

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CITY OF MARINA et al.,

Plaintiff and Respondent,

v.

BOARD OF TRUSTEES OF THE
CALIFORNIA STATE UNIVERSITY,

Defendant and Appellant.

H023158

(Monterey County
Super. Ct. Nos. M41795
& M41781)

**ORDER MODIFYING OPINION
AND DENYING REHEARING**

NO CHANGE IN THE JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on June 17, 2003, be modified as follows:

1. On page 3, the first full paragraph, beginning “CEQA requires that” is deleted and the following paragraph is inserted in its place:

CEQA requires that all of the negative impacts of a particular project be included in an environmental impact report (EIR). CEQA does not ultimately require that the environmental impacts be mitigated as long as they are identified and certain findings are made regarding the feasibility of mitigating the impacts and the desirability of the project. There are some exceptions in other acts and statutes irrelevant here having to do with such effects as toxic waste and endangered species, but CEQA by its terms permits an agency, once it has considered an environmental effect, to go forward with the project if it adopts certain findings.

2. On pages 7, the first full paragraph beginning “On November 9, 1998” is deleted and the following three paragraphs are inserted in its place:

On or about November 6, 1998, the City of Marina filed a petition for writ of mandate challenging the University’s certification of the EIR and its approval of the CMP as being in violation of CEQA. FORA filed a similar petition three days later. FORA alleged that the EIR failed to “adequately recognize the FORA allocation of fair-share costs of [the University’s] long-term impact on the infrastructure, or otherwise financially plan for the impacts and/or mitigation measures to minimize the impact on the local regional resources.”

The Trustees demurred to FORA’s petition and filed a motion to strike the city’s petition. The record does not reveal whether the demurrer and the motion to strike were ever heard or, if they were, what the disposition was as to those proceedings.

On or about April 16, 1999, the City of Marina and FORA filed first amended writ petitions that once again challenged the certification of the EIR and the approval of the CMP. At some point, the proceedings on the writ petitions were consolidated. The Trustees answered FORA’s first amended petition. It is not clear from the record whether they also answered the city’s petition.

3. On page 7, the first sentence of the second full paragraph the words “In the proceeding below” are replaced with “After further briefing and a hearing” so the sentence reads as follows:

After further briefing and a hearing, the Superior Court issued a preemptory writ ordering the Trustees to either vacate the resolution approving the CMP or, in the alternative, adopt findings that would “provide for mitigation of significant adverse environmental impacts off-site” “through either or both of” “(i) adoption and implementation of findings which commit the TRUSTEES to provide funding for public

capital facilities necessary to mitigate the CMP impacts, and/or (ii) adoption and implementation of other measures sufficient to mitigate the impacts.”

There is no change in the judgment.

Respondent’s petition for rehearing is denied.

Dated:

RUSHING, P.J.

I CONCUR:

MIHARA, J.

(Bamattre-Manoukian, J., would grant rehearing.)