

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 01/39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 10/12/2023

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the Court day preceding the hearing, notice is given of an intent to argue the matter as set forth herein. Counsel or self-represented parties must email Department 01/39 to request argument, cc'ing opposing counsel and/or self-represented parties. All affected counsel and self-represented parties must be notified of any intent to argue by no later than 4:00 p.m. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

Department 01/39's email address is: dept39@contracosta.courts.ca.gov

APPEARANCES CAN BE BY ZOOM OR IN PERSON. IF YOU INTEND TO APPEAR IN PERSON YOU MUST STATE SO IN YOUR EMAIL RE: INTENT TO ARGUE

CourtCall is not an option for law and motion matters due to voice quality issues.

The following link is to be utilized for your Zoom hearing:

<https://www.zoomgov.com/j/1613754153?pwd=Vnl5aU5JRkhxeXVIN0FSS21WKzVaUT09>

Meeting ID: 161 375 4153

Passcode: 282939

1. 9:00 AM CASE NUMBER: N22-1080
CASE NAME: COMMUNITIES FOR A BETTER ENVIRONMENT VS. COUNTY OF CONTRA COSTA
*HEARING ON MOTION IN RE: ORDER ALLOWING OPERATION OF RODEO RENEWED PROJECT
FILED BY: PHILLIPS 66
TENTATIVE RULING:

Appearances required.

Phillips 66 Company has filed a motion asking the Court to allow it to operate of the Rodeo Renewed Project while the County acts to comply with the Court's writ. The Court has considered the parties' briefs and declines to exercise its discretion to allow Project operations while the County reconsiders the CEQA issues. Therefore, Phillips' motion is denied.

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2. 9:00 AM CASE NUMBER: N22-1080

CASE NAME: COMMUNITIES FOR A BETTER ENVIRONMENT VS. COUNTY OF CONTRA COSTA

*HEARING ON MOTION IN RE: MOTION TO VACATE JUDGMENT AND WRIT (ADVANCED FROM
10/19/23 TO 10/12/23 FROM 9/14/23 EX PARTE HEARING)

FILED BY:

TENTATIVE RULING:

Appearances required.

Petitioners filed a motion to vacate the judgment and writ in this case pursuant to Code of Civil Procedure sections 663 and 663a. Petitioners argue that the judgment is inconsistent with the Court's statement of decision because it allows the Project's Land Use Permit to remain in place and fails to enjoin Project operations pending the County's compliance with CEQA.

"CEQA, through the Public Resources Code, allows a trial court to leave project approvals in place. After a court finds a CEQA error, the court has three options: void a decision in whole or part; suspend certain project activities; or take other specified actions. (Pub. Resources Code, § 21168.9, subd. (a).) CEQA does not require the court, on finding CEQA error, to void all project approvals. The plain language of section 21168.9 grants the trial court the discretion to leave project approvals in place. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 286–290.)" (*Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 205.)

The Court's intention when issuing the statement of decision and judgment was to allow for construction activities, but not Project operations, while the County reconsider the CEQA issues. The Court has considered the parties' papers for both this motion and Phillips' motion and reaffirms its decision. The Court must still consider whether there is any conflict between the statement of decision and the judgment.

In its statement of decision, the Court ordered the County to set aside its certification of the EIR because the piecemealing and cumulative impact issues affected the entire analysis of the Project. The Court went on to explain that "[t]he CEQA violations found here relate to Operation of the Project, but not to construction of the Project. Therefore, the Court will not issue an injunction preventing Phillips from continuing its construction activities while the County reconsiders these issues." (SOD at 29.)

The judgment in this case states that "[t]he Court exercises its equitable discretion under Section 21168.9 to allow, and issues no injunction preventing, the construction of the Project to proceed during the Respondents' performance of actions taken to comply with the writ of mandate." (Judgment at 3.)

The Court finds that the judgment allowing construction activities is consistent with the

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Court's statement of decision. In both instances the Court found that it would not enjoin Phillips from engaging in construction activities related to the Project. Furthermore, because the land use permit allows for both construction and operation of the Project, the Court decided not to order the County to set aside the permit since setting aside the permit would conflict with the Court's decision to allow construction while the County reconsiders the CEQA issues.

There is, however, a potential conflict between the statement of decision and the judgment because the Court allowed the land use permit to remain in place but did not specifically enjoin Project operations. Therefore, the Court grants Petitioners' motion to vacate the judgment and to issue a new judgment that specifically enjoins Project operations until further order of the Court.