

Court of Appeal

FOURTH APPELLATE DISTRICT

Division One

750 B Street, Suite 300

San Diego, CA 92101

www.courts.ca.gov

(619) 744-0760

September 3, 2021

RE: SAVE CIVITA BECAUSE SUDBERRY WON'T,
Plaintiff and Appellant,
v.
CITY OF SAN DIEGO,
Defendant and Respondent.
D077591
San Diego County Super. Ct. No. 37-2017-00045044-CU-TT-CTL

To All Parties:

Appellant claims that the City violated the public's right to due process and a fair hearing. In support of this contention, appellant maintains that the City's certification of an environmental impact report (EIR) and approval of amendments to the Serra Mesa Community Plan and City of San Diego General Plan in this case are reviewed as quasi-adjudicatory decisions pursuant to Public Resources Code section 21168 and Code of Civil Procedure section 1094.5.

The parties are directed to file simultaneous supplemental letter briefs, no longer than 10 single-spaced pages, answering the following questions:

1. Were the City's certification of the EIR and approval of the amendments to planning documents in this case quasi-*adjudicatory* decisions, reviewable pursuant to Public Resources Code section 21168 and Code of Civil Procedure section 1094.5 or quasi-*legislative* decisions, reviewable pursuant to Public Resources Code section 21168.5 and Code of Civil Procedure section 1085?

In answering this question, the parties are directed to discuss *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, and in particular, whether the City's certification of the EIR and approval of the amendments to the planning documents in this case required it to determine facts in relation to specific property rights or interests in an adjudicative fashion. The parties are also instructed to identify any law pursuant to which the City was required to hold an

evidentiary hearing and make factual determinations based on the administrative record in certifying the EIR and approving the amendments to the planning documents.

In addressing these issues, the parties may wish to discuss *Save Lafayette Trees v. East Bay Regional Park District* (2021) 66 Cal.App.5th 21 [“ ‘whether an existing street shall be improved . . . is a question to be addressed to the governing body of a municipality in its legislative capacity, and its determination upon that question, as well as upon the character of the improvement to be made . . . is a legislative act,’ ” quoting *Quinchard v. Board of Trustees* (1896) 113 Cal. 664, 669] and cases cited therein, and *Yost v. Thomas* (1984) 36 Cal.3d 561, 570 [“the amendment of a general plan is . . . a legislative act”].)

2. Would a determination that the City was acting in a quasi-*legislative* capacity foreclose appellant’s procedural due process claim? (See *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1188 [stating that “[q]uasi-legislative acts are not subject to procedural due process requirements”].)

All briefs shall be filed, and served, no later than September 17, 2021.

KEVIN J. LANE, CLERK

BY: Jonathan Newton, Deputy Clerk