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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

FRIENDS OF THE COLLEGE OF
SAN MATEO GARDENS,

Plaintiff and Respondent,

v.

SAN MATEO COUNTY COMMUNITY
COLLEGE DISTRICT et al.,

Defendants and Appellants.

A135892

(San Mateo County
Super. Ct. No. CIV 508656)

Defendants San Mateo Community College District and its Board of Trustees (District) deviated from its district-wide, three-college-campus master plan¹ with regard to a project on the College of San Mateo campus. This project involved the College of San Mateo’s Building 20 complex (the Building 20 complex), which includes gardens popular with faculty and students. The Master Plan called for renovation of the Building 20 complex, but District decided to demolish it. District stated its new intent in an addendum to a negative declaration.

Plaintiff Friends of the College of San Mateo Gardens (Friends) petitioned the superior court for a writ of mandate, arguing the demolition project violated the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) and seeking to compel District to prepare an environmental impact report (EIR) for the demolition project. The trial court granted the petition and ordered District to comply

¹ A “Facilities Master Plan” (Master Plan) was adopted by the District in 2006.

with CEQA with regard to the demolition project. District contends an addendum was appropriate and was sufficient environmental review of the demolition project. We disagree because the demolition project is a new project not subject to an addendum and requiring additional environmental review. Accordingly, we affirm.

I. PROCEDURAL BACKGROUND & FACTS

The Building 20 complex consists of five components. The first is Building 20 itself, which is described in the record as a small cast-in-place concrete building, dating to 1963, housing one classroom and laboratory facilities. It had been used for floristry and horticultural instruction and some student services. The second component consists of three parking lots with a total of 40 parking spaces. The third and fourth components are a greenhouse containing plant specimens for horticulture and certain science courses, and a lath house used for storage and the cultivation of seedlings.

The fifth component of the Building 20 complex consists of the North and South Gardens. The North Garden is an open area containing perimeter landscaping, a lawn, a walking path, a picnic area, and a circular walkway. The South Garden has two sections: a demonstration garden consisting of ground level planting beds which contain a wide variety of native and ornamental plantings used for instructional purposes, and which are separated by paved walkways; and a landscaped area which includes a semi-mature nonnative *Metasequoia glyptostroboides* (dawn redwood) tree.

In 2006, District adopted the Master Plan for all three of its community college campuses: the College of San Mateo (CSM), Cañada College, and Skyline College. The Master Plan was designed to “set a broad vision” for District’s campuses “for the next thirty years.” The portion of the Master Plan devoted to CSM described several buildings as “requiring some level of modernization or remodel,” including Building 20.

In January 2007, District certified an Initial Study and adopted the 2006 Mitigated Negative Declaration (IS/MND) for the facility improvements at the College of San Mateo project (CSM project). Like the Master Plan, the IS/MND for the CSM project contemplated renovation of the Building 20 complex. The Initial Study states, Building

20 “would be renovated,” and “currently house[d] . . . horticulture[] and student service programs.”

Despite the fact both the 2006 Master Plan and the 2006/2007 IS/MND anticipated renovation of the Building 20 complex, District abandoned renovation and opted for demolition. In May 2011, District issued a notice of determination that it had approved the Building 20 demolition project. It also proposed a CEQA addendum (May Addendum) for the project, which concluded the Building 20 complex was “no longer needed.” Instructional and other functions of the Building 20 complex would be relocated to other campus facilities. Building 20, the greenhouse, and the lath house would be destroyed. The May Addendum stated, “There is a need for additional parking on the east side of the campus where the Building 20 complex is located. . . . The Building 20 complex would be replaced with a parking lot and landscaping.” An additional 125–200 parking spaces would be built. Unspecified numbers of 11 species of plants or trees would be removed or relocated or “replaced with a new plant”—presumably resulting in the destruction of the existing plant.

The May Addendum concluded: “[T]he project changes would not result in a new or substantially more severe impact than disclosed in the 2006 IS/MND. Therefore, an addendum to the 2006 MND is the appropriate CEQA documentation. An addendum need not be circulated for public review but can be included in or attached to the adopted MND.”

The demolition project triggered considerable public controversy. Members of the public, mostly faculty and students, stressed the aesthetic value of the gardens.² Nevertheless, District approved the demolition project and the May Addendum. Friends challenged the approval by filing a petition for writ of mandate (initial mandate petition).

² At a public hearing on the demolition project, a horticulturist described the gardens as a “historic vernacular landscape,” i.e., a landscape that has “evolved through use by the people whose activities shaped it” and “reflects the physical, biological, and cultural character of everyday lives.”

District prepared a revised addendum (August Addendum). The August Addendum reflects District’s decision to rescind the May Addendum in response to Friends’ initial mandate petition and proceed with the August Addendum.

The August Addendum noted funding had not been obtained for the Building 20 complex renovation, and that Building 20 was vacant, in great disrepair, noncompliant with the Americans with Disabilities Act, and known to contain asbestos. “Therefore, instead of renovating the Building 20 complex as analyzed in the 2006 IS/MND, [District] proposes to demolish the Building 20 complex and replace it with parking lot, accessibility, and landscaping improvements.” Demolition of the Building 20 complex buildings “would allow for the expansion of the existing parking lots in the Building 20 complex to accommodate between 140 and 160 additional parking spaces.” This would constitute a three-to-four percent increase in campus-wide parking availability.

The August Addendum points out the 2006 IS/MND for the CSM project contemplated the demolition of 16 buildings, and the new project simply substitutes Building 20 for Buildings 15 and 17 on the list of buildings to be demolished. The August Addendum also stated: “The majority of the garden and landscaped areas included in the existing Building 20 complex would be retained and improved as part of the proposed change to the CSM Project. Over eighty percent . . . of the North Garden would be retained and improved. In the South Garden, approximately forty-five percent . . . of the South Garden would be retained including the [dawn redwood] tree and lawn area surrounding it. The remaining approximately fifty-five [percent] of the South Garden—consisting of the demonstration garden, paved walkways and a portion of the lawn area—would be removed.”

With regard to the aesthetic impact of the proposed demolition project, the August Addendum noted there were “no established, objective criteria for evaluating the aesthetic effect resulting from removal of a portion of the gardens.” As such, “subjective personal opinions regarding the impact on the gardens may vary.” The August Addendum concluded the reduction of the existing garden area in the Building 20 complex, including the demonstration garden, “does not result in a new significant

aesthetic impact.” It would result in a reduction of only less than one-third of one percent of the garden, landscaped, and open space areas on the CSM campus. The remaining garden areas “would be rehabilitated with new walkways and new plantings,” as well as proposed “mini-ecosystems,” which “would enhance the aesthetics of . . . these garden areas.”

In a similar fashion to the May Addendum, the August Addendum concluded: “[T]he project change would not result in a new or substantially more severe impact than disclosed in the 2006 IS/MND. Therefore, this revised addendum to the 2006 MND is the appropriate CEQA documentation. An addendum need not be circulated for public review but can be included in or attached to the adopted MND.”

After public comment, District approved the August Addendum and reapproved the demolition project. Friends filed a new petition for writ of mandate.³ Friends alleged District approved the demolition project without preparing an EIR, in violation of CEQA. Friends alleged, inter alia, the demolition project was “a new project that is not within the scope of the 2006 Facilities Master Plan that provided for [the Building 20 complex’s] rehabilitation and retention,” and District approved the project without adequately analyzing the aesthetic impact of the demolition of the gardens. Friends prayed for the issuance of a peremptory writ of mandate ordering District to set aside its approval of the demolition project and prepare an EIR.

After briefing and oral argument, the trial court granted the petition for writ of mandate. In its judgment granting the petition, the trial court ruled that District “violated [CEQA] in basing approval on an Addendum to the 2006 [MND] for the Facilities Improvement [CSM] Project.” The court found “the demolition project is inconsistent with both the 2006 Facilities Master Plan and the 2006 CSM Project, and the impacts of demolishing the Building 20 Complex and North and South Gardens were not addressed in the 2006 MND.”

³ Presumably, the initial petition was dismissed.

The court issued a peremptory writ of mandate commanding District to “rescind [its] approvals of the . . . Building 20 Complex . . . [d]emolition . . . [p]roject and Addendum.” The writ also recited that “[n]o consideration of project approval may occur without fully complying with the requirements of [CEQA].”⁴

II. DISCUSSION

The purpose of CEQA is “to protect and maintain California’s environmental quality.” (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 106 [fn. omitted].) CEQA requires a public agency to “consider measures that might mitigate a project’s adverse environmental impact, and adopt them if feasible. [Citations.]” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 123.)

Generally, when a public agency proposes to approve or carry out a project it must prepare and certify an EIR if the project may have a significant effect on the environment. (Pub. Resources Code §§ 21080, subd. (a), 21100, subd. (a), 21151, subd. (a); see *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1048 (*Moss*).)⁵

If the agency’s initial study of the project reveals no substantial evidence the project may have a significant effect on the environment, the agency may adopt a negative declaration. (*Center for Sierra Nevada Conservation v. County of El Dorado*

⁴ District complains the trial court’s order lacks specificity. District is the author of its own self-styled predicament.

Following oral argument, the trial court issued a proposed order which only stated the August Addendum “provides inadequate analysis of the change in the project in violation of CEQA, where the Building 20 Complex is now planned to be demolished rather than renovated. Consequently, the Court sets aside all of [District’s] approvals of the demolition of the Building 20 Complex.” District requested clarification of the proposed order. Apparently, this request went unanswered. Friends submitted a proposed judgment containing fairly specific CEQA findings. District revised Friends’ proposed order, and with Friends’ approval the proposed revisions were also submitted to the court. District’s revision *deleted* proposed specific findings, including a finding that the demolition project was a new project and a finding that the August Addendum did not adequately analyze environmental impacts. The trial court signed District’s revised proposed order, which is the language quoted in the text.

⁵ Subsequent statutory citations are to the Public Resources Code.

(2012) 202 Cal.App.4th 1156, 1170–1171 (*Center for Sierra Nevada Conservation*); § 21080, subd. (c)(1); Cal. Code Regs., tit. 14, § 15064, subd. (f)(3).⁶ “[I]f the project has potentially significant environmental effects but these effects will be reduced to insignificance by mitigation measures that the project’s proponent has agreed to undertake, CEQA requires the . . . agency to prepare a mitigated negative declaration.” (*Moss, supra*, 162 Cal.App.4th at p. 1048, citing § 21080, subd. (c)(2) and Guidelines, § 15064, subd. (f)(2).)

We deal here with a purported modification to a project after the initial environmental document, i.e., the 2006 MND, has been adopted. “Where a project for which an EIR or negative declaration has been prepared is later modified or the circumstances under which it is to be carried out change, a subsequent or supplemental EIR or negative declaration may be required.” (*Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1295 (*Save Our Neighborhood*)). Section 21166, which addresses only projects where the initial environmental document was an EIR, provides that a subsequent or supplemental EIR shall be required if substantial changes are proposed in the project, or occur with respect to the circumstances under which the project will be undertaken, which require major revisions to the EIR, or if new and previously unknown information becomes available.

Section 21166 is augmented by Guidelines section 15162, which “imposes the same obligation on a project for which a negative declaration was prepared.” (*Save Our Neighborhood, supra*, 140 Cal.App.4th at p. 1295.) In other words, a subsequent or supplemental EIR need not be prepared for a project for which the agency has adopted a negative declaration unless substantial changes are proposed in the project, or occur with

⁶ California’s CEQA Guidelines are found in California Code of Regulations, title 14, section 15000 et seq. We will henceforth cite them as “Guidelines.” Our Supreme Court “has not decided the issue of whether the Guidelines are regulatory mandates or only aids to interpreting CEQA,” the court instructs us that “[a]t a minimum, . . . courts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA. [Citation.]” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2.)

respect to the circumstances under which the project will be undertaken, which require major revisions to the EIR, or if new and previously unknown information becomes available.

If the changes to the project are not sufficiently substantial to require a subsequent or supplemental EIR, the agency may prepare a subsequent negative declaration, an addendum, or no further documentation. (Guidelines, § 15162, subd. (b).) Of particular interest to the present case, the Guidelines provide: “An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in [Guidelines] Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.” (Guidelines, § 15164, subd. (b).) An addendum need not be circulated for public review or public comment. (See Guidelines, § 15164, subd. (c).)

The August Addendum clearly does far more than make “minor technical changes or additions” to the 2006 Master Plan and the 2006 MND for the CSM project. The addendum changes “renovation” of the Building 20 complex to “demolition” of the complex’s buildings and a substantial portion of the gardens. As was the case in *Save Our Neighborhood*, the latest proposed project “is not a modification of the [initial] project but a new project altogether.” (*Save Our Neighborhood, supra*, 140 Cal.App.4th at p. 1297.) Whether or not a proposed modification is a “new project” is a question of law for the court. (*Ibid.*) We conclude the demolition project is a “new project” that has not been subjected to adequate environmental review, and the trial court correctly ordered District to comply with CEQA and conduct such review.

We realize the typical standard of review in CEQA cases is limited to whether the agency has abused its discretion, by failing to proceed in the manner required by law or reaching a decision not supported by substantial evidence. (See, e.g., *Center for Sierra Nevada Conservation, supra*, 202 Cal.App.4th at p. 1172.) But in the narrow circumstances of the present case, where it is clear from the record that the nature of the project has fundamentally and qualitatively changed to the point where the new proposal is actually a new project altogether, we believe *Save Our Neighborhood*’s standard is

both workable and sound. We also realize *Save Our Neighborhood* was criticized in *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385 (*Mani Brothers*), as vague and undermining the typical deference to agency decisions embodied by the substantial evidence standard. (*Id.* at pp. 1400–1401.) We conclude *Mani Brothers* was too harsh in its criticism of *Save Our Neighborhood*, and at least under the straightforward facts of the present case we can decide, as a matter of law, that the demolition project is a “new project.”

District cites us to several cases in which addendums were used with judicial approval. But those cases did indeed involve minor changes to a project, and not an entirely new project substituted for the initial project which had been environmentally reviewed. But these cases did indeed involve relatively minor changes in the scale or composition of a project, and not an entirely new project substituted for the initial project which had been environmentally reviewed. For example, in *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, the appellate court concluded no supplemental EIR was required where the project under consideration was expanded in scale from 7 percent coverage of the site to 7.6 percent coverage and building heights and parking configurations were modified. (*Id.* at pp. 1545–1546.)

District also resists the characterization of the Building 20 complex demolition project as a separate project, and argues it is only one component of the entire CSM project which can, in essence, be entirely altered with only addendum review. District notes Building 20 is being demolished in the place of Buildings 15 and 17, which were slated for destruction, but will now be renovated. District also argues the *types* of environmental changes—such as parking lot reconfiguration and landscaping alterations—were previously considered in the 2006 MND.

District takes too narrow a view of the concept of a “project.” In general terms, CEQA defines a “project” as “an action which [may cause] either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (Guidelines, § 15378, subd. (a).) Where, as here, an agency adopts a large-scale environmental document, such as the 2006 MND, that does not “focus[]

narrowly on a specific development project,” but “addresse[s] the environmental effects of a complex long-term management plan” (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316), a court can find a material alteration in that plan regarding a particular site or activity to be a new project triggering new environmental review. (See *id.* at pp. 1313–1314, 1320–1321.)

To adopt District’s concept, it would be empowered to change various components of the CSM project at will over the years, with inadequate environmental review. This case focuses on the changed intent with regard to a building complex and its attached gardens—from renovation to substantial destruction. As the trial court held, this is inconsistent with the Master Plan and the MND and amounts to a new project requiring CEQA review.

We decline Friends’ request to order the preparation of an EIR on remand. Such a request is premature. District must change its focus on the demolition project, and view it as a separate, new project rather than a minor or technical amendment to the overall CSM project. It must then evaluate the demolition project, fully and adequately examine potential environmental impacts, and determine whether substantial evidence supports a fair argument that the demolition project may have a significant effect on the environment. If there is such evidence, District would then have to prepare an EIR. (See *San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 389.)

III. DISPOSITION

The judgment is affirmed.

Sepulveda, J.*

We concur:

Margulies, Acting P.J.

Dondero, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.