

Attachment 21
Superior Court Judgment and Writ of Mandate

FILED

MAY 06 2020

CLERK OF THE NAPA SUPERIOR COURT
BY 
DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF NAPA

CENTER FOR BIOLOGICAL DIVERSITY,
and SIERRA CLUB,

Petitioners,

vs.

NAPA COUNTY, NAPA COUNTY BOARD
OF SUPERVISORS, NAPA COUNTY
DEPARTMENT OF PLANNING BUILDING
AND ENVIRONMENTAL SERVICES; and
DOES 1 through 20, inclusive,

Respondents.

HALL BRAMBLETREE ASSOCIATES, LP,
and Does 21 through 40, inclusive,

Real Parties in Interest.

Case No.: 17CV000060

PEREMPTORY WRIT OF MANDATE

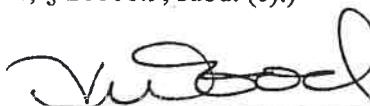
**TO RESPONDENTS NAPA COUNTY, NAPA COUNTY BOARD OF SUPERVISORS AND
NAPA COUNTY DEPARTMENT OF PLANNING, BUILDING AND ENVIRONMENTAL
SERVICES:**

The Court having entered judgment in this proceeding ordering that a peremptory writ of mandate issue under seal of this Court:

YOU ARE HEREBY COMMANDED, on receipt of this writ, as follows:

1. Within 60 days of service of this writ, Respondents shall vacate and set aside their findings concerning whether the project will have a less-than-significant impact with respect to greenhouse gas (“GHG”) emissions.
2. Respondents shall not reconsider whether to adopt such findings unless and until those findings are supported by substantial evidence in the record without making substantive changes to other aspects of the Project and/or EIR that have already been approved and are not subject to this partial writ of mandate.
3. Respondents shall not approve, and Real Party in Interest Hall Brambletree Associates LP shall not commence, Project-related activities that cause or contribute to GHG emissions, unless and until the Court discharges this peremptory writ of mandate.
4. Respondents shall file the following returns to this peremptory writ of mandate:
 - a. Respondents shall file an initial return to the writ of mandate within 90 days of service of this writ setting forth the steps taken to comply with paragraph 1 of this writ.
 - b. Respondents shall file a supplemental return to the writ of mandate within 30 days of completing the activities, if any, mandated by paragraph 2 of this writ setting forth those actions.
5. This Court retains jurisdiction over Respondents' proceedings by way of the returns to the peremptory writ of mandate until the Court has determined that Respondents have complied with CEQA as specified herein or that Respondents have determined not to approve the Project.
6. Nothing in this writ shall be understood to direct Respondents to exercise their discretion in any particular way. (Pub. Resources Code, § 21168.9, subd. (c).)

Dated: 05/06/2020



Victoria Wood, Judge

Superior Court of California

County of Napa
825 Brown Street
Napa, CA 94559

Case #: 17CV000060

Center for Biological Diversity and Sierra Club vs Napa County et al

John P Rose

1212 Broadway STE 800
OAKLAND, CA 94612

Elizabeth Rachel Pollock

555 Capitol Mall STE 800
SACRAMENTO, CA 95814

Jeffrey Michael Brax

1195 Third Street
Suite 301
Napa, CA 94559

Certificate of Mailing/Service

I hereby certify that I am not a party to this cause and that a copy of the foregoing document was:

- mailed (first class postage pre-paid) in a sealed envelope
- certified copy faxed to Napa Sheriff's Department at (707) 253-4193
- personal service – personally delivered to the party listed above
- placed in attorney/agency folders in the Criminal Courthouse Historic Courthouse

at Napa, California on this date and that this certificate is executed at Napa, California this Date. I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing within the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 5/6/2020

Robert E Fleshman, Court Executive Officer



Julie Oliver, Deputy Court Executive Officer

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JUDGMENT GRANTING PEREMPTORY
WRIT OF MANDATE

I. PROCEDURAL HISTORY

The Petition of Center for Biological Diversity (CBD) and Sierra Club (each a Petitioner and collectively Petitioners) came on for hearing February 13, 2018, and March 1, 2018, before the Honorable Thomas E. Warriner in Department G of this Court. Aruna Prabhala of the Center for Biological Diversity appeared on behalf of Petitioners. Jason Dooley appeared on behalf of Respondents County of Napa, Napa County Board of Supervisors, and Napa County Department

of Planning, Building and Environmental Services (“Entity Respondents”). Whitman Manley appeared on behalf of Real Parties in Interest Hall Brambletree Associates, LP (“Real Party”)(Entity Respondents and Real Party will hereinafter be referred to collectively as “Respondents”). On April 5, 2018, the Court entered judgment in favor of Respondents and Real Parties (Original Judgment).

Petitioners appealed the Original Judgment to the Court of Appeal, First Appellate District. On September 30, 2019, the Court of Appeal affirmed the Original Judgment in part and reversed in part. (See *Living Rivers Council v. County of Napa*, 2019 Cal. App. Unpub. LEXIS 6612 (*Opinion*).) Specifically, the Court of Appeal found that Petitioner CBD demonstrated a lack of substantial evidence supporting the inference that the trees to be permanently conserved would not reasonably have remained on the property. (*Id.* at 87.) “CBD has accordingly satisfied its burden of showing that substantial evidence does not support the EIR’s conclusion that the project would have a less-than-significant GHG emission impact.” (*Ibid.*) On all other claims, the Court of Appeal affirmed the Original Judgment of this Court. Accordingly, the Court of Appeal reversed the judgment denying Petitioners’ petition for a writ of mandate and remanded the matter to this Court to grant the petition as to the EIR’s failure “to ensure that the GHG emissions associated with the Project, as mitigated, constitute a less-than-significant-impact, as set forth in [this Opinion].” (*Opinion* at 87-88.)

On February 11, 2020, this Court invited the parties to submit additional briefing regarding the appropriate nature and scope of the writ of mandate and judgment, consistent with the Opinion of the Court of Appeal. Hearing on the matter was held on March 4, 2020, with the following attorneys appearing: Jason Dooley on behalf of the entity Respondents; Aruna Prabhala and Ross Middlemiss on behalf of Petitioner; and Whitman Manley on behalf of Real Party. Following the hearing, the matter was submitted.

Having read and considered the parties’ briefs and arguments at hearing, the Court now orders as follows.

II. LEGAL ANALYSIS

When a public agency’s decision, determination, or finding does not comply with CEQA, a peremptory writ of mandate must be issued. (Pub. Resources Code § 21168.9, subd. (a).) As noted above, pursuant to the *Opinion* of the Court of Appeal, “substantial evidence does not

support the EIR’s conclusion that the project would have a less-than-significant GHG emission impact.” (*Opinion* at p. 87.)

Respondents urge the Court to issue a so-called “partial writ” and judgment directing the County to reconsider its finding of substantial evidence on this single issue. (See Memorandum of Points and Authorities in Support of Proposed Judgment (Respondent’s Memo) at 5:4-7.) Respondents further argue that “the judgment and writ need not direct the County to decertify the EIR. (*Id.* at 5:9-10.)

Respondents’ position appears to find support in the following language of the *Opinion*. “We remand the CBD matter to the trial court to grant the petition *as to the following EIR issue*: to ensure that the GHG emissions associated with the Project, as mitigated, constitute a less-than-significant impact, as set forth in Section II.F of this opinion.” (*Opinion* at 87-88. Emphasis added.)

Partial writs are authorized under Public Resources Code section 21168.9. Subsection (b) of the statute specifically requires that a mandate order under subsection (a) “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.”

As to the first finding of the three that cumulative necessitate issuance of only a partial writ, Petitioner contends that a severability finding cannot be made in this case, because the Project itself is not severable. For this contention, Petitioner relies heavily on the Fifth Appellate District’s decision in *Landvalue 77, LLC v. Board of Trustees of California State University* (*Landvalue 77*) (2011) 193 Cal.App.4th 675. Implementing plain language interpretation of section 21168.9, this Court disagrees with Petitioner, as well as with the Fifth District in *Landvalue 77*. When section 21168.9 subsection (b)(1) requires a finding that the “the portion or specific activity or activities” are severable, the Court interprets this language to allow for the severability finding to be as to a portion not only of project activity/ies, but alternatively to a portion of the “determination, finding, or decision,” as indicated in the prefatory language of the

sentence identifying the three requisite findings. This Court's interpretation seems to be supported by the Second Appellate District in *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, at page 287, when it critiqued the *Landvalue* 77 Court's "perfunctory" conclusion that the "in part" language in subdivision (a)(1) does not apply to EIR certification decisions. Applying this interpretation of severability under section 21168.9, the Court easily concludes the portion of the County's decision pertaining to mitigation for GHG emissions is severable from the remainder of the Project decisions, as the First District seemed to contemplate in its *Opinion* as well.

The Court also believes it should make the second and third findings that require it to issue only a partial writ in this case. Obviously, the court has not found the remainder of the Project to be in noncompliance with CEQA, since the First District has upheld all other aspects of the Project approval. Whether the Court can make the second finding that severance of this portion of the County's approval would not prejudice complete and full compliance with CEQA is a closer question for consideration.

The First District found deficient the County's approval of the EIR's GHG mitigation measure, number 6-1, because there was insufficient evidence that the unspecified 248 acres of trees to be preserved as mitigation would not reasonably have remained on the property under "business as usual circumstances," i.e. without the proposed Project. (*Opinion* at 87.) It is possible Respondent will be able to approve the same mitigation measure, by simply identifying 248 acres of the 524 to be preserved and finding sufficient evidence in the record that those acres would not reasonably have remained without the preservation contemplated by the Project. Petitioner's concern that a partial writ could result in modifications to the mitigation measure that may require "changes to the scope and scale of the Project" can be alleviated by a mandate that the County shall not readopt findings of a less than significant GHG emissions impact, unless and until such findings are supported by substantial evidence in the record *without making substantive changes to other aspects of the Project and/or EIR that have already been approved and are not subject to the partial writ of mandate*. Petitioner's concern that Respondent may be required to adopt a Statement of Overriding Considerations, is alleviated by the fact that such a statement would be subject to separate CEQA compliance. Under these circumstances, the Court concludes that severance of the County's decision [that mitigation measure 6-1 sufficiently supported approval of the Project] will not prejudice complete and full compliance with CEQA.

III. JUDGMENT

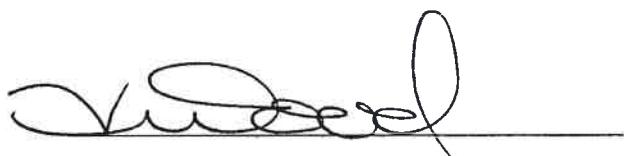
IT IS THEREFORE ORDERED that:

1. As set forth in the *Opinion*, the Petition for Writ of Mandate, filed by Petitioners is granted in part as to the following EIR issue: to ensure that the greenhouse gas (“GHG”) emissions associated with the project, as mitigated, constitute a less-than-significant impact. As set forth in Section II.F of the *Opinion*, substantial evidence does not support the County of Napa’s (the “County’s”) conclusion that the conservation easement that the Project must provide will provide sufficient mitigation to reduce the Project’s GHG emissions to less-than-significant levels.
2. In all other respects, the petition is denied.
3. A peremptory writ of mandate shall issue under the seal of the Court commanding:
 - a. The County shall vacate and set aside its findings concerning whether the Project, as mitigated, will have a less-than-significant impact with respect to GHG emissions.
 - b. The County shall not reconsider whether to adopt such findings unless and until they are supported by substantial evidence in the record without making substantive changes to other aspects of the Project and/or EIR that have already been approved and are not subject to the partial writ of mandate.
 - c. The County shall not approve, and Real Party in Interest Hall Brambletree Associates LP (“Real Party”) shall not commence, Project-related activities that cause or contribute to GHG emissions.
4. The Court retains jurisdiction to ensure compliance with the writ issued pursuant to this judgment. If the County responds to the writ by re-adopting its finding concerning GHG emissions, then the County shall file a return to the peremptory writ of mandate issued pursuant to this judgment setting forth the steps taken by the County to respond to the writ.
5. Nothing in this judgment shall be understood to direct the County to exercise its discretion in any particular way. (Pub. Resources Code, § 21168.9, subd. (c).)
6. Unless and until this Court has determined that the County has taken the actions specified herein to bring the Project approvals into compliance with CEQA, the County and Real Party shall not undertake, and are enjoined from undertaking, any Project-related activities that may cause or contribute to GHG emissions.

7. The portion of the Project decision affected by this judgment is severable under Public Resources Code section 21168.9, subdivision (b). Paragraph (6) of this judgment ensures that no GHG emissions will occur as a result of the project, unless and until the County has addressed, to the Court's satisfaction, the adequacy of the steps taken to offset the project's GHG emissions. The EIR's analysis of GHG emissions has been found to be otherwise adequate. The EIR has also been found to be adequate with respect to its analysis of all other issues. Issuing this partial writ will not prejudice complete and full compliance with CEQA.

8. Each party shall bear its own costs.

Dated: 05/06/2020

A handwritten signature in black ink, appearing to read "Victoria Wood", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'V' at the beginning.

Victoria Wood, Judge

Superior Court of California

County of Napa
825 Brown Street
Napa, CA 94559

Case #: 17CV000060

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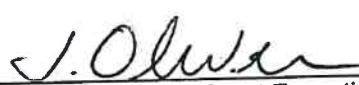
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Date: 5/6/2020

Robert E Fleshman, Court Executive Officer



Julie Oliver, Deputy Court Executive Officer