

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL
MINUTE ORDER**

Date: 02/26/2010

Time: 10:00:00 AM

Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager
Clerk: Lee Ryan

Bailiff/Court Attendant: Henry Whately
ERM:
Reporter: Peter C. Stewart, CSR#3184

Case Init. Date: 06/10/2009

Case No: 37-2009-00091583-CU-TT-CTL Case Title: The California Chaparral Institute vs. County Of San Diego

Case Category: Civil - Unlimited Case Type: Toxic Tort/Environmental

Event Type: Hearing on Petition
Moving Party: The California Chaparral Institute
Causal Document & Date Filed: Motion for Peremptory Writ of Mandate, 10/05/2009

Appearances:

See the attached sign-in sheet for appearances.

The Court hears oral argument and takes this matter under submission.

The Court, having taken the above-entitled matter under submission on 02/26/10, and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioner The California Chaparral Institute's Petition for Writ of Mandate is granted.

There are legislative exemptions from CEQA. "As a practical matter, the statutory exemptions have in common only this: the Legislature determine that each promoted an interest important enough to justify foregoing the benefits of environmental review." (*Napa Valley Wine Train, Inc. v. Public Utilities Commission* (1990) 50 Cal.3d 370, 382.) Respondent is pursuing the Project under the emergency exemption, set forth in Pub. Res. Code §§21080(b)(4) and 21060.3 and 14 CCR 15269(c). "Emergency" is defined as:

"Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

CEQA then provides that:

The following emergency projects are exempt from the requirements of CEQA.

... (c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term. (14 CCR §15269(c).)

Respondent contends there is substantial evidence in the record to support the emergency exemption

Date: 02/26/2010

MINUTE ORDER

Page: 1

Dept: C-71

Calendar No.: 37

because the record supports a conclusion there is an imminent threat of wildfires.

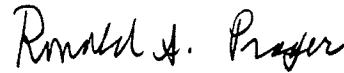
In this case, Respondent has failed to meet its burden and establish there is substantial evidence in the record to support the emergency exemption. It is undisputed that a wildfire is an occurrence under the statutory definition of "emergency." However, what is in dispute is whether there is substantial evidence to support the remainder of the emergency definition. Respondent does not cite to evidence which supports a conclusion there is a clear and imminent danger of wildfire which requires immediate action. The fact there have been wildfires in the past, including two catastrophic wildfires supports a reasonable conclusion there is likely to be future wildfires. (AR 10:138) But it is insufficient to support a conclusion there is an *imminent* threat of damage to life, health or property.

The evidence is distinguishable from the facts in *Calbeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529. In *Calbeach*, the Court of Appeal affirmed the denial of a writ of mandate vacating the approval of a special use permit to construct a sea wall on the grounds the court erroneously found the emergency exemption applied. The Court found there was substantial evidence to support a finding the erosion of the bluffs created a notch which required immediate repair to prevent collapse of the bluff. "Immediate" in that case was "weeks". (*Id.* At 538.) Also, due to the location of the homes in proximity to the areas of threatened collapse, the court determined there was a danger to life, health and property. In this case, there is no expert testimony or evidence to support a conclusion a wildfire is imminent.

In addition, there is insufficient evidence this is a short-term project. (14 CCR §15269(c).) The Project is expected to take years. (AR 5:117) Thus, the fact this is a long term project is another basis to grant the writ.

This project is not exempt from CEQA under the Forest Practices Act.

All requests for judicial notice are granted.



Ronald S. Prager