

FILED

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CLERK OF THE SUPERIOR COURT
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY**

ANIMAL LEGAL DEFENSE FUND, et al.,
Petitioners/Plaintiffs,

Case No.: 16CV001670

vs.

INTENDED DECISION

MONTEREY COUNTY,
Respondent/Defendant.

The Petition for Writ of Mandate by Petitioners/Plaintiffs Animal Legal Defense Fund, et al. (collectively, "Petitioners") came on for hearing before the Honorable Lydia M. Villarreal on May 12, 2017, at 9:00 a.m., in Department 1. Petitioners and Respondent Monterey County ("the County") were represented by their respective attorneys. The matter having been submitted, the court makes the following rulings:

I. Background

This California Environmental Quality Act ("CEQA") proceeding relates to the County's Integrated Wildlife Damage Management Program ("the IWDM Program"). Each year, the County's Agricultural Commissioner enters into an annual Work and Financial Plan ("Work Plan" or, collectively, "Work Plans") with U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services ("APHIS-WS"). Each Work Plan governs implementation of the IWDM Program for a 1-year period beginning July 1st and ending June 30th ("Annual Program" or, collectively, "Annual Programs"). In April 2016, the County's Agricultural Commissioner entered into the Work Plan ("2016 Plan") to implement the Annual Program for July 1, 2016 to June 30, 2017 ("2016 Program"). The next day, its Assistant

1 Agricultural Commissioner executed a notice of exemption ("2016 NOE") wherein the County
2 asserted a ministerial exemption for the 2016 Plan.

3 Petitioners allege that the County failed to perform any environmental review for the
4 IWDM Program, including an initial study and preparation of a negative declaration,
5 environmental impact report ("EIR"), or other CEQA document. Petitioners further allege that
6 the County improperly asserted a ministerial exemption in the 2016 NOE in an effort to avoid
7 CEQA environmental review. Petitioners make clear they only challenge the CEQA compliance
8 based on allegations that the County (1) improperly asserted a ministerial exemption for the 2016
9 Program/2016 Plan in the 2016 NOE; and (2) failed to perform CEQA environmental review for
10 the 2016 Program before the approval in the 2016 Plan as required.

10 **II. Procedural History**

11 Petitioners commenced this action on June 1, 2016, and filed the operative verified first
12 amended petition for writ of mandate and complaint ("FAP") on August 4, 2016.¹ In the FAP,
13 Petitioners assert causes of action for: (1) Petition for Writ of Mandate Under CEQA;
14 (2) Declaratory Relief With Respect to CEQA; (3) Petition for Writ of Mandate and Declaratory
15 Relief to Set Aside the County's Project Approval as Contrary to CEQA; and (4) Declaratory
16 Relief that the County Willfully Suppressed Records.

17 The County filed a statement of issues in September 2016.

18 Pursuant to the parties' stipulation, Petitioners submitted a joint administrative record that
19 includes a deposition transcript and records that the County refused to certify.

20 On December 19, 2016, Petitioners timely filed an opening brief and their counsel's
21 supporting declaration with attached exhibits. On February 17, 2017, the County timely filed an
22 opposing brief that contained a request to dismiss the action and evidentiary objections to the
23 declaration and exhibits filed with the opening brief. On March 20, 2017, Petitioners timely filed
24 a reply brief and supporting declaration. On March 22, 2017, Petitioners filed a notice of the
25 hearing previously set for May 12, 2016.

26 At the hearing on May 12, 2016, Petitioners and the County submitted oral arguments,
27 and Petitioners agreed to voluntarily dismiss their claims for declaratory relief. Thereafter, the
28 court took the matter under submission.

¹ Contrary to the County's assertion, the verification attached to the FAP is adequate.

1 **III. The County's Request for Dismissal in the Opposing Brief**

2 The County's request for dismissal of the action effectively is a procedurally defective
3 motion for renewal or reconsideration of a prior motion to dismiss. (See Code Civ. Proc.,
4 § 1008.) In any event, the request lacks merit. The County's request for dismissal is DENIED.

5 **IV. Declaratory Relief Claims (Second & Fourth Causes of Action)**

6 Since Petitioners agreed to dismiss the declaratory relief claims during the hearing on
7 May 12, 2017, the second and fourth causes of action for declaratory relief are DISMISSED.

8 **V. Petition for Writ of Mandate Under CEQA (First & Third Causes of Action)**

9 All that remains is the petition for writ of mandate under CEQA (first and third causes of
10 action). Before analyzing the merits of the petition, the court will address evidentiary issues and
11 objections, summarize the evidence, and set forth the applicable CEQA principles.

12 **A. Evidentiary Issues & Objections**

13 *The County's Evidentiary Objections:* Extra-record evidence is admissible in this CEQA
14 writ of mandate proceeding because Petitioners challenge an informal decision and claims of
15 exemption. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576;
16 see also *California Oak Foundation v. Regents of University of California* (2010) 188
17 Cal.App.4th 227, 255-256.) Therefore, the County's extra-record evidence objection lacks merit.
18 Its remaining objections also lack merit. Accordingly, the County's evidentiary objections are
19 OVERRULED.

20 *Deposition Transcript in the Joint Administrative Record:* Although not addressed by
21 the parties, the deposition transcript submitted as part of the stipulated/joint administrative record
22 is not within the scope of the CEQA record of proceedings. (See Pub. Res. Code, § 21167.6,
23 subd. (e).) That being said, the court may properly consider the deposition transcript as extra-
24 record evidence because—as explained above—Petitioners challenge an informal decision and
25 claim of a ministerial exemption.

26 *Uncertified Records in the Joint Administrative Record:* The County refused to certify
27 certain records in the joint administrative record, despite stipulating to their inclusion in the
28 record. The County does not dispute that the uncertified records are accurate and relevant. After
29 reviewing the uncertified records, the court finds that they are properly included in the record of

