

***Holocarpha macradenia* v. Alternate Transportation: Arana Gulch & the Broadway-Brommer Bike Path**



AMY E. LEE

WRITER'S COMMENT: After Dr. Cahill assigned this legal analysis to my Environmental Law class, I spent weeks sifting through numerous journals and magazines looking for high-profile controversies currently under legal debate. I ultimately looked closer to home and used this opportunity to explore a complex and contentious land use issue in my own hometown of Santa Cruz. I chose an issue that has spanned the last decade of local politics and community debate regarding the development of a cross-town bicycle path through a currently undeveloped greenbelt area, an issue of interest to me as both a bicyclist and environmental scientist. I knew when approaching this issue that it was, like many environmental law cases, not simply a matter of conservation versus development, but that stakeholders from multiple realms of society, politics, and planning were involved. This issue pitted sects of environmentalists against other environmentalists and revealed a common challenge of the legal system: discerning which parties promote true sustainability and which promote their own self-interest.

—Amy E. Lee

INSTRUCTOR'S COMMENT: Environmental Science and Policy 161, Environmental Law, is an undergraduate course in law. The students learn how the law is developed, through legislation, regulations, and cases. They learn to read and brief legal cases, and they study the major environmental laws. Student papers are an important element of the course. Professor Tracy Winsor and I require each student to write a paper on a current environmental controversy, describing the facts and parties, identifying the applicable law, and applying the law to the facts. We encourage interviews so that the student will obtain a "real world" perspective. Amy Lee's paper is a fine example of such a paper. She selected a concrete, local controversy that had resulted in litigation. She read the court decision, interviewed local parties, reviewed environmental documents and other materials, discussed the requirements of the California Environmental Quality Act, and wrote a clear paper explaining the controversy and how it was resolved.

—Virginia Cahill, Department of Environmental Science and Policy

Introduction

THE SANTA CRUZ REGION of Northern California is well known for its natural beauty, open spaces, endemic species, and terrible transportation planning. All receive attention from the Santa Cruz City Council, planners, residents, and environmentalists, and all receive earmarked government spending and prompt local development projects. The case at hand in this paper represents the pith of the environmental debate over transportation development at the cost of open space.

In 2006, the Santa Cruz City Council approved the master plan for the Arana Gulch greenbelt area, which included a plant restoration plan and a multi-use, east–west transportation corridor through the open space (*California Native Plant Society v. City of Santa Cruz* 2009). The interpretive path project caused controversy because the proposed path would transect critical habitat of the Santa Cruz tarplant, a federally listed threatened species endemic to the Monterey Bay area (USFWS 2010). This project not only split environmentalists, it had a multitude of other stakeholders as well—the cyclist camp vying for better alternate routes, the plant community wanting habitat conservation, the Americans with Disabilities Act weighing in for wheelchair access, the Not-In-My-Backyarders resisting increased traffic through their neighborhoods. Litigation quickly followed the Council’s decision, brought to the Santa Cruz County Superior Court by the California Native Plant Society et al. on procedural and substantive claims under the California Environmental Quality Act (CEQA) (*CNPS v. City of Santa Cruz* 2009). In the fall of 2009, the California Court of Appeal’s Sixth Appellate District upheld the district court ruling in favor of the City Council, finding no CEQA violation and allowing the Arana Gulch Master Plan to stand (*ibid.*). However, the California Coastal Commission has now stepped in on the basis of the California Coastal Act in a (potentially) final attempt to veto the Council’s decision.

The Issue and the Parties

ARANA GULCH IS A 67.7-ACRE CITY-OWNED GREENBELT at the top of the Santa Cruz Harbor. It sits just inside the eastern boundaries of the city and follows Arana Creek as it runs from the surrounding neighborhoods to its outlet in the Monterey Bay. The open space features meadows, live oak riparian forest, central coast riparian scrub, wetlands, coastal prairie grassland, the federally threatened Santa Cruz tarplant, and a small

network of unpaved trails, including a half-mile connection trail from the neighborhoods to the harbor for pedestrians and cyclists, and a foot-path that circles the southern meadow (“Arana Gulch” 2009). Residents use the area to hike, jog, walk their dogs, and access the harbor and beachfront.

Arana Gulch was private cattle-grazing land until its purchase in 1994. Part of the 67-acre expanse was also city property before 1994, a 4.7-acre strip through the center of the greenbelt having been bought with the intention of building a roadway between Broadway and Brommer Street in the late 1980s (Burns 2010). That road project was strongly opposed by Santa Cruz residents and was never accomplished (ibid.).

The Arana Gulch Master Plan evolved over a span of two decades, with the Arana Gulch Interim Management Plan being used as the principle document managing and maintaining the space from 1997 until 2006. The final version of the Master Plan was published in February of 2006 and includes two principle components: 1) Resource Protection and Enhancement and 2) Public Use (City of Santa Cruz Parks and Recreation 2006). Initial study found the proposed uses to have potentially significant environmental effects, and an Environmental Impact Report (EIR) was therefore prepared concurrently in accordance with CEQA (ibid.). The Resource Protection and Enhancement component outlines general goals emphasizing adaptive habitat management, restoration and education (Skewes-Cox 2006). The main element for the case at hand is the description and implementation of a comprehensive adaptive management plan for the Santa Cruz tarplant to ensure its viability in the Arana Gulch area. The Public Use component primarily focuses on a two-mile trail network, specifically including an east–west multi-use paved bicycle and pedestrian path described in the Plan as “comply[ing] with the Americans with Disabilities Act (ADA) requirements and provid[ing] pedestrian, wheelchair and bicycle access” (ibid.). About two-thirds of the trail system (1.4 miles) is restricted to pedestrians and leashed dogs, while the remaining third (approximately 0.6 miles) provides access for pedestrians, wheelchair users, cyclists, and on-leash dog use (ibid.). The public use component also features dog restrictions and the closure of current unauthorized and non-designated pathways (ibid.).

The Master Plan and Draft EIR discuss in detail the impacts and mitigation measures for the Santa Cruz tarplant (*Holocarpa macradenia*). The tarplant is a small- to medium-sized annual herb in the

sunflower family listed as threatened by the U.S. Fish & Wildlife Service and as endangered by the California Department of Fish and Game due to significant population decline over the past few decades (Skewes-Cox 2006). Species decline is attributed mainly to habitat loss as a result of urbanization or conversion to agricultural land and invasive non-native species (*ibid.*). The Draft EIR states that routing trail segments through existing tarplant habitat would cause a direct loss of habitat, despite the fact that only small numbers of plants have been observed in the critical habitat areas of Arana Gulch over recent years. It is assumed that a dormant seed bank may still be present, and that proper management measures could potentially restore the species' population (*ibid.*). The EIR outlines mitigation measures for the habitat loss, including aligning trails to avoid sensitive areas and a full implementation of the Santa Cruz Tarplant Adaptive Management Program. Yet despite these mitigation efforts to reduce impact to the species, the report notes that impact would still be "significant and unavoidable because it cannot be fully ensured that all tarplant habitat would be protected" (*ibid.*).

As required by CEQA, the EIR includes four alternatives to the development project and their associated impacts. These alternatives include 1) No Project, which would eliminate impacts but fail to meet any of the project objectives; 2) a Reduced Creek View Trail alternative, which would include the same trail system as the proposed project and the Santa Cruz Tarplant Adaptive Management Plan but exclude any trail segments on Port District property; 3) an Unpaved Trail System with Hagemann Bridge, having the same trail system as the proposed project except no trails would be paved, which would make this alternative non-compliant with ADA requirements (Skewes-Cox, 2006). Without funding for the habitat-taking trails, funding for the Adaptive Management Program is uncertain (*ibid.*). Alternative 4 is the Unpaved Trail System without Hagemann Bridge. Although the latter is the "environmentally superior alternative," it is also noncompliant with ADA requirements, and the exclusion of the Hagemann Bridge eliminates the new west entrance or east–west trail connection, preventing a cross-town bicycle corridor (*ibid.*). As with the third alternative, the lack of paved multi-use trails leaves funding for the Adaptive Management Program uncertain.

After required CEQA procedure and Planning Commission recommendation, the Arana Gulch Master Plan was brought before the Santa Cruz City Council for approval on July 11, 2006. Public hearings

included staff reports in which the environmental consultant who authored the EIR advised the Council to adopt a Findings of Overriding Considerations and approve the Master Plan (*CNPS v. Santa Cruz* 2009). The environmental consultant stated that the mitigation measures in the EIR would reduce environmental impacts to less than significant except in respect to the tarplant species, but that a very conservative approach had been taken in regards to the tarplant. The location and viability of the dormant seed banks are unknown, so the EIR therefore defined impacts as significant and unavoidable; however, the “majority of the plant habitat is protected” (*ibid.*). Following the proceedings, the Council voted unanimously to certify the EIR and adopt the advised Findings of Overriding Considerations, and started necessary actions to approve the Arana Gulch Master Plan (*ibid.*).

A main party in this issue are the proponents of habitat conservation, headed by the Santa Cruz Chapter of the California Native Plant Society, who petitioned for a writ of mandate subsequent to the City Council’s decision on the basis of CEQA violations (*CNPS v. Santa Cruz* 2009). The writ was brought on the grounds that the City Council adopted a Statement of Overriding Considerations to approve the project, despite the fact that there were feasible alternatives (*ibid.*). Furthermore, CNPS asserted that the City was required to consider an offsite alternative for an ADA-compliant multi-use trail because it was a main objective of the project. By failing to do so, the plaintiffs claimed, the City neglected the informed-decision making and public participation that is required by CEQA (Wittwer & Parkin 2006). The City of Santa Cruz disagreed with these claims and asserted that substantial evidence offered throughout the administrative process defended the alternatives considered in the EIR as well as its ultimate decision regarding infeasibility and overriding considerations (*CNPS v. Santa Cruz* 2009).

An opposing party in the issue of the Master Plan is the cycling community, which supports the development of a connecting east–west trail on the basis of a convenient, direct, and safe cross-city bike route to increase local bike errands and commutes. One community organization backing this opinion is People Power, a local nonprofit promoting bike commuting as “sensible transportation for Santa Cruz County” (Piercy 2009). People Power argues that the proposed development would be key in reducing carbon emissions and traffic congestion and that the Broadway-Brommer connection through Arana Gulch is the

final half-mile link in the Laurel-Broadway-Brommer-Jade-Topaz arterial street, which would create a straight, centrally located route through the entire Santa Cruz-Capitola urbanized area (*ibid.*). The existing cross-town routes pose serious safety, traffic, and distance concerns, and therefore People Power claims that this bicycle-only connector would be a deciding factor for nonserious cyclists to choose a bicycle over a car (*ibid.*).

Such proponents of the bike path deny the negative effects on the Santa Cruz tarplant. People Power states that the species exists in many other locations around the Monterey Bay area and that the planned bike route would not displace a single existing plant. The tarplant populations in Arana Gulch have been shrinking, largely due to the unplanned paths created by the foot traffic and off-leash dogs, and the installation of a planned pathway would create a route around major tarplant habitat, restrict off-leash dogs, and legally bind the City of Santa Cruz to funding a restoration project as stipulated mitigation in the EIR (Piercy 2009). Without the construction of the pathway project, the city is under no obligation to fund any conservation project.

The cycling community's final argument aligns with the interests of the handicapped community. Currently, none of the four greenbelt properties in Santa Cruz (Pogonip, Delaveaga, Moore Creek, and Arana Gulch) are wheelchair-accessible (*ibid.*). They all provide a network of unpaved trails, but the Arana Gulch project is the first to provide a paved pathway through a city open space. The development of a paved bike path would therefore open at least a half mile of open space to those in wheelchairs, complying with the Americans with Disabilities Act.

Yet a third party in this issue are the concerned citizens who organized themselves as the "Friends of Arana Gulch." This group consists mostly of residents of the surrounding neighborhoods with the self-defined purpose of "working for the preservation of Arana Gulch as open space, and for the restoration of the rare and native flora and fauna of its coastal prairie habitat" (Friends of Arana Gulch 2010). Their short- and long-term goals include stopping the construction of the Broadway-Brommer Bike Path and advocating instead for an Arana Gulch Master Plan that includes management and maintenance to protect and restore the coastal habitat, leaving out any transportation project at all. The Friends of Arana Gulch have aligned themselves with the California Native Plant Society in the legal proceedings, but some stakeholders have

criticized their environmentalist arguments as a legal basis for serving their own private, not-in-my-backyard interests (Burns 2010).

Application of the Law

THE ENVIRONMENTAL LAW AT HAND in this issue is CEQA and whether the City Council violated CEQA's procedural mandate when approving the Environmental Impact Report for the Arana Gulch General Plan. Specifically, issues arose under CEQA regarding both the City's adoption of a Findings of Overriding Considerations despite the existence of "feasible" alternatives as well as the scope of the alternatives the EIR included.

The Court's analysis of the case followed a legal framework set by environmental protection under CEQA and judicial review. The Court understood that the legislature intended CEQA to be interpreted to provide the fullest possible protection to the environment within the reasonable scope of the statutory language (*CNPS v. City of Santa Cruz*, citing *Marin Municipal Water District v. KG Land California Corp.*, 235 Cal. App. 3d, 1994), and furthermore required public agencies to mitigate or eschew the approval of projects that would carry significant environmental effects when "feasible" alternatives or mitigation measures exist that would substantially reduce or avoid those effects (CEQA 2010, §21002.1). Nevertheless, section 21002 and a precedent set by *Sierra Club v. State Board of Forestry* do permit public agencies to approve projects having an "environmentally deleterious effect" when economic, social, or other conditions make it infeasible to mitigate those effects (*Sierra Club v. State Board of Forestry* 1994).

CEQA has multiple elements that ensure the fullest possible protection to the environment. The environmental impact report is the "heart of CEQA" and an "environmental alarm bell" intended to alert the public and policy makers of the environmental implication of their decisions (*Marin Municipal Water District v. KG Land California Corp* 1991). The EIR requires a description of a range of reasonable alternatives to the project that would avoid or substantially reduce the significant environmental effects. "Every conceivable alternative" need not be considered, but rather a "reasonable range of potentially feasible alternatives" (CEQA 2010, §15126.6). As stated in section 21061.1 of CEQA, "feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental,

social and technological factors.” The potential alternatives must provide sufficient analysis for informed decision-making and meaningful participation and criticism by the public. The last element of CEQA regarding environmental protection concerns approval of a project despite environmental impact. CEQA allows approval of a project with significant environmental impact on the stipulations that the identified mitigation measures and alternatives are infeasible, and that unavoidable impacts are acceptable because of overriding considerations (CEQA 2010, §21081). According to the case *City of Marina v. Board of Trustees of California State University* (2006), the override decision lies at “the core of the lead agency’s discretionary responsibility” and is therefore not to be “lightly overturned.” A statement of overriding considerations requires support of substantial evidence under CEQA code section 15093.

The standard of review of this issue addresses whether the agency has abused its discretion either by failing to follow procedure required by CEQA or by reaching a factual conclusion unsubstantiated by significant evidence. Procedural claims are brought to the court for enforcement of CEQA requirements and are “scrupulously enforced” (*City of Marina v. Board of Trustees* 2006). Courts give greater deference to agencies’ substantive or factual conclusions than to procedural review (*Chevron U.S.A. Inc. v. National Resources Defense Council, et al.*). The court holds that the agency is the “finder of fact” and yields to all reasonable inferences from the evidence that would support agency decision (*CNPS v. City of Santa Cruz*).

Evaluation

APPLICATION OF CEQA DOES RESOLVE many of the issues brought by this case. CEQA mandates the procedures to be followed and the evidence to be included in the environmental review. Therefore, analysis of the Arana Gulch Master Plan within the CEQA guidelines provides clear resolution.

As stated above, CEQA requires that reasonable alternatives to the *project*, not elements within the project, be considered in the environmental review process prior to approval. The EIR expressly describes alternatives to the project that include variations to the proposed pathway; however, each of the four alternatives fails to meet the primary project objectives of the Master Plan. The Court defers to the City Council as “finders of fact,” upholding the Council’s decision to reject as infeasible

an alternative that does not satisfy the project's objectives, as it is "undesirable from a policy standpoint" (*CNPS v. Santa Cruz* 2009). The decision-makers' rejection on a policy basis in no way undermines the EIR's analysis of alternatives, which must assess only *potentially* feasible alternatives. CEQA does not mention an EIR needing to take into account the broader considerations of policy that come into play when decision-makers consider the actual feasibility of implementing a project. In this case, the City Council considers the multi-use pathway a primary objective of the Master Plan and is therefore given deference in its decision to reject environmentally superior alternatives on the basis that "social, or other conditions" make them infeasible.

Furthermore, the necessity for an EIR to consider the availability of alternate sites is dependent on the particular facts of a given project, with the ultimate objective being a discussion of alternatives that fosters informed decision-making and public participation. CEQA has no requirement that an EIR explore off-site project alternatives in every case. The project at hand is the master plan for a particular property, Arana Gulch—not a development plan for a multi-use pathway. The Arana Gulch Master Plan is the project in need of approval and the multi-use trail is simply a facet thereof. The controversy thus revolves around an off-site alternative for a *component* of the project and not the project itself and consequently has no requirement by CEQA for a description of alternatives. Conclusively, off-site alternatives to an east–west connection had already been the subject of extensive prior review, culminating in the Broadway-Brommer EIR to which the Arana Gulch Master Plan and EIR make reference. As allowed by CEQA § 15126.6, an EIR may "rely on a previous document to help it assess the feasibility of potential project alternatives" when it has "sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose." The previous examination of multiple off-site alternatives and the substantial evidence it contributed to the case at hand are more than sufficient to satisfy CEQA's substantive mandate.

Conclusion

THE ARANA GULCH PARCEL HAS BEEN THE SUBJECT of extensive city planning efforts since its purchase almost two decades ago, with extremely passionate stakeholders representing all facets of its potential uses. As Santa Cruz looks to improve its bicycling conditions and increase

alternate transportation, the Broadway-Brommer connection will play a pivotal role in alleviating cross-town automobile traffic and creating an accessible route for all levels of the cyclist spectrum.

The proposed Arana Gulch Master Plan took into account a majority of perspectives necessary to appeal to the various stakeholders in this issue. The extensive adaptive management plan will rejuvenate an already-dwindling population of the coveted Santa Cruz tarplant and create a space for residents to learn about their natural community. It will finally provide greenbelt accessibility for persons of all abilities and represent a momentous step in the realm of the city's sustainable transportation measures. The ecological and procedural issues raised by the Arana Gulch Master Plan provided a comprehensive legal assessment under the California Environmental Quality Act and ultimately withstood its exhaustive environmental review.

Sources

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