Appendix S. Ruling, Judgment and Writ

MINUTE ORDER AND RULING

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/09/2024 TIME: N/A DEPT: C-69

JUDICIAL OFFICER: KATHERINE A. BACAL
CLERK: S. Christensen
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2022-00041478-CU-MC-CTL** CASE INIT.DATE: 10/14/2022
CASE TITLE: **Preserve Wild Santee vs City of Santee [IMAGED]**
CASE CATEGORY: Civil CASE TYPE: (U)Other Complaint (Not Specified): Other Complaint

---

The Court having taken this matter under submission on 06/14/2024, now rules as follows:

RULING ON SUBMITTED MATTER

Petitioners' first amended petition for writ of mandate and complaint is **GRANTED**.

Preliminary Matters

The unopposed request for judicial notice under Evidence Code section 452(c) and (h) [ROA # 133] by petitioners Preserve Wild Santee, Center for Biological Diversity, California Chaparral Institute and Endangered Habitats League (collectively, "petitioners") of exhibits A through E in support of their opening brief is granted.

The request for judicial notice [ROA # 138] by respondents City of Santee and Santee City Council (collectively "City") and real party in interest HomeFed Fanita Rancho, LLC ("HomeFed") of exhibits 1—4 is denied as irrelevant. Their request for judicial notice of exhibits 5-9 is granted.

Petitioners' supplemental request for judicial notice [ROA # 155] of exhibit 1 is granted.

Background

The first amended petition ("FAP") alleges the following causes of action (1) violation of California Environmental Quality Act ("CEQA") – inadequate environmental impact report, findings, statement of overriding considerations; (2) violation of state planning and zoning law – inconsistency with general plan; (3) violation of subdivision map act – inconsistency with general plan; and (5) violation of elections code – approval of project despite qualifying referendum. ROA # 18. The fourth cause of action, for violation of state very high fire hazard regulations, was dismissed after City and HomeFed's demurrer was sustained without leave to amend. ROA # 58.) Petitioners filed the petition under CCP section 1085 and/or 1094.5, and Public Resources Code section 21168 *et seq*. FAP ¶ 7. Respondent and real party filed answers to the FAP. ROA # 59, 69.

In a bifurcated hearing, the Court heard oral argument as to the first cause of action for violation of CEQA. It then held oral argument on the second, third and fifth causes of action and took the matter under submission. The Court now issues this ruling as to all causes of action.

Standards of Review

In reviewing an agency's compliance with CEQA the Court's inquiry extends "only to whether there was a prejudicial abuse of discretion." *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512. "[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence." *Id.*, citing Pub. Res. Code § 21168.5. Whether the agency employed correct procedures is reviewed *de novo*, whereas the agency's substantive factual conclusions are accorded "greater deference." *Id.* "The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" *Id.* at 516 (citations omitted).

The second and third causes of action are brought under a petition for writ of administrative mandamus under CCP section 1094.5. Under that section,

> (b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.
>
> (c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

CCP § 1094.5(b) & (c).

The fifth cause of action, for violation of the Elections Code, is brought pursuant to CCP section 1085. "Mandamus will lie to compel a public official to perform an official act required by law. (Code Civ. Proc., § 1085.) Mandamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. Mandamus may issue, however, to compel an official both to exercise his [or her] discretion (if he [or she] is required by law to do so) and to exercise it under a proper interpretation of the applicable law." California *Teachers Assn. v. Ingwerson* (1996) 46 Cal.App.4th 860, 865, internal citations omitted. "Mandamus will also lie to correct an abuse of discretion by an official acting in an administrative capacity." Petitioner has the burden. Evid. Code § 664.

The petitioners seek a writ of mandate directing respondents to vacate and set aside the REIR certification and associated project approvals; directing the City to comply with the State Planning and Zoning Law, the Subdivision Map Act, the Elections Code, and all applicable state regulations; and petitioners seek a declaration that the City's certification and approval of the Fanita Ranch Project

("project") violated the CEQA and CEQA Guidelines, the State Planning and Zoning Law, the Subdivision Map Act, the Elections Code, and that the certification and approval are invalid. FAP, Prayer ¶¶ 1-4.

Discussion

CEQA (1st COA)

The FAP alleges the EIR is legally defective and respondents prejudicially abused their discretion in violation of CEQA when they approved the project. FAP ¶ 97. The FAP alleges (a) respondents failed to amend and recirculate the EIR for public review and comment; (b) the final EIR's responses did not adequately respond to petitioners' comments; (c) the EIR is inconsistent with the applicable general plan; and (d) the EIR fails to disclose, analyze and/or mitigate biological resource impacts, impacts regarding wildfire and wildfire safety, and transportation and traffic. FAP ¶¶ 87-99. Respondents deny the allegations. ROA # 59, 69.

a. ***CEQA Notice Recirculation Requirements***

Petitioners argue the City did not notify the Center that the draft recirculated EIR was available. OB at 33; see also FAP ¶ 96 (alleging failure to recirculate the EIR as required, which deprived the public and public agencies of meaningful opportunity to review and comment). Respondents apparently do not directly address this argument in their opposition. See Opp. at 39-40 (stating petitioners raised only two issues in the opening brief under CEQA: the comment and disclosure issues). Respondents mention, however, that the record shows the recirculated EIR was provided for public and agency review and comment from July 10, 2022 – July 25, 2022. Opp. at 19, AR 1764, 3212-3217, 14598-14600.

CEQA requires that a lead agency provide public notice of an EIR preparation to the "last known name and address of all organizations and individuals who have previously requested notice, and shall also be given by posting the notice on the internet website of the lead agency," and by at least one of the following procedures: in a newspaper; by posting in the area where the project is to be located; and direct mailing to owners/occupants of contiguous property. Pub. Res. Code § 21092(b)(3) and 14 Cal. Code Regs. ("CEQA Guidelines") § 15087(a).

Here, the record indicates notice was accomplished. The Center does not point to evidence in the record that it previously requested notice. Even if the City did not specifically notify the Center of the availability of the draft recirculated EIR, the evidence indicates the Center transmitted a comment letter and attachments to the City during the review and comment period on July 25, 2022. ROA # 128 at 1, citing Peter Broderick Decl. ¶¶ 3-5, Ex. A; Haskins Decl. ¶¶ 4-8, Ex. A. Accordingly, the Court does not find a notice violation under the CEQA on this basis.

b. ***CEQA Comment Requirements***

Petitioners also argue the City failed to respond to the Center's comments on the draft recirculated EIR, including comments concerning the new wildfire analysis and safety impacts, and comments from a transportation expert concerning the evacuation analysis. OB at 13-14, 34-35, citing AR 20492.12-.13, and AR20492.448.

The City argues that although it omitted the Center's letter from the final recirculated EIR, its final recirculated EIR adequately responded to and addressed the issues raised in the Center's comment

letter because those issues were also raised by others, and so petitioners cannot establish prejudice. Opp. at 40-45. Respondents rely on the California Supreme Court's opinion in *Environmental Protection Information Center ("EPIC") v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 484.

This Court likewise finds the guidance and analysis in *EPIC* applicable here. The *EPIC* Court posited that the question is whether the agency's error in failing to consider certain comments is prejudicial. *Id.* at 484-485. To assess that question, the Court first considers "what constitutes prejudicial error in cases involving environmental review. As previously noted, 'Only if the manner in which an agency failed to follow the law is shown to be prejudicial, or is presumptively prejudicial, as when the department or the board fails to comply with mandatory procedures, must the decision be set aside....'" *Id.* at 485, citation omitted. "If it is established that a state agency's failure to consider some public comments has frustrated the purpose of the public comment requirements of the environmental review process, then the error is prejudicial." *Id.* at 487. "When an agency adequately addresses an environmental issue in response to one commenter, it may refer to the prior response when addressing other commenters, and a failure to respond to a particular comment is not prejudicial error when the issue raised by the comment is adequately addressed elsewhere." *Id.* at 487, footnote 9.

In advance of the hearing, the Court posed a question in the tentative regarding whether respondents adequately responded to the issue raised in Neal Liddicoat's comment that the wildfire evacuation plan in the draft recirculated EIR did not establish a "performance standard" to determine whether the project evacuation times are significant. ROA # 167, citing AR 20492.448-449. Having considered the arguments in the briefing and presented orally at the hearing, and the evidence in the record, the Court agrees with respondents that the City adequately addressed the issue raised by Liddicoat in their comments.

As shown by Liddicoat's letter, the issue is that if the City "has no established standard within CEQA, how was it determined that the Project's impact was less than significant?" AR 20492.448. Liddicoat commented, "[a]bsent an adopted standard of significance regarding acceptable evacuation times, no determination is possible as to the magnitude of the Project-related impact." AR 20492.449.

Here, the record shows this issue was addressed in the comments under Thematic Response 4(b). There, the City explained that CEQA has not "adopted numerical time standards to determine whether a timeframe is appropriate." AR 1793. Instead, it is "[p]ublic safety" that is "generally the guiding consideration for evaluating impacts related to emergency evacuation." *Id.* The City further explained that it "considers a Project's impact on evacuation significant if the Project will significantly impair or physically interfere with implementation of an adopted emergency response or evacuation plan; or if the Project will expose people or structures to a significant risk of loss, injury, or death involving wildland fires." *Id.* As explained by respondents at the hearing, the record shows the Appendix G standard is the standard the City used. *League to Save Lake Tahoe Mountain etc. v. County of Placer* (2022) 75 Cal.App.5th 63, 133, 139-140 (where EIR relied on Guidelines' Appendix G to provide standard of significance, appellate court concluded agency did not abuse its discretion in determining the "methodology for evaluating the impact to its evacuation plan or selecting the standard of

significance"). Thus, this issue was adequately addressed and petitioners have not established prejudice on this basis.

The record also shows the agency adequately addressed the additional environmental issues raised by the Center. Opp. at 43-44, AR 6685-6686, 1790, 3887-3888, see also, AR 2206-2207 (addressing comment regarding roadway capacities assumed in the calculation of evacuation times); AR 1903-1905 (addressing comment regarding detection and notification time in evacuation scenarios); AR 1887-1889 (addressing comment regarding nighttime evacuation assumption and congestion); AR 2292-2293 (addressing comment regarding residents who would evacuate even if not under evacuation order); and AR 1793-1795 and 3752-3753 (addressing evacuation performance standard). Accordingly, the Court does not find a violation of CEQA based on comment requirements.

c. ***CEQA Requirements re: Disclosure of Inconsistencies***

Petitioners argue the EIR failed to disclose the project's inconsistency with the general plan. OB at 36. Petitioners argue the general plan imposes mandatory policies for development, including density restrictions. *Id.* Petitioners argue the 2022 recirculated EIR states the project is consistent with the general plan, and in doing so swept under the rug that the project is inconsistent. *Id.*, and Reply at 25, citing CEQA Guidelines § 15125(d); *Napa Citizens for Honest Gov. v. Napa County Bd. Supervisors* (2001) 91 Cal.App.4th 342, 381, 386-87; AR 989, 991-995.

Respondents argue petitioners conflate their argument that the project is inconsistent with the general plan with CEQA's requirements to evaluate plan inconsistencies. Opp. at 45-46, citing *The Highway 68 Coalition v. County of Monterey* (2017) 14 Cal.App.5th 883, 894, AR 3331-3358, AR 561-564. According to respondents, the project is consistent with the general plan because it was certified as an essential housing project, and so the City was not required to analyze and disclose any claimed inconsistencies. *Id.*

Whether the City can be found to have violated CEQA on this basis is intertwined with the second and third causes of action in the FAP regarding alleged inconsistencies with the general plan. Accordingly, this claim is discussed in connection with the second and third causes of action below.

d. ***Impacts Analysis***

The FAP alleges the EIR fails to disclose, analyze and/or mitigate biological resource impacts, impacts regarding wildfire and wildfire safety, and transportation and traffic. As noted by respondents, the petitioners do not argue the substance of the final recirculated EIR's analysis is inadequate. Opp. at 38. Rather, the petitioners challenged the City's alleged failure to respond to the Center's written comments (which is discussed above). *Id.* Thus, argue respondents, petitioners forfeited their legal challenge as to the substance or adequacy of the wildfire and evaluation analysis by not raising it in their opening brief. *Id.* Petitioners do not appear to rebut this on reply. Accordingly, the Court does not find a violation of the CEQA on this basis.

Violation of State Planning And Zoning Law – Inconsistency with General Plan (2nd COA)

Petitioners' FAP alleges that when the City approved the project it did not amend the general plan; that the project is inconsistent with general plan policy adopted by voter initiative ("Measure N"), which

requires certain land use changes be approved by a vote of the people; and the City abused its discretion and violated state planning and zoning law by approving a project inconsistent with the City's general plan. FAP ¶¶ 101-104. Petitioners bear the burden to establish inconsistency between the project and the plan. *Cal. Native Plant Soc. v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 639.

The City and HomeFed assert in opposition that this cause of action is time-barred. Response Brief ("RB") at 20. They also argue this cause of action is meritless because state housing laws (the density bonus law and Gov. Code section 3937) authorize the essential housing program urgency ordinance no. 592 ("ordinance"), and the cause of action is meritless because substantial evidence in the record supports the City's consistency findings. *Id.* at 22-26, 27-36.

Time Bar

HomeFed asserts in its answer that the limitations period in Government Code section 65009 applies to bar the second cause of action. HomeFed Answer, 11th Aff. Def. ROA # 59. The City did not cite section 65009 in its statute of limitations affirmative defense. Answer, 8th Aff. Def., ROA # 69.

The City and HomeFed have the burden to show the statute of limitations bars this action. *Pollock v. Tri-Modal Distr. Services* (2021) 11 Cal.5th 918, 947. Both HomeFed and the City argue the 90-day statute of limitations period applies to commence an action to challenge a legislative body's decision "on the matters listed in Sections 65901 and 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit;" and "[c]oncerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions" in the statute. Gov. Code § 65009(c)(1)(E) & (c)(1)(F). RB at 13, 20-22.

The state planning and zoning law (Gov. Code §§ 65000 *et seq.*) contains a section with general provisions, which includes a time limitations provision on bringing actions to challenge decisions by a legislative body regarding general or specific plans, zoning ordinances, regulations attached to specific plans, development agreements, variances, and permits. Gov. Code § 65009(c)(1).

HomeFed and the City argue the petitioners challenge the urgency ordinance that adopted the essential housing program, which occurred in August 2021, and the City planning director's final decision to certify Fanita Ranch as an essential housing project, which occurred on December 27, 2021. RB at 20-21, citing OB at 20-28, AR 3961-3962, AR 1773-1779, 1779-1782. To support their position, HomeFed and the City rely on *Venice Coalition*, which involved a ministerial process through a specific plan in which the *Venice Coalition* petitioners challenged the specific plan. *Venice Coalition to Preserve Unique Community Character v. City of Los Angeles* (2019) 31 Cal.App.5th 42.

Here, HomeFed and the City have not met their burden to show the 90-day statute of limitations period applies. The FAC and record show petitioners challenge a specific land use approval, not merely a ministerial approval. Unlike *Venice Coalition*, the petitioners here challenge the final land use approval during which the City adopted findings of fact to state the project was consistent with the general plan. AR 561-64, Reply at 19-20. The petitioners are not challenging the planning director's December 27, 2021 certification. Even though petitioners discuss the underlying ordinance and certification in their

opening brief, this does not necessarily transform the crux of their challenge to the land use approval. Rather, such discussion may reasonable be inferred as providing support context and information to their timely challenge of the final land use approval that occurred on September 14, 2022, after which they filed suit within the 90-day period on October 14, 2022. AR 561-564; ROA # 1. Consequently, the 90-day limitations period does not bar the second cause of action.

Whether a General Plan Amendment Was Required or Whether State Housing Laws Authorize the Essential Housing Program Urgency Ordinance

As to the merits of the second cause of action, the parties present two starkly different positions and legal theories in this case. Petitioners assert the City committed fundamental legal error by using the certification as an excuse to avoid the need for a general plan amendment, and in doing so violated state planning and zoning law. OB at 19-26; Reply at 10-11. Petitioners argue the City's certification does not fit within the state land use hierarchy, and the City and HomeFed's attempts to rely on laws and standards outside the hierarchy of the general plan does not mean they proceeded in the manner required by law. Pet. Supp. Brief [ROA # 156] at 2-5; Reply at # 140 (if a local agency fails to notify a project applicant of objective requirements, the project is "deemed consistent ... only when substantial evidence supports the Project's consistency" with the general plan's objective standards," citing Gov. Code § 65589.5(j)(1), (f)(4)).

In contrast, the City and HomeFed argue that certain laws authorize the City to bypass general plan amendment requirements, and that the project may be "deemed consistent" under state housing laws, such as the Housing Accountability Act. RB at 23-25, 27-28, 36. The City argues the urgency ordinance waived or superseded the general plan's guiding principle standard for minimum lot sizes, and that this was authorized. City Supp. Brief [ROA # 166] at 1-2. The City points to the density bonus law as an example of a project inconsistent with development standards, to show that like the density bonus law, the ordinance here likewise does not violate the general plan. RB at 11, 22-25, citing Gov. Code § 65915, *Bankers Hills 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 771; City Supp. Brief at 3-4 (arguing the ordinance also is being used to satisfy the state laws re: provision of affordable housing) and citing AR 3966, AR 14621, 1767-1768; 1770-1771. The City also argues the director's certification of the project fits within the general plan land use hierarchy. City Supp. Br. at 4-5. HomeFed joins in the City's arguments. ROA # 165 at 1. HomeFed argues the Housing Accountability Act ("HAA") applies to this project and mandates approval of this project. ROA # 165. HomeFed argues that an applicant who receives incentives, concessions or waivers under the Density Bonus Law does not mean a project is inconsistent with a general plan. Supp. Br. at 3, citing § 65589.5(j)(3). Thus, argues HomeFed, a project that provides sufficient affordable housing under the ordinance may waive City development standards, do not require amendment and are deemed compliant with the general plan. *Id.* at 3-4. The City joins in HomeFed's arguments. ROA # 166 at 1.

The City and HomeFed's position have flaws that appear fatal to defend against the challenges raised by petitioners in the FAC. Although the City urges that the certification fits in the land use hierarchy the City does not clearly explain where and how it fits, and, in circular fashion, cites to the ordinance to state a certification is deemed in compliance and consistent with the General Plan Land Use and Housing Elements. City Supp. Br. at 4-5, citing AR 3961-3962 [Ord. 592 § 4.D.1]. The fallacy with HomeFed's

argument is that concluding a particular basis for a project is not inconsistent with the general plan does not necessarily mean that a project is therefore consistent with a general plan. Indeed, as petitioners have aptly noted, the Housing Accountability Act restricts local governments from *denying* certain housing applications; it does not mandate local government *approvals* of projects. Reply at 15, citing Gov. Code § 65589.5(a)(2)(K), (d)(2)&(d)(5) & (j)(1). This distinction is material and is one which the City's and HomeFed's arguments do not convincingly refute.

Moreover, neither the Density Bonus Law, including section 65915(n), nor the Housing Accountability Act are mentioned in the City's findings of fact and statement of overriding considerations on September 14, 2022. AR 561-564. HomeFed expressly did not seek any incentives, waivers or concessions under the Density Bonus Law. AR 3992. The City and HomeFed's arguments relying on these bases after the findings of fact were made justifying approval the project are thus unpersuasive.

At oral argument, City and HomeFed emphasized that the ordinance no. 592 is essentially the local ordinance version of the density bonus law that gave it express statutory authority to proceed with its essential housing program based on Government Code section 65915(n). This argument also is unconvincing, as it does not address the fact that the City's most recent housing element acknowledged that it removed the prior density bonus program ordinance from the municipal code to ensure continued compliance with the state's density bonus requirements. RJN, City of Santee Sixth Cycle Housing Element (Ex. A), p.46; Santee Municipal Code § 13.26.010 (City implements the housing element of the general plan under its density bonus provision). City's arguments attempting to rebut petitioners' showing on this basis are unconvincing. City Supp. Br. at 3-4. Accordingly, petitioners have met their burden to show City abused its discretion and did not proceed in the manner required by law. The petition as to the second cause of action is granted.

Violation of Subdivision Map Act – Inconsistency With General Plan (3rd COA)

Petitioners' FAP alleges the City violated state law requirements by "approving a vesting tentative map for the Project" inconsistent with the City's general plan requirements regarding issues such as density, transportation, roadway improvements, minimum lot sizes, planning requirements, park dedication and specific amenities. FAP ¶¶ 105-107. Petitioners reference the Subdivision Map Act in just one section of their opening brief. OB at 17 (stating that the Subdivision Map Act "likewise mandates that subdivision approvals, including approvals of vesting tentative maps, must be consistent with the applicable general plan.") The City and HomeFed also mention this Subdivision Map Act only once, in arguing that the general plan claims are meritless because state housing laws authorize the essential housing program urgency ordinance. RB at 22.

At oral argument, petitioner acknowledged the third cause of action for violation of the Subdivision Map Act rises or falls with the second cause of action for violation of the State Planning and Zoning Law. See also e.g., Reply at 6, 13, 17-18, 25 (tying arguments regarding the Subdivision Map Act to its earlier arguments regarding the State Planning and Zoning Law), citing Gov. Code § 66473.5 (general requirement that tentative map or parcel map be consistent with the general plan or specific plan). The Subdivision Map Act is found in Title 7, Planning and Land Use, Division 2, Subdivisions. Gov. Code, §§

66410 *et seq*. In line with the reasoning as to the second cause of action, petitioners' third cause of action for violation of the Subdivision Map Act is granted.

Because the Court found general plan inconsistences under the second and third causes of action, the EIR failed to disclose those inconsistencies. Accordingly, petitioners' first cause of action for violation of the CEQA is granted based on the failure to discuss inconsistencies.

Violation of Elections Code – Approval of Project Despite Qualifying Referendum (5th COA)

Petitioners assert that under the Elections Code, the City had the option of either repealing the ordinance or submitting it to the voters for approval or rejection. MPA at 9, citing Elec. Code § 9241. They argue state law prohibits local jurisdictions from approving the same or similar legislation for a one-year period after a referendum qualified for the ballot is either passed by a vote or the referendum approval is rescinded. OB at 29, citing Cal. Const. art 4 § 1, Elec. Code § 9241. The FAP alleges the City violated the Elections Code by removing a qualified certified referendum about the project from the November 8, 2022 ballot, and then readopting the project (on Sept. 14, 2022) well before one year elapsed from the City's May 25, 2022 repeal of the project approvals. FAP ¶ 115, OB at 30.

The Elections Code's section 9241 states:

> If the legislative body does not entirely repeal the ordinance against which the [referendum] petition is filed, the legislative body shall submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the legislative body, or at a special election called for the purpose, not less than 88 days after the order of the legislative body. The ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it. *If the legislative body repeals the ordinance or submits the ordinance to the voters, and a majority of the voters voting on the ordinance do not vote in favor of it, the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body or disapproval by the voters.*

Elec. Code § 9241, emphasis added.

Here, petitioners assert the City "repealed" the Fanita Ranch Project approvals on May 25, 2022. FAP ¶ 113, 115, OB at 29, citing AR 24151-53, 1595-99, 1609-12. The City also acknowledges that on May 25, 2022, the City "adopted a resolution setting aside all prior project approvals on May 25, 2022 — including the Final REIR certification and the 2020 GPA approval — and subsequently filed its return. (AR 1767; RJN Ex. 9 [Fanita Ranch III Initial Return to Peremptory Writ].)" RB at 15. City and HomeFed argue, however, that section 9241 does not apply under the circumstances of this case because it makes no sense to have a referendum for legislation that no longer existed, since the Court ordered the prior EIR invalid and to be set aside. Yet section 9241 makes no exception for when a judicial body directs a city to rescind an approval pursuant to a writ.

City and HomeFed also argue the one-year delay required by Elections Code section 9241 would be inconsistent with the expedited processing timeframes for housing developments under the Housing Accountability Act and Housing Crisis Act (SB 330). RB at 38-39. In accordance with the policy reasons

explained above, these sections likewise do not apply and cannot form the basis for non-compliance with the Elections Code here. The petition on the third cause of action is granted.

Conclusion

For the reasons stated, petitioners' first amended petition for writ of mandate on the first, second, third and fifth causes of action in the complaint is **GRANTED**.

The minute order is the order of the Court.

Petitioner to prepare the proposed writ. The Clerk to serve notice.

Katherine A. Bacal

Judge Katherine A. Bacal

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
Central
330 W. Broadway
San Diego CA 92101

SHORT TITLE: PRESERVE WILD SANTEE VS CITY OF SANTEE [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: **37-2022-00041478-CU-MC-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the 08/09/2024 Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California on 08/12/2024.

Clerk of the Court, by: S. Christensen , Deputy

AMY E HOYT
655 BROADWAY 15TH FLR
SAN DIEGO CA 92101

JOHN BUSE
1212 BROADWAY ST., SUITE 800 800
OAKLAND CA 94612

PETER J BRODERICK
CENTER FOR BIOLOGICAL DIVERSITY
1212 BROADWAY 800
OAKLAND CA 94612

JEFFREY A. CHINE
ALLEN MATKINS LECK GAMBLE
600 WEST BROADWAY 27TH FLOOR
SAN DIEGO CA 92101

JEFFREY A CHINE
600 WEST BROADWAY, STE. 2700
SAN DIEGO CA 92101

JUDGMENT

John Buse (SBN 163156)
Peter J. Broderick (SBN 293060)
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Suite 800
Oakland, California 94612
Telephone: (510) 844-7117
Facsimile: (510) 844-7150
jbuse@biologicaldiversity.org
pbroderick@biologicaiversity.org

Attorneys for Center for Biological Diversity, Preserve Wild Santee, Endangered Habitats League, and California Chaparral Institute

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

PRESERVE WILD SANTEE, CENTER FOR BIOLOGICAL DIVERSITY, ENDANGERED HABITATS LEAGUE, and CALIFORNIA CHAPARRAL INSTITUTE

Petitioners,

v.

CITY OF SANTEE, CITY OF SANTEE CITY COUNCIL, and DOES 1 through 20, inclusive,

Respondents,

HOMEFED FANITA RANCHO, LLC, and DOES 21 through 40, inclusive,

Real Parties in Interest.

Case No. 37-2022-00041478-CU-MC-CTL

[~~PROPOSED~~] JUDGMENT

Action Filed: October 14, 2022
Trial Date: June 14, 2024
Department: Dept. C-63
Judge: Hon. Katherine Bacal

Petitioners Preserve Wild Santee, Center for Biological Diversity, Endangered Habitats League, and California Chaparral Institute ("Petitioners") by the above-captioned action challenged the September 14, 2022 decision of the City of Santee and the City of Santee City Council ("Respondents") to re-approve the Fanita Ranch Project ("Project"), adopt findings, adopt resolutions approving a vesting tentative map, a development plan, and other approvals for the Project, and certify an Environmental Impact Report ("EIR") for the Project. The matter came on for hearing on June 14, 2024, in Department C-69 of the above-captioned court, the Honorable Katherine Bacal, presiding. Appearances were as noted in the record. The Court having reviewed the record of proceedings in this matter and having heard oral argument and fully considered the arguments of all parties, both written and oral, and after taking the matter under submission, issued a ruling by Minute Order on August 9, 2024 ("Order"), a copy of which is attached hereto as Exhibit A, and incorporated herein by reference.

For the reasons set forth in the Order,

IT IS NOW ORDERED, ADJUDGED, AND DECREED that:

1. Judgment is hereby entered in favor of Petitioners, Preserve Wild Santee, Center for Biological Diversity, Endangered Habitats League, and California Chaparral Institute, and against Respondents City of Santee and City of Santee City Council, and Real Party in Interest HomeFed Fanita Rancho, LLC.

2. The Peremptory Writ of Mandate attached hereto as Exhibit B shall issue from this Court, ordering Respondents to, *inter alia*:

   a. Set aside and vacate in its entirety Resolution No. 112-2022 of the City Council for the City of Santee Certifying the Revised Environmental Impact Report (SCH # 2005061118), Including the Recirculated Sections of the Revised EIR (except for chapter 4.18 "Wildfire), for the Fanita Ranch Project; Adopting Findings of Fact and a Statement of Overriding Considerations Under the California Environmental Quality Act; Adopting a Mitigation Monitoring and Reporting Program; and Approving the Project;

   b. Set aside and vacate in its entirety Resolution No. 113-2022 of the City Council of the City of Santee, California Approving the Application of HomeFed Fanita

Rancho LLC for Fanita Ranch Vesting Tentative Map TM2022-1 for the Subdivision of Approximately 2,638 Acres into 1,467 Lots to Develop the Fanita Ranch Master Planned Community Located North of the Terminus of Fanita Parkway in the Fanita Ranch Planned Development Area;

c. Set aside and vacate in its entirety Resolution No. 114-2022 of the City Council of the City of Santee, California Approving the Application of HomeFed Fanita Rancho LLC for Fanita Ranch Development Plan and Development Review Permit DR2022-4 for the Subdivision of Approximately 2,638 Acres into 1,467 Lots to Develop the Fanita Ranch Master Planned Community Located North of the Terminus of Fanita Parkway in the Fanita Ranch Planned Development Area;

d. Set aside and vacate in their entirety any and all permits, entitlements, or other land use approvals issued in reliance on the above-described Project environmental documents or land use approvals that the Court has commanded be set aside.

3. It is declared and adjudged that, consistent with and for the reasons set forth in the Court's Order, Respondents' actions in approving the Project and certifying the EIR (except chapter 4.18 "Wildfire) violated the State Planning and Zoning Law, the Subdivisions Map Act, the Elections Code, and the California Environmental Quality Act.

4. Petitioners are entitled to recover costs in an amount to be determined. This Court reserves jurisdiction to hear post-trial issues matters, including the award costs and attorney's fees.

5. Pursuant to Public Resources Code section 21168.9(b), the Court shall retain jurisdiction over these proceedings by way of a return to the Peremptory Writ of Mandate until such time as this Court determines that the City has complied with the terms of the writ.

6. Nothing in this Judgment directs Respondents to exercise their discretion in any particular way.

DATED: 10/1/24

SAN DIEGO COUNTY SUPERIOR COURT

By: Hon. Katherine Bacal
Judge of the Superior Court

PEREMPTORY WRIT OF MANDATE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

PRESERVE WILD SANTEE, CENTER FOR BIOLOGICAL DIVERSITY, ENDANGERED HABITATS LEAGUE, and CALIFORNIA CHAPARRAL INSTITUTE

Petitioners,

v.

CITY OF SANTEE, CITY OF SANTEE CITY COUNCIL, and DOES 1 through 20, inclusive,

Respondents,

HOMEFED FANITA RANCHO, LLC; and DOES 21 through 40, inclusive,

Real Parties in Interest.

Case No. 37-2022-00041478-CU-MC-CTL

~~[PROPOSED]~~ **PEREMPTORY WRIT OF MANDATE**

Action Filed: October 14, 2022
Trial Date: June 14, 2024
Department: Dept. C-63
Judge: Hon. Katherine Bacal

TO RESPONDENTS CITY OF SANTEE AND CITY OF SANTEE CITY COUNCIL:

Judgment having been entered in this proceeding, ordering that a peremptory writ of mandate be issued from this Court:

IT IS NOW ORDERED that, promptly after service of this Peremptory Writ of Mandate upon Respondents,

1. Respondents shall:

   a. Set aside and vacate in its entirety Resolution No. 112-2022 of the City Council for the City of Santee Certifying the Revised Environmental Impact Report (SCH # 2005061118), Including the Recirculated Sections of the Revised EIR (except for Chapter 4.18 "Wildfire"), for the Fanita Ranch Project; Adopting Findings of Fact and a Statement of Overriding Considerations Under the California Environmental Quality Act; Adopting a Mitigation Monitoring and Reporting Program; and Approving the Project;

   b. Set aside and vacate in its entirety Resolution No. 113-2022 of the City Council of the City of Santee, California Approving the Application of HomeFed Fanita Rancho LLC for Fanita Ranch Vesting Tentative Map TM2022-1 for the Subdivision of Approximately 2,638 Acres into 1,467 Lots to Develop the Fanita Ranch Master Planned Community Located North of the Terminus of Fanita Parkway in the Fanita Ranch Planned Development Area;

   c. Set aside and vacate in its entirety Resolution No. 114-2022 of the City Council of the City of Santee, California Approving the Application of HomeFed Fanita Rancho LLC for Fanita Ranch Development Plan and Development Review Permit DR2022-4 for the Subdivision of Approximately 2,638 Acres into 1,467 Lots to Develop the Fanita Ranch Master Planned Community Located North of the Terminus of Fanita Parkway in the Fanita Ranch Planned Development Area;

   d. Set aside and vacate in their entirety any and all permits, entitlements, or other land use approvals issued in reliance on the above-described Project

environmental documents or land use approvals that the Court has commanded be set aside.

2. Respondents are further ordered to suspend all project activity that could result in any change or alteration to the physical environment unless and until Respondents have corrected the deficiencies identified in the Court's Judgment and attached August 9, 2024 Order; reconsidered an EIR certification determination and findings relative to the project; and brought their determination and findings into compliance with the requirements of the California Planning and Zoning Law and CEQA.

3. Respondents are further ordered to file and serve a return to the writ no later than 60 days after service of this writ. The return shall specify the actions taken to comply with the terms of this Peremptory Writ of Mandate.

4. The Court shall retain jurisdiction over these proceedings by way of a return to this Peremptory Writ of Mandate pursuant to Public Resources Code section 21168.9(b) until such time as this Court determines that the City has complied with the terms of this writ.

5. Nothing in this Peremptory Writ of Mandate directs Respondents to exercise their discretion in any particular way.

THE FOREGOING PEREMPTORY WRIT OF MANDATE ISSUES IMMEDIATELY.

DATED: 10/01/2024

SAN DIEGO SUPERIOR COURT

By: _____
CLERK OF THE SUPERIOR COURT