

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 05/05/2011

TIME: 02:24:00 PM

DEPT: CX102

JUDICIAL OFFICER PRESIDING: Gail A. Andler

CLERK: Mary White

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2010-00365758-CU-WM-CXCCASE INIT.DATE: 04/22/2010
CASE TITLE: **Banning Ranch Conservancy vs. City of Newport Beach**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 71227585

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission now makes the following ruling:

Petitioner seeks to set aside the approvals by the City of Newport Beach ("City") in resolutions it adopted regarding the proposed Sunset Ridge Park and related access agreement. The proposed park lies on land which is partially owned by the City and partially owned by Newport Banning Ranch LLC ("NBR"). The City bought the property from Caltrans with the intent to build a park. Caltrans imposed scenic preservation restrictions and it limited access. The limited access required an access agreement with the neighboring property owner, NBR. The City's EIR review generally considered the impacts of the Park standing alone and also provided analysis of the cumulative effects of potential growth. Petitioners argue, among other things, that the Park is part of the proposed development for the neighboring NBR property and that the EIR for the Park has to also consider how the park and the proposed development together impact the environment.

The issue on review is for this Court to consider whether the City abused its discretion by either (1) failing to proceed in the matter provided by law; or (2) it reached a decision that is not supported by substantial evidence. An EIR is presumed adequate, and the party challenging it has the burden to show that it is not. The City's decision must only be supported by substantial evidence. The Court cannot set aside the decision of the City merely because an opposite conclusion would have been equally or more reasonable.

Several arguments have been advanced by Petitioners, both orally and in writing, urging the Court to set aside the approvals and grant the writ. However, the Court is not persuaded after reviewing the record that under the law Petitioners are entitled to the relief requested, and adopts the reasoning of counsel for

the City and Real Party in Interest. Preliminarily, the Court notes that the General Plan provides that even if the property was purchased with the designation to remain as "open space", the General Plan provided that the open space provided for the development of parks and other amenities to benefit the neighboring community. If the property was developed, the General Plan provided for limits on the type of development. Under either scenario, a road from 19th Street to Pacific Coast Highway was specifically provided for in the General Plan.

Addressing the arguments raised by Petitioners, substantial evidence supports the City's finding that the CEQA review could be limited to the Park itself. The Court finds that the EIR properly focused on the Park Project and that there was no improper "piece-mealing." Under a substantial evidence standard, the Court finds that the EIR adequately addressed the cumulative impacts as to traffic, biological impacts, noise, hazards, and land use. Substantial evidence supports a finding by the City that the effect of the Park is not cumulatively considerable, and even if it was, the cumulative effect was already considered and approved by the passage of the City's General Plan. There is substantial evidence to support the finding that there are no growth inducing impacts from the Park project. Substantial evidence support the City's biological EIR and mitigation proposals. There is substantial evidence in support of the City's findings related to jurisdiction and consistency with other land use agency requirements. The Court also denies the Writ based on the alleged failure to adequately consider alternatives. Petitioners have the burden to show an alternative is feasible and the failure of the Petitioner to discuss the evidence supporting the agency's analysis and to demonstrate why it is lacking is a concession under Tracy First that the evidence supports the analysis and is fatal to Petitioner's claim. The record reflects that the City considered Alternatives. There is substantial evidence to support a finding by the City that Alternative B was not feasible, as well as the infeasibility of the other alternatives stated in the EIR that would not call for the use of Bluff Road.

Thus, the Court finds there was substantial evidence to support the EIR and its proposed mitigation plans to reduce any serious impacts to an insignificant impact. The Court denies the writ of mandate in its entirety, based upon the applicable statutory and case law, after full consideration of the arguments of counsel and the administrative record.

Counsel for the City is directed to prepare the appropriate order and give notice.

Clerk to give notice to counsel for the city and counsel for the city is to give notice to all others.

It is so ordered.

GAIL A. ANDLER

Hon. Gail Andler

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 05-MAY- 2011, at Santa Ana, California. ALAN CARLSON /EXECUTIVE OFFICER & CLERK OF THE SUPERIOR COURT, BY: M.WHITE deputy.

CASE TITLE: Banning Ranch Conservancy vs. City of
Newport Beach

CASE
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NO:

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