

FILED

APR 16 2008

SIERRA SUPERIOR COURT
BY Cecilia Rubin
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SIERRA**

**SIERRA VALLEY DEVELOPMENT
COMPANY, LLC, a California Limited
Liability Company and JOHN K.
GULLIXSON,**

Petitioners,

vs.

**BOARD OF SUPERVISORS OF SIERRA
COUNTY AND SIERRA COUNTY,**

Respondents.

**DAVID and KATHLEEN
GOICHOECHEA,**

Real Parties in Interest.

Case No.: 6729

**TENTATIVE DECISION FOLLOWING
HEARING**

The above-entitled matter came on calendar for hearing on April 7, 2008 on Petitioners' Verified Petition for Writ of Mandamus and for Writ of Administrative Mandamus. Petitioners appeared by William D. Ross. Respondents appeared by Timothy M. Taylor and Greg C. Gatto. Real parties in interest appeared by Matthew Addison. Petitioners' counsel asked that the Court issue a Statement of Decision. Having considered the written and oral submissions of the parties, the Court finds and orders as follows.

1 809). At that meeting, the Board unanimously approved all three applications for FSZ
2 designation. At that meeting, the Board also found the applications were exempt from
3 the California Environmental Quality Act (CEQA) based on a finding they fell within
4 Categorical Exemption Class 17 for open space contracts under the Williamson Act (AR
5 307, 347).

6 Following these actions, the petitioners sought the issuance of a writ of
7 mandamus and a writ of administrative mandamus to set aside the decision of the
8 Board of Supervisors to approve the application for an FSZ designation on RPI's
9 property.

10 **DISCUSSION**

11 **JUDICIAL NOTICE**

12 The Court reserved ruling on Petitioner's request for judicial notice of the entire
13 General Plan and a recorded document entitled, "Land Conservation Contract Notice of
14 Non-Renewal." Having considered the arguments of counsel, the Court grants judicial
15 notice of those two documents.

16 **CASE CITATIONS**

17 In the interests of brevity, all case citations in this decision are limited to the
18 named plaintiff in those cases. Unless otherwise noted, the full citation can be found in
19 the Petitioners' and Respondents' table of authorities, in their briefs.

20 **STANDARD OF REVIEW**

21 While varying standards of review may apply to the different issues raised by the
22 Petition, for purposes of clarity and consistency, the Court will apply the "substantial
23 evidence" standard of review.

24 **STANDING OF PETITIONERS**

25 The Court finds Petitioners have standing to bring this petition in that they are
26 adjacent landowners. The Waste Management case cited by Respondents emphasizes
27 the commercial and competitive interests of the Petitioner and Respondent in that case
28 and the distance between and natural geological division of the properties of the
Petitioner and Real Party in Interest in that case. As such, Waste Management is

1 factually distinguishable from this case. The Bozung case cited by Petitioners in their
2 Reply Brief is more factually apposite to this case.

3 **SUFFICIENCY OF NOTICE**

4 The Court finds the notice given was legally sufficient. The notice required for a
5 proposed action such as in this case under the Williamson Act is set forth in
6 Government Code Sections 51230 and 6061. The Respondents met and exceeded the
7 notice requirements by twice publishing notice in a newspaper of general circulation,
8 sending notices to property owners within 500 feet of the RPI's property (including
9 Petitioners) and posting notices at various locations around the County (AR 29-32, 91).
10 After hearing objections to the proposed actions at the first Board meeting, the Board of
11 Supervisors took no action until the next Board meeting two weeks hence. In the
12 interim, notice was again mailed to all property owners within 500 feet of the RPI's.

13 Environmental Defense Project of Sierra County, cited by Petitioners, involved
14 the notice requirement for a zoning ordinance amendment, not a proposed action under
15 the Williamson Act. As such, that case does not apply to the circumstances of this case.

16 Having concluded the proper notice procedures were followed, the issue of
17 Petitioners' standing to object to the notice given is rendered moot and need not be
18 addressed.

19 **CONFLICT OF INTEREST**

20 The Court finds there was no conflict of interest created in this case by virtue of
21 the County Planning Director also serving as the Executive Officer of LAFCO for the
22 following reasons.

23 First, LAFCO has no jurisdiction over the creation of FSZ's pursuant to
24 Government Code Section 51296. Second, Government Code Section 1099 does not
25 apply to an employee, such as a Planning Director. Finally, Government Code Sections
26 56380 and 56384 specifically allow LAFCOs to contract with public agencies for
27 personnel. Therefore, the same person holding the position of Planning Director for the
28 County and Executive Officer of LAFCO does not create "incompatible offices" for
purposes of the actions taken in this case.

1 evidence supports the finding of the Respondents that the action is categorically exempt
2 from the requirements of CEQA.

3 Having so concluded the burden shifts to Petitioners to show the project is not
4 exempt by virtue of an exception. This exception must be shown by substantial
5 evidence. Petitioners have failed to meet this burden.

6 Petitioners' reliance on the Pocket Protectors case is misplaced. That case did
7 not address a challenge to a finding of a categorical exemption. Rather, the issue raised
8 was whether or not a full Environmental Impact Report was required despite the
9 agency's finding that a mitigated negative declaration was sufficient. Unlike the present
10 case (which is exempt from CEQA), the Pocket Protectors case was not exempt from
11 the requirements of CEQA.

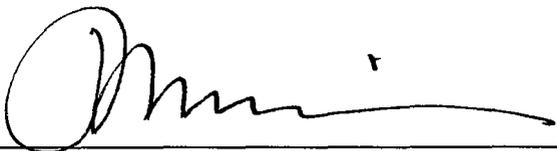
12 **ADEQUACY OF FINDINGS**

13 The Court concludes substantial evidence supports the findings of the
14 Respondents and those findings are adequate to support their actions. This conclusion
15 is based on the entire record submitted to this Court. Further, the Court concludes the
16 Petitioners have failed to exhaust their administrative remedies on this issue and have
17 therefore waived this issue.

18 **CONCLUSION**

19 For the reasons stated herein the Court denies the Petition. Petitioners have
20 requested a Statement of Decision pursuant to California Rules of Court, Rule 3.1590.
21 This ruling will be the Statement of Decision unless within ten days any party specifies
22 controverted issues or makes proposals not covered by this Tentative Decision.

23
24
25 Dated: April 16, 2008



R. MICHAEL SMITH
Judge of the Superior Court, Assigned