SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL COURTHOUSE

TENTATIVE RULING

HEARING DATE: 4/2/2026

JUDICIAL OFFICER: WENDY M. BEHAN

CASE NO.: 25CU021150C

CASE TITLE: Free Sacred Trinity Church vs The City of San Diego

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Petitioner's evidentiary objections are overruled.

Petitioner Free Sacred Trinity Church brings a Petition for Writ of Mandate regarding its proposed housing development. Petitioner seeks a Writ of Mandate pursuant to Code of Civil Procedure section 1085 directing Respondent City of San Diego ("the City") to issue ministerial approval of Petitioner's housing development on the specified property.

Petitioner finds authority for its petition in SB 4, California's Housing on Faith and Higher Education Lands Act ("the Act"). The Act allows certain entities, including religious institutions such as Petitioner, to obtain approval of a qualified housing development project as "a use by right." (Cal. Gov't Code section 65913.16(c).)

The court understands the relevant procedural history as follows: on May 8, 2024, Petitioner submitted initial materials to the City by way of the City's "Preliminary Review Questionnaire" service ("PRQ"). The parties characterize this process differently. Petitioner states in its Petition for Writ that this submission was "an initial application for streamlined approval." (See ROA 2, hereinafter "Petitioner's Writ," at ¶ 15.) The City's materials identify the PRQ process as a voluntary service offered before formal submittal to the City where project proponents can obtain answers to determine project feasibility and how to submit a project for review successfully.

Petitioner's initial submission stated the project was to "provide 360 affordable apartment units spread evenly across 3 separate buildings (120 units each) on each site. The buildings will be between 5-6 stories, under a 70' height maximum and include 245 parking stalls. The project would be completed in 3 phases, each corresponding with the construction of 1 of the 3 buildings and its associated parking." (See ROA 13, hereinafter "Petitioner's Exhibits Volume 1," at Exhibit 1, pg. 1.) Petitioner sought answers to eight questions from "Planning Review." The City provided feedback in the form of a "Project Issues Report" on June 14, 2024. The findings highlighted what the City found to be various issues with the project as described in the PRQ, including the site's location in various planning areas, including a Very High Fire Hazard Severity Zone, and other overlays indicating conservation concern, as the entire site is comprised of Environmentally Sensitive Lands with sensitive vegetation and steep hillsides. The City also noted that an Open Space Easement covers the large majority of the site. (See Petitioner's Exhibits Volume 1, Exhibit 2.)

At that point, the parties continued to communicate over email and had an in-person meeting on July 2. Petitioner transmitted more documents to Respondent on July 3, including a Cultural Resource Survey, a Phase I Environmental Survey, a Preliminary Hydrology Report, and Soil and Geologic Reconnaissance.

On July 18, 2024, Petitioner transmitted a letter to the City. (See ROA 14, hereinafter "Petitioner's Exhibits Volume 3," at Exhibit 8.) The letter states that "on May 8, 2024 [Petitioner] submitted under SB 4 a 'use by right' request for streamlined approval of a 150-unit affordable housing project…Our project and [Petitioner] meet all SB 4 standards." Various documents are attached, including an executive summary and blueprints now depicting a 150-unit building with 127 parking spaces. (*Id.* at pg. 12-14.) In response, the City indicated ongoing issues with an Environmental Impact Report, as many documents submitted by Petitioner, such as the Environmental Impact Report, Preliminary Hydrology Report, and Soil and Geologic Reconnaissance (Petitioner's Exhibits 14, 6, and 7) are related to a previous and never-realized office building project, and are from 2010, 2005, and 2003, respectively. Upon contact from Petitioner's counsel insisting upon SB 4's application to the project's ministerial approval, the City stated it had never received a streamlined ministerial application.

To trigger the streamlined ministerial approval process sought by Petitioner, an applicant is to submit a complete housing development project application that satisfies certain criteria. The Act makes repeated reference to this: "(1) 'Applicant' means a qualified developer who submits an application for streamlined approval pursuant to this section…(2) 'Development proponent' means a developer that submits a housing development project application to a local government under the streamlined, ministerial review process pursuant to this chapter…(c) Notwithstanding any inconsistent provision of a local government's general plan, zoning ordinance, or regulation, upon the request of an applicant, a housing development project shall be a use by right, if all the following criteria are satisfied…" (Gov't Code 65913.16 subd. (b)(1)-(2) and (c).)

The "following criteria" that must be met are what make the project a *qualifying* project. There are 15 requirements outlined in section 65913.16(c)(1)-(15), including land ownership and location requirements, which requires a showing of compliance with certain cross-referenced sections of Gov't Code section 65913.4 (these subsections include concerns as to high fire risk zones, environmentally protected areas, and open space easements); industrial use restrictions; affordability and labor requirements; environmental and safety requirements; and additional compliance requirements.

There are two possible submissions which could constitute a housing development project application. The first is the May 8 submission to the City's PRQ process. The second is the July 18 letter. The reason the Court is concerned with what constitutes a housing development project application is because, in order for Petitioner to avail itself of relief in the manner sought, i.e., for the Court to order Respondent to ministerially approve Petitioner's project, administrative remedies must have been exhausted. The Court cannot order Respondent to ministerially approve a project that has not been rejected, or to approve a project that was never contained in a qualifying application.

There are two issues the Court sees with the May 8 PRQ submission, which carries over to the interplay between the May 8 PRQ submission and the July 18 letter, and ultimately to the July 18 letter on its own. First, the Court finds an impermissible incongruence between the May 8 and July 18 plans, and a lack of clarity in what Petitioner seeks to be approved in the face of what is, practically speaking, two different project proposals. The record clearly reflects the May 8 submission to be for a project containing 360 affordable apartment units spread evenly across 3 separate buildings (120 units each) on each site, with 245 parking spaces. The July 18 letter describes a substantially different project: one 150-unit building with 127 parking spaces. Still, in the Petition for Writ, the motion, and in the July 18 letter, Petitioner refers to the May 8 submission as the initial application for streamlined approval. This is challenged by a review of the record, which indicates that a part of the PRQ feedback received from the City regarded that the May 8 plan as proposed built substantially

upon the Open Space Easement on the parcel, and Petitioner's July 18 plan was in part to show that the site, in the smaller one-building form, was no longer on the Open Space Easement. However, Petitioner seeks approval of the May 8 submission, despite substantially changing the submission in the July 18 letter, to correct what appeared to be mutual agreement regarding an issue with the plan. Petitioner does not address this inconsistency meaningfully, and repeatedly seeks approval of its initial May 8 proposal as the streamlined development application, without ever identifying that a new submission was being made.

Second is the issue of whether either submission can constitute a complete application. The Court does not find that Petitioner's May 8 submission to the PRQ process was an application for streamlined approval because it cannot be said that the submission itself, nor the follow-up materials, demonstrate compliance with the Act's various requirements that render an application necessarily "complete" and in turn eligible for ministerial approval. This is partially because of the nature of the PRQ process, which is described to applicants clearly as a preliminary consultation process, resulting in feedback from the City, but which does not result in an agency's final decision.

Respondent argues Petitioner was to submit a notice of intent pursuant to Gov't Code section 65913.4, subds. (b)(1)(A)(i) before the City was to consider a submission as one for a streamlined ministerial approval. This section states that "[b]efore submitting an application for a development subject to the streamlined, ministerial approval process described in subdivision (c), the development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent shall be in the form of a preliminary application that includes all of the information described in Section 65941.1…" Subdivision (c) as referenced describes the same process for ministerial approval as the Act, i.e., if there is a determination that a submitted development is consistent with objective planning standards, the local government shall approve the development. Section 65941.1 states that an application for a housing development project shall be deemed to have submitted a preliminary application upon a showing of various factors, including: location, parcel numbers, existing uses, major physical alterations to the property, a site plan, the proposed land uses by number of units and square feet, parking spaces, sources of pollutants, species of special concern, whether the property is located in a high fire hazard zone or other special areas, historical or cultural resources on the property, the number of proposed below market rate units, bonus units and incentives, and the location of any recorded public easement, among others. Housing development project is ultimately defined broadly, including projects that involve no discretionary approvals or mixed discretionary approvals, proposals to construct a single dwelling unit, or only residential units, or mixed-use developments. (Gov't Code section 65905.5(3)(A)-(C); 65589.5(2)(h)(2)(A)-(B).) Petitioner argues in reply that a notice of intent is not required, because section 65913.16 adopted various portions of 65913.4, but does not include express language as to its "notice of intent" requirement, and expression of some parts of a statute implies the exclusion of others. However, the court does not see how Petitioner's project, to its mind, is not an application for a housing development subject to the ministerial approval process, or otherwise a housing development project with no discretionary approvals for residential units as defined by the Code.

In any event, while Petitioner is generally correct that there is not necessarily a required "format" that an application must take or be submitted through, it is logically imperative that the submission to the City contains all information required before the City's duty to issue ministerial approval is triggered. It is clear to the court that what was submitted to the City does not contain the requisite information to

be a notice of intent or a complete application, as the above-discussed factors (of which there is general overlap) are not addressed completely in the PRQ submission, nor in the July 18 letter.

It is also true that these factors are generally addressed in Petitioner's Writ of Mandate (See Petitioner's Writ at ¶ 31-56.) However, for Petitioner to show an exhaustion of administrative remedies, it is necessary to show that the complete application was rejected, and without a complete application presented to the City, with all necessary requirements addressed and accounted for, it cannot be said that any materials submitted to the City constituted the plans for a project actually qualified for ministerial approval and were therefore wrongfully rejected. By way of example, the City takes issue with Petitioner's lack of compliance with Code section 65913.4(a)(6)(D), which states that a development cannot be on a site that is "[w]ithin a very high fire hazard severity zone," without a showing that the site has "adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development…" In response to the City's raising of this issue, Petitioner states in its reply that the Writ itself and an accompanying declaration demonstrate the project's compliance with fire hazard mitigation measures, but points to nowhere in the submitted materials, which Petitioner claims constitute a complete application for streamlined ministerial approval, that demonstrated to the City at its time of apparent review that there was compliance with fire hazard mitigation measures. There are other issues as well: the Open Space Easement and the parcel's potential status as a habitat for protected species are both pointed to by the City. Petitioner argues as to the merit of these positions, but to the court, Petitioner does not make a showing that these issues were ever actually addressed within the materials submitted themselves, which were supposed to constitute an application entitled to ministerial approval.

This illustrates as well why this court does not find futility of administrative remedies. Petitioner argues that "[t]he Church was not required to submit an application that the City had already stated it would deny." (See ROA 23, hereinafter "Petitioner's Reply" at p. 4:11-12.) The futility exception is "extremely narrow," and to come within it requires a sort of inevitability that refusal is certain or nearly certain. (*Black v. City of Rancho Palos Verdes* (2018) 26 Cal.App.5th 1077, 1089, quoting *Calprop Corp. v. City of San Diego* (2000) 77 Cal.App.4th 582, 593-594.) The court does not agree that Petitioner has yet presented a meaningful application that has been thoroughly rejected and does not agree that Petitioner has made a showing that refusal is nearly certain considering what the Court sees to be significant issues with what has actually been initially presented to the City for review. (*Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30, 39-40; *Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 256.)

With this finding, the Court does not ultimately reach the merits of the project's compliance with Government Code Section 65914.4, subds. (a)(6)(B)-(K) or its compliance with what the City presents to be its objective standards. Petitioner's Petition for Writ of Mandate to direct Respondent to approve the Petitioner's housing development project is DENIED for failure to exhaust administrative remedies. The court will hear from the parties as to the remaining declaratory relief action.