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by Superior Court of CA,
County of Santa Clara,
on 5/18/2023 3:54 PM
Reviewed By: R. Walker
Case #22CV399384
Envelope: 12013165

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

STOP THE PACHECO DAM PROJECT
COALITION,

Petitioner,

22CV399384

vs.

**ORDER GRANTING PETITION FOR
WRIT OF MANDATE (CEQA)**

SANTA CLARA COUNTY WATER
DISTRICT,

Respondent.

This matter came on for hearing on March 22, 2023, at 9:00 a.m. in Department 19, the Honorable Theodore C. Zayner presiding. The Court has reviewed and considered the written submissions filed by the parties, including the entire administrative record provided, and listened carefully to the arguments of counsel, after which the matter was submitted to the court for decision. Having further reviewed, re-reviewed, and thoroughly considered all filings of the parties, the arguments of counsel, and the administrative record, the court now rules as follows.

1 The court will refer to respondent as the “District” and to its project challenged by the
2 petitioner, Phase 2 Geotechnical Investigations for the Pacheco Reservoir Project, as the
3 “Project.”
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5 The Court finds that respondent’s Notice of Exemption fails to comply with CEQA as the
6 claimed categorical exemptions from CEQA: the “Class 4” exemption for minor alterations to
7 land; and the “Class 6” exemption for information collection, do not, as a matter of law based
8 upon respondent’s administrative record, reasonably apply to exempt the Project from CEQA. It
9 is the court’s view and finding that these categorical exemptions cannot reasonably be construed
10 to include within their scope respondent’s Project as described and presented to the court.
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13 As to the Class 4 exemption, the court’s analysis is as follows. The court finds that the
14 Class 4 exemption for “minor public or private alterations in the condition of land, water, and/or
15 vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and
16 agricultural purposes” cannot be reasonably construed as applying to the Project.
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18 Drilling approximately 200 geotechnical borings (using portable drill rigs that may
19 require the construction of wooden platforms with lumber delivered by helicopters to some
20 locations), using backhoes/excavators to dig up to 57 test pits (each of which will measure 10 to
21 20 feet long, 3 feet wide and up to 20 feet deep) and removing 32 trees (to allow for “the
22 construction of temporary level wooden work platforms to support the drill rigs transported by
23 helicopter on steeper slopes”) cannot reasonably be construed as “minor” alterations or “minor”
24 trenching. The court’s concern in this regard is compounded by the statements that some of the
25 project activity will be in locations that have yet to be determined.
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1 Further, the Class 4 exemption expressly states that “grading shall not be exempt in a
2 waterway, in any wetland.” It is undisputed that some of the 10 to 20 feet long, 3 feet wide and
3 up to 20 feet deep test pits will be in such locations. The fact that this may only be a handful of
4 test pits is irrelevant, in the court’s view. The District’s assertion that the Project should be
5 treated as “mostly” exempt is not supported by the plain language of the exemption, the general
6 rule that categorical exemptions are narrowly construed, or the decisions it cites. The Class 4
7 exemption also can only be used for minor alterations “which do not involve removal of healthy,
8 mature, scenic trees except for forestry and agricultural purposes.” The staff memo makes clear
9 that Project will remove 32 blue oaks, foothill pines, California bay laurels, California buckeyes
10 and coast live oaks for equipment access purposes, not for forestry or agricultural purposes. The
11 District has failed to meet its burden to demonstrate through substantial evidence in the record
12 that none of these 32 trees are “healthy, mature, scenic trees.”
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17 The Class 6 exemption does not include a scale restriction like the Class 4’s limitation to
18 “minor” alterations and does not expressly exclude activity the Project admits either will take
19 place (grading in waterways or wetlands) or may take place (removing trees that may be
20 “healthy, mature, scenic trees”) the way the Class 4 does. Also, “serious or major disturbance” is
21 not defined and no comparative examples are provided for the Class 6 exemption.
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23 As to the lack of a definition for “serious or major disturbance,” categorical exemptions
24 as a general matter cannot apply to activities that have a “significant effect on the environment.”
25 CEQA Guidelines section 15382 states in pertinent part that a significant effect on the
26 environment is “a substantial, or potentially substantial, adverse change in any of the physical
27 conditions within the area affected by the project including land, air, water, minerals, flora,
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1 fauna, ambient noise, and objects of historic or aesthetic significance.” Therefore, while not
2 specifically defined in CEQA or the Guidelines, the express limitation in the Class 6 exemption
3 that it can only apply to information collection that does not “result in a serious or major
4 disturbance to an environmental resource,” must refer to activities that are much less impactful
5 than activities that may cause a “potentially substantial adverse change in any of the physical
6 conditions within the area affected by the project,” as that would be a significant effect that could
7 never be found categorically exempt from CEQA. “Serious or major disturbance” does not
8 appear to even require a finding of an “adverse change,” just a disturbance.
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11 The definitions for “serious” in Merriam-Webster’s Dictionary¹ include: “requiring much
12 thought or work,” “of or relating to a matter of importance,” and “having important or dangerous
13 possible consequences.” The definitions for “major” include: “notable or conspicuous in effect
14 or scope,” “prominent or significant in size, amount or degree,” and “involving grave risk.” The
15 definitions of “disturbance” include: “an interruption of a state of peace, quiet or claim,” “an
16 interference with or alteration in a planned, ordered, or usual procedure, state or habit,” and
17 “noisy or violent activity.” Thus, applying the “plain meaning” of “serious or major
18 disturbance” in the absence of other authority leads to the court’s conclusion that the Project
19 does not qualify for this exemption.
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22 The project activities, the planned digging of at least 200 geotechnical borings (using
23 portable drill rigs that may require the construction of wooden platforms with lumber for the
24 platforms delivered by helicopter to some locations), using backhoes/excavators to dig up to 57
25 test pits (each of which will measure 10 to 20 feet long, 3 feet wide and up to 20 feet deep) and
26 the removal of 32 trees (to allow for “the construction of temporary level wooden work
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¹ See www.merriam-webster.com/dictionary.

1 platforms to support the drill rigs transported by helicopter on steeper slopes”) cannot be
2 reasonably construed as not causing a “serious” or “major” disturbance to at least one
3 environmental resource. Just digging a handful of “test pits” in “wetland” areas (as the AR
4 establishes is planned) appears to the court to constitute a “serious” disturbance to a wetland.
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6 Petitioners also raise a valid point that the helicopter flights the project calls for to move material
7 into place may constitute a “serious” disturbance to wildlife and there is evidence in the record
8 suggesting this may have already occurred.

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10 Even if the scope of the Class 6 exemption could be seen as covering the Project as a
11 matter of law, the next question is whether the District’s decision to claim the exemption is
12 supported by substantial evidence in the AR. While this is a deferential standard, the court must
13 conduct some analysis in this regard. “We do not weigh conflicting evidence, as that is the role
14 of the public agency. Rather, we review the administrative record to see if it contains evidence
15 of *ponderable legal significance that is reasonable in nature, credible, and of solid value*, to
16 support the agency's decision.” (*Protect Tustin Ranch, supra*, 70 Cal.App.5th at p. 960, internal
17 citations omitted, emphasis added.) As mentioned above “substantial evidence” does not include
18 “unsubstantiated opinion or narrative.”
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20 The Court finds that the scope of the Class 6 exemption cannot reasonably apply to the
21 Project. The activities included in the Project are not activities “which do not result in a serious
22 or major disturbance to an environmental resource” under the plain meaning of that language,
23 which must be interpreted as meaning something less than a “significant effect on the
24 environment.” Even if the the court were to find that the Class 6 exemption could apply in theory
25 – which it does not – the District’s claim that the Project qualifies for the Class 6 exemption is
26 not supported by substantial evidence in the record. The brief statements in the staff memo and
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1 the promises in the Opposition of what the District will do in areas of the site it has not yet
2 surveyed are not “evidence of ponderable legal significance that is reasonable in nature, credible,
3 and of solid value, to support the agency's decision.”
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5 Having concluded that the Project does not fall within either of the categorical
6 exemptions to CEQA claimed by the District, the court need not reach and will not address the
7 merits of any disqualifying exceptions to these exemptions, as presented and discussed by the
8 parties. The court also need not, and does not, address the “piecemealing” arguments presented
9 by the parties in relation to the scope, methods, manner, and phasing of the challenged Project.
10 With regard to “piecemealing,” the court finds, in light of its conclusions in this order, this
11 argument is prematurely made and is moot, at this time, pending further CEQA review by the
12 District.
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15 IT IS ORDERED that:
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- 17 1. The Petition is GRANTED.
- 18 2. A peremptory writ of mandate shall issue, directing Respondent to vacate and set aside its
19 Notice of Exemption for the Project.
- 20 3. The matter is remanded to Respondent for further consideration and further appropriate
21 environmental review of the Project under CEQA.
- 22 4. Under California Public Resources Code section 21168.69(c), the Court does not direct
23 Respondent to exercise its lawful discretion in conducting further environmental review
24 under CEQA in any particular way.
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