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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FRIENDS OF THE SANTA CLARA RIVER et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents; THE NEWHALL LAND AND FARMING COMPANY, Real Party in Interest and Respondent.	B282421 (Los Angeles County Super. Ct. No. BS136549)
CALIFORNIA NATIVE PLANT SOCIETY et al.,	B282427

Plaintiffs and Appellants,

v.

COUNTY OF LOS ANGELES et al.,

Defendants and Respondents;

THE NEWHALL LAND AND FARMING COMPANY,

Real Party in Interest and Respondent.

(Los Angeles County Super. Ct. No. BS138001)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard L. Fruin, Jr., Judge. Affirmed.

Advocates for the Environment, Dean Wallraff and Kathleen R. Unger, for Plaintiffs and Appellants.

Office of County Counsel, Mary C. Wickham and Elaine M. Lemke, for Defendant and Respondent.

Gatzke Dillon & Ballance, Mark J. Dillon and David P. Hubbard; Nielsen Merksamer Parinello Gross & Leoni, Arthur G. Scotland; Morrison & Foerster, Miriam A. Vogel, for Real Party in Interest and Respondent.

INTRODUCTION

We are combining for decision two appeals pending before this court. In *Friends of the Santa Clara River v. County of Los Angeles,* case number B282421 (*Friends*), plaintiffs and appellants[1] Friends of the Santa Clara River and Santa Clarita Organization for Planning and the Environment appeal a judgment and writ of mandate decertifying portions of a final environmental impact report (EIR) prepared and certified by defendants and respondents County of Los Angeles and the Los Angeles County Board of Supervisors (collectively, the County), and directing the County to bring those portions into compliance with the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.)[2] In *California Native Plant Society v. County of Los Angeles,* case No. B282427 (*Native Plant*), the same plaintiffs and appellants[3] appeal a nearly

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[1] After the notice of appeal was filed, plaintiffs and appellants Center for Biological Diversity, and Wishtoyo Foundation/Ventura Coastkeeper settled with respondents. We dismissed them from the appeal on October 16, 2017.

[2] Further statutory references are to the Public Resources Code unless otherwise specified.

[3] After the notice of appeal was filed, plaintiffs and appellants California Native Plant Society, Center for Biological Diversity, and Wishtoyo Foundation/Ventura

identical judgment and writ of mandate in a separate but related case after the same judge conducted a joint hearing for the two cases.

In both cases plaintiffs contend the court erred by partially decertifying the final EIR while leaving project approvals in place. We hold that the limited writ was a valid exercise of the trial court's equitable powers under section 21168.9. We affirm the judgment and the writ of mandate.

FACTUAL AND PROCEDURAL BACKGROUND

Procedural overview

We start with a brief overview of three related cases arising from the proposed Newhall Ranch development in northwest Los Angeles County. The first case, *Center for Biological Diversity v. Department of Fish and Wildlife*, is not part of the current appeal, but was the subject of a 2015 opinion by the California Supreme Court (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204 (*Center for Biological Diversity*), as well as three separate opinions by this court.

The two cases currently on appeal are *Friends* and *Native Plant*. The *Friends* litigation concerns Landmark Village, "one of the five villages where residential and

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Coastkeeper settled with respondents. We dismissed them from the appeal on October 19, 2017.

commercial development are to occur as part of the Newhall Ranch Specific Plan." The *Native Plant* litigation concerns Mission Village, a separate project within Newhall Ranch.

Center for Biological Diversity Litigation

In 2012, the trial court in the *Center for Biological Diversity* litigation issued a writ of mandate requiring decertification of the EIR prepared by the California Department of Fish and Wildlife (the Department), voiding all project approvals, and enjoining any project activity by the Department or the developer.[4] This court reversed in 2014. The California Supreme Court granted a petition for review. (*Center for Biological Diversity v. Department of Fish & Wildlife* (Mar. 20, 2014, B245131) [nonpub. opn.] (*Center for Biological Diversity I*), review granted July 9, 2014, No. S217763.) In 2015, the California Supreme Court held[5] that the final EIR violated CEQA because the

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[4] The developer is the Newhall Land and Farming Company, which is the real party in interest and project applicant.

[5] The Supreme Court opinion included a number of other holdings not relevant to this case. It held the Department's proposed measure of protecting a fish species was a prohibited taking of the protected species under the Fish and Game Code. (*Center for Biological Diversity*, *supra*, 62 Cal.4th at pp. 213, 231–232, 237.) The Supreme Court

greenhouse gas (GHG) emissions insignificance finding was "not supported by a reasoned explanation based on substantial evidence." (*Center for Biological Diversity, supra,* 62 Cal.4th at p. 213.)

The Supreme Court remanded the matter to this court. We issued an opinion directing the trial court "to enter a finding that there is no substantial evidence the project's [GHG] emissions will not result in a cumulatively significant environmental impact." (*Center for Biological Diversity v. Department of Fish & Wildlife* (2016) 1 Cal.App.5th 452, 469 (*Center for Biological Diversity II*).) We directed the trial court to proceed under section 21168.9 and at a minimum set aside the certification of the EIR on the GHG emission issue and two other issues. (*Ibid.*)

The trial court entered judgment and issued a writ of mandate on December 19, 2016, directing the Department to void certification of portions of the EIR addressing the significance of the project's GHG emissions and the measures to protect a fish species, suspending the CEQA findings and statement of overriding considerations and the mitigation monitoring and reporting plan until they were updated, and enjoining all project activity including

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also directed this court to reexamine on the merits two claims of report deficiencies that we had held were forfeited—the project's impact on Native American cultural resources, and the effect of the project's dissolved copper discharge on steelhead smolt. (*Id.* at p. 240.)

construction until the EIR was compliant with CEQA. The court's order expressly stated that all other project approvals would remain in place because no action was needed as to them "unless compliance with the Writ changes or affects" them. Plaintiffs appealed the judgment and writ. We affirmed in a published opinion. (*Center for Biological Diversity v. California Department of Fish & Wildlife* (2017) 17 Cal.App.5th 1245, 1256 (*Center for Biological Diversity III*).)

Friends Litigation

Plaintiffs filed a petition for relief in the *Friends* litigation in 2012; the trial court denied the petition in 2014, and this court affirmed in 2015. (*Friends of the Santa Clara River v. County of Los Angeles* (Apr. 21, 2015, B256125) [nonpub. opn.] (*Friends I*).) The Supreme Court later transferred the matter back to this court with directions to vacate our earlier decision (*Friends I*) and reconsider in light of *Center for Biological Diversity*. Following the Supreme Court's instructions, we vacated *Friends I,* and in *Friends of the Santa Clara River v. County of Los Angeles* (Nov. 3, 2016, B256125) [nonpub. opn.]) (*Friends II*), we reversed the trial court's judgment on the GHG issue only, affirming the rest of the judgment.

Native Plant litigation

Plaintiffs filed a petition for relief in the *Native Plant* litigation in 2013; the trial court denied the petition in 2014, and this court affirmed in 2015. (*California Native Plant Society v. County of Los Angeles* (Sept. 29, 2015, B258090) [nonpub. opn.] (*Native Plant I*).) The Supreme Court later transferred the matter back to this court with directions to vacate our earlier decision (*Native Plant I*) and reconsider in light of *Center for Biological Diversity*. Following the Supreme Court's instructions, we vacated *Native Plant I,* and in *California Native Plant Society v. County of Los Angeles* (Dec. 1, 2016, B258090) [nonpub. opn.] (*Native Plant II*), we reversed the trial court's 2014 judgment on the GHG issue only, affirming the rest of the judgment.

New judgments and writs of mandate in Friends litigation and Native Plant litigation

After briefing by the parties in both cases and a joint hearing, the trial court filed judgments and writs of mandate in March 2017. In both cases, the writs of mandate directed the County to (1) void certification of only those portions of the EIR analyzing the significance of GHG emissions; (2) suspend any project activity, including construction, until the County corrects the GHG discussion; and (3) suspend the County's CEQA Findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Plan (collectively, the CEQA Conditions) until they are

corrected. The court specified that the CEQA Conditions were the only "project approvals" that directly relate to the EIR's GHG emissions analysis, and so only those documents needed to be corrected. The remaining approvals, referred to in this opinion as the Land Use Approvals, were not affected by the Supreme Court and Court of Appeal decisions, and so "no remedial action is required unless compliance with this Writ changes or affects" them.

Plaintiffs appealed both judgments.

DISCUSSION

All parties agree that the County's analysis of GHG emissions was deficient under the reasoning of *Center for Biological Diversity, supra,* 62 Cal.4th at pages 225–231. The key disagreement on appeal is whether the limited writ remedy imposed by the trial court is authorized under CEQA. Plaintiffs contend the trial court's writ of mandate violated CEQA because section 21168.9 does not permit a trial court to direct an agency to correct part of a final EIR while leaving all project approvals in place. They also argue that even if such a remedy is permissible under section 21168.9, it was an abuse of discretion to order such a remedy given the circumstances of this case. We reject both arguments, concluding our decision in *Center for Biological Diversity III* compels rejection of many of the points plaintiffs raise and their arguments on issues where *Center*

for Biological Diversity III may not dictate a particular outcome are unavailing.

CEQA Overview

"'The basic purposes of CEQA are to: [¶] (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. [¶] (2) Identify ways that environmental damage can be avoided or significantly reduced. [¶] (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible. [¶] (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.' (Cal. Code Regs., tit. 14, § 15002)." (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285–286.)

When a proposed project will arguably have significant environmental effects, CEQA requires a public agency to prepare an EIR before giving project approval. (*No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 83–85, disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575–576.) The EIR is "the heart of CEQA" and the environmental alarm bell that can alert the public and government officials to the environmental impact of decisions. (Cal. Code Regs., tit. 14, § 15003, subd.

(a);[6] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights*).) "Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government." (*Laurel Heights, supra,* at p. 392.)

The CEQA process involves multiple steps; if an agency determines that an EIR is necessary, it will prepare a draft EIR that is open for public review and comment before a final EIR is prepared. (Guidelines, § 15080 et seq.) Under CEQA, a lead agency must certify that the final EIR has been completed in compliance with CEQA and that it was presented to the agency's decisionmaking body prior to project approval. (Guidelines, § 15090.)

CEQA also requires that before project approval, the agency must find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project's benefits. (§§ 21002, 21002.1,

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[6] The guidelines mandated under section 21083 appear in title 14 of the California Code of Regulations, section 15000 et seq. (Guidelines).

21081; Guidelines, §§ 15091–15093.) If an agency plans to approve a project with an EIR that identifies significant environmental effects, the agency must first adopt CEQA Findings and a Statement of Overriding Consideration under section 21081. The EIR must identify and analyze mitigation measures, and if an agency incorporates a mitigation measure into the project, the measure must be enforceable and incorporated into project approvals through a Mitigation Monitoring and Reporting Plan. (§§ 21002.1, subd. (a), 21081.6, subd. (a)(1), 21100, subd. (b)(3); Guidelines, § 15126.4.) "If the EIR identifies significant environmental effects, the public agency may approve the project only if it makes one or more of the following findings: '(a) . . . [¶] (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. . . . [¶] . . . [¶] (3) Specific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or [project] alternatives identified in the environmental impact report.' [Citations.]" (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 653–654 (*Lotus*), quoting § 21081.) For the sake of clarity and consistency in this opinion, we have identified the CEQA Findings and Statement of Overriding Considerations (§ 21081) and the Mitigation Monitoring and Reporting Plan (§ 21081.6) collectively as "CEQA Conditions."

CEQA defines project approval as "'the decision by a public agency which commits the agency to a definite course

of action in regard to a project intended to be carried out by any person.' (Guidelines, § 15352, subd. (a); see generally *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 129 (*Save Tara*).)" (*Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 566.)

Standard of review

"A challenge to a limited writ remedy 'raises two interrelated questions: whether the trial court properly interpreted section 21168.9 as authorizing the limited writ remedy and whether the trial court properly exercised its equitable powers in utilizing the remedy in this case. We review the trial court's interpretation of section 21168.9 de novo. We review the trial court's exercise of its equitable powers for abuse of discretion. [Citation.]' [Citation.] ""An abuse of discretion occurs when, in light of applicable law and considering all relevant circumstances, the court's ruling exceeds the bounds of reason."' [Citation.]' [Citation.]" (*Golden Gate Land Holdings LLC v. East Bay Regional Park Dist.* (2013) 215 Cal.App.4th 353, 368 (*Golden Gate*); see also *Center for Biological Diversity III, supra*, 17 Cal.App.5th at p. 1256 [reviewing trial court's severance determination for abuse of discretion.)

Legal authority to partially decertify an EIR while leaving all project approvals in place

Plaintiffs contend the court lacked legal authority to partially decertify the EIR while leaving all project approvals in place. They argue that when a court has found an EIR even partially deficient under CEQA, it violates CEQA to leave all project approvals in place while the agency corrects the EIR deficiencies. According to plaintiffs, the court's order impermissibly directs the County to provide a post hoc rationalization of its decision to approve the project.[7] We disagree.

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[7] The project approvals plaintiffs are concerned with are the Land Use Approvals (the Vesting Tentative Tract Map; the amendments to the General Plan, Specific Plan, and Local Plan; the Conditional Use Permits; and the Oak Tree Permit). Plaintiffs argue that the CEQA Conditions (the CEQA Findings of Fact and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Plan) are required CEQA documents, but not project approvals. We agree with plaintiffs that the CEQA Conditions are findings required by CEQA prior to project approval, and therefore prerequisites to project approval, but not approvals themselves.

A. Severance under section 21168.9

Section 21168.9[8] "was enacted in 1984 for the purpose of providing courts with some flexibility in tailoring the

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[8] The full text of section 21168.9 states: "(a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

"(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

"(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

"(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

"(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project

remedy to the specific CEQA violation. [Citations.] In 1993, section 21168.9 was amended to expand the authority of courts to fashion a remedy that permits a part of the project to continue while the agency seeks to correct its CEQA violations. [Citation.]" (*POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 756 (*POET I*).) The statutory language supports an interpretation that a trial court may implement a targeted remedy that does not necessarily include invalidating all project approvals. Once a court finds "that any determination, finding, or decision of

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activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.

"(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court."

a public agency has been made without compliance with [CEQA]," section 21168.9, subdivision (a) describes the orders or mandates a court may choose from when granting a petition. (*Save Our Schools v. Barstow Unified School Dist. Bd. of Education* (2015) 240 Cal.App.4th 128, 144–145 (*Save Our Schools)*.) A court may mandate: (1) that the agency's "determination, finding, *or* decision, be voided . . . *in whole or in part*" (§ 21168.9, subd. (a)(1), italics added); (2) if the court finds that certain mitigation measures or alternatives will be prejudiced if specific project activities continue, that the agency or developer "suspend any or all specific project activity or activities" that could alter or adversely affect the physical environment (§ 21168.9, subd. (a)(2)); or (3) that the agency "take specific action as may be necessary to bring the determination, finding, or decision into compliance with [CEQA]." (§ 21168.9, subd. (a)(3); see also *Center for Biological Diversity III, supra*, 17 Cal.App.5th pp. 1255–1256 [section 21168.9 authorizes trial court to leave in place project approvals unaffected by the CEQA violation]; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 286–288 (*Preserve Santee*) [rejecting argument that whenever a trial court finds an EIR inadequate it must decertify the EIR and vacate all related project approvals].) We also note that the reference to an agency's "determination, finding or decision" in subdivisions (a)(1) and (a)(3) supports a reasonable reading that a court may void or order an agency to correct its determination while leaving the decision—i.e., approval—in place. (*Center*

for Biological Diversity III, supra, at p. 1253 ["an EIR certification is an agency determination [that] may be voided in part by a trial court"].)

Subdivision (b) directs the court to limit its mandate orders to "only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division." (§ 21168.9, subd. (b).) Such a limited order must be based on severability findings described in subdivision (b) and discussed more fully later in this opinion. "The writ must also specify that the trial court 'retain[s] jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with [CEQA]' (Pub. Resources Code, § 21168.9, subd. (b)), but the writ may not 'direct any public agency to exercise its discretion in any particular way' (*id.*, subd. (c))." (*Save Our Schools, supra,* 240 Cal.App.4th at p. 144.)

Several cases have held that so long as a court makes the severability findings required under subdivision (b), a limited writ of mandate may leave key decisions by an agency in place while the agency brings an EIR into compliance with CEQA. In *Center for Biological Diversity III*, this court concluded that subdivision (a) of section 21168.9 gives the court "authority to order partial decertification of an EIR so long as the severability criteria pursuant to subdivision (b) of that section are satisfied" and that the statutory language "allows for the possibility of

leaving some project approvals in place when an EIR is partially decertified." (*Center for Biological Diversity III, supra*, 17 Cal.App.5th at p. 1254–1255.) In *Preserve Santee*, the Fourth District Court of Appeal explained, "In our view, a reasonable commonsense reading of section 21168.9 plainly forecloses plaintiffs' assertion that a trial court must mandate a public agency decertify the EIR and void all related project approvals in every instance where the court finds an EIR violates CEQA." (*Preserve Santee, supra*, 210 Cal.App.4th at p. 288.) In *Golden Gate*, the public agency had not prepared an EIR before initiating eminent domain proceedings. The court held that it was permissible under section 21168.9 to leave in place the agency's approval of a resolution of necessity—the first step of the eminent domain process—while directing the agency to prepare an EIR as required under CEQA. (*Golden Gate, supra*, 215 Cal.App.4th 365–380.)

Appellants rely on *Land Value 77, LLC v. Board of Trustees of California State University* (2011) 193 Cal.App.4th 675, 681–682 (*Land Value*) to argue that when a court orders an agency to decertify an EIR, it must void all project approvals. However, no later case has relied on *Land Value* for that proposition. The court in *Preserve Santee*, *supra*, 210 Cal.App.4th at page 289, criticized the reasoning of *Land Value* for its failure to account for statutory language authorizing courts to void matters "in part" and its heavy reliance on a treatise that also did not consider the "in part" language in subdivision (a). This court also pointed out

that "*LandValue* does not prohibit partially setting aside an EIR, so long as a court makes severance findings." (*Center for Biological Diversity III*, supra, 17 Cal.App.5th at p. 1254.)

In a reply brief filed after publication of *Center for Biological Diversity III*, plaintiffs acknowledged that a court could leave *some* severable project approvals intact, but still argued it would violate CEQA for a court to leave *all* project approvals in place. Plaintiffs have offered no argument about which approvals the court should have left in place or why, nor did they offer such information to the trial court. Based on the plain language of section 21168.9 and the case law interpreting and applying its provisions, we conclude the section gives courts legal authority to issue a limited mandate that directs an agency to bring certain determinations or findings into compliance with CEQA while leaving the remaining decisions or approvals in place.

B. Post hoc rationalization

Plaintiffs contend a limited writ that leaves all project approvals in place violates CEQA because changes to the EIR required under the writ would have no effect on the project approvals already adopted. They argue the EIR changes would be prohibited post hoc rationalizations of a project that has already been approved. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 265–266 [city approval of an inadequate EIR cannot be cured by approving an addendum]; *Burbank-Glendale-Pasadena*

Airport Authority v. Hensler (1991) 233 Cal.App.3d 577, 595–596 [affirming dismissal of eminent domain action where agency had failed to conduct any environmental review and had not prepared an EIR].)

Plaintiffs argue that the principles of res judicata prevent the County from reconsidering and potentially changing its prior approvals. (*Olive Proration Program Committee v. Agricultural Prorate Com.* (1941) 17 Cal.2d 204, 209.) We rejected this argument in *Center for Biological Diversity III*, explaining that "for an agency action on an EIR after it has been partially decertified and then revised, we think it clear that 'the legislature intended that the agency should exercise a continuing jurisdiction with power to modify or alter its orders to conform to changing conditions, [so] the doctrine of res judicata is not applicable.' [Citations.]" (*Center for Biological Diversity III, supra*, 17 Cal.App.5th at p. 1258, italics omitted.) The relevant mandate language in the *Friends* litigation and the *Native Plant* litigation is nearly identical to that considered in *Center for Biological Diversity III*, expressly stating that none of the Land Use Approvals need revision or correction "unless compliance with this Writ changes or affects" them.[9]

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[9] The orders in *Friends* and *Native Plant* both state, "Only portions of the first two of the Project approvals—the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Plan—directly relate to the EIR's [GHG] emissions analysis; accordingly,

The writ's language recognizes that the County retains authority to revise its Land Use Approvals if the corrected EIR and CEQA Conditions have any effect on those approvals. The court's limited writ recognizes that CEQA's purpose is to ensure an open process and that courts may not dictate how an agency exercises its discretion. (*Laurel Heights, supra,* 47 Cal.3d at pp. 392–393.)

Under section 21168.9, subdivision (b), a trial court must "retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ" until the court has determined the agency has complied with CEQA. In *Laurel Heights*, the Regents of the University of California certified an EIR that did not adequately examine project alternatives or the environmental effects of anticipated future uses of an off-campus facility in the Laurel Heights neighborhood. (*Laurel Heights, supra,* 47 Cal.3d at p. 389.) Emphasizing that the EIR deficiency pertained only to anticipated future uses and the university's current uses of the facility had been subject to valid CEQA review, the California Supreme Court directed that the current use could continue, but the Regents would

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only these two approvals need to be corrected. All other Project approvals were based on portions of the EIR that were not affected by the Supreme Court or Court of Appeal decisions and no remedial action is required unless compliance with this Writ changes or affects previous Project approvals."

be subject to a writ of mandate to certify a corrected EIR and reapprove the project.[10] (*Id.* at pp. 422–425.) Section 21168.9 gives courts authority to stay the Regents' activity at the site, but does not require such a stay. (*Id.* at p. 423.) The court explained its decision: "we believe CEQA will not be thwarted by allowing [the university] to continue its present activities at Laurel Heights. We believe the Regents have the good faith and ability to prepare an EIR that complies with CEQA and that they will proceed apace to do so. We can reasonably assume the Association and the trial court will closely monitor the Regents' progress in complying with our decision. Such oversight is an additional assurance a new EIR will be completed without undue delay. Should it become clear, however, that the Regents cannot or will not prepare and certify a legally adequate EIR and that compliance with CEQA will not be promptly forthcoming, the trial court can reconsider the question of whether equitable relief terminating operations at Laurel Heights is then appropriate." (*Id.* at p. 424, fn. omitted.) The *Laurel Heights* court directly addressed the possibility that the order permitting current use might impact the Regents' actions when certifying a corrected EIR and cautioned, "The

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[10] We recognize that in *Laurel Heights*, the court vacated the project approvals. Nevertheless, as discussed in the previous section, there is nothing in section 21168.9 that limits the court's ability to find project approvals severable from a partially deficient EIR.

Regents must begin anew the analytical process required under CEQA. We will not accept post hoc rationalizations for actions already taken, particularly in light of the fact that those activities were begun in violation of CEQA, even if done so in good faith. To do so would tarnish the integrity of the decisionmaking process required by CEQA." (*Id.* at p. 425, italics omitted.) The trial court order in *Golden Gate* paraphrased language from *Laurel Heights*, and the appellate court affirmed the decision to sever an eminent domain resolution from the agency's erroneous determination that a project was exempt from CEQA, noting that there was no construction activity or large monetary expenditure that would give the agency reason to ignore environmental concerns. (*Golden Gate*, *supra,* 215 Cal.App.4th at pp. 371, 378.)

Similarly in our case, the limited writ will not result in an agency making the type of unconsidered decision resulting in harm to the environment that CEQA was adopted to guard against. (See *Save Tara, supra*, 45 Cal.4th at pp. 129–130 [describing an EIR's intended function of informing and guiding decisionmakers of a project's environmental impact before a project is approved].) CEQA requires that an EIR include, among other things, a detailed statement setting forth "'[a]ll significant effects on the environment of the proposed project' and '[m]itigation measures proposed to minimize significant effects on the environment.' [Citations.]" (*Lotus, supra,* 223 Cal.App.4th at p. 653; see § 21081.) "Under CEQA, an agency may

approve a project with significant, unavoidable environmental impacts if it adopts a statement of overriding considerations finding that 'particular economic, social, or other considerations make the alternatives and mitigation measures infeasible and that particular project benefits outweigh the adverse environmental effects.' [Citation.] '[B]efore adopting a statement of overriding considerations, an agency must show that it has considered the mitigation measures and project alternatives identified in the EIR that would lessen the significant environmental effects.' [Citation.] The agency is not required to 'consider additional mitigation measures and project alternatives apart from those identified in an adequate EIR.' [Citation.]" (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 183–184, italics omitted.)

Here, the trial court contemplated the possibility that compliance might trigger additional changes, and it did not ignore the possibility of the County engaging in post hoc rationalizations. Rather, it used the flexibility of section 21168.9 to tailor a narrowly targeted remedy, as contemplated by the Legislature. Similar to the precautions accompanying the courts' limited writs in *Laurel Heights* and *Golden Gate,* in the current cases—*Friends* and *Native Plant*—the trial court expressly required the County to correct not only the GHG analysis in the EIR, but the CEQA Conditions as well. The order also suspends project activity pending the revisions to the EIR and the CEQA Conditions,

and gives the County authority to change the Land Use Approvals if the changes to the EIR or CEQA Conditions warrant such a change. If plaintiffs believe that the updated portions of the EIR and CEQA Conditions trigger required revisions to the Land Use Approvals, they would first propose such changes to the County. If the County refuses the proposed changes, plaintiffs could oppose discharge of the court's writ of mandate. We note, however, that CEQA is focused on the process, not the ultimate decision, and section 21168.9, subdivision (c) prohibits a court from directing an agency "to exercise its discretion in any particular way." "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283.)

Trial court's exercise of its equitable authority in this case

We next examine whether the trial court's limited writ of mandate was an abuse of the court's discretion under section 21168.9. The severability findings and limited writ are equitable determinations, subject to an abuse of discretion standard of review. The court abuses its discretion when its ruling exceeds the bounds of reason, considering the relevant circumstances and the applicable

law. (*Center for Biological Diversity III, supra*, 17 Cal.App.5th at p. 1256; *Golden Gate*, *supra*, 215 Cal.App.4th at p. 368, citing *Preserve Santee, supra*, 210 Cal.App.4th at pp. 287–289.)

A. Procedural Background

The Supreme Court decision in *Center for Biological Diversity, supra*, 62 Cal.4th 204, and this court's instructions in *Friends II* and *Native Plant II* provide a relevant backdrop to the court's decision to sever the GHG portions of the EIR and the CEQA Conditions from the remainder of the EIR and the Land Use Approvals.

In *Center for Biological Diversity*, the Supreme Court concluded the Department's analysis of whether the GHG emissions levels associated with the project in that case was insufficient to serve the EIR's purpose as an informative document. (*Center for Biological Diversity, supra*, 62 Cal.4th at p. 227.) It also acknowledged that the ultimate conclusion of a revised EIR was not certain, and it did not presume that the agency considering the updated GHG emissions significance analysis would necessarily disapprove the project. (*Id.* at pp. 229–231.) The Supreme Court noted that if the updated analysis found the project's GHG emissions would have a significant impact on the environment, and if after adopting feasible mitigation measures or project alternatives significant impacts remained, "the agency may still approve the project with a statement of overriding

considerations. (§§ 21002, 21002.1, subd. (b), 21081; Guidelines, §§ 15091, 15093, 15126.6.)" (*Id.* at p. 231.) The court continued in more detail: "Were [the Department] to determine on remand that adding hundreds of thousands of tons of greenhouse gasses to the atmosphere has a cumulatively significant effect, therefore, it would not necessarily be required to disapprove the project on that basis. The agency could instead adopt whatever feasible alternatives and mitigation measures exist beyond the efficiency and conservation features already incorporated in the project design and, to the extent those measures do not reduce the cumulative impact of the project below the chosen threshold of significance, [the Department] could add a discussion of these impacts, and the countervailing benefits of the project, to the statement of overriding considerations the agency previously adopted in approving the project." (*Ibid.*) The discussion aligns with the legal principle that appellate courts may not substitute their judgment for that of the agency certifying the EIR and approving the project. (*Lotus, supra,* 223 Cal.App.4th at pp. 652–653.)

After the Supreme Court decided *Center for Biological Diversity*, it transferred our decisions in *Friends I* and *Native Plant I* back to this court, with directions to vacate and reconsider in light of *Center for Biological Diversity*. We then issued *Friends II,* in which we reviewed the reasoning from *Center for Biological Diversity*, described the scope of the writ of mandate to be issued by the trial court, and rejected a request by the County and the developer to issue

our own writ of mandate, rather than directing the trial court to do so. We emphasized that we were reversing the trial court's judgment as to only one issue—the GHG emissions analysis—and affirming the judgment in all other respects. Our order directed: "The writ of mandate is to state that defendant's finding the project's [GHG] emissions will have no significant impact is not supported by substantial evidence and reasoned discussion. (*Center for Biological Diversity, supra*, 62 Cal.4th at pp. 225, 227, 240.) Plaintiffs' first amended mandate petition and declaratory and injunctive relief complaint is to be denied in all other respects. *The only challenge to the environmental impact report that remains to be resolved once the remittitur issues is the no* [*GHG*] *emission significant impact question we have described.* The trial court is to proceed pursuant to the provisions of section 21168.9. The post-remittitur issuance actions to be taken, including the extent of any injunctive relief, are matters we leave in the trial court's good hands." (*Friends II*, *supra*, at p. *9, italics added.) Our opinion in *Native Plant II*, issued about a month later, was substantially similar, stating our intent in slightly more emphatic language: "Once the remittitur issues, there is no need to decertify any other portion of the environmental impact report. Rather, the trial court is to proceed pursuant to the provisions of section 21168.9." (*Native Plant II*, *supra*, at pp. *10–*11.)

Because both matters—the *Friends* litigation and the *Native Plant* litigation—involved similar issues and followed

virtually identical trajectories through the courts, the parties agreed to a coordinated process to brief the issue of the writs and judgments, to submit proposed orders in the two cases, and to conduct a joint hearing, which took place on March 9, 2017. The parties agreed that the mandate should suspend any project activity, including construction. Plaintiffs proposed setting aside the Land Use Approvals, the final EIR, and the CEQA Conditions. Defendants argued in favor of a more limited approach that would only decertify the GHG portions of the EIR and leave the Land Use Approvals in place. They argued that because the *Friends II* opinion found the only CEQA defect was the County's GHG analysis, and affirmed the judgment in all other respects, a limited writ under section 21168.9 was warranted, leaving the Land Use Approvals in place and directing the County to correct those portions of the EIR and the CEQA Conditions relevant to the GHG emission issue.

On March 13, 2017, the court filed judgments and limited writs of mandate consistent with respondents' approach in both cases, directing the County to: (1) void the certification of the portion of the EIR addressing the significance of GHG emissions; (2) suspend any project activity, including construction, that could change the physical environment until the County corrects the EIR; (3) suspend the CEQA Conditions while leaving the Land Use

Approvals in effect unless compliance with this Writ changes or affects previous Project approvals."[11]

B. Legal requirements

A court issuing a limited writ of mandate under section 21168.9, subdivision (b) must make three findings: "(1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division." (§ 21168.9, subd. (b).) The limited mandate must "include only those mandates which are necessary to achieve compliance with [CEQA]" and should specify what actions are "necessary to comply with [CEQA.]" (*Ibid.*) "[I]f the court finds that it will not prejudice full compliance with CEQA to leave some project approvals in place, it must leave them unaffected. (*Center for Biological Diversity III, supra*, 17 Cal.App.5th at p. 1255.) "[T]he trial court may not direct

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[11] The court explained that because the CEQA Conditions were the only "project approvals" that directly relate to the GHG analysis, they were the only "approvals" needing correction. All other approvals—meaning the Land Use Approvals—"were based on portions of the EIR that were not affected by the Supreme Court or Court of Appeal decisions and no remedial action is required unless compliance with this Writ changes or affects previous Project approvals."

the agency to exercise its discretion in a particular way." (*Preserve Santee, supra*, 210 Cal.App.4th at p. 287.)

C. Limited mandate not an abuse of discretion on these facts

We acknowledge at the outset that the typical remedy for a CEQA violation is to direct the agency to void its approval of the project and then reapprove after the defect has been corrected. (*POET I, supra*, 218 Cal.App.4th at p. 759.) But the existence of a typical remedy does not automatically mean a court abuses its discretion in imposing a different remedy. We concluded in *Center for Biological Diversity III* that "plaintiffs have provided us no convincing reason to conclude that the trial court abused its discretion by not setting aside all project approvals where it suspended all project activity pending correction of the EIR." (*Center for Biological Diversity III*, *supra*, 17 Cal.App.5th at p. 1259.) Here too, plaintiffs have not made a persuasive argument about why the limited writ issued by the trial court was an abuse of discretion.

Plaintiffs proffer various arguments why the trial court abused its discretion when it ordered the County to bring the GHG portions of the EIR and the related CEQA Conditions into compliance, while permitting the rest of the EIR and the Land Use Approvals to remain in place. Their arguments do not establish an abuse of discretion.

1. *GHG analysis severable from project approvals (section 21168.9, subdivision (b)(1))*

Plaintiffs argue the court erred in failing to make an express finding under section 21168.9, subdivision (b)(1), that the portions of the EIR analyzing the significance of GHG emissions are severable from the remainder of the EIR or from the Land Use Approvals. While the court did not separately enumerate its findings, there can be no question that it found the relevant portions of the EIR severable from the rest of the EIR and the Land Use Approvals. Our remand opinions in *Friends II* and *Native Plant II* provided the framework for the court's severance determination.

In both cases, we determined that based upon the holding and reasoning from *Center for Biological Diversity*, *supra*, 62 Cal.4th at pages 225–227, 240, "the no significant impact portions of the trial court's [GHG] emissions ruling must be reversed." (*Friends II*, *supra*, at p. *9; *Native Plant II, supra*, at p. *10.) Our rulings expressly limited the relief available to plaintiffs, emphasizing that their petition and complaint for declaratory and injunctive relief was "to be denied in all other respects." (*Friends II*, *supra*, at p. *9; *Native Plant II*, *supra*, at p. *4.) The trial court explained the basis for severing the Land Use Approvals by noting that they "were based on portions of the EIR that were not affected by the Supreme Court or Court of Appeal decisions" and concluded that no remedy was necessary.

An express severance finding is unnecessary in these cases because our directions on remand and a common-sense

reading of the terms of the writs issued by the trial court leave no doubt that the trial court made a finding of severability, even if it did not do so expressly. Plaintiffs cite to no controlling authority requiring a trial court to make an express finding under such circumstances, and we conclude there is no such requirement for an express finding when the court's order makes clear that the identified portion of an agency's determination, finding, or decision is severable.

Plaintiffs argue that there was no evidence to support the court's determination that the GHG significance portions of the EIR were severable from the rest of the EIR and the project approvals. They claim that because GHG emissions are referenced in various parts of the EIR, it is unclear what portions the court has decertified. We disagree. The trial court's order decertified the portions of the EIR that were the focus of the Supreme Court's reasoning in *Center for Biological Diversity, supra,* 62 Cal.4th at pages 225–231. If plaintiffs believe the County's approach is too narrow, they can raise their concerns during the EIR revision process.

Plaintiffs argue severability findings are only permissible in circumstances where either a discrete part of a larger project could be severed from the rest of the project or in cases where defective or nonexistent EIRs were severed from activities intended to benefit or protect the environment. They point to cases where a court's order under section 21168.9 was upheld: *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1179–1181 [trial court properly ordered defective EIR analysis for a gas

station severed from a CEQA-compliant EIR for the rest of the larger shopping center project]); *Golden Gate, supra*, 215 Cal.App.4th at pp. 371–380 [agency's erroneous negative declaration severable from resolution of necessity for a project to preserve open space]; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1604–1605 [erroneous negative declaration severable from heightened biosolid treatment standards]; *Poet I*, *supra*, 218 Cal.App.4th at pp. 760–764 [CEQA violation severable from regulation to reduce GHG emissions]). Plaintiffs' argument is flawed because nothing in the reasoning of these cases places a limit on when a court may find a portion of a determination, finding, decision, or project activity severable under subdivision (b)(1) of section 21168.9.

Plaintiffs also argue that the trial court's labeling of the CEQA Conditions as "project approvals" was a legal error constituting an abuse of discretion. In considering this argument, we note that the court expressly treated the CEQA Conditions[12] differently from the Land Use Approvals because "[o]nly portions of the [CEQA Conditions] directly relate to the EIR's [GHG] emissions analysis; accordingly, only these [CEQA Conditions] need to be corrected." Having determined that section 21168.9 permits a court confronted

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[12] The court did incorrectly refer to the CEQA Conditions as "the first two of the Project approvals," but it correctly ordered the county to revise those documents to comply with CEQA.

with this record to order an agency to correct portions of an EIR while leaving all project approvals in place, we conclude that even if the court mistakenly believed it was ordering the County to correct two project approvals (which turned out to be CEQA Conditions, not project approvals), relying on that mistaken belief would not amount to an abuse of discretion.

2. *Compliance with CEQA not prejudiced by severance (section 21168.9, subdivision (b)(2))*

Plaintiffs next contend that the court cannot make the finding required under subdivision (b)(2) of section 21168.9, that severance "will not prejudice complete and full compliance with [CEQA]." Their points recycle earlier arguments that severing portions of the EIR discussing the significance of GHG emissions from the project approvals impermissibly allows the County to engage in a post hoc rationalization of the approvals left in place. We reject this argument for the same reasons stated in the earlier section of this opinion addressing plaintiffs' post hoc rationalization arguments.

3. *The remainder of the project is in compliance with CEQA (section 21168.9, subdivision (b)(2))*

Plaintiffs argue that the project approvals are inseparable from the County's failure to certify a EIR that

meets CEQA's requirements on the issue of GHG emissions. They compare this case to *Preserve Santee, supra,* 210 Cal.App.4th at pages 289–290, arguing that the CEQA violations are "so intertwined with all aspects of the Project approvals that the trial court's limited writ remedy, which set aside *none* of the Project approvals, is an abuse of discretion under section 21168.9."

As discussed earlier in this opinion, plaintiffs have not made any argument other than "post hoc rationalization" to explain why the project approvals (which have twice been found to be CEQA compliant by this court) are not compliant with CEQA. In *Friends I* and *Friends II*, this court twice found all other aspects of the project to be CEQA compliant. The same is true in *Native Plant I* and *Native Plant II*. The only reason both cases were remanded to the trial court is that the California Supreme Court decided—years after the County had certified the EIRs for both projects—that the County's determination that GHG emissions associated with the project are not cumulatively significant was not supported by substantial evidence and reasoned analysis. (*Center for Biological Diversity, supra*, 62 Cal.4th at p. 227 [describing the EIR's deficiency and the "analytical gap left by the EIR's failure to establish, through substantial evidence and reasoned explanation, a quantitative equivalence" between a statewide and project-level comparison of GHG emission level reductions].) We reject plaintiffs' attempt to ignore the procedural histories in both cases, in which the only CEQA deficiency identified was

based on the *Center for Biological Diversity* opinion. Before the Supreme Court transferred the cases back to this court, the County had finalized and certified EIRs, the trial court had denied plaintiffs' petitions and complaints challenging CEQA compliance on a variety of issues, and this court had fully affirmed the trial court's judgment. Cognizant of that procedural history, we took care to limit the scope of our remand order to the trial court, and so we find it entirely reasonable that the trial court could conclude the GHG significance issue was severable and curable in a manner that would not prejudice full compliance with CEQA.

The court ordered the County to correct the GHG significance portions of the EIR and the related CEQA Conditions, and to only change the Land Use Approvals if their actions in complying with the writ changed or affected those approvals. The trial court's application of section 21168.9 was not an abuse of discretion under the circumstances of these cases.

Grammatical Error

Plaintiffs ask this court to remand the trial court's limited writ order with directions to correct the grammatical error in the first sentence of the writ. In *Friends II*, we gave a specific directive to the trial court: "The writ of mandate is to state that defendant's finding the project's GHG emissions will have no significant impact is not supported by substantial evidence and reasoned discussion. (*Center for*

Biological Diversity, supra, 62 Cal.4th at pp. 225, 227, 240.) Plaintiffs' first amended mandate petition and declaratory and injunctive relief complaint is to be denied in all other respects." (*Friends II*, *supra*, at p. *9.)

We agree with appellants that the first sentence of the limited mandate mistakenly combines two separate ideas into a single sentence, with a result that ignores the rules of grammar. The sentence directs the County "To void certification of the portion of the Final Environmental Impact Report (EIR) for the Mission Village Project . . . that addresses the EIR's finding that the Project's greenhouse gas (GHG) emissions will have no significant impact is not supported by substantial evidence and reasoned discussion . . . ."

We disagree that remand is required. When the sentence is read in light of our remand order, the trial court's intention is clear. First, the order directs the County to void the GHG significance portion of the final EIR. Second, the order complies with our directions on remand by concluding, consistent with *Center for Biological Diversity, supra*, 62 Cal.4th at pages 225, 227, 240, that the County's GHG insignificance finding is not supported by substantial evidence and reasoned discussion. A remand is not necessary for the parties to understand and comply with the court's instructions.

DISPOSITION

We affirm the judgments and the writs of mandate in both cases. Defendants County of Los Angeles and the Los Angeles County Board of Supervisors and real party in interest the Newhall Land and Farming Company shall recover their costs on appeal from plaintiffs and appellants Friends of the Santa Clara River and Santa Clarita Organization for Planning and the Environment.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

KIM, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.