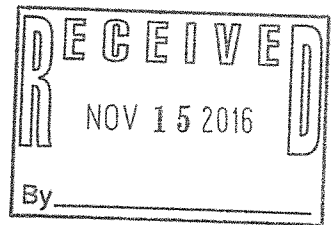


SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL



MINUTE ORDER

DATE: 11/09/2016

TIME: 09:09:00 AM

DEPT: C-68

JUDICIAL OFFICER PRESIDING: Judith F. Hayes
CLERK: Richard Cersosimo, Blanca Delgado
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: P.K. Beebe

CASE NO: 37-2015-00037137-CU-WM-CTL CASE INIT.DATE: 11/03/2015
CASE TITLE: **Citizens Oversight Inc vs. California Coastal Commission [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

APPEARANCES

The Court, having taken the above-entitled matter under submission on 08/19/2016 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Motion to Dismiss of Real Party in Interest Southern California Edison Co. is DENIED.

"In cases involving an apparent conflict between two statutes, the principle of paramount importance is that of harmonious construction, by which we must attempt to give effect to both statutes if possible.... [citation]" (*Strother v. California Coastal Comm.* (2009) 173 Cal.App.4th 873, 880.)

"To the extent of any inconsistency or conflict between the provisions of the ... Coastal Act ... and the provisions of [CEQA], the provisions of [the Coastal Act] shall control." (*Sierra Club v. California Coastal Comm.* (2005) 35 Cal.4th 839, 859; Pub. Res. Code § 21174.) Courts "must resolve th[e] conflict in the manner that is most protective of coastal resources, and do so through a liberal construction that will accomplish the Coastal Act's purpose and objectives. (*Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 946; Pub. Resources Code, §§ 30007.5, 30009.)

In *Kalnel*, the petitioner unsuccessfully argued the Mello Act superseded the Coastal Act, requiring approval of increased density affordable housing despite Coastal Act violations. (*Id.* at 945.) The Court harmonized the Mello Act and the Coastal Act by applying the affordable housing requirements so long as they abide by the Coastal Act's overall protective provisions. (*Id.* at 946.)

Here, the apparent conflict arises because Coastal Act § 30801 guarantees "[a]ny aggrieved person... a right to judicial review of any decision or action of the commission," while CEQA § 21167.4 conditions judicial review on Petitioner timely filing a request for hearing. The right to judicial review is a protective provision of the Coastal Act that may not be superseded by a conflicting provision which on balance is less protective of coastal resources, such as the Mello Act's affordable housing requirements or CEQA's request for hearing requirement. (*Id.*; Pub. Res. Code § 30007.5.)

The conflict between Coastal Act § 30801 and CEQA § 21167.4 can be harmonized by applying the

mandatory dismissal provision of § 21167.4 so long as the weight of the potential adverse environmental impact does not balance against requiring dismissal.

Petitioners challenge a Coastal Commission decision to permit long-term storage of more than three-million pounds of nuclear waste on the beach within fifty miles of 8,400,000 California residents. (Complaint, ¶ 19.) Therefore, this Court will not subordinate the protectionist policies of the Coastal Act to CEQA's policy of expedient resolution when, as here, the stakes for the environment are so high.

Based on the forgoing, the Court denies Real Party in Interest's Motion to Dismiss the Petition.

IT IS SO ORDERED:

Judith F. Hayes

Judge Judith F. Hayes

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Citizens Oversight Inc vs. California Coastal Commission [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2015-00037137-CU-WM-CTL

I certify that I am not a party to this cause. I certify that a true copy of the Final Ruling on 8/19/16 Motion to Dismiss was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 11/09/2016.

Clerk of the Court, by: , Deputy

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