

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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LOS ANGELES
SUPERIOR COURT

COMMUNITY ALLIANCE FOR)
OPEN SPACE, ETC.)
Petitioner)
)
vs)
)
CITY OF LOS ANGELES, CITY)
COUNCIL OF LOS ANGELES,)
ET AL)
Respondents)
_____)

CASE NO. BS127621

**COURT’S RULING ON MOTION TO SUPPLEMENT AND PETITION FOR WRIT OF
MANDATE HEARD ON MAY 16, 2011**

Petitioner Community Alliance for Open Space (“CAFOS”) seeks a writ of mandate to challenge the approval by the City of Los Angeles (“City”) of the Mitigated Negative Declaration (“MND”) and zoning variances relating to the operation of a truck driving academy on a former landfill site within the Lopez Landfill, which is zoned as open space.

Petitioner contends that the City’s approval of the truck driving academy must be overturned because the adoption of the MND violates the California Environmental Quality Act (“CEQA”) and the approval of the variance violates applicable zoning laws.

After considering the briefs and the Administrative Record, admissible evidence and matters subject to judicial notice, the Court rules as follows:¹

¹ Petitioners have requested that the Court augment the certified administrative record in this action to include the 2003 Final Mitigated Negative Declaration (“2003 MND”) from the Lake View Facility “because it was previously omitted from the record despite containing relevant evidence which strikes to the heart of the controversy in this case.”

CCP § 1094.5(e) bars the introduction of extra-record evidence subject to two narrow exceptions: (1) the evidence was improperly excluded at the hearing before the agency, or (b) the Petitioner could not, with the reasonable exercise of diligence, have produced the evidence before the agency. Western States Petroleum Assn. v. Superior Court, 9 Cal. 4th 559 (1995). Although this 2003 Final MND was not presented to the City Council, it does not need to have been. Petitioner misconstrues the instant MND regarding the maximum daily truck trips allowed with truck driving academy project. It does not, as Petitioner contends, contradict information regarding truck trips associated with the Lopez Canyon green waste facility operation discussed in the 2003 MND. Thus, the 2003 MND was not improperly excluded. Nor does Petitioner address whether CAFOS could have, with the exercise of reasonable diligence, produced the 2003 MND during the lengthy approval process associated with this project. Accordingly, Petitioner meets neither of the exceptions of section 1094.5(e). Its motion to augment the record, therefore, is denied. That same 2003 MND is also stricken as an exhibit to the Declaration of Matthew D. McMillan

Statement of the Case

The Lopez Canyon Landfill opened for operation in 1975 in the Northeast San Fernando Valley, as a 596 acre location for the collection of household trash. (AR 584, 693, 696). From 1975 until its closure in 1996, the landfill collected nearly 19 million tons of trash on 165 acres. (AR 584). Local residents and business owners, who were directly impacted by the environmental burdens of such a facility, organized and became more involved in environmental issues involving their local community. (AR 756.) These community groups were a driving force behind the closure of the landfill and were able to secure the commitment by the City to use the area as future open space. (AR 584, 596, 820). Community members recall promises that the hillsides would be graded and seeded and planted with native plants to make the landfill blend back into the natural landscape. (AR 820, 830). Lopez Canyon landfill provides a viewshed for Lope and Kagel Canyon residents, as the landfill shares a boundary with the Los Angeles National Forest. (AR 694, 1605).

As part of the closure of the landfill, a long-range plan was devised. (AR 633-656). Planning is particularly important in these cases, as waste settlement and consolidation of soils in a closed landfill is particularly complex. (AR 2332). In its 2009 Final Post-Closure Maintenance Plan, the City contemplated a driving academy operating at Deck A. (AR 651).

Current uses of the landfill site include an active methane gas collection plant, which allows the off-gasses produced at the landfill to be recaptured and used to serve 4500 homes. (AR 1775). In addition, a section of the landfill has been dedicated for the construction of the Lopez Canyon Environmental Center ("LCECL), where green waste is collected and ground into mulch for reuse by City residents. (Id.). In addition, the Bureau of Sanitation currently trains City employees as heavy equipment operators at the closed landfill.² (AR 610). This heavy

filed in support of Open Space's Reply Brief Re Writ of Mandate. The remaining Exhibits B and C thereto are similarly irrelevant and will not be considered.

With regard to the City's Request for Judicial Notice, the Court will take judicial notice of the two provisions of the Los Angeles Municipal Code and the Los Angeles City Charter, Section 562. Evid. Code § 452(b), 452(g), 453 and 200; Melton v. San Pablo, 252 Cal. App. 2d 794, 802 (1967)(judicial notice taken of local zoning ordinances).

² The Administrative Record fails to disclose any environmental document which was processed before commencing the operation of a heavy equipment training academy currently conducted by the Department of Sanitation at the landfill. (AR 610-11). These heavy equipment training activities are clearly visible from the Sky View Terrace mobile home park. (AR 611). At oral argument, the City directed the court's attention to that part of the Draft Mitigated Negative declaration dealing with "Aesthetics." (AR 16). A careful reading of that discussion fails to identify with any specificity a heavy equipment driving academy. All that is described is "the site is currently used by City departments . . . for a truck-driver training similar to the intended project operation." Where, as here, the baseline environmental conditions have not be fairly or adequately described, it is impossible to conclude (as the City does) that the instant project will not have cumulative environmental impacts that are less than significant. Nor do the photographs of Deck A cited at oral argument give a sense of the intensity of use or scope of operation of the heavy equipment academy. (AR 2459-61). The pieces of equipment shown in these photos are not linked back to the heavy equipment training academy.

equipment training activity would be conducted simultaneously with the proposed truck driver training academy. (Id.)

The Bureau of Sanitation proposed to provide a portion of the open space for the operation of a truck driver training academy through a non-profit entity, Transportation Opportunity Program – the real party in interest. The proposed academy would enable students to obtain a Class A California Driver's license.³ (AR 693). The academy would be operated at the Lopez Canyon site under a five-year lease, with two five-year extensions. (Id.). It is the City's intent to provide a double-wide trailer to act as an administrative and classroom space. The tenant's hours of operations will be from 6 a.m. until 3:30 p.m., although no truck driving will take place on Deck A before 8 a.m. (Id.). Initially, the academy would consist of one class at a time with twelve students, who would receive 160 hours of instruction and training in each four-week session. At full operation, the training academy will start one twelve-student class session every two weeks, so that a maximum of 24 students will occupy the project site at any one time. (Id.) And, a total of ten trucks will be available for training: four trucks assigned to each class, and two trucks to be kept in reserve for when the regular vehicles are inoperative. (Id.).

The academy will perform operations using diesel (until converted to LNG) trucks and empty trailers to instruct student drivers on the Lopez Canyon site and on local freeways and streets. (AR 18, 697). One half of the training, or about 80 hours, will be behind the wheel. (AR 18, 697). Although certain residential streets have been designated as 'no-drive zones', the routes that will be used to train the student drivers are not delineated in the project plans.⁴ (AR 576 (identifying Paxton Street as a "main exit route"), 605 (noting there is only one way in and one way out of the landfill and an already congested intersection at Paxton and Lopez Canyon), 611 (no training on Lopez Canyon and Kagel Canyon roads), 697). The trainees will park their private autos off-site and will be shuttled onto Deck A. (AR 28). And, driving on residential streets will be prohibited from 8 to 9 a.m. and from 2 to 4 p.m.⁵ (AR 28).

The training academy trucks, as well as the moving equipment and collection vehicles already at the landfill are equipped with back-up alarms, which are designed to "command attention." (AR 698). The alarms on the existing equipment – although using broadband systems -- are audible at residential sites throughout Kagel Canyon. (AR 698). The training academy trucks would be similarly fitted with broadband alarms. (Id.) In addition, a noise berm will be constructed at the project site to reduce noise. (AR 25).

³ The proposed academy would operate daily classes – both in a classroom building placed on the site, and on the road at unspecified training routes in adjacent areas. (AR 33, 162, 440). TOP's plans call for them to have 24 students participating in the training at all times. (AR 30). And, an additional eight administrators and instructors will be required to operate the academy. (AR 30). Eight semi-tractor trailer rigs and trailers will be used in the training program. (AR 18, 57, 2246). Two rigs in addition to these eight will also be on site to allow replacements in the event of a break-down. (AR 18, 160).

⁴ The Zoning Administrator prohibited all truck-driver training on the streets bounded by Fillmore Street to the west, Gladstone Avenue and the I-210 freeway to the south, and Osborne Street to the east. (AR 162, 393-94).

⁵ Strangely, one of the "mitigations" proposed for the traffic implications of the project is a requirement that 25% of the trainees will be residents of the Seventh Council District. (AR 27). See Pub. Res. Code section 21080(e)(1)(2) ("economic impacts unrelated to environmental impacts are not substantial evidence").

On January 15, 2009, the Los Angeles Bureau of Sanitation (“Bureau”) released the Lopez Canyon Proposed Truck Driver Training Academy Draft MND for public review and comment. (AR 9-145). In that draft MND, the Bureau determined that there would be no significant impact on the environment as a result of this project that could not be mitigated. (AR 14).

On September 29, 2009, the Bureau applied for a zoning variance for the truck driver training academy project in a portion of the Lopez Canyon Landfill, which was zoned as open space. (AR 708-10). On January 22, 2010, the Zoning Administrator for the City of Los Angeles approved the variance for five years, with conditions, and adopted the accompanying MND for the establishment of the truck driving academy. (AR 159-202). The Zoning Administrator included findings addressing the requirements for the granting of a variance. (AR 167-90).

Petitioner appealed the Zoning Administrator’s decision to the North Valley Area Planning Commission (“NVAPC”). (AR 204). At the public hearing on April 15, 2010, the NVAPC denied the appeal and sustained the Zoning Administrator’s approval of the variance. (AR 204, 307-398). The NVAPC also adopted the conditions of approval and findings of the Zoning Administrator. (AR 203-221).

Petitioner appealed the decision of the NVAPC. (AR 231-53). The City Council’s Planning and Land Use Management (“PLUM”) Committee held a public hearing on June 15, 2010, at which additional testimony was provided. (AR 404-445). Thereafter, on June 30, 2010, a public hearing took place before the entire City Council. (AR 450-490). At the conclusion of that hearing, the City Council voted to approve the requested variance, subject to the conditions of approval, adopted the MND, adopted the findings of the NVAPC as the findings of the City Council, and denied Petitioner’s appeal. (AR 2-6).

On July 29, 2010, CAFOS filed a Verified Petition for Writ of Mandate and for Injunctive Relief.

Analysis

1. CEQA Analysis

CAFOS asserts that an EIR, rather than an MND, was required in this case. An EIR is required if there is substantial evidence in the “whole record” that supports a “fair argument” that a project may have a significant effect on the environment. No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 75 (1974); Communities for a Better Environment v. California Resources Agency, 103 Cal. App. 4th 98, 111-12 (2002). An EIR must be prepared where there is substantial evidence that significant effects “may” occur. League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland, 52 Cal. App. 4th 896, 904-05 (1997). Substantial evidence is defined as “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.”⁶ Pub. Res. Code § 21080(e)(1). The fair argument test is a “low threshold

⁶ Testimony of area residents who are not qualified experts qualifies as substantial evidence when based on relevant personal observations, e.g., visible activities, noise, traffic problems. See, e.g., City of Carmel By-the-Sea v. Board of Supervisors, 183 Cal. App. 3d 229, 246 n.8 (1986).

test.” Stanislaus Audubon Society v. County of Stanislaus, 33 Cal. App. 4th 114, 151 (1995). Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence. League for Protection, supra, 52 Cal. App. 4th at 904-05.

Whether the administrative record contains a fair argument sufficient to trigger preparation of an EIR is a question of law, not a question of fact, and so under this unique test, deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. Sierra Club v. County of Sonoma, 6 Cal. App. 4th 1307, 1318 (1992). In Toulumne County Citizens for Responsible Growth, Inc. v. City of Sonora, 155 Cal. App. 4th 1214, 1224 (2007), the Court held that the scope of the project required to be reviewed under CEQA at the outset of an agency’s consideration of approval is a question of law. In that case, the City of Sonora violated CEQA in segmenting its environmental review of a proposed home improvement center because the adopted negative declaration did not identify and analyze the impacts of constructing improvements to adjacent roadways required as a condition of approving the center.

In this case, as a matter of law, there is a fair argument sufficient to trigger preparation of an EIR.⁷ As noted by the Chief Executive Officer for the County of Los Angeles, the MND failed to properly identify the baseline or the existing conditions at the landfill against which the significance of the environmental impacts of the training academy project could be properly measured. For example, it is impossible in this case to measure the cumulative noise impact of the truck driver training academy because the City failed to disclose the fact that it presently trains employees as heavy equipment operators on the Lopez Canyon landfill and will continue to do so simultaneously with the proposed truck driving academy.⁸ (AR 16, 877, 610). The MND fails to adequately identify the heavy equipment training center and fails to address the environmental impacts of that program, much less the cumulative effects of the new proposed truck training academy. (AR 16, 426, 429-30, 866, 611). “During a recent field inspection of the County unincorporated Lopez Canyon community adjacent to the landfill, DRP observed that the heavy equipment training activities are clearly visible from the Sky View Terrace mobile home park located on the hilltop on the westerly side of Lopez Canyon. (AR 426). Similarly, the proposed site is visible to certain residents in upper Kagel Canyon. (AR 921). These adverse cumulative effects on viewscape and noise were not considered or discussed in the MND.

⁷Application of the fair argument standard is a question of law and deference to the agency’s determination is not appropriate. Rather, the court independently reviews “the record and determine[s] whether there is substantial evidence in support of a fair argument [the proposed project] may have a significant environmental impact,” while giving the lead agency the benefit of a doubt on any legitimate, disputed issues of credibility. See, e.g., Quail Botanical Gardens Foundation, Inc. v. City of Encinitas, 29 Cal. App. 4th 1597, 1603 (1994); Sierra Club v. County of Sonoma, 6 Cal. App. 4th 1307, 1317-18 (1992). An agency’s “decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.” Sierra Club, supra, 6 Cal. App. 4th at 1317-18.

⁸ Impact evaluation should extend to all potential impacts, including project level and cumulative impacts. Cal. Code Regs., tit. 14, Appendix G, at ¶ 2.

Another fair argument in the record is that there will be significant impacts from the project on traffic and access to the landfill. As before, by failing to include the heavy equipment training facility and failing to assess the actual size and magnitude of the green waste operations, the MND cannot conclude that the addition of eight trucks in this setting will result in no significant cumulative environmental impacts. (AR 612). And, there is substantial evidence in the record that the limited egress to the landfill forces these trucks to drive in adjacent residential communities for training drives. (AR 605, 858). Further, the MND's failure to identify the routes to be used by the academy makes it impossible to measure the impact (and its significance) of the proposal. (AR 612, 1425).⁹ There is substantial evidence suggesting that there is only one street in and out of the landfill, and that there are already significant delays at a key intersection used by adjacent communities to gain access to the freeway. Without knowing whether the academy will use this route and drive through this intersection, it is impossible for the City to reasonably conclude that there will be no substantial impact on traffic from the addition of eight tractor trailers traversing this route throughout the day.¹⁰

Further, without knowing the routes to be traveled by the student drivers, and without disclosing the existing equipment presently operated by the City at the landfill, it is impossible to conclude that there will be no significant cumulative impact on noise from the trucks (and, without limitation) the back-up alarms on these vehicles.¹¹ (AR 613,). There is substantial evidence that the promise of earthen berms (a mitigation measure included in the MND) will not be achieved. These same sound barriers were promised by the City as a mitigation measure against the noise of the green waste facility and have never been constructed.¹² (AR 611).

As set forth above, the City's adoption of the MND violated CEQA.¹³

⁹ Contrary to counsel's argument, there is nothing in the syllabus of the program that describes the training routes to be used. (AR 869). Accurate project description is necessary for intelligent evaluation of potential environmental effects of a proposed activity. Burbank-Glendale-Pasadena Airport Authority v. Hensler, 233 Cal. App. 3d 577, 592 (1991). A narrow view of the project could result in the fallacy of division, *i.e.*, overlooking its cumulative impact by focusing separately on isolated parts of the whole. (AR 1426).

¹⁰ The MND treats the project as if it will operate only as an island on top of the landfill. It fails to describe or consider the environmental impacts (individually or cumulatively) of the fact that the project necessarily as a much wider ambit. (AR 329). The MND also fails to accurately describe the existing baseline, including not only the heavy equipment training program, but also the actual use of the green waste facility, which has expanded. (AR 334, 341). According to one observer, although the original plan called for 30 trucks at the green waste site doing the mulching, there are currently 80 trucks per day at that site. (AR 341). This piecemeal approach to assessing the environmental impacts of a program is impermissible. (AR 331).

¹¹ Certain residents complained that the MND used for this project was the same one used for the mulching/green waste program at Lopez Canyon. (AR 847). The draft had not been updated despite the fact that the utilization of that green waste facility has been expanded because other communities have discontinued their programs. (AR 855, 886, 921).

¹² An MND must be set aside if there is substantial evidence in the record that the conditions attached to its adoption are insufficient to mitigate the project impacts. Citizens for Responsible and Open Gov't v. City of Grand Terrace, 160 Cal. App. 4th 1323, 1340-41 (2008).

¹³As discussed below, the MND's conclusion that the project would have no impact on applicable land use plans is also incorrect.

2. Zoning Analysis

Judicial review of the Council's decision to grant the variance in this case is governed by the administrative mandamus provisions of the Code of Civil Procedure. CCP § 1094.5.

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ann's for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 514-15 (1974). The pertinent issues under section 1094.5 are (1) whether the respondent has proceeded without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP § 1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP § 1094.5(c).

A threshold issue is a determination of whether the substantial evidence or independent judgment test standard of review applies. The substantial evidence test applies in all cases used to review decisions of administrative agencies when no fundamental vested right is involved. In these cases, a court is not "authorized by law" to exercise its independent judgment on the evidence. Strumsky v. San Diego Co. Empl. Retire Ass'n, 11 Cal. 3d 28, 44-45 (1974). Courts have rarely upheld the application of the independent judgment test to land use decisions. Goat Hill Tavern v. City of Costa Mesa, 6 Cal. App. 4th 1519, 1526 (1992). And, in those rare cases where the independent judgment test has been applied, they have typically involved classic vested rights. Id.; Halaco Engineering Co. v. South Central Coast Regional Com., 42 Cal. 3d 52 (1986).

The duty of the reviewing court is to decide whether the agency's findings were based on substantial evidence. Young v. Gannon, 97 Cal. App. 4th 209, 225 (2002). Substantial evidence is defined as evidence of "ponderable legal significance . . . reasonable in nature, credible, and of solid value, [and] relevant evidence that a reasonable mind might accept as adequate to support a conclusion." County of San Diego v. Assessment Appeals Board No. 2, 148 Cal. App. 3d 548, 555 (1983). Under the substantial evidence standard, courts may not re-weight the evidence, must resolve all reasonable doubts in favor of the agency's determination, and may not set aside the agency's decision even if the opposite conclusion is more reasonable. Western States Petroleum Assn. v. Superior Court, 9 Cal. 4th 559, 572 (1995).

Petitioner contends that the variance issued in this case must be set aside because there is no substantial evidence in the administrative record to support the five mandatory elements required under L.A.M.C. § 12.27D and City Charter § 562. See Zakessian v. City of Sausalito, 28 Cal. App. 3d 794, 798 (1972)(agency's findings must suffice to establish compliance with all the statutory criteria and are supported by substantial evidence in the record).

[N]o variance may be granted unless the Zoning Administrator (or "ZA") finds all of the following:

1. that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;

2. that there are special circumstances applicable to the subject property, such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;
3. that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;
4. that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and
5. that the granting of the variance will not adversely affect any element of the General Plan.

L.A.M.C. §12.27 D.

In addition, “a variance shall not be used to grant a special privilege or to permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity. Id.”

A review of the record in this case fails to reveal substantial evidence supporting the Zoning Administrator’s findings in support of a variance.

With regard to the first element, the Zoning Administrator found a “hardship” from the strict application of the requirements of Open Space zoning because “public land would go underutilized at the expense of a project with substantial public benefits.” (AR 174). That rationale, however, reflects a complete misunderstanding and improper application of this requirement. There is no substantial evidence in the record of any practical difficulty associated with denying this project; the area will remain as a closed landfill and an open space used for passive recreation and viewscape. And, there is no substantial evidence of a hardship as the use of the land will remain unchanged. In this case, the zoning designation is intended to preclude incompatible uses of the land (such as a truck driving academy), not to mandate overnight conversion into a park or recreation space.

Nor is there substantial evidence to support the ZA’s wholly irrelevant conclusion that the City will directly benefit from the project.¹⁴ That the public may not be able to enjoy active recreation in this open space for years does not support the ZA’s assumption that the open space provides no present value. (AR 376). Unobstructed vistas and the peace and quiet of undeveloped acres, regenerating flora and fauna in the middle of a congested megalopolis and

¹⁴ Benefits to the community are irrelevant to the determination of undue hardship. Broadway, Laguna, Vallejo Ass’n v. Bd. of Permit Appeals, 66 Cal. 2d 767, 777-78 (1967).

atop a previous waste site afford the public powerful benefits, even without being able to play golf or ride a bike on the property.¹⁵ (AR 351, 353, 855, 858, 888).

With regard to the second finding, the Zoning Administrator's conclusory statement that there are "special circumstances" in this instance is unsupported by substantial evidence. First, there is no substantial evidence to support the ZA's finding that the project is "well-removed from any adjacent residential uses." While the classroom location on Deck A may be well-removed, the tractor trailer trucks are going to have to drive out of the landfill and onto the freeways in order to meet their training mandate.¹⁶ These trucks will necessarily drive by a mobile home park adjacent to the landfill entrance. (AR 858). And, as disclosed by substantial evidence in the record, a significant portion of existing heavy equipment training and the proposed project is visible (and audible) to the neighboring communities. (AR 878, 886, 921).

Nor is there substantial evidence in the record to support the ZA's finding that there were no reasonable alternatives to siting this industrial use in an open space. Instead, the ZA concluded that alternatives were not feasible solely because the City would be required to pay a lease. (AR 215, 423-24). The City's desire to avoid paying others is not, without more, sufficient to disqualify an alternative to a variance. Broadway, Laguna, Vallejo Ass'n v. Bd. of Permit Appeals, 66 Cal. 2d 767, 775 (1967)(profit motive is not an adequate ground for a variance). There is no substantial evidence in the record to support the inference that the academy must be sited on City-owned property. Nor is there substantial evidence that the academy must be located in the seventh council district; adjacent locations could also serve the residents of that district. And, the claimed "savings in travel time" rationale applies only to the 25% of the enrollees from other areas of the City. The remaining 75 percent save nothing (and, indeed, may suffer additional costs in travel time and energy consumption) from siting the academy in the seventh council district.

There is no substantial evidence in the record to support the Zoning Administrator's finding as to the third variance finding. There is no substantial evidence to support the broad statement that it is clear that the City allows non-recreational uses when the property in question cannot reasonably be used for the intended purpose. (AR 183-84). That statement ignores, however, that an intended purpose of the open space here is not limited to active recreational uses. As discussed above, open space – free of industrial uses – serves a useful and intended purpose as an undeveloped open zone presently. There are a number of open space zones throughout the County that are inaccessible to the public. That fact does not negate its intended and valid purpose as green space and viewscape. Those purposes will be met both now and in the future, when more active recreational uses will be able to be exploited. The ZA's erroneous belief that the variance was necessary because "recreational use is not feasible" ignores the undisputed and substantial evidence of the existing utility of this passive open space.

¹⁵ For example, jurisdictions have acquired inaccessible property in order to preserve viewsheds. (AR 858). These properties will never be enjoyed as active open space. That fact, however, does not render them of no public use.

¹⁶The ZA's finding that the landfill enjoyed special circumstances due to its remoteness is without substantial evidence. A remote driving school would have no value as it could not access roads and highways. While the training trailer may be surrounded by open space, the academy is anything but "remote."

Nor did the Zoning Administrator conduct a meaningful comparison between the project site and any other comparable property in the same zone and immediate vicinity. See Stolman v. City of Los Angeles, 114 Cal. App. 4th 916, 928 (2003). While there is a gravel mining operation in the open space zone, there was no need for a variance in that case because it was grandfathered in as a pre-existing use in operation before open space zoning was adopted. (AR 1753). And, the Hansen Dam gravel operation (which is more than two miles away) is not within reasonably close proximity to the project site. (AR 1753)(Office of Zoning Administration policy defines “vicinity” as a distance of 500 feet).

Nor is there substantial evidence to support the Zoning Administrator’s finding that the proposed variance will not be materially detrimental to the public welfare. The application concedes that the proposed use will introduce additional activity and noise. And, while the application attempts to characterize these as incremental impacts, that minimization is deceptive. Many of the present impacts are unavoidable consequences of the closing of the landfill. These grading, composting and off-gassing activities cannot be located elsewhere; a truck driving academy can be. (AR 168, 184). Further, the administrative record reflects overwhelming community opposition to this project. This opposition suggests that the majority of the persons in the best position to assess the impact believe that the project will be materially detrimental to their way of life. There is nothing in the substantial evidence presented in this record to ignore the neighborhood concerns. The proposed mitigation measures (as discussed in the previous section) do not eliminate the detrimental effects of the variance.

Finally, there is no substantial evidence to support the Zoning Administrator’s finding that this variance will not adversely affect any element of the General Plan. Allowing a truck driving academy on open space land completely and utterly destroys the passive recreational value of open space and the preservation of that space as free from industrial activity.

As observed by Supervisor Antonovich:

“The applicant is trying to establish a commercial activity, one that involves the use of 18-wheel semi-tractor trailers spewing diesel fumes on property that is to be utilized for open space. If such activity does not ‘conflict’ with the General Plan, not to mention any reasonable interpretation of the phrase ‘open space,’ then one has to wonder what potential use would be required to conflict with the General Plan. Although there are many, there is one in particular that deserves mention. The City’s Open Space Element in the General Plan (adopted by the City Council and Mayor in 1973) has a statement that reads ‘Open Space Owned by City Departments and Agencies and other jurisdictions shall be retained for open space use wherever feasible.’”

(AR 859). The instant variance will directly contradict this provision in the General Plan. There is no substantial evidence that it is not feasible to maintain this open space.

In addition, the variance at issue here is the embodiment of the City affording itself a special privilege and granting itself a variance to allow an industrial use in an open space zone. While the City is free to apply for a variance, it is not free to afford itself one when it fails to have substantial evidence supporting the requisite findings.

Supporting the conclusion that a special privilege was afforded here is the speed with which this application was processed. (AR 867) While it ordinarily takes from 6-8 months to process a variance in Los Angeles, in this case, the entire application process took a mere seven weeks. (AR 860). And, substantial evidence in the record suggests that Lopez landfill mitigation fund monies were used to pave a "proposed" academy's deck prior to submitting the application for a zoning variance in November 2009. (AR 867). That this variance was a "done deal" before it ever began supports the Court's conclusion that the City granted itself a special privilege.

Conclusion

For these reasons, the Court grants petitioner's writ.

Counsel for Petitioner is to submit to this Department a proposed judgment and a proposed writ within 10 days with a proof of service showing that copies were served on Respondent by hand delivery or fax. The Court will hold these documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.

While there was some discussion at the hearing regarding the scope of the writ, a review of the record in this case supports the conclusion that an EIR must be conducted in this case. The MND is so inadequate and the cumulative effects of the proposed project -- including its training routes -- on viewscape, noise and traffic congestion are so inadequate that they cannot be cured by simple amendment.

The administrative record is ordered returned to the party who lodged it to be preserved without alteration until a final judgment is rendered and to forward it to the Court of Appeal in the event of appeal.

The Court's Ruling, signed and filed this date, shall be deemed to be the Court's Statement of Decision.

DATED: May 17, 2011

ANN I. JONES

ANN I. JONES, JUDGE OF THE SUPERIOR COURT