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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

AGRICULTURE, BUSINESS & LABOR
EDUCATIONAL COALITION OF SAN
LUIS OBISPO COUNTY,

Plaintiff and Appellant,

v.

COUNTY OF SAN LUIS OBISPO,

Defendant and Respondent.

2d Civil No. B233805
(Super. Ct. No. 090135)
(San Luis Obispo County)

In 2009, the County of San Luis Obispo (County) approved by negative declaration a series of amendments to the Framework for Planning included within the Land Use and Circulation Elements of its general plan for both coastal and inland zones. Appellant Agriculture, Business & Labor Educational Coalition of San Luis Obispo County (COLAB) filed a petition for writ of mandate and complaint for declaratory relief in which it alleged that the County approved the negative declaration in violation of the California Environmental Quality Act (CEQA), Public Resources Code, sections 21001, et seq.,¹ because the so-called "Framework Amendments" would have a significant impact on the environment and should, therefore, have been the subject of an environmental impact report (EIR). After a court trial, the trial court entered judgment in favor of the County. We affirm.

¹ All statutory references are to The Public Resources Code, unless otherwise stated.

Facts

In the summer of 2005, the County Board of Supervisors unanimously approved Resolution 2005-166 adopting 11 "Guiding Principles for Smart Growth." In summary, the guiding principles are: 1. strengthen regional cooperation in the formulation and carrying out of land use policy; 2. preserve open space, farmland, natural beauty and critical environmental areas; 3. strengthen and direct development towards existing communities; 4. foster distinctive, attractive communities with a strong sense of place; 5. provide a variety of transportation and land use choices; 6. create a range of housing opportunities and choices; 7. encourage mixed use land uses; 8. create walkable neighborhoods and towns; 9. take advantage of compact building design; 10. make development decisions predictable, fair and cost effective; and 11. encourage community and stakeholder collaboration.

County staff used the principles adopted in Resolution 2005-166 to draft proposed amendments to the Framework for Planning included in the Land Use and Circulation Elements of the County's general plan for both its inland and coastal zones. The proposed "Framework Amendments" were also analyzed in an initial study² which concluded that they could have a significant effect on the environment which would be addressed in a mitigated negative declaration. After this initial study was completed, the proposed Framework Amendments were the subject of planning commission hearings, a lengthy public comment period and hearings before the Board of Supervisors.

As a result of comments from other public agencies and members of the public, the proposed mitigated negative declaration and initial study were revised to clarify that the Framework Amendments "orient planning and development activities to be based on the availability of sustainable resources. [¶] A proposed consistency finding for new development will tie these policies to project review. [¶] A proposed policy to avoid

² An "initial study" is performed to determine whether there is substantial evidence that any aspect of the project may cause a significant effect on the environment and whether, as a result of that determination, an environmental impact report (EIR), negative declaration or mitigated negative declaration must be prepared. (Guidelines for the Implementation of the California Environmental Quality Act (CEQA Guidelines), Cal. Code Regs, title 14, § 15063.)

significant impacts over mitigating them will reduce potential impacts through planning and design and of projects." The revised initial study concluded that the County was not required to produce an EIR prior to adopting the Framework Amendments because "[t]he proposed goals, policies and implementing strategies emphasize that planning activities and development should sustain the capacities of natural resources and adequate services and facilities. They do not create additional growth beyond the existing General Plan."

The revised initial study analyzed the potential environmental impact of the Framework Amendments on 14 categories or issue areas: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, noise, public services and utilities, recreation, transportation, wastewater, water resources and land use. With respect to each category, the revised study concluded the Framework Amendments would have no significant environmental impact because policies and goals adopted as a result of the amendments would not create additional growth, new development would be required to be consistent with policies expressed in the amendments, and the amendments would be as protective, or more protective of the environment than the existing general plan. In an addendum to the revised initial study, the County concluded that the Framework Amendments would reduce greenhouse gas emissions through the encouragement of compact development, efficient land use and transportation, and reduced vehicle miles traveled.

At its meeting on April 28, 2009, the County Board of Supervisors adopted Resolution 2009-136, approving the Framework Amendments and the Revised Negative Declaration. As a consequence, the inland and coastal land use elements of the County's general plan were amended to include the following strategic growth principles: "1. Preserve open space, scenic natural beauty and sensitive environmental areas. Conserve energy resources. Conserve agricultural resources and protect agricultural land. 2. Strengthen and direct development toward existing and strategically planned communities. 3. Foster distinctive, attractive communities with a strong sense of place. 4. Create walkable neighborhoods and towns. 5. Provide a variety of transportation choices. 6. Create a range of housing opportunities and choices. 7. Encourage mixed land uses. 8.

Take advantage of compact building design. 9. Make development decisions predictable, fair and cost-effective. 10. Encourage community and stakeholder collaboration. 11. Strengthen regional cooperation." Each principle is accompanied by a set of policies and implementing strategies designed to support the principle.

Appellants filed their petition for writ of mandate and complaint for declaratory relief. Among other things, they contended the County's revised initial study and negative declaration were inadequate because the administrative record contained substantial evidence supporting a fair argument that adoption of the Framework Amendments would have a significant effect on the environment. Appellants also contended that the failure to prepare an EIR prior to adopting the Framework Amendments would result in improper "piecemeal" environmental review. Appellants sought a writ of mandate compelling the County to vacate its approval of the Framework Amendments until the County prepared and circulated an EIR adequately addressing their environmental impact.

The trial court denied the writ petition because it concluded appellants had failed to carry their burden to prove the administrative record contained substantial evidence supporting a fair argument the Framework Amendments would have a significant effect on the environment. It noted that many of appellants' citations to the administrative record did not actually support their position. "For example, numerous references are made [to a statement in the record] that '[w]ith the proposed amendments . . . , new development is anticipated to create increased demands on water supplies and quality' [Citation.] Petitioner omits the balance of the sentence, however, which concludes as follows: 'new development is anticipated to create increased demands on water supplies and quality only to the extent of their sustainable capacity, which would be less than a significant impact.' " Another example noted by the trial court was appellants' insistence that implementation of the Framework Amendments would lead to increased greenhouse gas emissions. The cited reference, however, "actually points out that [the Framework Amendments are] designed to redirect growth into urbanized areas in order to *reduce* the emission of greenhouse gases from those levels that would otherwise occur." The trial court concluded that, while the

record included criticism of the Framework Amendments, the criticism was ideological and tended to prove nothing more than that anticipated population growth would inevitably impact the environment. The record did not include evidence that the Framework Amendments would increase that inevitable impact. Accordingly, the trial court entered judgment denying the petition for writ of mandate and finding in favor of the County on the complaint for declaratory relief.

COLAB contends the County was obligated to produce an EIR before adopting the Framework Amendments because the amendments will encourage "densification," which will have impacts exceeding those contemplated in the general plan. We are not persuaded.

Standard of Review

CEQA requires County to prepare an EIR whenever it proposes to approve or implement a project that "may have a significant effect on the environment." (§§ 21100, 21151.)³ "If there is no substantial evidence of any significant environmental impact, however, the agency may adopt a negative declaration." (*City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 405.) In evaluating a claim that an agency improperly approved a project by using a negative declaration, rather than preparing an EIR, the trial court applies the deferential "fair argument" test. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 899.) "Under this test, the agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a proposed project may have a significant effect on the environment." (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399-1400.) The trial court's function is to decide whether substantial evidence supported the agency's conclusion as to whether a fair argument of environmental impact could be made. (*Id.* at p. 1399.)

³ In this context, "environment" means, "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.) A "significant effect on the environment" is a "substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project" (14 Cal. Code Regs., § 15382.)

We apply the same test as the trial court. "We independently review the administrative record to determine whether the agency failed to proceed in a manner consistent with the requirements of CEQA. . . ." (*City of Redlands, supra*, 96 Cal.App.4th at p. 405.) "We review the trial court's findings and conclusions de novo and do not defer to the agency's determination, except on 'legitimate, disputed issues of credibility[.]'" (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580-581, quoting *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1603.)

Substantial Evidence

Like any petitioner challenging an agency's decision to proceed by negative declaration, COLAB has the burden to prove, by citations to the administrative record, that a fair argument of environmental impact can be made. (*Porterville Citizens for Responsible Hillside Development, supra*, 157 Cal.App.4th 885, 899.) CEQA and its implementing regulations provide that facts, reasonable assumptions predicated on facts, and expert opinions supported by facts may constitute substantial evidence; argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous factual statements or evidence of social or economic impacts that do not result in physical impacts on the environment may not. (§§ 21080, subd. (c); 21080. 2, subd (c); 14 Cal. Code Regs., §§ 15064, subd. (f)(5), 15384.) " '[I]n the absence of a specific factual foundation in the record, dire predictions by non-experts regarding the consequences of a project do not constitute substantial evidence.' " (*Porterville Citizens for Responsible Hillside Development, supra*, 157 Cal.App.4th at p. 901.)

Discussion

It is COLAB's burden to prove, by citations to the administrative record, that substantial evidence exists to support a fair argument that the Framework Amendments will have a significant environmental impact. (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1348-1349.) COLAB's argument on appeal flounders on this first criterion: its opening brief contains no citations to evidence in the administrative record. Its brief discusses each issue area addressed in the revised initial study, from Aesthetics to Wastewater, but does not reference any portion of the administrative record

containing factual information or qualified expert opinion to support its claim of potential significant impact. Accordingly, we reject COLAB's contentions because they are not supported by any substantial evidence.

We further note that, in many instances, COLAB mistakenly represents the content and potential effect of the Framework Amendments. For example, COLAB complains that the Framework Amendments might result in significant environmental effects because they mandate "changing building height limits, parking requirements, lot sizes, lot coverage, setbacks, resident density, street width, infilling current urban areas, more compact building and neighborhood design, provisions for public transportation corridors, intermingling residential with commercial uses, and other changes" However, as the negative declaration and revised initial study plainly state, the Framework Amendments "do not propose any changes to plan designations or zoning." They contain no language altering the County's parcel size, density, or building intensity criteria, nor did they amend any portion of the County's Land Use Ordinance or change any zoning designations. As the Negative Declaration and Initial Study point out, the amendments "do not create additional growth beyond the existing General Plan." Instead, the Framework Amendments and their implementing strategies function as general principles and policies to guide future land use decisions in the county. At most, the implementing strategies obligate the County to consider future regulations that would address such issues as parking, height limits, lot coverage, minimum lot size, minimum densities and setbacks. They cannot by themselves operate to increase density in any portion of the County or to bar or mandate any particular development.

COLAB complains the County's Negative Declaration and Initial Study employ circular reasoning: "since Strategic Growth by its very nature does not result in significant environmental impact, any impacts resulting from implementation of Strategic Growth principles will be insignificant." But that is not the County's reasoning. The County's revised initial study concluded the Framework Amendments would have no significant impacts because the proposed policies "emphasize maintaining sustainable resource capacities as the limiting basis for carrying out other projects." In addition, the

County concluded that the policies and goals included in the amendments are protective of the environment, encourage future development to avoid rather than mitigate potential impacts, and require that future proposed development be consistent with the policies expressed in the amendments. Thus, in effect the County found that the Framework Amendments and their implementing strategies would be as protective, or more protective of the environment than the existing general plan and could not, therefore, create significant environmental impacts. COLAB highlights no evidence in the administrative record challenging these conclusions.

COLAB's brief on appeal contains a separate argument for each of the 14 issue areas addressed in the revised initial study. In our view, addressing each of these arguments individually would only lengthen this opinion. Each argument fails for the same reasons: COLAB does not reference any evidence in the administrative record supporting its position; it also mistakenly represents both the content and the potential effect of the Framework Amendments and their implementing strategies. For these reasons, we agree with the trial court's conclusion that COLAB has failed to demonstrate the Framework Amendments are likely to result in any significant environmental impacts.

Conclusion

The judgment is affirmed. Respondent shall recover its costs on appeal.
NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Martin J. Tangeman, Judge

Superior Court County of San Luis Obispo

John F. Hodges, for Appellant.

Warren R. Jensen, County Counsel, County of San Luis Obispo, Timothy McNulty, Chief Deputy County Counsel and Whitney G. McDonald, Deputy County Counsel, for Respondents.