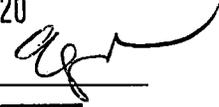


MAR 19 2020



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

E. Usher

TITLE:
CENTER FOR BIOLOGICAL DIVERSITY VS.
CITY OF TEMECULA

DATE & DEPT:
March 19, 2020
Department 4

NUMBER:
RIC1800858

COUNSEL:
None

REPORTER:
None

PROCEEDING: RULING ON SUBMITTED MATTER

This case was consolidated with RIC1800866. The ruling is the same for both cases.

The Court's ruling on the submitted matter is as follows:

The court's tentative ruling indicated that the Petitions were granted as to seven distinct issues. Respondents objected to the court's ruling as to each of the issues. However, Respondents' arguments amount to little more than re-argument of the points raised in the Respondents' original Opposition Brief. Accordingly, the tentative ruling, as modified, shall become the ruling of the court.

* * *

The Respondents' unopposed Request for Judicial Notice is GRANTED. The Joinder is GRANTED. The Petitions are GRANTED as follows:

- The Linkage impact analysis in the EIR is deficient and not supported by substantial evidence.
 - As reflected in the DEIR, the analysis of impacts to Linkages is based almost entirely upon the Helix modeling, which the City acknowledges was not intended to serve as the primary basis of the EIR's analysis. (AR 4194-4202, 9300-01.) Although the City references other support, the referenced material is not included with the DEIR or FEIR. That is, the appendices contain no reports

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regarding the “multiple site visits” or the visits to “offsite Linkage areas.” Moreover, while Respondents indicate that there was an extensive review of mountain lion literature and discussions with mountain lion experts, the EIR contains no illumination with respect to how such material/discussions contributed to the analysis of Linkages, and the EIR itself appears to rely solely on the Helix modeling, which the EIR also acknowledges is not designed to “determine whether a corridor or linkage is viable or not.” (AR 4201, 8982.) Further, while the EIR also references published literature regarding a “zone of negative influence” of 0 to 1,970 feet, this zone is not taken into account in the Helix modeling or otherwise incorporated in the analysis of Linkage impacts. (AR 4197.) Finally, with respect to Constrained Linkage 14 (which is outside of the Project site), Respondents argue that the Nature Center is not within the “zone of negative influence” of 0 to 1,970 feet, as it is “more than 2,050 feet” away from the Linkage. (See ROB, p. 19:22-27.) However, the pages of the AR referenced by Respondents [AR 6916 and 9374] do not support the statement. In its analysis of the Nature Center, the FEIR simply indicates: “As concluded by the Draft EIR, given the distance of Proposed Constrained Linkage 14 from the project site (approximately 1,800 feet) and its location (east of I-15), similar to the Civic/Institutional use, the Nature Center would have no direct or indirect effect on this linkage.” (AR 9341-42.) If the Nature Center is “approximately 1,800 feet” from Constrained Linkage 14, it would be within the zone of negative influence, as described in the FEIR, and the Project would result in potential indirect impacts. In their objections to the tentative ruling, Respondents argue – without

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acknowledging their erroneous claim that Linkage 14 is “*more than 2,050 feet* from the approved nature center” [ROB, 19:23-25] [emphasis in the original] – that the court should not apply the “maximum range” of the zone of negative influence because Linkage 14 is also separated by a physical barrier, to wit, the I-15 freeway. However, as reflected in the MSHCP, the I-15 *intersects* Linkage 14 at its western terminus – that is, Linkage 14 starts just west of the I-15. (AR 741, 6941.) Moreover, the MSHCP further indicates that Linkage 14 provides connectivity, especially for bobcat and mountain lion, to Existing Core G and Linkage 10 *in the west* to Existing Linkage A in the south. (AR 741, 6941-42.)

- The EIR must address the proposed mitigation measure of funding staff to patrol the South Parcel to prevent human trespass.
 - While Respondents acknowledge that commenters proposed such funding, the City never provided a specific response explaining why the proposed measure is not feasible or is otherwise unnecessary. In their objection to the tentative ruling, Respondents argue that they addressed the proposed mitigation measure; however, the cited pages of the AR do not support their claim [AR 0134, 9139]; rather, the responses to comments merely refer to funding for additional police officers necessary to sustain an acceptable ratio of officers to residents for the Temecula Police Department.

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- The EIR's determination of MSHCP consistency is not supported by substantial evidence.
 - The DEIR and FEIR each indicate that although the Project does not meet the specific Criteria Cell acreage goals, the Project would not preclude achievement of the Reserve Assembly in Subunit 1 or Subunit 6. (AR 4213, 6946, 8976-77.) While Respondents maintain that the MSHCP does not require a consistency analysis at the Criteria Cell level, the language of the MSHCP upon which Respondents rely is not so clear. (AR 778; *see also* 6999-7002; 89786-77.) That is, while the ultimate measurement of success in assembly of the Additional Reserve Lands is measured on a Core and Linkage basis or on an Area Plan and Subunit basis, nothing in the cited language suggests that a Project may comply with the Reserve Assembly requirements by simply achieving the target acreage at the Subunit level but ignoring the Criteria Cell level, which would be counterintuitive to the ultimate goal of conserving Cores and Linkages. Further, the EIR itself is equivocal on the issue. The Addition to the Final EIR indicates, among other things, "the RCA and the City ... find that the Project as proposed with the Nature Center use and other MSHCP requirements ... will be consistent with the Reserve Assembly goals and objectives of the MSHCP at the individual Criteria Cell, as well as the Area Plan and Subunit levels." The statement directly contradicts the DEIR and FEIR's statements that the Project did not meet the Reserve Assembly goals at the Criteria Cell level. As such – and at the very least – the EIR suffers from an internal inconsistency. Lastly, the determination that the Project does not preclude achievement of Reserve Assembly target for

Subunits 1 and 6 was based in part on the unsupported assumption that undeveloped land would come into conservation. (AR 7000-01, 9010-11, 9273, 13166-87.) In their objections to the tentative ruling, Respondents notably make no attempt to harmonize the inconsistent statements in the EIR and Addition to the Final EIR. Moreover, the City's acreage requirements for Subunit 1 and Subunit 6 are derived by simply adding up the acreage designated for conservation in each individual Cell. (AR 7000.) However, each Cell varies, and an analysis of acreage requirements at a Subunit level without reference to specific Cells is inherently flawed. (7000-01, 9273.)

- The EIR's conclusions that the Project presents no significant environmental impact to the western pond turtle is not supported by substantial evidence.
 - The only evidence Respondents cite to support the EIR's conclusions regarding the western pond turtle is a single page from the Helix October 19, 2015 MSHCP report indicating that the analysis involved a review of the results of surveys and assessments of the property conducted by HELIX over the past several years, including "Riparian/Riverine and Vernal pool habitat assessment, wet and dry season fair shrimp assessment, least Bell's vireo survey ..., burrowing owl ... survey, and vegetation mapping along with general habitat assessment of the potential for sensitive species to occur." (AR 6893.) There are no specifics about what time of year surveys were made, whether any surveys were specific to the western pond turtle and whether wildlife surveys encompassed areas in the South Parcel upland of Murrieta Creek (potential overwintering and estivation sites). In this regard, Respondents' reliance on *Banning Ranch Conservancy v.*

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City of Newport Beach (2012) 211 Cal.App.4th 1209 is entirely misplaced. There, the court found that the site-specific observations and opinions of City's biologist supported the City's determination that gnatcatcher habitat on the project site was already degraded. (*Id.* at 232.) Here, there is no evidence of the parameters of any survey made with respect to the western pond turtle, although the Helix report notably indicates that other species-specific surveys were conducted. (AR 6893-94.) Further, Helix's conclusion in its report (and repeated in the FEIR) that the steep sides of western edge of the creek would limit access to the turtles is made without reference to any evidence – neither scientific study nor survey – and without any indication of the actual slope of the site. (AR 6937, 8936-37.) Lastly, following the proposal to include the Nature Center on the South Parcel, Helix supplemented its MSHCP report and indicated, among other things, that the “Nature Center use will reduce potential for indirect impacts to pond turtle habitat along Murrieta Creek.” (AR 9375.) That is, at the very least, Helix appeared to recognize, that there was “potential for indirect impacts,” which runs contrary to the EIR's conclusion that “no impacts to western pond turtles are anticipated on the South Parcel under either the [University/Hospital Use or the Nature Center Use].” (AR 8937.)

- The EIR's conclusion that there are no significant environmental impacts to the Sand Diego ambrosia is not supported by substantial evidence.
 - The City indicates that under §§ 6.1.3 and 6.3.2 of the MSHCP, site-specific surveys for ambrosia must be conducted only in areas covered by NEPSSA and/or CASSA and that if the plant is found in those areas, it must be conserved

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in accordance with the procedures under § 6.1.3. However, the City's conclusion that there is conversely no requirement for focused plant surveys or conservation outside of NEPSSA or CASSA and that the City is therefore authorized to "take" ambrosia is not supported by the referenced pages of the AR. (AR 568; 1306, 4160-63, 4184-85, 9049, 17064-65.)

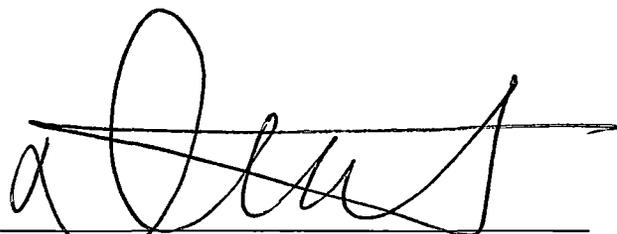
- Because the Project is not consistent with the MSHCP, the project is also not consistent with the City's General Plan.
 - The City's findings regarding MSHCP consistency are not supported by substantial evidence, and in this regard, the Project is not consistent with the General Plan policies. (AR 10819, 31505.)
- The Addition to the Final EIR highlights the defects in the DEIR and FEIR and creates an internal inconsistency in the EIR that should have been, at the very least, subject to further public scrutiny through recirculation.
 - CEQA Guidelines § 15088.5(a)(d) provides that "significant new information" requiring circulation includes a disclosure that demonstrates "[t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (*See also Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 1130; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 266-67.) Here, the Addition to the Final EIR provides: "The RCA and the City ... find that the Project as proposed with the Nature Center use and other MSHCP requirements ... will be consistent with Reserve Assembly

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goals and objectives of the MSHCP at the individual Criteria Cell, as well as the Area Plan and Subunit levels.” (AR 13222-23.) However, not only does the EIR steadfastly maintain, despite numerous comments, that consistency at the Criteria Cell level was unnecessary, but also the EIR admits that Reserve Assembly acreage goals were not met at the Criteria Cell level. (AR 4212-13; 8974-77.) In their objection to the tentative ruling, Respondents claim that the DEIR in fact provides that the Project would be consistent with Cell/Cell Group conservation acreage goals. However, the quoted language is taken out of context. The DEIR, after acknowledging that conservation goals would not be met at the Criteria Cell level indicates that the Project would nevertheless be consistent with Cell/Cell Group conservation goals *because* conservation goals are to be determined on a Core and Linkage or Area Plan and Subunit Plan basis, which is simply to say, as Respondents argued in their original Opposition Brief, that conservation at the Criteria Cell level was unnecessary. (AR 4212-13.)

The Petitions are otherwise DENIED.

Dated: 3-19-20



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Judge of the Superior Court

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