Filed 5/31/18 Save Adelaida v. County of San Luis Obispo CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SAVE ADELAIDA et al., Plaintiffs and Appellants, v. COUNTY OF SAN LUIS OBISPO et al., Defendants and Respondents; WILLOW CREEK NEWCO, LLC, Real Party in Interest and Appellant.	2d Civ. No. B279285 (Super. Ct. No. 15CVP-0197) (San Luis Obispo County)

This case arises under the California Environmental Quality Act. (Pub. Res. Code, § 21000 et seq.; "CEQA.")[1] The owner of an olive orchard applied to the county for a minor use

[1] All statutory references are to the Public Resources Code unless otherwise stated.

permit to hold events for 200 people or less on its property. The project includes construction of several buildings. The county issued a mitigated negative declaration (MND) and granted the permit. Neighbors opposed the project, claiming that an MND is inadequate and that an environmental impact report (EIR) is required. Having exhausted administrative remedies to no avail, opponents petitioned for a writ of administrative mandate.

The trial court granted the petition, finding that an EIR is required to analyze the impacts of traffic, noise, water use, and cumulative impacts. The court also determined that the county may reexamine the project's compliance with the Williamson Act once the EIR is prepared. The court found that an EIR is not required to analyze the project's use of wastewater or compliance with the county's land use ordinance. Both the landowner and project opponents appeal.

We reverse as to the trial court's determination that an EIR is not required to analyze wastewater. In all other respects, we affirm.

FACTS

Willow Creek Newco, LLC (Willow Creek) owns a 127-acre ranch zoned for agricultural use in San Luis Obispo County (County). The property includes an olive orchard and an olive oil production facility. The property is subject to a Williamson Act contract.

In October 2013, Willow Creek applied to the County for a minor use permit to allow: construction of a 3,000-square-foot agricultural building for olive oil and wine processing; demolition of an existing barn and construction of a 6,946-square-foot replacement barn that would include a commercial kitchen and restrooms; construction of a 2,600-square-foot building with a

1,500-square-foot terrace that would include storage, an office, restrooms and a tasting room; and construction of access, parking and utility improvements. The permit would allow up to 25 events annually limited to no more than 200 guests. Outside amplified music would be allowed.

The County's staff prepared an initial study. The study concluded that an EIR was not required because all potentially significant impacts could be mitigated. The staff recommended an MND.

The matter proceeded to the County's planning commission for a hearing. Neighbors raised objections to the project, including traffic, noise, water, wastewater, compliance with the Williamson Act and the County's land use ordinance, and the project's cumulative impacts. The commission approved the project with modified conditions, including reducing the number of annual events from 25 to 20 and limiting the hours during which the events could occur.

Neighbors appealed to the County's board of supervisors (Board). Prior to the hearing, Willow Creek withdrew its request for outside amplified music. After a hearing, the Board approved the project with an MND.

Opponents of the project, including Save Adelaida, an unincorporated association (Adelaida), brought the instant petition for writ of administrative mandate. The petition alleged causes of action for violation of CEQA in not requiring an EIR for the project; violations of state and local land use regulations; and violation of the Williamson Act.

The trial court issued a writ of mandate requiring the County to set aside its approval of the project, including the

MND, unless and until an EIR is prepared, and to comply with all applicable laws and regulations.

Willow Creek appeals as the real party in interest. The County set aside its approval of the project and MND. It does not appeal. Adelaida appeals the trial court's ruling that the EIR need not analyze wastewater or compliance with the County's land use ordinance.

DISCUSSION

I

Under CEQA, an agency must require an EIR for any project that "may have a significant effect on the environment." (§ 21151, subd. (a).) Where, however, there is substantial evidence that a significant effect on the environment may be reduced to a level of insignificance by implementing mitigation measures, the agency may adopt an MND, and no EIR is required. (§§ 21064.5; 21080, subd. (c)(2).) "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (§ 21068.)

When there is a question whether an EIR is warranted, the doubt is resolved in favor of requiring an EIR. (*League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905.) Thus, preparation of an EIR is required whenever it can be "fairly argued"' on the basis of substantial evidence that the project may have a significant environmental impact. (*Id.* at p. 904.) If there is substantial evidence to support a fair argument, contrary evidence is not adequate to support dispensing with an EIR. (*Id.* at pp. 904-905.) The "fair argument" test creates a low threshold for requiring an EIR. (*Id.* at p. 905.) Whether substantial evidence supports a

fair argument is a question of law. (*Ibid.*) Thus, we give no deference to the agency's determination. (*Ibid.*)

II

Willow Creek's Appeal

Willow Creek contends there is no substantial evidence to support an EIR on the basis of traffic impacts.

CEQA Guidelines[2] provide that in determining whether a project will have significant traffic impacts, a lead agency should consider whether the project will "[s]ubstantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) . . . ." (Guidelines, appen. G, § XVI, subd. (d).)

Adelaida introduced a report by Gay Lawrence Pang, a registered civil and traffic engineer. Pang reported that the road leading to the project is inadequate. Its width ranges from 19 feet 4 inches to 22 feet 2 inches. The standard width is 24 feet. Pang also reported that the project's driveways should meet stricter standards than the County's sight-distance standards.

Willow Creek replies that Pang did not personally visit the road. Instead, Pang relied on a survey conducted by residents. The survey states only that "we" took 19 readings without specifying who "we" are. It does not state where the readings were taken or describe the protocol for how the measurements were made.

But it does not require an expert to measure the width of a road. Nor does it require any particular protocol. Simply laying a tape measure across the road will do. It may be true that the evidence would not be admitted over objection at trial in a court of law. But the rules of evidence do not apply to administrative

---

[2] All further references to Guidelines are to California Code of Regulations, title 14, section 15000 et seq.

proceedings involving land use. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 291.) Such hearings are "'informal to the point of being casual.'" (*Id.* at p. 295, quoting 4 Anderson, American Law of Zoning (3d ed. 1986) §§ 22.01, 22.30, pp. 3-5, 78.) "'[T]he usual board proceeding is permissive, informal, and nontechnical.'" (*Ibid.*)

In addition to Pang's report, residents familiar with the road testified to its hazards. Persons familiar with the area may testify to traffic conditions based on their personal knowledge. (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 730.) Indeed, citizen testimony concerning existing traffic problems constitute substantial evidence because logically existing traffic problems will only be exacerbated if the project is completed. (*Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1055.)

Over 20 people testified as to traffic hazards at the hearing before the Board. A resident described the road as a "very curvy, two lane country road with blind hills and blind curves." Another resident described the road as having many curves, intersections, steep embankments, winery driveways and lack of lighting at night. Besides cars, the use of the road includes heavy farm equipment, cattle, trucks, bicycles, motorcycles and pedestrians. Other residents described near head-on accidents and two recent fatalities.

Willow Creek relies on a Roadway Safety Analysis (RSA) prepared by its expert. Willow Creek's expert concluded that the project will not result in any significant traffic impacts or require additional road improvements. Willow Creek's reliance on its RSA is misplaced.

First, the RSA was prepared after the MND and thus was not considered in issuing the MND. Second, where there is substantial evidence to support a fair argument, contrary evidence will not be considered. (*League for Protection of Oakland's etc. Historic Resources v. City of Oakland*, *supra*, 52 Cal.App.4th at pp. 904-905.) Third, the County's resolution creating the RSA program expressly provides that nothing in the resolution preempts CEQA.

There is substantial evidence to show that the road leading to and from the project is substandard and hazardous. That is sufficient to raise a fair argument that the project will have a significant environmental impact.

The MND provides there will be no substantial sight-distance impact because it requires Willow Creek to comply with the County's sight-distance standards. Pang's report states, however, that due to the steeper grades and curvature of the roadway, the better criterion is the corner sight-distance requirement of Caltrans and the American Association of State Highway and Transportation Officials (AASHTO), which requires a greater sight distance.

Willow Creek points out that Pang never personally saw the roadway. But residents of the area stated that the roadway has many curves, intersections, winery driveways and blind hills. That is sufficient to raise a fair argument that the stricter sight-distance standards should apply.

III

Willow Creek contends there is no fair argument that noise impacts require an EIR.

Adelaida produced a report by Edward L. Pack Associates, Inc., acoustical consultants. Pack created a mock wedding with a

disc jockey and recorded music. The report concluded that noise levels would exceed standards established by the County to a "relatively minor" degree for performances occurring on the North Terrace of Willow Creek's property. But noise excess would be "extreme" for performances on the South Terrace "with high noise levels during much of [the] reception." The report stated that live bands tend to play louder and the sound is less directional than recorded music.

Pack's report concluded that to resolve noise excess, "entertainment using amplified systems[] would not be permitted at the South Terrace. All amplified entertainment at the North Terrace would be required to remain inside the event center during performances. Monitoring of the sound levels at the property boundaries should also be required to maintain acceptable sound levels."

Willow Creek replies that the conditions imposed by the MND answer Pack's noise objections. Willow Creek agreed to eliminate all outdoor amplified sound and to have the barn doors closed during events with amplified sound.

But the conditions do not prohibit outdoor music that is not amplified. Pack's report states that live bands can be even louder than recorded music. Moreover, the MND eliminated the need for Willow Creek to monitor noise levels during actual events. Pack's report recommends monitoring to ensure acceptable sound levels.

More importantly, an EIR is not limited to considering whether the project meets maximum sound levels established by county ordinance. The Guidelines provide that environmental analysis should consider: "A substantial temporary or periodic increase in ambient noise levels in the project vicinity above

levels existing without the project." (Guidelines, appen. G, § XII, subd. (d).)

The area in which the project is located is by all accounts a quiet rural area. It can be fairly argued that 200 guests plus extra staffing for the events and trucks delivering supplies will substantially increase noise levels above existing levels without the project.

Willow Creek argues that the possibility of an adverse impact on a few people, as opposed to the environment in general, is insufficient to require an EIR. (Citing *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 493-494 [private views impacted do not require EIR]; *Keep Our Mountains Quiet v. County of Santa Clara*, *supra*, 236 Cal.App.4th at pp. 734-735.)

But in *Keep Our Mountains Quiet v. County of Santa Clara*, *supra*, 236 Cal.App.4th 714, the court determined only that there was no substantial evidence of event-related noise impacts on visitors to an area that was closed to the public except by permit. (*Id.* at p. 734.) The court determined that noise-related impacts on neighboring residents in a rural area required an EIR. (*Id.* at p. 733.)

Moreover, it is not only residents who might be impacted by the noise. There is evidence from residents familiar with the area that the road leading to and from the project is used by bicyclists and pedestrians. Unlike *Keep Our Mountains Quiet*, the project is not in a preserve open to the public by permit only.

IV

Willow Creek contends there is no substantial evidence to support an EIR on the impacts of increased water use.

The MND states:

"The project proposes to obtain its water needs from an on-site well. The Environmental Health Division has reviewed the project for water availability and has determined that there is preliminary evidence that there will be sufficient water available to serve the proposed project. Based on available information, the proposed water source is not known to have any significant availability or quality problems."

"*Prior to holding any temporary events*, the applicant shall contact the Environmental Health Department to verify water supply adequacy and potability as for the proposed project. The applicant shall contact the Environmental Health Department to determine if an annual permit will be required for the water supply at this facility."

The MND estimates the project would add 0.42 acre-feet of water usage. The estimate is based on 25 events with 200 people or less. A later staff report estimates the project would add 0.54 acre-feet of water usage. The discrepancy is not explained. Willow Creek argues the usage would be less because the number of events was reduced from 25 to 20.

But the estimates of water usage do not take into account that, in addition to 20 events with 200 guests, the County rules allow an unlimited number of events with 50 guests or less. Willow Creek argues these gatherings are already permitted as normal tasting room operations and marketing activities, and therefore necessarily taken into account in current water usage. But Willow Creek cites no portion of the record in support of its argument.

Finally, there is the testimony of neighboring property owners. A property two doors down from the project testified:

"And let's get to the main subject: Water. Water has not been addressed. I can stand by my stock trough in my front pasture two doors down and see olives. My well ran dry when my neighbor put in his vineyard. So the water table that you're looking at has not been addressed. It is very fragile. We don't have the water. We don't have the infrastructure. And what we do have is these event centers."

Another neighbor testified that her neighbor put in a vineyard and now her walnut orchard is dying. She said her water situation "isn't that great."

Substantial evidence can consist of the testimony of persons familiar with the area based on their personal knowledge. (See *Keep Our Mountains Quiet v. County of Santa Clara*, *supra*, 236 Cal.App.4th at p. 730.) Willow Creek argues that general comments, concerns and speculation from neighbors are insufficient to give rise to a fair argument that an EIR is required. (Citing *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274.) But the testimony here is about specific, observable facts, not general comments, concerns or speculation.

Willow Creek claims the undisputed evidence shows that the property is served by an onsite long-time producing well not connected to the Paso Robles groundwater basin, which well generated 104 gallons per minute. But the record does not show that. The evidence to which Willow Creek refers is a single well pump test conducted on December 10, 2014, between 9:25 a.m. and 2:00 p.m. It presents only a snapshot. It does not show a long-time producing well. Nor does the well pump test show the well is not connected to the Paso Robles groundwater basin. The

well pump test report does not purport to determine the source of the water.

Willow Creek points to a staff report containing the conclusory statement that the project is not within the Paso Robles groundwater basin. Assuming that to be so, the staff report makes no effort to identify the source of the water being pumped from the well or to analyze whether the project will cause or contribute to overdrafting the aquifer that supplied the well. That a well can produce 104 gallons per minute does not mean it is a safe yield that will not result in overdrafting.

In any event, where, as here, there is substantial evidence to support a fair argument, contrary evidence is not adequate to support dispensing with an EIR. (*League for Protection of Oakland's etc. Historic Resources v. City of Oakland*, *supra*, 52 Cal.App.4th at pp. 904-905.)

V

Willow Creek contends there is no fair argument that the project will cause cumulative impacts.

An EIR must be prepared if the cumulative impact of a project when considered with the impact of past, present and future projects may be significant. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 119, disapproved on other grounds in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109, fn. 3.)

The MND states:

"*Impact*. No significant project-specific impacts to utilities of public services were identified. This project, along with others in the area, will have a cumulative effect on police/sheriff, fire protection, and schools. The project's direct and cumulative

impacts are within the general assumptions of allowed use for the subject property that was used to estimate the fees in place.

"*Mitigation/Conclusion*. Regarding cumulative effects, public facility (County) and school (State Government Code 65995 et seq.) fee programs have been adopted to address this impact, and will reduce the cumulative impacts to less than significant levels."

Willow Creek argues that fee-based mitigation programs are adequate under CEQA. (Citing *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140.) The County planning staff may be satisfied that its fee program is sufficient mitigation, but the County fire chief is not so sure.

The fire chief wrote to the County in August 2014. Under the heading "Special Concerns," the letter stated: "This project site has an extended fire engine response time of approximately 20 minutes where emergency services are not readily available. The cumulative effects of large scale special events and increased commercial operations within areas such as this *continue* to place challenges upon CAL FIRE/County Fire's ability to provide efficient and effective emergency services within rural areas." (Italics added.)

The letter is at least sufficient to raise a fair argument that the fee mitigation program relied on by the planning staff is insufficient to resolve the problem, and that the cumulative impacts on fire and emergency services must be addressed in an EIR.

Residents also testified about cumulative impacts. One resident of the area testified: "As each year passes, residents have watched as other local businesses and wineries have

'improved' and built out their properties in this immediate area. Opolo, Hammer Sky, Brecon, Thatcher, Halter Ranch, Tablas Creek, and several other wineries not mentioned have all followed suit in their desire to draw the tourist dollar. All of the mentioned businesses and many more are within a 2 mile radius of Pasolivo. I think you can understand that we are reaching our saturation level when it comes to operating businesses which require their patrons to use Vineyard Drive."

Another resident with a master's degree in urban planning and 32 years' experience as a planner, community development director and assistant city manager wrote:

"Traffic and Parking - This is a public health and safety concern. If the 200-300 wineries and olive oil venues all requested oversized tasting rooms and events similar to the current application, the infrastructure of the area would be compromised. A comprehensive planning study needs to be conducted to determine the capacity of the area while retaining our current roadway system. It should not be the intent of the study to widen Vineyard to multiple lanes but to manage uses so that the current system is adequate and the charm and character of the region is preserved. [¶] . . .

"In summary, the Wine Country of Paso Robles is a pastoral agricultural area with wineries, olive oil processors, farms, horse and cattle ranches, rural residential and other agricultural uses. The wineries and olive oil venues have been expanding their businesses to include weddings and rehearsals, art shows and lessons, lunch service, hikes, tours, large dinners, music festivals, helicopter and balloon rides and many other events. There are between 200-300 wineries and olive oil venues

in the Paso Robles Wine Country and no ordinance that directly manages their uses and orderly development."

There is ample evidence that a number of property owners in the area are converting their properties from purely agricultural use to tourist retail sales and event destinations. Presumably it is the goal of those property owners, like every other such business, to attract as many customers as possible; not only for 200-person weekend events, but an unlimited number of events for 50 persons or less and daily visits by individual tourists. It is reasonable to conclude that the use of these properties for tourist retail sales and event purposes will have a significant impact on such environmental factors as traffic, noise, fire and emergency services and water, and that Willow Creek's project will add to the impact. There is a fair argument that an EIR is necessary to address cumulative environmental impacts.

VI

Willow Creek contends there is no Williamson Act violation.

Under the Williamson Act, local governments and landowners may contract to limit the use of land to agricultural and compatible uses in exchange for certain property tax benefits. (Gov. Code, § 51200 et seq.) Williamson Act analysis is governed by CEQA. (See Guidelines, appen. G, § X, subd. (b) [will the project "[c]onflict with any applicable land use plan, policy, or regulation"].)

The trial court ruled: "In sum, Staff determined and the Board agreed that the Project, as approved, complies with the intent of the Act because the primary use is and will remain agriculture. . . . As emphasized by Willow Creek, it is the County

that is legislatively mandated to determine whether the uses are compatible with the agricultural use of the land and that is what the County in this case determined. . . . In the EIR, it appears it will again be up to the County to decide whether or not the Project violates the Act." (Citations omitted.)

Willow Creek claims that the trial court decided that the County was correct in finding that the project complies with the Williamson Act. It argues there is no need for the County to decide again.

But Willow Creek cites no authority that estops the County from reconsidering its finding once the EIR is complete. A well-crafted EIR will provide more information than a staff report attendant to an MND. Should the EIR's analysis of the project's compliance with land use policy and regulation cause the County to reconsider its Williamson Act finding, the County must do so.

VII

Adelaida's Appeal

Adelaida contends the trial court erred in finding the MND adequately addresses wastewater.

The MND states:

"The project proposes to use on-site systems, as its means to dispose of wastewater. . . . Based on the proposed project, adequate area appears available for an on-site system. To achieve compliance with the Central Coast Basin Plan, additional information will be needed prior to issuance of a building permit that can show that the leach area can adequately percolate to achieve this threshold. [¶] . . .

"Prior to building permit issuance and/or final inspection of the wastewater system, the applicant will need to show to the county compliance with the County Plumbing Code/Central Coast

Basin Plan, including any above-discussed information relating to potential constraints. Therefore, based on the project being able to comply with these regulations, potential groundwater quality impacts are considered less than significant.

"*Mitigation/Conclusion*. Prior to building permit issuance, the standard septic systems will be evaluated in greater detail to insure compliance with the Central Coast Basin Plan for any constraints listed above, and will not be approved if Basin Plan criteria cannot be met. The proposed wastewater treatment will require a waste discharge permit or exemption permit from the Regional Water Quality Control Board prior to construction. Based on compliance with existing regulations and requirements, potential wastewater impacts would be less than significant."

Adelaida claims the MND impermissibly delays decision making by requiring that the project meet all wastewater regulations prior to construction. But a condition requiring compliance with environmental regulations is a common and reasonable mitigation measure. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394.)

Of more concern is a statement made in a staff report replying to Adelaida's criticisms of the MND's wastewater impacts evaluation. The staff states, in part, "Portable restrooms will be brought to the site as a supplemental domestic disposal during events per the revised project description (Attachment 2)." (Italics omitted.)

Attachment 2 is simply a plot plan showing the location of on-site wastewater facilities. It has no apparent relationship to the staff's statement about portable restrooms being brought to the site.

The staff's statement appears to conflict with the statement in the MND that "[t]he project proposes to use on-site systems[] as its means to dispose of wastewater." Willow Creek offers no explanation for the discrepancy. The EIR should clarify the matter.

VIII

Adelaida contends there is a fair argument that the project violates the County code.

Willow Creek's minor use permit allows 20 "temporary events" per year. County land use ordinance section 22.30.610 defines "temporary events" as "[a]ny use of a structure or land for an event for a limited period of time where the site is not to be permanently altered by grading or construction of accessory facilities. Events include but are not limited to art shows, rodeos, religious revivals, tent camps, outdoor festivals and concerts." (Italics omitted.)

Adelaida argues Willow Creek's project does not qualify under the temporary event ordinance because it includes permanent alteration of the site by construction of accessory facilities that will be used for the events.

In interpreting an ordinance or any other statute, our objective is to ascertain the legislative intent. (*In re Samano* (1995) 31 Cal.App.4th 984, 989.) We adopt a common sense construction over one leading to mischief or absurdity. (*Ibid.*)

Here the ordinance does not prohibit the use of a structure for a temporary event. The intent of the ordinance is to prevent a landowner from dedicating his land or the structure thereon to the primary purpose of holding events. Thus, a structure or grading is permitted as long as it is not primarily for such

purposes. A landowner may hold a temporary event in a barn that is primarily used for agricultural purposes.

Here Willow Creek claims its property and the structures thereon will be used primarily for agricultural purpose. It claims the structures would not be economically feasible if their purpose is to hold 20 events per year. Adelaida presents no substantial evidence to the contrary.

We reverse as to the trial court's determination that an EIR is not required to analyze the project's wastewater. In all other respects, we affirm. Costs are awarded to appellants.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Ginger E. Garrett, Judge

Superior Court County of San Luis Obispo

Adamski Moroski Madden Cumberland & Green, LLP, Thomas D. Green, Michelle L. Gearhart; Snell & Wilmer, LLP, Richard A. Derevan, Todd E. Lundell for Real Party in Interest and Appellant Willow Creek Newco, LLC.

Wittwer Parkin LLP, William P. Parkin, Jonathan Wittwer, Natalie Kirkish for Plaintiffs and Appellants Save Adelaida, Wilton Webster and Helen Webster.

No appearance for defendants and respondents.