SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 01/30/2019 TIME: 09:18:00 AM DEPT: C-71

JUDICIAL OFFICER PRESIDING: Gregory W Pollack
CLERK: Terry Ray
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: L. Wilks

CASE NO: **37-2016-00030312-CU-TT-CTL** CASE INIT.DATE: 08/29/2016
CASE TITLE: **Friends of the San Dieguito River Valley vs. CITY OF SAN DIEGO [E-FILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

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EVENT TYPE: Ex Parte

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 01/28/19 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

RULING AFTER ORAL ARGUMENT: The Court rules on petitioner Friends of the San Dieguito River Valley's petition for writ of mandate as follows:

Petitioners are represented by Julie M. Hamilton and Joseph Bruno.

Respondent City of San Diego (City) is represented by Mara W. Elliott, George Schaefer, and Jenny K. Goodman of the Office of the City Attorney. Real Party in Interest Surf Cup Sports, LLC (RPI) is represented by G. Scott Williams of Seltzer Caplan McMahon Vitek, APC.

Petitioner challenges the City's approval, on July 25, 2016, of a 28-year ground lease with RPI of property commonly referred to as the Polo Fields. (AR, 1:6-8).

The Court has reviewed the record in light of the parties' briefs, oral arguments and the applicable law and concludes the petition for writ of mandate should be denied for the reasons stated below.

Standard of Review. The substantial evidence test governs a court's review of a city's factual determination that a project falls within a categorical exemption. (Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego (2006) 139 Cal.App.4th 249, 267.) Under the deferential substantial evidence standard, the court upholds the decision if the record contains "relevant

evidence that a reasonable mind might accept as adequate support for a conclusion." (Id. at p. 264.) Importantly, it is the City's role to weigh the evidence and decide whether the evidence supports the finding; the court's limited role is only to determine whether "no reasonable municipality could have reached the same decision as the City[.]" (Kutzke v. City of San Diego (2017) 11 Cal.App.5th 1034, 1042.)

As a preliminary matter, the Court declines to strike Petitioner's argument with respect to the CUP on the ground that it failed to raise the issue during the administrative hearing process. Courts have held that "the issues raised before a court must first have been raised during the administrative process, although not necessarily by the person who subsequently seeks judicial review." (Citizens for Open Gov. v. City of Lodi (2006) 144 Cal.App.4th 865, 876; Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist. (1997) 60 Cal.App.4th 1109, 1121.) Here, Petitioner cites to portions of the administrative record where the issue of the CUP was raised during the administrative process. (6 AR 582, 14 AR 365, 24 AR 2047, 29:2727.) However, the issue will not be considered since this Court previously ruled that a mandamus action is not a proper mechanism to compel the City to require a CUP. (See Minute Order dated August 10, 2018.)

The first issue is whether the City applied the proper baseline.

Under CEQA Guidelines, the baseline normally consists of "the physical environmental conditions in the vicinity of the project, as they exist at the time...environmental analysis is commenced." (CEQA Guidelines, §15125(a).) However, the California Supreme Court has interpreted this guideline to give lead agencies significant discretion in determining the appropriate existing conditions baseline. (Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth. (2013) 57 Cal.4th 439, 453; see also Communities for a Better Environ. v. South Coast Air Quality Mgmt. Dist. (2010) 48 Cal.4th 310, 336.) The City's determination of baseline conditions is reviewed for substantial evidence. (Cherry Valley Pass Acres & Neighbors v. City of Beaumont (2010) 190 Cal.App.4th 316, 337.)

Here, Petitioner contends that the appropriate baseline "could" be set at the time the RFP was issued: August 2015. More specifically, Petitioner argues that setting the baseline in March 2016 allows the City to avoid consideration of the impacts that occurred in the interim i.e., removing barns and stables (AR 2713-2714), grading new roads (AR 3491-3492), increasing available parking from 300 to 2000 cars on the project site in January 2016 (AR 2053; AR 180). Notably, courts have held that the proper baseline is the existing condition of the site even if that condition may be the result of prior illegal activity. (Riverwatch v. County of San Diego (1999) 76 Cal.App.4th 1428, 1452; Eureka Citizens for Responsible Gov. v. City of Eureka (2007) 147 Cal.App.4th 357, 371.) At oral argument, the City argued that the issue of whether the baseline was set in August 2015 or March 2016 was irrelevant since it used existing and historical conditions at the property to determine the baseline conditions. (AR 2775-2777.) More specifically, the administrative record contains evidence indicating that cars have historically parked within the confines of the property (AR 385, 407, 2436-2444) and that the City factored in the existence of the barns and clubhouse in its analysis of baseline conditions (AR 2775). Finally, the record evidence cited by Petitioner does not show or state that available parking was increased from 300 cars to 2000 cars.

Thus, the Court concludes that substantial evidence exists to support the City's decision to set the baseline as of March 2016.

The second issue is whether the City piecemealed the Project.

Petitioner contends that the City failed to consider the whole of the project pursuant to Public Resources Code section 21065 and CEQA Guidelines section 15378 subd. (a). A project comprises the whole of an action that has the potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (CEQA Guidelines, §15378(a); Laurel Heights Improvement Assn. v. Regents of Univ. of Cal. (1988) 47 Cal.3 376, 396.) Here, Petitioner argues that the list of activities set forth in the Hermann Memo should have been considered as activities contemplated by the Project but were not. (AR 2775.) However, evidence in the administrative record indicates that these activities were considered. (AR 80; AR 196-197.) Additionally, the NOE specifically notes that the Project included each of the component activities and a list of each of those activities which were the subject of the NOE. (AR 4.)

Thus, the Court concludes that there is substantial evidence which shows that the City did not piecemeal the Project and defer environmental review of the lease components to a later time.

The third issue is whether the Project is subject to an exception to the categorical exemptions.

"An agency's determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the Guidelines is applicable. The burden then shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category." (Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist. (2006) 141 Cal.App.4th 677, 689.

Petitioner argues that the unusual circumstances exception applies here. (CEQA Guidelines, §15300.2(c).) In Berkeley Hillside Preservation v. City of Berkeley (205) 60 Cal.4gh 1086, 1104, the California Supreme Court held that this exception applies only when both unusual circumstances and a significant impact as a result of those unusual circumstances are shown. Courts consider the issue of whether there is a reasonable possibility that a significant effect environmental impact will result from an unusual circumstance only if they first find that some circumstance of the project is unusual. (Ibid.) In other words, "[e]vidence that a project may have a significant effect is not alone enough to remove it" from an exempt category. (Emphasis added.) (Id. at p. 1115.) Judicial review is limited to whether the agency's determinations are supported by substantial evidence. (Id. at p. 1104.) Alternatively, courts have held that the exception applies if the project opponent can show that the project will have a significant environmental effect. (Don't Cell Our Parks v. City of San Diego (2018) 21 Cal.App.5th 338, 360.)

In response, the City notes that it specifically concluded that the Project "is not barred by one of the exceptions set forth in section 15300.2. (AR 79; AR 13.) Thus, its factual determination is not implied.

As to whether the project involved unusual circumstances, the City's environmental planner specifically rejected the contention that the Project's proximity to the San Dieguito River or other sensitive automatically renders the Project unusual. Notably, courts have held the mere proximity to riparian habitat does not automatically create an unusual circumstance. (Citizens for Environmental Responsibility v. State of Cal. ex rel. 14th Dist. Agricultural Assn. (2015) 242 Cal.App.4th 555, 585-588 (hereafter Citizens); Campbell v. Third Dist. Agricultural Assn. (1987) 195 Cal.App.3d 115, 118-119.) Here, Hermann stated that "none of the areas where renovations or improvements are proposed support sensitive biological resources that could be affected by the proposal. (AR 81.) The record also indicates that the Project "will allow for the continued use of the property for daily youth sports and youth polo instruction and occasional polo matches as it has since 1985 the non-profit Fairbanks Polo Club)...and by Surf Cup since 1992." (AR 80.) Thus, the Court concludes that substantial evidence in the record exists to support the City's finding that the Project does not involve unusual circumstances.

As to whether a reasonable possibility of a significant impact exists due to the Project's proximity to sensitive habitat, the record indicates that the Project will continue previous uses at historical levels. (AR 4411; AR 2436-2445 (parking); see also AR 80; AR 90:15-20; AR 226:16-19.) Petitioner presents no evidence as to how the Project will trigger new significant impacts. Furthermore, an argument based on a fear that a project might violate land use restrictions in the future cannot be considered a basis for further environmental review during the project approval. (Friends of Riverside's Hills v. City of Riverside (2018) 26 Cal.App.5th 1137, 1152.) In addition, the 2010 comment letter to the 2011 Mitigated Negative Declaration (MND) cited by Petitioner cannot set forth biological impacts resulting from the Project since it was written 6 years prior to the time the Project came to fruition. Furthermore, a Site Development Permit adopted by the City for the trail project already addresses the 100-foot buffer and restricts the timing of certain construction activity i.e., grading, construction, restoration, or revegetation, within said buffer during breeding season. (AR 778-780.) Notably, having a parking lot on the buffer zone is not prohibited by the MND. In addition, the MND runs with the land. Thus, the RPI is bound to comply with its terms. Finally, the maintenance activity to be performed will be done "in compliance with the Development Plan described in Section 6.12 and with all applicable laws." (AR 458.) Thus, Petitioner has not presented substantial evidence that there is a reasonable possibility that the new lease will cause significant environmental impacts.

The fourth issue is whether there is substantial evidence to support the City's determination that the Project is subject to multiple categorical exemptions.

The City determined that the Project was exempt pursuant to CEQA Guidelines 15323 (normal operations), 15301 (existing facilities), 15304 (minor alterations), and 15311 (accessory structures). (AR 2.) Petitioner bears the burden with this argument and must demonstrate that no substantial evidence supports the City's determination. (Walters v. City of Redondo Beach (2016) 1 Cal.App.5th 809, 817; Davidon Homes v. City of San Jose (1997) 54 Cal.App.4th 106, 115.)

CEQA Guidelines section 15323. It applies to normal operations of existing facilities for public gatherings (i) for which the facilities were designed, (ii) where there is a three-year history of the facility being used for the same or similar purpose, and (iii) where there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. (CEQA Guidelines, § 15323; see also Citizens, supra, 242 Cal.App.4th at p. 573.) Here, the record indicates that the site has been used for the same or similar purpose for the last 25 years (AR 80; AR 4411) and that there is no expectation of changed uses (AR 90:15-20; AR 226:16-19.)

CEQA Guidelines section 15301. It applies to the "operation, repair, maintenance...or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use...." The maintenance activities set forth in the City's environmental memo mirror the examples set forth in Section 15301 subds. (d), (h) and (i). Furthermore, the Project does not contemplate an expansion of uses at the site. (AR 90:15-20; AR 226:16-19.)

CEQA Guidelines section 15304. It applies to "minor public or private alterations in the condition of land, water, and/or vegetation," including minor grading and new landscaping." With respect to the Project, this exemption applies only to the extent that the maintenance of the roads and the re-seeding of the fields do not fall under the above noted exemptions.

CEQA Guidelines section 15311. It applies to construction or replacement of minor structures accessory existing facilities. With respect to the Project, it applies to the planned renovation, relocation or

replacement of irrigation equipment, fencing and gates, barns, stables, storage areas, trailers, offices, and temporary caretaker housing. (AR 80.)

Thus, substantial evidence supports the City's determination that the Project is covered by these exemptions.

Based on the foregoing, the Court denies the writ. The City is directed to prepare the Judgment.

IT IS SO ORDERED.

Judge Gregory W Pollack