

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/19/21 TIME: 1:30 P.M. DEPT: E CASE NO: CV1701913

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK:

<p>PETITIONER: COMMUNITY VENTURE PARTNERS</p>	
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and

<p>RESPONDENT: MARIN COUNTY OPEN SPACE DISTRICT</p>	
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NATURE OF PROCEEDINGS: NOTICE OF MOTION – AND MOTION TO DISCHARGE WRIT [RESP] MARIN COUNTY OPEN SPACE DISTRICT

RULING

The motion for order discharging the peremptory writ of mandate issued in this matter on May 2, 2018, as modified by the Court of Appeal’s decision in *Community Venture Partners v. Marin County Open Space Dist.* (Jan. 24, 2020) Case No. A154867, by respondent Marin County Open Space District (the “District”) is granted. The court finds that the District has satisfied its obligations pursuant to the writ.

I. PROCEDURAL AND FACTUAL BACKGROUND

This action involved the process by which the District evaluated and approved certain proposed improvements and the allowance of bicycle use on the Bob Middagh Trail in Mill Valley (the “Project”). Petitioner Community Venture Partners (“Petitioner”) filed a petition for writ of mandate seeking to set aside the District’s approval of the Project based on a violation of the procedures contained in the California Environmental Quality Act (“CEQA”) (Pub. Res. Code § 21000 *et seq.*) for failure to assess the impact of the physical changes to the environment that would affect the safety, noise, wildlife viewing, aesthetics, recreational and cultural values of existing users, and for failure to consider alternatives and mitigation measures prior to granting its approval of the Project. In approving the Project, the District issued a Notice of Determination on May 11, 2017, summarizing its conclusions and further advising that the filing of the notice “starts a 30-day statute of limitations on court challenges to the approval under CEQA,” triggering Petitioners to file this writ petition two weeks later, on May 26, 2017. (See Declaration of Brandon Halter, Exh. C, Judgment and Order Granting Petition for Writ of Mandate, Exh. A, p. 9 (“Ruling”).)

Additionally, Petitioner sought mandamus relief, pursuant to Code of Civil Procedure section 1085, based on the District's alleged violation of its internal rules governing the evaluation of proposals related to the Middagh Trail. Petitioner complained that the District failed to "score" certain project proposals in violation of the District's rules in its Road and Trail Management Plan ("RTMP"), which required a six-step decision-making process for potential road and trail projects submitted by the public.

This court granted both the CEQA petition and the mandamus relief requested. However, the Court of Appeal reversed the portion of the trial court judgment that found the District had violated CEQA by approving the Project and affirmed the grant of mandamus relief under Code of Civil Procedure section 1085.

In its opinion as to the mandamus petition pursuant to Code of Civil Procedure section 1085 (the "Writ"), the Court of Appeal held that "the District's failure to 'score' certain project proposals violated the District's rules in the RTMP relating to evaluation of proposals." (Court of Appeal Opinion, 1/24/20 ("COA Opinion"), p. 30, Exh. E to the Halter Decl.) It opined that, "[t]he trial court did not err in granting the writ, as it correctly concluded that some of the unscored proposals were in fact scoreable based on the RTMP's own methodology for evaluating proposals." (*Id.* at p. 32.) The Court of Appeal further found that by failing to score certain proposals that met its criteria for competing in the evaluation process, the District failed to adhere to its own rules governing the assessment of project proposals, amounting to an abuse of its discretion. (*Ibid.*)

The District now requests that the Writ be discharged and the case be closed, asserting that it has fully complied with the Writ by scoring the unscored proposals at issue.

II. DISCUSSION

A. The District Was Not Required to Set Aside Its Notice of Determination Approving the Middagh Trail Improvement Project

In its initial ruling, this court found, and the Court of Appeal affirmed, that the District failed to properly score several project proposals for the Middagh Trail received from individuals and organizations which advocated either no project/no change in use on the Middagh Trail or some changes, without change in "use." The court was persuaded that such proposals were capable of being scored and/or if the proposals were equivalent to baseline (e.g. a proposal with absolutely no change), then an explanation regarding the decision not to "score" the proposal was required. This would allow the unscored proposals to be included in the reprioritized list of trail projects considered in proposed budget requests. (Halter Decl., Exh. C, Ruling p. 19.)

Petitioner argues that the District was required to set aside its Project approval and "wrongly assumes it may discharge the Writ by purportedly 'scoring' old, no-longer relevant proposals submitted in 2015 for trail improvements without instead considering the *up-to-date current proposals* for trail improvements in the Alto Bowl Preserve trail system that have been submitted

since trails were allowed to be reconstructed pursuant to the District's initial project approval." (Oppo., p. 2:8-12, emphasis in original.)

The court's order on the Writ required the District to set aside its Notice of Determination approving the Middagh Trail Improvements Project as related to the CEQA claims. (Halter Decl, Exh. C, Ruling, p. 20.) The Notice of Determination was a result of the CEQA-specific procedural step notifying the public that the District approved the Bob Middagh Trail and Gasline Trail Improvements. (Halter Decl, Exh. C, Ruling, p. 9.) The Notice of Determination further advised of the 30-day statute of limitations on court challenges to the approval under CEQA. (*Ibid.*) Pursuant to the Court of Appeal opinion, the District was not in violation of CEQA and thus not required to set aside its Notice of Determination approving the Middagh Trail Improvements Project. (Halter Decl., Exh. E, COA Opinion p. 30.) Thus, the District is not required to do so here.

Additionally, neither this court's opinion nor the Court of Appeal opinion suggests that the District is required to evaluate "up-to-date current proposals" for trail improvements. The requirement of the District to "score" the unscored proposals was limited to those proposals raised in the Writ and modified by the Court of Appeal in its opinion.

B. The District Has Complied with the Writ

To comply with the court's ruling and in accordance with the RTMP, the Declaration of Resource Specialist Jason Hoorn evidences the steps taken by the District to evaluate the proposals implicated. Although this court identified five proposals that had not been scored and the Court of Appeal references at least one additional proposal not identified by this court, Mr. Hoorn, along with the assistance of other District employees, located one *additional* proposal not identified in either opinion, but that fits "the criteria for a proposal that needed additional scoring analysis under the court's ruling." (Hoorn Decl. ¶ 4.) Thus, Mr. Hoorn scored the seven proposals according to the requirements of the RTMP and provides this court with the results and analysis supporting the scoring of the same. (Hoorn Decl. ¶5, Exh. A.) Mr. Hoorn ultimately integrated the proposals that would yield a net reduction, or no net increase, to the baseline of biophysical impacts, and that enhance visitor experience and safety, into the District's list of potential road and trail projects to compete for funding with other proposals and District priorities, as required by the RTMP. (Hoorn Decl. ¶¶ 6-7; see also, Halter Decl., Exh. C, Ruling, p. 19, citing to 67 AR p. 3156-3157.)

The court finds that the District has demonstrated its compliance with the remainder of the peremptory writ of mandate issued on May 2, 2018 and modified by the Court of Appeal's decision on January 24, 2020, and is discharged.

All parties must comply with Marin County Superior Court Local Rules, Rule 1.10(B) to contest the tentative decision. Parties who request oral argument are required to appear remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 1.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 1.11.

The Zoom appearance information for February 19, 2021 is as follows:

Meeting ID: 934 1115 8610

Passcode: 009894

<https://zoom.us/j/93411158610?pwd=NzFmNWtRS3FqUmxnMlFhbUdtQnJWZz09>

If you are unable to join by video, you may join by telephone by calling (669) 900-6833 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marincourt.org/>