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F I L E D
STEPHEN THILBERS
Clerk of the Superior Court

AUG 31 2000

By: J. PETERSON, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SAVE OUR FOREST AND RANCLANDS, a
California Corporation,

Petitioner,

v.

COUNTY OF SAN DIEGO, a governmental entity;
the BOARD OF SUPERVISORS OF THE
COUNTY OF SAN DIEGO, AND DOBS 1-15.
Respondents.

Case No.: No. 676630

Statement of Decision

Hon. Judith D. McConnell
Department 75

This matter came on regularly for hearing on August 28, 2000 in Department 75 of the Superior Court, in and for the County of San Diego, the Honorable Judith D. McConnell, Judge presiding. Petitioner, Save Our Forest and Ranchlands (SOFAR) appeared by and through counsel Charles Stevens Crandall. Respondent County of San Diego appeared by and through Senior Deputy County Counsel, Laurie J. Orange, and Mark Mead. The Farm Bureau, Amicus Curia, appeared by Attorney Henry E. Rodegerdt. The People of the State of California, Amicus Curia, appeared by and through Deputy Attorney General Susan Durbin. Briefs were filed on behalf of the following Amici Curia: California Native Plant Society, California Oaks Foundation, Center for Biological Diversity, Environmental Health Coalition, Mountain Defense League, San Diego Audubon Society, San Diego Baykeeper, Sierra Club, and Surfrider Foundation, by Daniel P. Seimi, Esq.

1 Before the Court was the County's Motion to Discharge the Peremptory Writ of Mandate.

2 BACKGROUND

3 In 1994, the County amended the land use element of its general plan to establish a uniform
4 eight-acre minimum parcel size throughout its agricultural preserves. No EIR was prepared on the
5 project. SOFAR filed a Petition for Writ of Mandate, challenging the adequacy of the County's general
6 plan regarding agricultural issues, and arguing, among other things, that eight-acre parcels are too small
7 to support viable agricultural uses. This court granted the Petition and issued a peremptory writ of
8 mandate requiring the County to vacate the general plan amendment, bring the land use, conservation
9 and open space elements of the general plan into conformance with the law, and to prepare an
10 Environmental Impact Report (EIR) on the project.

11 In response, the County prepared and adopted General Plan Amendment (GPA) 96-03. The
12 project amends the Land Use Element of the San Diego County General Plan to establish minimum
13 acreage designations for properties located in a 191,000 acre area of San Diego County, ostensibly set
14 aside for agricultural uses. Additionally, the County adopted rezoning implementation. At issue are lands
15 within an area designated "(20)" on the General Plan.

16 Under GPA 96-03, the (20) lands west of the County Water Authority (CWA) boundary would
17 have a density of one dwelling per ten acres; East of the CWA boundary, the (20) lands would have a
18 density of one dwelling per 40 acres. The County prepared an Environmental Impact Report (EIR) which
19 predicts significant environmental project and cumulative impacts on the (20) lands. The County deemed
20 nearly all such impacts unmitigable. To the extent that any such impacts were mitigable, the mitigation
21 measures were deemed unfeasible.

22 When presented with the original proposal, the County Planning Commission deadlocked on the
23 matter, referring it to the County Board of Supervisors. The Board of Supervisors adopted GPA 96-03.

24 ¹ Paragraph E of the final judgement and paragraph D.2.c of the Peremptory Writ of Mandate were reversed on
25 appeal. The judgement was otherwise affirmed. (D025782), Feb 4, 1997.

1 with two abstentions. The County now seeks to discharge the Writ; SOFAR opposes discharge of the
2 Writ and seeks to have the court set aside the adoption of GPA 96-03, and its implementing zoning.

3 The Land

4 The area affected by GPA 96-03 is a vast expanse of acreage scattered across an extraordinarily
5 diverse part of Southwestern California. It is a land of great contrasts. It ranges from chaparral, to
6 Diogen Coastal Sage scrub, from oak woodland, to forests, from areas of coastal influence, to desert
7 ecosystems. [AR 20]. It is an area flush with "sensitive, rare, threatened or endangered species of both
8 plants, and animals". [AR 15]. Sensitive flora and fauna in San Diego County are found, or "expected
9 to be found", in astonishing array.

10 Thus, in the aggregate, the (20) lands form an inconspicuous, and tenuous zoological and
11 botanical zone.

12 In contrast to the suspected abundance of flora and fauna, there are two things in apparent short
13 supply in this area earmarked for agricultural development: 1) good soil and, 2) unimported, and,
14 therefore, inexpensive water. [AR 301, 303, 316-317, Report and Supplemental Report of William W.
15 Wood, Jr.]

16 Agriculture in San Diego and (20) Lands

17 County contends that GPA 96-03 will foster agriculture in San Diego County. Agriculture is an
18 important aspect of the local economy. From a strictly economic viewpoint, San Diego agriculture is less
19 a bread basket than it is a flower basket. The single most valuable crop produced in San Diego County in
20 1997 was "indoor decoratives", at a value of \$287,568,250. Bedding plants and turf were next at
21 \$131,282,000. Together they comprised 62% of the economic output of San Diego agriculture in the
22 year surveyed. [AR 374-375]. One apparent reason for this is that it is possible to make more money per
23 acre with such nursery crops. [AR 327]. This is despite the fact that they are considered water intensive
24 crops. [AR 101]. Avocados are the third most valuable crop in San Diego County. Eggs, milk, and other
25 products of animal agriculture are also produced.

1 Oddly, as the County points out, much of the lands in the (20) area are "not suitable for
2 agriculture due to lack of water, good soil and appropriate topography". County's Reply, page 8, fn. 5.
3 However, the County hopes that GPA 96-03 will nonetheless encourage agriculture in the area.

4 The Farm Bureau agrees that GPA 96-03 will promote the purposes of agriculture in San Diego
5 County. The Farm Bureau believes that an "ag-urban" mix of land uses can serve as a "test-tube crucible"
6 to show the balance of the state how agriculture can survive and thrive". The Farm Bureau asserts that
7 the key to this is smaller "farms", which San Diego has in abundance. So convinced is it of the efficacy
8 of the agriculture model established by GPA 96-03, the Bureau states that "If California is to continue to
9 be the California we know today, then what we see in San Diego County must be superimposed over the
10 balance of this state." [Brief of Amicus Curiae Farm Bureau, p. 8].

11 Others are skeptical of the contention that GPA 96-03 is intended to promote agriculture. The
12 concern is that the unexpressed purpose of the plan is to promote a patchwork of residential development
13 in the form of ranchettes, and that these ranchettes will soon be transformed into suburbs. [AR 1197,
14 121E, 1218].

15 The Standard of Review

16 In reviewing a matter subject to the California Environmental Quality Act (CEQA), the court
17 determines whether the Lead Agency ~~judicially abused its discretion by failing to proceed in a~~
18 ~~manner required by law or by reaching a decision which is not supported by substantial evidence.~~ Public
19 Resources Code § 21168.5. *Laurel Heights Improvement Association v. Regents of the University of*
20 *California* (1988) 47 Cal.3d 376; *Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559,
21 567-568.

22 Whether the EIR Conforms to the Requirements of CEQA

23 The court has previously determined that an EIR on the project is required. The County has
24 complied with the letter, if not the spirit, of this aspect of the Writ of Mandate. The question is whether
25 the EIR meets the intended purpose of such a report.

1 "The EIR is the primary means of achieving the Legislature's considered
2 declaration that it is the policy of this state to take all action necessary
3 to protect, rehabilitate, and enhance the environmental quality of the
4 state.' [Public Resources Code § 21001(a)]" The EIR is therefore 'the
5 heart of CEQA.' [Guidelines, Cal. Code of Regs., tit. 14, § 15003(a)];
6 County of Inyo v. Yarty (1973) 32 Cal.App.3d 795, 810.] An EIR is an
7 'environmental alarm bell' whose purpose it is to alert the public and its
8 responsible officials to environmental changes before they have reached
9 ecological points of no return.' [Santiago County Water Dist. v. County
10 of Orange (1981) 118 Cal.App.3d 818, 822.]

11 Laurel Heights Improvement Ass'n v. Regents of the University of Cal. (1988) 49 Cal.3d 376,
12 392.

13 The crux of the matter is whether GPA 96-03 brings us to an ecological point of no return. The
14 County contends that it does not and that there will be further opportunities for review. The County
15 contends that when "specific discretionary projects are proposed, such as subdivisions and tentative
16 maps, these projects will receive environmental review". Motion, County, p. 13. Thus, the County takes
17 the view that GPA 96-03 is merely a General Plan amendment, and that, as a result, a deeper level of
18 environmental analysis is not required at this time.

19 ~~In this case, the court finds that an environmental review deferred is an environmental review~~
20 ~~denied.~~ The EIR points out that agricultural lands are exempt from the County's grading ordinance and
21 that, theoretically, all of these lands could be cleared and graded without further environmental review.
22 [AR 151-152]. In that event, "there could be 1) significant secondary impacts to most distinguishable
23 vegetation communities and natural habitats on a countywide basis, 2) significant secondary impacts to
24 vegetation communities and habitats in all Community and Subregional Planning Areas and 3)
25 significant cumulative impacts to wildlife corridors within the project areas". [AR 152].

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1 "Agricultural practices [such as] discing, plowing, planting, irrigation, harvesting, and grazing
2 are generally allowed by right in the (19) and (20) areas. Erection of agricultural buildings requires only
3 a ministerial building permit and does not undergo environmental review. Expansion of agricultural
4 operations into vacant land supporting native wildlife habitat requires no discretionary review or permit
5 outside of the MSCP Subarea due to specific exemptions given to agriculture." [AR 140]. In other
6 words, as a worst case scenario, all sensitive flora, and habitat for creatures great and small in the (20)
7 area could be plowed under, without further review. This would seem to be the environmental point of
8 no return.

9 This situation should be contrasted with that described in *Rio Vista Farm Bureau Center v.*
10 *County of Solano* (1992) 5 Cal.App.4th 351 and *Al Larson Boat Shop v. Bd of Harbor Commissioners*
11 (1993) 18 Cal.App.4th 729, where further environmental review was contemplated. Here, although the
12 County suggests that subdivision of the (20) lands will be subject to environmental review, there may be
13 no flora or fauna left to review should this speculative future review actually occur.

14 Thus, it is insufficient to state that there could be effects on groundwater, on surface water, on
15 rare and protected species of plants and animals. That is only stating the obvious. What is needed is
16 some information on how adverse the adverse impact will be. *Santiago County Water District v. County*
17 *of Orange* (1981) 118 Cal.App.3d 818, 831. As noted in *Santiago*, "An EIR should be prepared with a
18 sufficient degree of analysis to provide decision-makers with information which enables them to make a
19 decision which intelligently takes account of environmental consequences." *Guidelines, Cal. Code of*
20 *Regs., tit. 14, § 15130. See, Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.
21 App. 4th 182.

22 Here, the Board of Supervisors was utterly reliant on the EIR for information sufficient for it to
23 take into account environmental consequences. The Supervisors were deprived of this information. The
24 EIR should spell out just how adverse the project will be on the zoology and the botany of the region.
25 The Attorney General points out that the EIR merely contains a table of the wildlife species that have

1 been found or are "expected to be found" in the (20) lands. It is one thing to say that certain animals on a
2 long list may be affected; it is another to say that unbridled grading of parcels within a particular area
3 will necessarily lead to the extirpation of particular species. San Diego County may decide that it needs
4 more farms producing "indoor decoratives" with imported water, and fewer native animals and plants. It
5 is to elected officials to make that call, provided they have otherwise complied with CEQA. However,
6 compliance with CEQA requires better information than that presented here.

7 [It is not required that the County visit each of the proposed (20) parcels and individually
8 examine the impact of the project. What is required is that the County make a good faith effort to go
9 afoot and afield in San Diego and come back with a reasonable assessment of what the County stands to
10 lose as a result of the project. Guidelines, Cal. Code Regs. tit. 14, § 15151. "The fact that precision is not
11 possible... does not mean that no analysis is required". Laurel Heights, supra, at 309.

12 It has been said—and said— that "you don't know what you've got 'til it's gone".² Yet where
13 CEQA applies, the opposite is true: Citizens and decision makers must, in fact, be informed of what
14 they have before, and not after, it is gone. While the environmental effects of GPA 96-03 are unknown,
15 they are not, as the County insists, unknowable. Although the area covered by the (20) lands is vast, the
16 County need not examine each parcel. Approximately 35% of the affected lands are in public
17 ownership. [AR 1867]. At least half of the (20) lands have been deemed by the County to be unsuited
18 for intensive agriculture. [AR 2081]. Thus, the County is not obliged to visit every acre in the (20)
19 lands. Rather, it should prepare a focused analysis on lands that the County can reasonably expect to be
20 impacted by GPA 96-03. "Drafting an EIR or preparing a negative declaration necessarily involves some
21 degree of forecasting. While forecasting the unforeseeable is not possible, an agency must use its best

22
23 ² Joni Mitchell, Big Yellow Taxi, on Ladies of the Canyon (Warner Bros. Records 1970).

1 efforts to find out and disclose all that it reasonably can." Guidelines, Cal. Code of Regs., tit. 14, §
2 15144.

3 Where, as here, important, detailed and relevant information is missing, it precludes informed
4 decision making and a prejudicial abuse of discretion results. Kings County Farm Bureau v. City of
5 Hanford (1990) 221 Cal.App.3d 692.

6 **The Failure to Mitigate**

7 Mitigation measures must be developed to minimize, reduce, or avoid identified environmental
8 impact or to rectify or compensate for that impact. Guidelines, Cal. Code of Regs., tit. 14, § 15370. Here,
9 the identification of the impacts is so speculative, vague and unsupported by evidence as to be
10 meaningless, except to inform decision makers that significant environmental impacts in certain broad
11 categories may occur if GPA 96-03 and rezoning are implemented. As noted above, this is insufficient.
12 Assuming arguendo that such impacts had been adequately identified, the County has nonetheless failed
13 to take the appropriate next step of fully and carefully analyzing mitigation measures.

14 The County has determined that the benefits of the project outweigh the projected significant
15 effects on the environment and that the mitigation measures proposed are unfeasible. Los Angeles
16 Unified School District v. City of Los Angeles (1997) 56 Cal.App.4* 1019. Here, the County has
17 indicated that the promotion of agriculture in the (20) lands outweighs the additional burdens on traffic,
18 the possible and unmitigated extirpation of species, the possible contamination or depletion of ground
19 and surface waters and the host of other significant effects on the environment prognosticated in the EIR.
20 The County proposed, and then dismissed, precisely one measure in mitigation of these effects: a
21 possible amendment of its grading ordinance that would have provided for some review of agricultural
22 grading. It deemed this unfeasible because it could impose expensive site-specific surveys on the small
23 farmer. However, as indicated by SOFAR and the Attorney General, the County failed to consider more
24 tailored proposals such as grading projects above a certain size, grading within a certain distance of
25 streams, lakes, vernal pools or wetlands, or grading which, in the opinion of a building official has a

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1 potential for significant environmental impact. [AR 1784]. The County had before it numerous examples
2 of agricultural grading ordinances, such as that of Lake County.

3 It is not the province of the court to determine which mitigation measures are best, or the most
4 feasible. Los Angeles Unified School District, supra, at 1030. The Lead Agency must make this
5 determination "based on a reasonable balancing of the relevant economic, environmental, social and
6 technological factors". City of Del Mar v. City of San Diego (1982) 133 Cal.App.3d 401, 417. The
7 County appears not to have performed this analysis with respect to the grading ordinance. The
8 conclusion that there is no feasible mitigation measure that would address the problems posed by
9 agricultural grading is simply not supported by substantial evidence.

10 ~~An EIR is intended to "demonstrate to an apprehensive citizenry that the agency has in fact~~
11 ~~analyzed and considered the ecological implications of its action." No. 011, In re City of Los Angeles~~
12 (1974) 13 Cal.3d 68; Guideloes, Cal. Code of Regs, Title 14 § 15003(d). In this case, it is plain that the
13 EIR has not fulfilled this legislative intention. The County shall prepare an EIR that fully apprises the
14 citizenry and the Board of Supervisors of the actual adverse effects of the project, so that the appropriate
15 elected officials can make an informed decision as to the wisdom of the project.

16 The motion to discharge the writ is denied. The County is ordered to prepare a revised EIR
17 which analyzes the biological, botanical and hydrological resources at risk or impacted, if any, in the
18 (20) lands. In so doing, it should be guided by the rule of reason. It may employ resources already
19 available to it, such as Resource Conservation overlays, GIS databases, and recent field studies. Where
20 gaps remain, it should perform targeted research, sufficient to apprise the Board of Supervisors of the
21 environmental impacts of its decisions.

22 IT IS SO ORDERED.

23
24 August 31, 2000

25 
Judith D. McCannell
Judge of the Superior Court