

**ORIGINAL FILED**

JAN 13 2011

LOS ANGELES  
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

<b>LUCILLE SAUNDERS, ET AL</b>	<b>BS115435</b>
vs.	c/w BS117832
<b>CITY OF LOS ANGELES, ET AL</b>	<b>COURT'S ORDER ON SUBMITTED MATTER</b>

The Court having read all papers and hearing the arguments of counsel, submitted its ruling on 11-3-10. The Court now rules as follows:

Petitioners' motion to augment the record is DENIED. PRC § 21167.6(e).

The administrative record includes "any other written materials relevant to the respondent public agency's compliance with this division . . ." PRC § 21167.6(e). "A court may exercise its discretion to augment an administrative record if the evidence is relevant. . ." Evans v. City of San Jose (2005) 128 Cal. App. 4th 1123, 1144. However, the only evidence that is relevant is that which was before the agency at the time it made its decision. Western States Petroleum Assn. v. Superior Court (1995) 9 Cal. 4th 559, 574 fn4. Extra-record evidence is barred. Id. at 578. Petitioners' request includes excerpts of community plans which predate the adoption of the re-adopted Framework Element of 2001. They were not introduced at that time and are therefore not relevant. Petitioners did not challenge the City's past approval of any of these plans. The use of these documents to critique the City's implementation of the Framework Element is not appropriate. The proposed evidence does not tend to prove or disprove any disputed fact in this action. Id. at 570 (citing Evidence Code sections 350 and 210) This extra-record evidence was not considered.

The court accepts the discovery responses (Exhibits B, E, F, and G) as evidence for the statute of limitations issue only.

LUCILLE SAUNDERS, et al.'s petition for writ of mandate is DENIED. CCP §§ 1085, 1094.5(f), PRC § 21168.5.

Respondent's request for judicial notice is GRANTED. EC §§ 452, 453. The court recognizes the existence of the 59 weblinks to 46 different websites.

The Framework does not impose any mandatory duties. The City Council added a caveat to the adoption of the Framework Element stating that the programs could change due to a wide variety of factors including the availability of adequate funding. C999 ("In addition, amounts and sources of funding, initiation dates, responsible agencies and detailed work scope of programs may be changed without requesting amendments to the General Plan Framework Element."), see also C993. It is clear that the decisionmakers did not create a mandatory duty. The Planning Department has consistently interpreted the language of Chapter 10 as discretionary and not mandatory. Howe Declaration ¶¶ 8, 9. The "contingent upon" language in the relevant sections of the Framework Element make it clear that the use of the word "shall" in the other parts of the Element does not create a mandatory duty when addressing the method, manner and timing of implementation. See Crespin v. Kizer (1990) 226 Cal. App 3d 498, 513.

Even if the language of the Framework element could be construed to impose a mandatory duty, the City substantially complied. The City implemented program 43 by preparing three bound annual reports for the years 1990-94, 1994-96, 1996-98. P797-800, P809-812, P839-844, see also P336, P607. The reports were expensive to produce and by the time they were bound they were already out of date. Thereafter, the City took advantage of new technology and expanded the information it made available to the public on its website. Howe declaration at ¶ 6. The information that would have been published as a bound report was available on the website. The City Council, Mayor and Planning Commission were notified of the changes. The information is updated quarterly and annually. See, e.g. P2178 (for the year 2002) and P2991 (for the year 2008).

The City also established a monitoring program. The planning Department has always monitored growth and development and worked with 11 technical departments to track infrastructure. Blumenfield declaration at ¶¶ 1, 7, 9, 11, P801-802. The City also has a transportation database. P844-847, 862. Unlike the smaller cities familiar to petitioners' expert, responsibility for monitoring infrastructure is not centralized in single "Community Development Department." Blumenfield Declaration at ¶ 8.

Neither State Law nor the Framework Element requires the City to update its General Plan or any element with the exception of the Housing element. Govt. Code §§ 65300 et seq., 65583. However, the City is in the process of updating the Hollywood Community Plan. CTab 5-6.

Injunctive relief is inappropriate. The court cannot simply stop all development in the City and it certainly does not have the time nor the expertise to review each proposed amendment to land use regulations, specific plan amendments, development agreements, tentative subdivision maps and community plan updates.

The City did not violate its charter. Charter § 216 does not apply to annual reports adopted by resolution, only to those adopted by ordinance. Tab 7.

Public Resources Code § 21167(a) sets a 180 day statute of limitations, which runs from "the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without formal decision by the public agency . . . from the date of the commencement of the project." The 180 day statute of limitations applies to those cases where the agency proceeds without any attempt at compliance and the 30 day statute of limitations applies where compliance is alleged to be defective. PRC §§ 21167(a)(b); Cal. Mfrs. Assn. v. Indus. Welfare Comm. (1980) 109 Cal. App. 3d 95, 125.

The "commencement of the project" is not clear here. No bulldozers appeared, no grading commenced, no survey stakes were erected. None of the usual signs that a "project" had been commenced were present. Instead, as petitioner alleges, the City abused its discretion by "unilaterally and secretly deleting the Annual Report requirement without proper CEQA review." SAP at ¶ 92.

This claim fails for two reasons. First, the claim is time barred. On January 14, 2008, the Planning Department notified petitioners' counsel by letter that there were no written reports for the years 1999 through 2007. Ex. 1. Again on January 26, 2009 the City notified petitioners' counsel about the online format in its discovery responses. Ex. 2. Yet the motion to amend the petition to add the CEQA claim was not filed until September 8, 2009, well beyond the 180 day limit. Arguably, even the March 11, 2009 "discovery date" would have made the amendment time barred because the amendment was not filed until October 9, 2009. The CEQA claim must be commenced, i.e., filed within 180 of the "commencement of the project." The amendment was filed as of the date of the hearing on the motion, not the date of the filing of the motion.

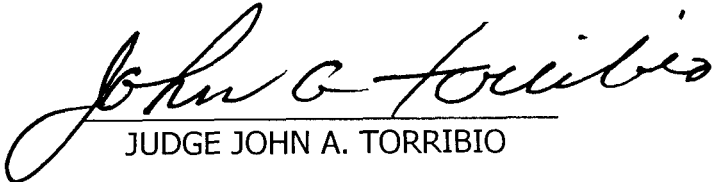
Secondly, the Framework Element is a non-mandatory element of the City's General Plan. SAU 47. The annual report on growth and infrastructure is one of 70 discretionary reports described in Chapter 10 of the Framework Element. Petitioners are unable to point to any evidence on the record to show that the City adopted the annual report implementation program as required CEQA mitigation. Nor does the record show that the City took an approval action to delete the annual reports. As discussed above, the annual reports were changed to an "online" format. The on-line database made the information available faster to City decisionmakers and reduced costs. SAU 2178-3889. While it is true that the data, without analysis, is not the same

as would be presented in a paper document, the court finds that City has not violated any mandatory duty.

Accordingly, the petition is denied.

Although not a factor in its decision, the court observes that petitioner did not prepare and file a trial notebook in compliance with LASCER 9.24(j).

Dated: 1-13-11

  
JUDGE JOHN A. TORRIBIO

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 12720 Norwalk Blvd., Dept. SE-G, Norwalk, CA 90650. On, January 13, 2011, I served the foregoing document described as COURT'S ORDER ON SUBMITTED MATTER on the Petitioners, Respondent, and Real Party in Interest in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

SABRINA D. VENSKUS  
21 S. California St., Suite 204  
Ventura, CA 93001

DOUGLAS P. CARSTENS  
CHATTEN-BROWN & CARSTENS  
2601 Ocean Park Blvd., Suite 205  
Santa Monica, CA 90405

TERRY P. KAUFMANN MACIAS  
MARY J. DECKER  
Deputy City Attorneys  
City Hall East  
200 N. Main St., Room 700  
Los Angeles, CA 90012

BY MAIL: I am "readily familiar" with the Court's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Norwalk, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

Executed on January 13, 2011 at NORWALK, CALIFORNIA

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Michelle M. Vermilye  
Type or Print Name

  
Signature