Civil No. S214061

IN THE SUPREME COURT OF CALIFORNIA

FRIENDS OF THE COLLEGE OF SAN MATEO GARDENS,

Plaintiff and Respondent,

v.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, *et al.*,

Defendants and Appellants

After an Unpublished Decision by the Court of Appeal
First Appellate District, Division One
Civil Number A135892

Affirming the Ruling by the Honorable Clifford Cretan
San Mateo County Superior Court Case No. CIV 508656

ANSWER TO PETITION FOR REVIEW

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Introduction

Respondent Friends of the College of San Mateo Gardens is a group of community college students acting in the public interest. They oppose demolition of the evocative 1963 Building 20 horticulture complex at the College of San Mateo, including its well-used, much-loved gardens, for yet another surface parking lot. The Friends contend that the appellant College District violated mandates of the California Environmental Quality Act by failing to study and mitigate the project's environmental impacts to campus biology, cultural resources, aesthetics, recreation, and parking.

The First District Court of Appeal agreed. The unanimous, unpublished, de novo opinion affirms the ruling of the San Mateo County Superior Court and its issuance of a peremptory writ requiring environmental review for the significant demolition project. CEQA requires that the appellant College District study its campus parking needs and then identify and impose feasible mitigations and alternatives that may reduce or avoid the adverse impacts of demolition.

The College District posits that rather than preparing a negative declaration or an EIR it should be allowed to rely on an "addendum" to a mitigated negative declaration prepared for a prior campus project in 2007 — the College of San Mateo (CSM) Project. The CSM Project, pursued as

part of the College District's then-current 5-year Master Plan, had directed the rehabilitation of the aging Building 20, which it proclaimed to be structurally sound, and the retention of the gardens. The College District changed course in 2010, approving demolition based on the addendum.

Use of an addendum to a negative declaration is a creation of the CEQA Guidelines, as addenda are nowhere mentioned in the Public Resources Code. As described by the Guidelines, an addendum requires no public comment or agency consideration of project alternatives. Its intended use is only for "minor, technical changes or additions" to a negative decaration for a prior project. It cannot be used for a new project. (CEQA Guidelines [14 Cal.Code Regs §§ 15000, et seq.], § 15164, subd. (b).)

This appeal focuses in large part on whether environmental review for demolition of the Building 20 Complex and Gardens may proceed as a change to an existing project or must be considered a new project. The District disagrees with *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, in which the Court treated that question as one of law rather than a matter for the lead agency to decide based on substantial evidence. The District insists both that *Save Our Neighborhood* was wrongly decided and that it has been "heavily criticized." (Petition, p. 2.) However, only one case in the seven years since its publication has offered

any criticism: *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385.

Further, the purported conflict between *Mani Brothers* and *Save Our Neighborhood* is dicta, as *Mani Brothers* considered an addendum to an EIR and *Save Our Neighborhood* considered a negative declaration. The year after its publication, *Mani Brothers*' criticism of *Save Our Neighborhood* was decried as "a bit harsh." (*Moss v. Humboldt* (2008) 162 Cal.App.4th 1041, pp. 1051-1052, n.6; *accord*, Slip Opinion, p. 9.)

Nothing has happened since. There is no burgeoning conflict among appellate districts that seeks resolution. To the contrary, longstanding CEQA case law firmly supports the treatment of the proposed demolition of the horticulture complex and the historic Gardens as a new project. (*E.g.*, Slip Opinion, pp. 9-10, citing *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, pp. 1313-1314, 1320-1321.)

The Petition does not meet criteria for this Court's review of the unpublished, well-supported Slip Opinion, and it should be denied.

Statement of Facts

Appellants adopt the Procedural Background and Facts in the unpublished opinion of the Court of Appeal. (Slip Opinion at 1-6; California Rule of Court 8.500 (c)(2).)

Issue Presented by the Petition

> If a lead agency approves modifications to a previously reviewed and approved project approved through an addendum, may a court disregard the substantial evidence underlying the agency's decision to treat the proposed action as a change to a project rather than a new project, and go on to decide as a matter of law that the agency in fact approved a "new" project rather than a modification to a previously approved project, even though this "new project" test is nowhere described in CEQA or the Guidelines?

(Petition, p. 6.)

Answer: As ruled by the San Mateo Superior Court and affirmed by the de novo review of the First District Court of Appeal, under the straightforward facts presented in the certified administrative record the proposed demolition of the Building 20 horticulture complex and the gardens is a new project as a matter of law. (Slip Opinion, p. 9.) It is not within the scope of the 2007 CSM Project that was approved via mitigated negative declaration and requires rehabilitation and retention of the unique complex and vintage gardens. The project requires more than minor, technical changes to the negative declaration. The new idea to demolish this special area of the campus has potential significant environmental impacts.

Discussion

Following extensive campus redevelopment in recent years, the mature gardens and botanical collections within the Building 20 Complex continue to provide an evocative historic vernacular landscape and unique campus gathering-place. The gardens' plant and wildlife habitat also provide a valuable teaching venue. As explained by a College professor,

> ... the Garden is the only place left on campus where students, faculty, and staff can go to get away from the concrete and rigid plots of monoculture plantings that have taken over the campus, where we can enjoy nature's kindness, bounty, and wonder, relax, sit on the grass, and leisurely explore and experience its mini-climates and ecosystems so carefully nurtured over the past 40 years.

(Administrative Record (AR) 4:1997.)

"The trees on campus may not be put into a tree museum, but trustees for the College of San Mateo did vote ... to pave at least 20,000 square feet of paradise to put up a parking lot ..." Student Nick Carlozzi, who writes music in the "habitat where hundreds of plants — from the ancient Bunya-Bunya, to the rare Fragrant Pitcher Sage — attract wildlife, bees, hawks and herons" explained that "it's a really peaceful place now. A beautiful place.'" (AR5:2610, *San Francisco Chronicle*, May 21, 2011; see AR 2:1835, referencing Joni Mitchell's 1970 song [*Big Yellow Taxi*] and

the refrain, "pave paradise, put up a parking lot…")

The College District treated the proposed demolition of the Building 20 complex and gardens as part of its College of San Mateo/CSM Project approved in 2007 on the basis of a mitigated negative declaration. At that time, the District determined to rehabilitate the structurally-sound complex and to retain the gardens. (AR 1:9-10, 64-66; 3:1687.)

(AR 5:2607 [Portion of the South Garden].)

The District changed course and pursued demolition of the Building 20 Complex and gardens in 2011 to expand the parking lot adjacent to the complex. (AR 1:9-10.) To do so, it prepared an addendum to the 2007 mitigated negative declaration adopted for the CSM project. (AR 1:10-12,

4-213.) Students, faculty members, and community members passionately objected to the newly-proposed demolition project and the associated addendum. (AR 1:459; 2:609-611, 633, 719-721, 738-755, 774-776; 4:1952-1963, 1971-2010, 2012-2020.)

Among other things, the District's unstudied plans to relocate and replant some of the gardens' existing mature plants were decried as impractical and likely to fail. (AR 4:1972.) And while the District touted a large percentage of the garden that it promised to retain, its descriptions were misleading and equated questionable re-plantings with well-established specimens. (Respondents' Brief, pp. 30-35.)

"CEQA compels process. It is a meticulous process designed to ensure that the environment is protected ... the EIR is the heart and soul of CEQA." (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911.) Instead of requiring the preparation of a new environmental document, and without studying any alternatives to its parking needs, the District approved the demolition and parking lot project based on the addendum. (AR 3:1566, 1569-1625.)

As affirmed by the First District Court of Appeal, the District's unstudied approval of the new Building 20 complex demolition project was error and the peremptory writ properly issued. Addenda are not allowed for

new projects. The salutary protections of CEQA mandate environmental review in a public process, considering environmental impacts and feasible mitigations and alternatives that may reduce or avoid adverse impacts to Building 20 and the marvelous Gardens.

Conclusion

This appeal was correctly and thoughtfully decided. The Slip Opinion's treatment of proposed demolition as a new project is well-supported. And even if demolition of the CSM Building 20 complex and gardens were to be considered as a changed project rather than a new project, the addendum was inadequate. Rather than illustrating misuse of codified procedures, the peremptory writ will result in environmental protection and agency accountability within CEQA's required public process. There is no need for this Court's review to secure uniformity of decision or to settle an important question of law.

The Petition for Review should be denied.

Counsel's Certificate of Word Count per **Word**:mac[2011]:

November 25, 2013

Respectfully submitted,

Susan Brandt-Hawley
Attorney for Respondent

Friends of the College of San Mateo Gardens v. San Mateo County Community College District, et al.
Supreme Court Civil No. S214061

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen years and not a party to this action; my business address is P.O. Box 1659, Glen Ellen, CA 95442.

On November 25, 2013, I served one true copy of:

Answer to Petition for Review

X By placing a true copy thereof enclosed in a sealed envelope with prepaid postage, in the United States mail in Glen Ellen, California, to addresses listed below.

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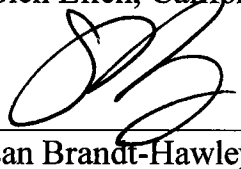
I declare under penalty of perjury that the foregoing is true and correct and is executed on November 25, 2013, at Glen Ellen, California.



Susan Brandt-Hawley