

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 09/25/2023

TIME: 09:30:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Gregory W Pollack

CLERK: Terry Abas

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: D. Divalerio

CASE NO: **37-2022-00050853-CU-PT-CTL** CASE INIT.DATE: 12/19/2022

CASE TITLE: **Petition for Normal Heights Community Development [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Petitions - Other

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**EVENT TYPE:** Motion Hearing (Civil)

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**APPEARANCES**

Julie M Hamilton, counsel, present for Petitioner(s).

Jana Mickova Will, counsel, present for Respondent(s).

Rebecca L Reed, counsel, present for Interested Party(s).

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The Court orally advises the parties of its tentative ruling, after which oral argument is conducted. Upon completion of oral argument, the Court (1) makes the following Order, (2) enters the date of this hearing for the following Order, and (3) gives Notice of Entry of the following Order:

**RULING AFTER ORAL ARGUMENT:** The Court rules on petitioner Normal Heights Community Dev. Corp.'s (Petitioner) petition for writ of administrative mandamus (Petition) as follows:

The Court's ruling will serve as the Court's Statement of Decision pursuant to California Rules of Court, rule 3.1590.

*Requests for Judicial Notice.* The parties' requests for judicial notice are granted.

Petitioner is represented by Julie M. Hamilton.

Respondent City of San Diego (City) is represented by Jana Mickova Will of the Office of the City Attorney. Real Party in Interest INI Greenfield, MC (RPI) is represented by Rebecca L. Reed of Procopio, Cory, Hargreaves & Savitch, LLP.

Petitioner challenges the City's ministerial approval of a 175-unit, 83.33' high mixed-use project known as the Mars Project on Adams Avenue in the San Diego community of Normal Heights (Administrative Record (AR) 822.)

The Court has reviewed the record in light of the parties' briefs, oral arguments and the applicable law and concludes the Petition should be denied for the reasons stated below.

*Standard of Review.* The parties agree that that the act being challenged was ministerial and thus subject to review under Code of Civil Procedure section 1085 (Section 1085). A ministerial duty subject to a cause of action in mandamus, is an act that a public officer is obliged to perform in a manner required by law when a given set of facts exists. (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5<sup>th</sup> 470, 495.) The parties also agreed at oral argument that the Court must determine if the city's action was "arbitrary, capricious or entirely lacking in evidentiary support, or whether the City failed to conform to procedures required by law. (*Western Cal., Ltd. v. Dry Creek Elementary School Dist.* (1996) 50 Cal.App.4<sup>th</sup> 1461, 1492.) When determining whether an agency has correctly interpreted a statute, courts give weight to the agency's construction. (*Gann v. Acosta* (2022) 76 Cal.App.5<sup>th</sup> 347, 354.)

The first issue is whether the Mars Project qualifies for Complete Communities Housing Solutions (CCHS).

Petitioner makes two principal arguments: (1) the Mars Project does not meet the requirements under SB 330 and (2) the Mars Project was not located in a Transit Priority Area at the time of preliminary review or when the RPI applied for a building permit.

As to SB 330, it vests "housing development projects" with enhanced streamlining and vesting opportunities in order to facilitate increased building of residential units and to protect existing residential units within California. (Gov. Code, §65589.5(a)(2).) It also provides a preliminary application process whereby an applicant for an eligible housing development may secure a vesting opportunity to allow for the project's continued review by the lead agency under ordinances, development regulations, policies, standards and fees in effect at the time the SB 330 preliminary application "deemed complete." (Gov. Code, §§65589(o)(1), 65941.1.) To be deemed complete, the preliminary application must include specific criteria listed in Government Code section 65941.1(a)-(c). After the preliminary application is deemed complete, the applicant has 180 days to submit "an application for a development project that includes all of the information required to process the development consistent with Sections 65940, 65941 and 65941.5." (Gov. Code, §65941.1(d)(1).)

Here, the Mars Project was properly deemed complete on July 28, 2021, when the City determined that it met the specific criteria listed in Government Code section 65941.1. On December 14, 2021, a date within the 180-day period to submit an application for a development project pursuant to Government Code section 65941.1 subd. (d), the RPI submitted a grading permit application to the City. Notably, Government Code section 65927 defines "development" to include, among other things, "*grading, removing dredging, mining or extraction of any material.*" (Italics added.) Furthermore, Government Code section 65941.1 subd. (d)(1) does not, as noted above, specify that the submittal must be a building permit. Furthermore, the RPI pointed out that the administrative record shows that the documentation submitted with the grading permit application was extensive and allowed the City to assess whether the project at that point in time differed significantly than what was proposed in the preliminary application. (See *e.g.*, AR 285-357.) Thus, Petitioner's argument that grading permit was insufficient and that the RPI should have filed a building permit instead of grading permit fails.

As to the Transit Priority Area (TPA), it is defined in San Diego Municipal Code (SDMC) section 113.0103 as "the area defined in California Public Resources Code Section 21099,...or an area within one-half mile of a *major transit stop* that is existing or planning, if the planned *major transit stop* is

scheduled to be completed within the planning horizon included a Transportation Improvement Program." (Italics added.) SDMC section 113.0103 also defines a "major transit stop" to be "a site as defined in California Public Resources Code section 21064.3,...or a site that contains an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods."

The City's CCHS offers an opt-in incentive program intended to assist the City in meeting its goals for increased affordable housing by incentivizing the construction of housing in multi-family and mixed-use commercial areas served by transit. (City Ord. No. O-21275.) It is intended to streamline the development process and remove regulatory barriers to housing construction where possible. In order to benefit from the CCHS, the development project must be located within a TPA. Projects that qualify under CCHS are processed with ministerial review unless site-specific conditions such as impacts to environmentally sensitive lands or historical resources or a coastal development permit warrant a discretionary approval. (SDMC, §143.1010(i)(3).)

Here, the City relied the San Diego Association of Government's (SANDAG) 2015 TPA Map to determine that the Mars Project lied within the TPA. The 2015 Map upon which the City relied is the 2035 Revenue Constrained Transit Network shows a Rapid transit route (Rapid Route 11) and Local route bus service (Local Route 11) located along Adams Avenue (AR 1995-1996.) Both these routes had a frequency of service of less than or equal to 15 minutes during peak commute times under the 2015 Regional Transportation Plan (RTP). (SDMC, §113.0103; AR 2613.) The combination of Rapid Route 11 and Local Route 11 bus service qualified the transit stop at 35<sup>th</sup> and Adams Avenue as a major transit stop such that any area within one-half mile of it was within the TPA under the laws in effect on July 28, 2021, the date the Mars Project vested under SB 330. Notably, Brian Lane, a senior transit planner for SANDAG disproved Petitioner's Seth Torma's contention that Rapid Route 11 was a replacement for Local Route 11. (AR 576-581; 1591-1595.) Thus, the Court finds that it was not arbitrary or capricious for the City to conclude that the Mars Project lied within a TPA and that it was thus entitled to the incentives provided by the CCHS. Finally, since the Mars Project vested in July 2021, SANDAG's update to its RTP in December 2021 irrelevant for the purposes of said Project.

The second issue is whether the Mars Project is subject to the California Environmental Quality Act (CEQA).

The Court notes that Petitioner conceded that the City's action was ministerial. (Reply, p. 2.) Ministerial projects are exempt from CEQA. (Pub. Res. Code, §21080(b)(1)' CEQA Guidelines, §15369; *Mission Peak Conservancy v. State Water Resources Control Bd.* (2021) 72 Cal.App.5<sup>th</sup> 873.)

The third issue is whether the administrative record was adequately prepared.

Petitioner contends that the administrative record prepared by the City is disorganized and deficient. However, both the City and the RPI note that Petitioner failed to raise this argument when the City circulated a draft of the administrative record or at any time prior to the filing of its opening brief. Thus, the Court finds that the Petitioner waived the issue. Moreover, at oral argument, Petitioner's counsel conceded that despite the disorganized administrative record, she was able to locate all necessary evidence. *No harm, no foul.*

The RPI is directed to prepare the Judgment.

**IT IS SO ORDERED.**

*G. W. Pollack*

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Judge Gregory W Pollack