SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Hills For Everyone vs. City of Brea

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2014-00731930-CU-WM-CXC**

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 11/03/15, Minute Order dated 11/03/15, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from email address on November 3, 2015, at 9:54:57 AM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 11/03/2015 TIME: 09:34:00 AM DEPT: CX102

JUDICIAL OFFICER PRESIDING: Robert J. Moss
CLERK: Betsy Zuanich
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2014-00731930-CU-WM-CXC** CASE INIT.DATE: 07/01/2014
CASE TITLE: **Hills For Everyone vs. City of Brea**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

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EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 10/30/15 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The hearing on petitioners' writ of mandate took place on October 30, 2015.

The matter was taken under submission.

Having considered the briefs, the administrative record, and oral arguments the court now issues its ruling as follows:

The petition is granted.

The court finds as follows:

1) that the Hillside Management Ordinance applies to the project and therefore precludes project approval;

2) that the argument as to any inconsistency between the ordinance and the specific plan is not properly before this court, and, in any event, there is no inconsistency;

3) that the project, as admitted by the City, is inconsistent with the Brea General Plan and the Carbon Canyon Specific Plan;

4) that the project, as admitted by the City, is inconsistent with the woodland preservation policies;

5) that the project is not exempt from CEQA review under Government Code Section 65457; and,

6) that the EIR is otherwise inadequate, as it fails to analyze the consistency with the specific plan's grading standards; it fails to analyze climate change impacts adequately; and it uses an improper baseline for impacts on recreation. The petition is denied on all other issues raised.

The Hillside Management Ordinance applies to the project. The statute could not be any clearer, so the issue is not one of ambiguity. The only issue, then, is whether the court gives some deference to the City to provide some other explanation of the ordinance, and the court does not. The City's shifting approach with respect to the ordinance does not allow this court the option to defer to the City on the issue (Tower Lane Properties v. City of Los Angeles (2014) 224 Cal. App. 4th 262, 276.)

Here, as shown by the petitioner, the City's historical position has been anything but clear and consistent. The City actually took the exact opposite position, from that which it is taking now, in 2001 and 2004.

The issue then becomes whether any inconsistency between the ordinance and the specific plan can invalidate the ordinance, as argued by real party in interest. It may have, had the City made that finding, but as the City made no such finding, the argument cannot be considered here. The argument was raised by real party in interest at the agency level, and again here, but the argument was not adopted by the City. Since that is the case, and since this court can only uphold the City's action based on the findings articulated by the City (Southern California Edison v. Public Utilities), real party in interest's argument is irrelevant.

Is the ordinance, however, consistent with the specific plan, as asserted by petitioner? The answer is yes. The ordinance advances several of the goals of the specific plan and does not obstruct the obtainment of those goals. The developer can comply with both without violating either.

This brings us to the end result that as the ordinance applies to the project, the project is barred, and neither the City nor the real party in interest has argued otherwise. The petition must be granted for this reason alone.
As admitted by the City, Madrona is inconsistent with the Brea General Plan and the Carbon Canyon Specific Plan, further reason for the Petition to be granted.

Contrary to the assertions of petitioner, Madrona does meet the requirements of the specific plan's mandatory open space policy. As argued by the petitioner itself, in other parts of the briefing, the City is given deference in carrying out the terms of its general and specific plans, and is deemed consistent when, considering all of its aspects, the project will further the objectives and policies and not obstruct their attainment (San Francisco Tomorrow v. City and County of San Francisco). Here, the findings of the City, which are supported by substantial evidence, must be given deference and the decision of the City in that regard is upheld.

Madrona is not exempt from CEQA under Section 65457. First, because it is admitted by the City that the project is inconsistent with the Brea General Plan and the Carbon Canyon Specific Plan, and the exemption cannot apply when such inconsistencies exist (Government Code Section 65457; Concerned Dublin v. City of Dublin).

Second, the City itself found that the project is not exempt, and this court gives deference to that finding, as it is supported by substantial evidence, and real party in interest has not shown otherwise. Real party in interest's reading of the Citizens for Responsible Equitable Environmental Development and Concerned Dublin Citizens, is incorrect. They do not hold, as argued that real party in interest, that the adoption of new GHG guidelines do not constitute new information for exemption purposes. And, its reliance on Del Cerro Mobile is also misplaced, and not controlling, as that case does not allow real party in interest to embrace an exemption which the agency has specifically rejected. We look at the bases the City used in making its determinations, not the arguments of the real party in interest that were not adopted by the City, and actually rejected by the City.

The EIR is inadequate as it fails to analyze the consistency with the specfic plan's grading standards, and it is required by CEQA (Pocket Protectors v. City of Sacramento). Real party in interest cites to three documents contending that such analysis was conducted. But, as noted by petitioner, two of the documents do not analyze the current project, but a former project, and the third is real party in iInterest's own self-serving analysis submitted after the approval of the final EIR, and therefore not within the EIR itself. That is insufficient.

The EIR is also inadequate as it fails to properly analyze climate change impacts. The first issue is raised, in this regard, was whether the selected thresholds in the EIR for GHG are proper, and they are not. On this project, the City utilized a 3,500 tons CO2E/year threshold. The threshold recommended by the South Coast Air Quality Management District is 3,000. While the City does not have to adopt the District's threshold and can use another, its use of the other threshold must be consistent. The evidence establishes that the use has not been consistent and no substantial evidence shows otherwise. Further, no substantial evidence has been cited which supports applying different standards to each individual project.

As to whether the EIR appropriately disclosed the inconsistency with the GHEG reduction Plans, the answer is mixed. As to the first point raised by Petitioner, with regard to the 2008 Scoping Plan, as admitted by Petitioner, Petitioner's argument is based on case law that is not any longer citable and the argument therefore fails. With regard to the second point, that the EIR incorrectly concludes that the Project does not conflict with the 2012 Regional Transportation Plan, as the City incorrectly finds the strategies promulgated there do not apply to the project, is asserted without any evidence to support the statement that Madrona is plainly inconsistent with the Plan's key strategies. There is no citation to support this bald assertion, and the argument therefore fails. Finally, Petitioner's argument that the EIR fails to completely analyze consistency with the 2012 Sustainability Plan is correct. The plan was well on its way to coming to fruition, and certainly within the City's purview. *It was the City' own Plan*, and it should have been considered.

The EIR is inadequate, as it used inappropriate trip rates. The petitioner is correct. The City offers no effective explanation for its failure to make the same verification on its calculations of climate related impacts, that it conducted in relation to the traffic impacts, based on the higher trip rate considered for hillside residences.

As to whether the EIR properly analyzed and mitigated fire impacts sufficiently, the EIR was sufficient and supported by substantial evidence, and it has not been shown otherwise by petitioner. The mitigation measures are also adequate. Petitioner has not negated real party's assertion concerning the conditions of approval for the easements being eliminated. Petitioner merely notes them without negating them.

Finally, the EIR was inadequate as it used an improper baseline for impacts on recreation. It did not include a significant physical environment feature, the trials that existed. While they were mentioned, there were not considered in the baseline analysis with regard to impacts on recreation. While the Center for Biological Diversity, cited by petitioner, is no longer citable, as it has been taken up for review, the other cases cited by petitioner emphasize the need to consider existing conditions that may not comply with the law or previous environmental review. They exist, however, whether legal or previously reviewed.

Clerk to give e-Service notice.

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I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid as indicated below.
The mailing and this certification occurred at Santa Ana, California on 11/03/2015

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