SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - May 26, 2011

EVENT DATE: 05/27/2011 EVENT TIME: 11:00:00 AM DEPT.: C-74

JUDICIAL OFFICER: Linda B. Quinn

CASE NO.: 37-2010-00095062-CU-TT-CTL

CASE TITLE: COASTAL ENVIRONMENTAL RIGHTS FOUNDATION INC VS. CITY OF SAN DIEGO

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Hearing on Petition

CAUSAL DOCUMENT/DATE FILED: Amended Petition, 09/10/2010

Petitioner Coastal Environmental Rights Foundation's Petition for Writ of Mandate is granted.

The court begins by addressing the merits of the writ by analyzing the SDMC sections in effect at the time of the issuance of the 2010 permit. Petitioner contends the City abused its discretion by not requiring a Special Events Permit for the 2010 Event and, instead, only requiring a Park Use Permit. Special Events are defined in SDMC §22.4003, in pertinent part, as:

Special Event means:
...
(c) any other organized activity conducted by a Person for a common or collective use, purpose or benefit which involves the use of, or has an impact on, other public property or facilities and the provision of City public safety services in response thereto.
(d) Examples of Special Events include concerts, parades, circuses, fairs, festivals, block parties, community events, mass participation sports (such as, marathons and running Events, bicycle races or tours, -over–the–line tournaments), or spectator sports (such as, football, basketball and baseball games, golf tournaments or hydroplane or boat races).
(Emphasis added.)

The City asserts its interpretation of the term "organized activity" includes only events which include the sale of food or alcohol. However, there is nothing within the definition of "Special Event" which contains this criteria. The City's interpretation is supported only by the declaration of Carolyn Wormser and not in any publication provided by the City. Further, there is no other evidence in the record of application of this standard to otherwise qualifying Special Events. Thus, the City's interpretation is not supported by the SDMC. Based upon the plain language of the statute, the 2010 Event qualifies as an "organized activity" for which a Special Event Permit should have been required. The event included a sponsor (94AR1018), attendance of 10,000 to 20,000 people (11AR128, 13AR163, 94AR1018), and includes a concert (94AR1020). Therefore, the City abused its discretion by not requiring a Special Events Permit.

The City does not dispute a Special Events Permit is a discretionary permit. CEQA applies to discretionary projects, as opposed to ministerial projects. (Pub. Res. Code §21080(a).) Since the court concludes a Special Events Permit was required, the 2010 Event is subject to CEQA.

Instead of requiring a Special Events Permit, the City issued a Park Use Permit. The City asserts a Park Use Permit is a ministerial act. "'Ministerial' describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The

public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision..." (14 CCR § 15369.) The SDMC allows discretion to deny the permit. For example, the Park Use Permit can be denied if the activity will unreasonably add congestion or interfere with vehicular or pedestrian traffic. (SDMC §63.0103(d) and (f); See also SDMC §§63.0105 and 63.0110.) Thus, based upon the applicable statute, the decision to issue the Park Use Permit is not purely ministerial because it grants the Park and Recreation Department leeway in determining whether to issue a permit. To the extent the City asserts the conditions to be considered are a simple checklist, the plain language of the SDMC does not support this argument. Regardless, "section 21080 extends CEQA's scope to hybrid projects of a mixed ministerial-discretionary character; doubt *whether a project is ministerial or discretionary should be resolved in favor of the latter characterization*." (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 271, citations omitted.) Therefore, decision to issue a Park Use Permit for the 2010 Event was a discretionary act, not ministerial.

On May 24, 2011, the City Council amended the SDMC sections in effect at the time the 2010 Event permit was issued. Respondents contend the newly adopted SDMC sections support a finding issuance of a Park Use Permit is ministerial. Section 63.01013(d) now states a Park Use Permit "shall issue if the activity will not conflict or interfere with any other event previously scheduled or interfere with the public's general use of the park, plaza, beach, or beach area." (Carlin Dec. Ex. 5.) Subsection j (formerly subsection k) states: The City Manager may make such other regulations as may be reasonably necessary for the enforcement of Section 63.0103. (*Id.*) The City contends the amended code does not allow the City discretion to shape an event and the permit must issue. However, based upon the plain language of the statutes, the City still has discretion in whether to issue a permit since the code allows for the City Manager to determine whether the event will interfere with the public's general use of the site. "Interfere" is not defined by the statutes and thus, since there is discretion for denial of a Park Use Permit, granting of the permit is subjective. Therefore, Petitioner's claims succeed under statutes in effect in 2010 and as amended.

All requests for judicial notice are granted. The evidentiary objections are overruled and motion to strike is denied.