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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROBERT TRAPHAGEN et al.,	
Plaintiffs and Appellants,	
v.	G036195
THE CITY OF DANA POINT,	(Super. Ct. No. 04CC00676)
Defendant and Respondent;	OPINION
DOHENY ESTATES LLC,	
Real Party in Interest and Respondent.	

Appeal from a judgment of the Superior Court of Orange County, Jonathan H. Cannon, Judge. Motion for judicial notice. Judgment affirmed. Motion denied.

Evans & Associates and Patrick J. Evans for Plaintiffs and Appellants.

Rutan & Tucker, Robert S. Bower and Todd Litfin, for Defendant and Respondent.

Manatt, Phelps & Phillips, Tim Paone, Mark D. Johnson, Benjamin G. Shatz, and Michael Berger for Real Party in Interest and Respondent.

*   *   *

Plaintiffs Robert Traphagen and Bonny Pitkin appeal from a judgment denying their challenge to defendant City of Dana Point's approval of the adequacy of a closure impact report (CIR) prepared by real party in interest Doheny Estates LLC (Doheny) as part of its decision to terminate operation of a mobile home park on its property. (Gov. Code, § 65863.7; all further statutory references are to this code unless otherwise indicated.) They contend defendant could not approve the CIR because: (1) Its general plan lacked a valid housing element; (2) the approval violates the Mello Act (§ 65590); (3) it failed to provide a fair hearing on the CIR's adequacy; and (4) its approval was not supported by the evidence. Because plaintiffs' claims lack merit, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs resided in mobile homes located in a 90-space Dana Point mobile home park owned by Doheny. In early June 2004, Doheny gave the owners of mobile homes located in the park and the park residents notice that it intended to close the park in June 2005. Doheny also informed residents that while it was "studying various ultimate alternative uses for the property," initially "the property upon which the Park is situated will . . . be changed to vacant land."

Doheny prepared a 20-page CIR, attached 24 exhibits, and sent copies of the CIR to mobile home owners and park residents. Defendant sent the mobile home owners and park residents a notice declaring its intent to issue a negative declaration concerning the park's closure and inviting public comment on the proposal. The city council conducted a hearing, approved the negative declaration and, with certain amendments, found Doheny's CIR complied with the statutory requirements.

Plaintiffs sought a writ of mandate to set aside the city council's resolutions. Their amended petition contained six causes of action: (1) Lack of a valid general plan (§ 65300 et seq.); (2) failure to comply with the Mello Act (§ 65590); (3) failure to comply with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.; CEQA.); (4) denial of procedural due process; (5) breach of lease; and (6) injunctive relief. Plaintiffs dropped the breach of lease count, and the court dismissed the CEQA challenge contained in the third count after plaintiffs acknowledged failing to timely request a hearing on the claim. (Pub. Resources Code, § 21167.4, subd. (a).)

In part, the amended petition alleged defendant's "General Plan lacks . . . an adequate Housing Element," thereby "preclud[ing it] from enacting . . . land use approvals or decisions." Since two lawsuits by other mobile home park residents challenging unrelated land use decisions by the city asserted the same claim (*Seitz v. City of Dana Point* (Super. Ct. Orange County, 2004, No. 04CC00691); *Weitzman v. City of Dana Point* (Super. Ct. Orange County, 2004, No. 04CC00716)), the court conducted a joint hearing of all three cases on the validity of defendant's housing element.

The court concluded "the city has substantially complied" with the requirements for preparing a housing element and its "general plan does contain a housing element . . . ." On the remaining claims, the court ruled the city council's review and approval of the CIR did not constitute "a land use decision because there is no decision to be made by the legislative body in a closure impact report, other than the economic impact regarding . . . the closure. [¶] . . . [¶] . . . [Defendant's city council does not] have . . . the ability to make the decision that . . . you can close the park, but only if you promise to build low income housing or . . . moderate income housing or some other replacement housing . . . that could be utilized by residents."

Defendant and Doheny then moved for judgment on the amended petition's remaining causes of action. Reiterating its finding defendant's "approval of the CIR was

not a land use decision," the court granted the motions and entered judgment in favor of defendant and Doheny.

DISCUSSION

1. Plaintiffs' Attack on the Validity of Defendant's Housing Element

A substantial portion of plaintiffs' opening brief is addressed to the proposition that defendant "had no jurisdiction or legal right to approve a land use decision" because it "has not adopted a [h]ousing [e]lement" as part of its general plan." Defendant argues, in part, the validity of its housing element is irrelevant because the city council's review of Doheny's CIR did not constitute a land use decision. We agree with the latter argument.

"The Legislature has mandated that every county and city must adopt a 'comprehensive, long-term general plan for the physical development of the county or city . . . .' [Citation.] The general plan has been aptly described as the 'constitution for all future developments' within the city or county. [Citations.] '[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.' [Citation.]" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570-571; see also *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806.) "The lack of a mandatory element invalidates the general plan if the missing element is directly involved in the project under review. [Citation.]" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 742.) Thus, "the scope of authority of the agency to enact a general plan and zoning ordinances and *to apply them* is governed by the requirements of state law. A permit action taken without compliance with the hierarchy of land use laws is ultra vires as to any defect implicated by the uses sought by the permit."

(*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184.)

The issue presented here is whether a local agency's determination of the adequacy of a mobile home park owner's CIR constitutes a land use decision. There is no authority expressly addressing this question. But there are both statutory and case law describing what constitutes land use decisionmaking in CEQA actions. CEQA applies "to discretionary projects proposed to be carried out or approved by public agencies . . . ." (Pub. Resources Code, § 21080, subd. (a).) Under CEQA, a "project," includes "an activity which may cause either a direct physical change . . . or a reasonably foreseeable indirect physical change in the environment," involving "the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Pub. Resources Code, § 21065, subd. (c).) "The statutory distinction between discretionary and purely ministerial projects implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an EIR, or its functional equivalent, environmental review would be a meaningless exercise. [Citation.] Thus, ministerial projects 'involv[e] little or no personal judgment by the public official as to the wisdom or manner of carrying out the project.'" (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117.)

Under this approach, a local agency's involvement in the closure of a mobile home park is ministerial in nature. The Ellis Act (§ 7060 et seq.) permits a landlord, including one that operates a mobile home park, to go out of business. (*Keh v. Walters* (1997) 55 Cal.App.4th 1522, 1533.) But before a mobile home park owner ceases using its parcel as such, it must comply with any local laws governing mobile home park closure, plus the requirements set forth in section 65863.7 and Civil Code section 798.56.

Dana Point has not enacted an ordinance applicable to mobile home park closures. Civil Code section 798.56 permits a mobile home park owner to terminate the

residents' tenancies so long as it gives them written notice and provides each one with a copy of the CIR "required pursuant to . . . Section 65863.7 . . . ." (Civ. Code, § 798.56, subds. (g)(2) & (h).) In addition, section 65863.8 requires defendant to "verify that the residents and mobilehome owners have been . . . notified[] in the manner prescribed by law" before considering an application to change the use of the mobile home park. Doheny gave the mobile home owners and park residents the legally required written notice of its decision to close the park. Since Doheny had no current plan for use of the property, its "change of use" notice needed "to be given 12 months" before the "change . . . occur[red]." (Civ. Code, § 798.56, subd. (g)(2).) The notice satisfied this requirement as well.

Section 65863.7 requires "the person or entity proposing the change in use [to] file a report on the impact of the . . . closure[] or cessation of use upon the displaced residents of the mobilehome park . . . ." (§ 65863.7, subd. (a).) "[T]he report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs." (*Ibid.*) "The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion [or] closure . . . on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation." (§ 65863.7, subd. (e); see also *Keh v. Walters, supra,* 55 Cal.App.4th at p. 1534.)

Doheny prepared the CIR. Defendant's involvement was limited to reviewing the CIR and, before approving it, requiring Doheny "to mitigate any adverse impact . . . on . . . displaced mobilehome park residents" by agreeing to pay "the[ir] reasonable costs of relocation." (§ 65863.7, subd., (e).) The CIR satisfied this requirement, offering eligible residents four payment options based on estimates of the average expenses involved in moving a mobile home. The trial court properly ruled

defendant's review of the CIR did not constitute a land use decision, thereby rendering irrelevant the validity of the general plan's housing element.

At the same hearing, defendant reviewed and approved a negative declaration concerning the mobile home park's closure. Arguably, this ruling constituted a land use decision that implicated the general plan's housing element. But the trial court dismissed plaintiffs' CEQA challenge to the negative declaration's approval because they failed to timely pursue it, and that ruling is not challenged on appeal.

2. Plaintiffs' Mello Act Claim

Plaintiffs' second cause of action alleged the park's residents included "persons or families of low or moderate income," and defendant "allow[ed] the conversion of the mobile home park to vacant land" without providing "replacement . . . housing for" them. On appeal, they again argue the park closure "caused loss of affordable housing" and defendant was obligated to "replace affordable housing in a coastal zone that is lost by development activity" even where there has been a "change to non residential [*sic*] use." Respondents contend there is no evidence any park residents qualified as moderate or low-income individuals, defendant did not "authorize" the park's closure, and imposing a duty to replace affordable housing in this circumstance would conflict with Doheny's rights under the Ellis Act.

The Mello Act declares, "In addition to the requirements of Article 10.6 (commencing with Section 65580), . . . [e]ach respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone." (§ 65590, subd. (a).) The replacement of low and moderate income housing in the coastal zone is governed by subdivision (b) of the statute. It declares, "The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income . . . shall not be authorized unless provision has been made for the replacement of those dwelling units with units for

persons and families of low or moderate income. . . . The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone." (§ 65590, subd. (b).)

Doheny's property is in the coastal zone of Dana Point's city limits. (Pub. Resources Code, § 30103, subd. (a).) Contrary to respondents' evidentiary insufficiency claim, Doheny's revised CIR noted "[t]he Park owner is subsidizing the rents of eight low-income residents in the form of monthly rent credits . . . ." Nonetheless, respondents' other arguments have merit.

"Our fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning . . . . If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737; see also *Reidy v. City and County of San Francisco* (2004) 123 Cal.App.4th 580, 591.)

The Mello Act's language reflects it applies to only land use decisions by local governments. Subdivision (a) declares the Act is "[i]n addition to the requirements" imposed on a local government to adopt, review, and periodically revise the housing element of its general plan. (§ 65590 et seq.) "Because general plans embody fundamental land use decisions that guide future growth and development of cities and counties," which "have the potential for resulting in ultimate physical changes in the environment," it is settled that "the adoption and amendment of general plans and their elements are projects within the meaning of CEQA. [Citations.]" (*Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 985.)

Subdivision (b) of section 65590 requires replacement of housing only where there has been an "*authorized*" "conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income." (§ 65590, subd. (b), italics added.) The term "authorize" means "[t]o give legal authority; to empower," and "[t]o formally approve; to sanction." (Black's Law Dict. (7th ed. 1999) p. 129, col. 1; see also *County of Washington v. Gunther* (1981) 452 U.S. 161, 169 [101 S.Ct. 2242, 68 L.Ed.2d 751] ["Although the word 'authorize' sometimes means simply 'to permit,' it ordinarily denotes affirmative enabling action"].)

As previously discussed, defendant's approval of Doheny's decision to close the mobile home park, conditioned solely on its determination the relocation expenses offered to displaced residents, constituted ministerial action. Thus, defendant's approval did not involve a land use decision. Nor did the city's approval amount to an "authoriz[ation]" of the mobile home park's closure. The city did not participate in the decision to close the park, the planning of how and when the closure would occur, or consider a request for an alternative use of the property after the closure.

Furthermore, as respondents argue, employing a broader definition of "authorized" would bring the Mello Act into conflict with the Ellis Act. Courts "do not examine [statutory] language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles, supra,* 34 Cal.4th at p. 737.) "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.]" (*Dyna-Med, Inc. v. Fair Employment and Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

The Ellis Act generally declares "No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease . . . ." (§ 7060, subd. (a).) By its reference to section 811.2's definition of a public entity, which includes the State of California, and use of the term "statute," the Ellis Act clearly applies to state laws such as the Mello Act. *Reidy v. City and County of San Francisco, supra,* 123 Cal.App.4th 580 noted that, while "[t]he courts [have] uniformly concluded that a city retains its traditional police power to regulate the subsequent use of the property after the property's removal from the rental market," since its "1985 enactment . . . the Ellis Act" has been construed as "bar[ring] local ordinances that condition a residential landlord's right to go out of business on compliance with requirements that are not found in the . . . Act." (*Id.* at p. 588; see *First Presbyterian Church of Berkeley v. City of Berkeley* (1997) 59 Cal.App.4th 1241, 1253 [conditioning demolition permit on owner either showing withdrawn units unusable or that it would develop an equal number of new housing units invalid]; *Los Angeles Lincoln Place Investors, Ltd. v. City of Los Angeles* (1997) 54 Cal.App.4th 53, 64-65 [demolition permit conditioned on either property owner's covenant to restrict use of the property or city's approval of new apartment project plans invalid]; *Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1099-1101 [permit allowing conversion of residential hotel to tourist hotel conditioned on owner either furnishing comparable residential units or paying a substantial "in lieu" fee to city invalid]; *Javidzad v. City of Santa Monica* (1988) 204 Cal.App.3d 524, 526, 528, 531 [demolition permit conditioned on prior issuance of rent control board's removal permit that required showing of either economic infeasibility or owner's intent to construct multi-family housing invalid].)

Notwithstanding the foregoing case authority, the Ellis Act does place limitations on a landlord's decision to withdraw its premises from the rental market.

Section 7060.1 declares "nothing in this chapter" "[p]revents a public entity from enforcing any contract or agreement by which an owner of residential real property has agreed to offer the accommodations for rent or lease in consideration for a direct financial contribution" from the public entity in the form of infrastructure costs, a write-down of land costs, or construction subsidies. (§ 7060.1, subd. (a).) Nor does the Ellis Act "[d]iminish[]" a public entity's "power" "to grant or deny any entitlement to the use of real property" (§ 7060.1, subd. (b)), "mitigate any adverse impact on persons displaced by reason of the withdrawal . . . of any accommodations" (§ 7060.1, subd. (c)), or "[r]elieve[] any party to a lease or rental agreement of the duty to perform any obligation under that lease or rental agreement" (§ 7060.1, subd. (e)).

Subdivision (d) of section 7060.1 further declares the Ellis Act does not "[s]upersede[the] provision[s] of" the following legislative enactments: Section 7260 (governing relocation assistance for persons displaced by public actions); the Fair Employment and Housing Act (§ 12900 et seq.); the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.); laws governing personal rights (Civ. Code, § 43 et seq.), bailments and leases (Civ. Code, § 1925 et seq.), and unlawful detainer actions (Code Civ. Proc., § 1159 et seq.); or the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.). In addition, section 7060.2 through 7060.4 impose constraints on the ability of landowners with property in jurisdictions subject to rent control laws to re-rent property after withdrawing it from the market. Noticeably missing from the foregoing list of exceptions and limitations is any requirement that a coastal zone landowner withdrawing property from the rental market must comply with the Mello Act.

If defendant's approval of Doheny's CIR is construed as an authorization triggering a duty by Doheny to comply with the Mello Act, the latter statute would have the same effect as the municipal ordinances invalidated in the cases cited above. As stated in *Bullock v. City and County of San Francisco, supra,* 221 Cal.App.3d 1072, "The Ellis Act does not permit the City to condition [a landlord's] departure upon the payment

of ransom. . . . '"The plain effect of this . . . provision is to compel the landlord to remain in the rental business . . . since it allows no means to permit the landlord to just simply go out of that business. By contrast, the Ellis Act contains no such limitations."' [Citation.] Rather than recognize the right of [the landlord] given by the Ellis Act '"to just simply go out of . . . business,"' the City is attempting to 'impose[] a prohibitive price on the exercise of th[at] right under the Act.' [Citation.]" (*Id.* at p. 1101.)

Finally, in the event we cannot reconcile these statutes, the Mello Act would not assist plaintiff's cause. "If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation]." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310.) The Ellis Act was enacted in 1985. (Stats. 1985, ch. 1509, § 1, p. 5560.) The Mello Act was enacted in 1981. (Stats. 1981, ch. 1007, § 1, p. 3897.) Since the Ellis Act is the more recent statutory enactment and deals with rental housing, it would supersede the Mello Act in this case. Thus, the trial court did not err in finding plaintiffs' Mello Act cause of action lacked merit.

3. Plaintiffs' Due Process Claim

The amended petition's fourth cause of action alleged that "[d]espite timely demand . . ., [defendant], . . . refused and failed to provide [plaintiffs] . . . access to the public records and documents . . . required in order to effectively prepare for the . . . hearing [on] the 'Park closure' agenda topic" in violation of their right to due process. On appeal, plaintiffs contend an "[a]dministrative hearing[] must be a 'fair trial,'" and defendant violated their right to "basic due process" by denying "their right to be apprised of [the] evidence against them." Defendant argues the CIR review conducted by its city council was "quasi-legislative in nature" and thus the procedures employed by it satisfied due process.

The record supports the trial court's conclusion defendant's review of the CIR did not violate plaintiffs' due process rights. First, plaintiffs do not identify what documents they were denied permission to review. Although plaintiffs cite to the California Public Records Act (§ 6250 et seq.), the remedy for a violation is an action seeking a court order to inspect or receive copies of the documents sought. (§§ 6258 & 6259.) Plaintiffs never sought this relief.

Furthermore, the appellate record reflects plaintiffs received Doheny's CIR, including the numerous supporting exhibits attached to it. Defendant also complied with the requirements for giving notice of its intent to issue a negative declaration concerning the park closure.

"Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. [Citations.]" (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) But procedural due process only applies to "governmental decisions" that: (1) "are *adjudicative* in nature" (*ibid.*); (2) "result[] in 'significant' or 'substantial' deprivations of property" (*id.* at p. 616); and (3) "involve[] the exercise of judgment, and the careful balancing of conflicting interests" (*id.* at pp. 615). "Legislative action generally is not governed by . . . procedural due process requirements because it is not practical that everyone should have a direct voice in legislative decisions; elections provide the check there. [Citations.]" (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 622.) And "[m]inisterial action is generally not within this constitutional realm either . . . because ministerial decisions are essentially automatic based on whether certain fixed standards and objective measurements have been met. [Citation.]" (*Id.* at pp. 622-623.)

As discussed above, defendant's review of the CIR's adequacy was ministerial. The documentation supporting the CIR appeared in the attached exhibits. The relocation expenses defendant imposed on Doheny were general in nature, varying only in terms of the size of an owner's mobile home and the amount of per diem expense

based on the number of a mobile home's occupants. "While [defendant] . . . did conduct a hearing prior to its approval of the [CIR], the 'ascertainment of facts as a basis for legislation does not render the process judicial or anything less than quasi legislative.' [Citations.] Moreover, the fact that [section 65863.7] required [defendant] to make a 'finding' . . . is of no import under the circumstances presented here. Although the statutory obligation to make a 'finding' is a characteristic shared with adjudicatory proceedings, it does not stamp the function with an adjudicative character. [Citation.]" (*Joint Council of Interns & Residents v. Board of Supervisors* (1989) 210 Cal.App.3d 1202, 1212.) The trial court properly concluded defendant's approval of the CIR did not result in a denial of due process to plaintiffs.

4. Defendant's Review of the CIR

Finally, plaintiffs attack defendant's determination on the adequacy of the CIR. They argue "there is not substantial evidence to support the City's decision" because "demonstrably inaccurate evidence [was] presented at the City Council [m]eeting." This argument misstates the appropriate standard of judicial review.

Plaintiffs rely on Code of Civil Procedure section 1094.5 to support their argument. But defendant's review of Doheny's CIR constituted legislative or quasi-legislative action subject to judicial review under ordinary mandamus. (Code Civ. Proc., § 1085; *Joint Council of Interns & Residents v. Board of Supervisors, supra,* 210 Cal.App.3d at p. 1209.) In ordinary mandamus proceedings, a court cannot set aside a public agency's action unless it finds the agency acted in an arbitrary or capricious manner, made its decision without evidentiary support, or failed to either follow the mandated procedure or provide legally adequate notice. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361; *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195.)

As respondents note, the CIR itself presented more than sufficient evidence for defendant's decision. The mere fact plaintiffs and others presented conflicting evidence does not equate to a lack of substantial evidence to support the decision. Neither the trial court nor this court is permitted to reweigh the evidence or substitute its judgment for that of defendant's city council. (*Redevelopment Agency v. Rados Bros.* (2001) 95 Cal.App.4th 309, 316.)

Plaintiffs complain about the CIR's use of a 125-mile radius for relocating mobile home park residents. This argument simply misstates the record. The CIR notes that "[a]lthough the law is silent on the distance from the Park the owner is required to identify" as available relocation housing, "it is the intent of this report to provide as many relocation options . . . as possible." Thus, choice of a 125-mile radius was not to suggest that distance was "reasonable," but simply to provide a broader number of relocation options to residents. The report also noted that "[t]he additional cost to transport the mobile home further than 125 miles would not be significant." As respondents note the number of spaces available within that range would be in a constant state of flux. Thus, plaintiffs' claim that the report misstated the number of available spaces is also incorrect.

Defendant provided sufficient notice of its review of the CIR and held a public hearing where the city council received additional evidence on the adequacy of the report. We conclude defendant did not act in an arbitrary or capricious manner or without adequate evidentiary support in approving Doheny's CIR.

DISPOSITION

Appellants' motion for judicial notice is denied. The judgment is affirmed. Respondents shall recover their costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.