehouse projects.

Consideration of How Individually Insignificant Impacts

May Be Cumulatively Significant

Petitioners argue that the FEIR failed to consider how individually insignificant impacts, even if minor impacts, could be cumulatively significant. They cite to the FEIR's response to Comment 5-5-24 analysis on storm water impacts as an example. This Comment describes certain mitigation measures applicable to water quality impacts, and water treatment controls, and then concludes: "It is reasonable to assume that if each individual cumulative project mitigates its own water quality impacts, then the cumulative water impacts ... can be effectively mitigated to less than significant levels." Petitioners point out that there is no analysis of cumulative effects relating to water quality impacts other than analysis of the project itself. Respondents do not cite to specific instances in the record to demonstrate that there is substantial evidence in the FEIR that an adequate cumulative impacts analysis considering incremental effects was done. Accordingly, any new cumulative impacts analysis should also consider and discuss whether any environmentally insignificant impacts may be cumulatively significant, taking into account all relevant past, present, and probable future projects.

The petition is denied as to all remaining arguments.

Petitioners shall prepare and serve a proposed judgment and a proposed peremptory writ of mandate and present it to the Court no later than February 22, 2018. A hearing is set to insure the Court's receipt of these documents. No appearance is required.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street - 2nd Floor
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www.riverside.courts.ca.gov

CLERK'S CERTIFICATE OF MAILING

ALBERT THOMAS PAULEK

vs.

CASE NO. RIC1510967

CITY OF MORENO VALLEY


TO:

I certify that I am currently employed by the Superior Court of California, County of Riverside and I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the attached Ruling on Peremptory Writ of Mandate on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Dated: 02/08/18

by:


LETICIA HALL, Deputy Clerk

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