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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

SODA CANYON GROUP, Plaintiff and Respondent, v. COUNTY OF NAPA et al., Defendants and Respondents; MOUNTAIN PEAK VINEYARDS, LLC et al., Real Parties in Interest and Appellants.	A158130 (Napa County Super. Ct. No. 17CV001063)

Mountain Peak Vineyards, LLC (Mountain Peak Vineyards), and Hua "Eric" Yuan (Yuan) purport to appeal from an order in an administrative mandamus proceeding remanding a matter to Napa County to reconsider its adoption of a negative declaration and approval of a use permit allowing Mountain Peak Vineyards to construct and operate a new winery. In its order, the trial court indicated it was retaining jurisdiction in the administrative mandamus proceeding and expressly stated it was remanding "prior to the administrative mandamus hearing." The order directed that "[i]f the County affirms its decision, the matter will return to the trial court for hearing. If not, the matter will proceed accordingly." Because such order

contemplates further proceedings and is not a final determination of the issues raised in the administrative mandamus proceeding, it is interlocutory and not appealable. Accordingly, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In 2013, Mountain Peak Vineyards applied to Napa County for a use permit to construct and operate a new winery ("the Project"). As approved, the use permit allowed, among other things: construction of a new 100,000 gallon per year winery, a 33,424 square foot wine cave, an 8,046 square foot tasting room and office building, and a 6,412 square foot covered crush pad and work area; on-premises consumption of wine; installation of a wastewater treatment system and potable water supply sourced from private wells including two 100,000 gallon water tanks and one 20,000 gallon water tank; 26 parking spaces and construction of two new driveways and private access roads with ingress/egress from Soda Canyon Road; and employment of up to 19 full-time employees, 4 part-time employees, and 4 seasonal workers. The use permit also allowed wine tours and tastings for up to 60 visitors every day (limited to 275 visitors per week), plus two annual events for 75 visitors, and another annual event allowing 125 visitors, totaling 14,575 visitors per year. This would lead to roughly 44,000 additional car trips per year on Soda Canyon Road.

The Project site is in a remote and rural area of Napa County known to be at high risk for fires. The only means of accessing the Project site is via Soda Canyon Road. Soda Canyon Road is a dead-end, two-lane road that is poorly paved, narrow, steep, winding, and lacking in shoulders or guardrails. Conditions there can create poor visibility.

The Napa County Planning Commission (the Planning Commission) held public hearings regarding the Project in July 2016 and January 2017.

Numerous witnesses voiced concerns about the Project, citing among other things its location, traffic and accidents on Soda Canyon Road, and potential difficulties in evacuating the area in the event of a fire. At the conclusion of the January 2017 public hearing, the Planning Commission adopted a negative declaration and approved the use permit subject to conditions.

Four residents living near the Project site appealed the Planning Commission's decision to the County Board of Supervisors (the Board) as permitted by the Napa County Code. The Board consolidated the appeals and, after a public hearing in mid-2017, adopted a resolution denying the appeals in their entirety, adopting the negative declaration for the Project, and upholding the Planning Committee's approval of the Project subject to revised conditions. Among the claims dismissed by the Board were the claims "that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of testimony . . . describing the inherent dangers of Soda Canyon Road . . . . [and] that approval of the Project would increase the risk of fire and significantly impact rescue efforts." In dismissing these claims, the Board stated: "No credible evidence was put forward that the addition of another winery along Soda Canyon Road will significantly increase the risk of fire or significantly hinder rescue efforts. Neighbors' opinion[s] that winery visitors will cause traffic congestion during a fire is not supported by fact. Generalized fears and concerns about a project [do] not constitute substantial evidence. [Citations.] [¶] . . . In the event of a fire that results in mass evacuations from this area, the road has sufficient capacity and roadway width to accommodate all outgoing traffic while allowing incoming fire response units. In addition, most of Foss Valley in the vicinity of the Project

site is now planted in vineyard, which significantly reduces the extent of wildland fire that can occur in the vicinity."

In September 2017, Soda Canyon Group (SCG)—an unincorporated association of Napa County residents and property owners, including the four individuals who appealed the Planning Commission's decision—filed a petition for writ of mandate in superior court pursuant to Code of Civil Procedure section 1094.5[1] and Public Resources Code sections 21168 and 21168.5 of the California Environmental Quality Act (CEQA). The petition named Napa County and the Board (collectively, the County) as respondents, and Mountain Peak Vineyards, Hua Yuan, and Eric Yuan[2] (collectively, Mountain Peak) as real parties in interest.

The petition raised three claims. First, SCG alleged the County failed to prepare an environmental impact report as required by Public Resources Code section 21067 of CEQA and thereby abused its discretion in adopting the negative declaration. Second, SCG argued the County's actions violated state planning and zoning laws (Gov. Code, § 65000 et seq.) because there was substantial evidence the Project was inconsistent and incompatible with numerous goals, policies, programs, and regulations contained in the County's general plan and Zoning Code. Third, SCG claimed the County's approval of the Project violated county planning and zoning laws (Napa County Code, § 18.124.070) because there was substantial evidence the Project's operation would adversely affect public health, safety, and welfare of County residents. SCG's prayer for relief sought a peremptory writ directing

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise stated.

[2] The petition named Hua Yuan and Eric Yuan as separate persons, but the verified answer of the real parties in interest makes clear that Eric Yuan is another name used by Hua Yuan.

the County to set aside its adoption of the negative declaration and approval of the use permit, and to fully comply with CEQA, state planning and zoning laws, and the Napa County Code before taking subsequent action to approve the Project.

On October 8, 2017, prior to a hearing on the merits, Napa County was beset by the Atlas Fire, which burned tens of thousands of acres including Soda Canyon Road and surrounding properties including portions of the Mountain Peak parcel. Shortly after, SCG filed a motion requesting, in part, that the trial court augment the administrative record with new evidence pertaining to the Atlas Fire (§ 1094.5, subd. (e)) and remand the matter to the County for reconsideration in light thereof.

In brief, the proffered Atlas Fire evidence concerned the difficulties that residents living in the vicinity of Soda Canyon Road experienced when trying to evacuate during the fire, as well as the harm the fire caused to the people and property in that area. For example, the evidence showed that during the Atlas Fire, a tree fell on lower Soda Canyon Road and blocked 15 to 20 people fleeing the fire in their cars. On upper Soda Canyon Road, fire blocked the only escape route down Soda Canyon Road, and there was a chaotic traffic jam at the intersection of the Project site as residents and vineyard workers tried to get out. People retreated to nearby vineyards and property for safety, and a helicopter evacuated dozens of people. In the end, the Atlas Fire destroyed 118 of the 163 residences on Soda Canyon Road and damaged 16 others. SCG argued this new evidence showed the Project's proposed location was inappropriate given the danger of fire in the area and access constraints. SCG asked the trial court to remand the matter to the County or Board to reconsider its decision approving the use permit in light of such evidence.

Without deciding the merits of the petition, and over opposition by both the County and Mountain Peak, the trial court granted SCG's motion to augment the administrative record with some of the Atlas Fire evidence, indicating it would remand the matter to the Board to reconsider its earlier decision.[3] After a separate hearing, the court determined which specific pieces of evidence were to supplement the administrative record for consideration by the Board. In its order, the court stated "it would be most efficient to remand the matter to the County prior to the administrative mandamus hearing. If the County affirms its decision, the matter will return to the trial court for hearing. If not, the matter will proceed accordingly." Mountain Peak and the County filed separate writ petitions challenging the remand order (case nos. A158071 & A158076), which this court summarily denied. Mountain Peak also filed a notice of appeal from the remand order.

Prior to the filing of any appellate briefs or the record, SCG moved to dismiss the appeal. We deferred ruling on SCG's motion pending our consideration of the merits of the appeal, and we instructed the parties to address in their appellate briefs whether the order challenged on appeal is a final, appealable order under the holding in *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1115 (*Dhillon*).

DISCUSSION

A. Appealability

As a threshold matter, we address SCG's motion to dismiss the appeal. Mountain Peak appeals from the order remanding the matter to the County for further administrative action. In moving to dismiss the appeal, SCG contends the order is merely interlocutory because the trial court did not

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[3] Mountain Peak and the County jointly filed a writ petition (case no. A156816) seeking to set aside the order on the motion to augment. This court summarily denied that petition.

decide the merits of the issues raised in the writ petition and retained jurisdiction over the issues presented by it. We agree the remand order at issue here is interlocutory and therefore nonappealable.

1. Governing Law

"In general, an adverse ruling in a judicial proceeding is appealable once the trial court renders a final judgment. [Citations.] This general rule applies equally in administrative mandamus proceedings." (*Dhillon*, *supra*, 2 Cal.5th at p. 1115.) "[A] judgment is final, and therefore appealable, ' " 'when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.' " ' [Citation.] ' "It is not the form of the decree but the substance and effect of the adjudication which is determinative. As a general test, . . . *where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory*." ' " (*Ibid.*, italics added.) The proper application of these principles depends on the circumstances of the case and the nature of the particular remand order at issue. (*Id.* at p. 1116.)

Case law is instructive. In *Dhillon*, a surgeon filed a petition for administrative mandamus alleging that John Muir Health and its board of directors violated its bylaws by imposing discipline on him without a hearing before a judicial review committee (JRC). (*Dhillon*, *supra*, 2 Cal.5th at pp. 1112–1113.) His petition asked that the trial court order a JRC hearing (or a hearing before another appropriate body), direct John Muir to vacate the imposition of discipline, find that John Muir's bylaws violate due process and are unenforceable (under specific circumstances), order John Muir not to

make disparaging comments about the surgeon regarding the matter, and authorize the surgeon to sue John Muir for damages. (*Id.* at p. 1113.) The court concluded the surgeon was entitled to a JRC hearing under John Muir's bylaws, and lack of such a hearing deprived the surgeon of due process. (*Ibid.*) The court issued a peremptory writ directing John Muir to conduct a hearing before the JRC or other appropriate body, but denied the petition *in all other respects*. (*Ibid.*) John Muir filed an appeal, which the Court of Appeal dismissed. (*Ibid.*)

On review, the Supreme Court examined whether the order directing John Muir to conduct a JRC hearing was a final appealable order. (*Dhillon*, *supra*, 2 Cal.5th at pp. 1113–1114.) Emphasizing that a reviewing court must focus on the nature of the particular remand order at issue, the Supreme Court concluded the subject order was an appealable final judgment because the trial court granted or denied all of the doctor's claims and did not reserve jurisdiction to consider any issues. (*Id.* at pp. 1116–1117.) In other words, there were no issues "left for the court's ' "future consideration except the fact of compliance or noncompliance with the terms of the first decree." ' " (*Id.* at p. 1117.) In so concluding, the Supreme Court also observed that, "as a practical matter, unless John Muir has a right of immediate appeal, the trial court's interpretation of its bylaws may effectively evade review," because the opportunity for review would be dependent upon whether the doctor seeks mandamus review after an adverse decision. (*Id.* at pp. 1117–1118.)

In *County of Los Angeles v. Los Angeles County Civil Service Com.* (2018) 22 Cal.App.5th 174 (*County of Los Angeles*), the County fired an employee who appealed his discharge to the Civil Service Commission (the Commission). (*Id.* at p. 179.) The Commission adopted the hearing officer's

finding that the employee had been negligent, as well as the hearing officer's decision to set aside the discharge and instead order a suspension with no backpay. (*Id.* at pp. 179–180.) The County filed a petition for administrative mandamus asking the trial court to overturn the Commission's decision and uphold the discharge. (*Id.* at p. 180.) The employee separately filed his own petition for traditional mandate seeking backpay. (*Ibid.*) The trial court found that the Commission failed to provide any reasoning or analysis for its imposition of a suspension without backpay instead of termination, and that the Commission's findings did not support the imposed suspension. (*Id.* at pp. 181–182.) The court remanded the matter, indicated the remand order was interlocutory, and declined to decide the County's claim that the Commission abused its discretion by not reviewing the record or conducting a de novo hearing. (*Ibid.*) The court further indicated the County could reassert its abuse of discretion claim if the Commission were to simply re-impose a suspension. (*Ibid.*) In light of the remand, the court denied the employee's petition seeking backpay as moot. (*Id.* at p. 182.) The employee appealed. (*Id.* at pp. 182–183.)

In granting the County's motion to dismiss the appeal, the Court of Appeal observed the trial court did not enter judgment and instead expressly stated its order was interlocutory. (*County of Los Angeles*, *supra*, 22 Cal.App.5th at pp. 185–186.) And indeed, the substance of the trial court's order was interlocutory. The order did not grant or deny all relief requested by the petition, but rather deferred a decision on whether the Commission abused its discretion—which was "the very question posed by the County's petition"—and directed the Commission to make additional findings and reconsider the appropriate penalty. (*Id.* at p. 186.) Additionally, because the trial court retained jurisdiction to reconsider whatever penalty (if any) the

Commission's new decision might impose upon remand, the trial court's order would not evade review even though it was not immediately appealable. (*Ibid.*)

2. Analysis

Our examination of the particular nature of the remand order here leads us to confidently conclude the order is not a final judgment. Like the order in *County of Los Angeles*, the remand order in this case was interlocutory both in form and in substance. (See *County of Los Angeles*, *supra*, 22 Cal.App.5th at pp. 185–186.) In terms of form, the remand order—which was labeled as such and not as a judgment—indicated it was a pre-judgment remand that contemplated future superior court proceedings after the remanded proceedings concluded. Specifically, the order stated "it would be most efficient to remand the matter to the County prior to the administrative mandamus hearing. If the County affirms its decision, the matter will return to the trial court for hearing. If not, the matter will proceed accordingly." At the May 7, 2019 hearing, the court repeatedly described the remand as interlocutory.

In terms of substance, the remand order stands in contrast with the orders found appealable in *Dhillon* and in other cases. Here, the order did not terminate the litigation between the parties leaving nothing more for future consideration in the trial court; nor did it actually address any of the claims raised in the petition. (Compare with *Dhillon*, *supra*, 2 Cal.5th at pp. 1116–1117; *1041 20th Street, LLC v. Santa Monica Rent Control Bd.* (2019) 38 Cal.App.5th 27, 39 & fn. 11 [in action challenging application of rent control laws to rental properties, a court order was found appealable where the order determined that housing board was equitably estopped from finding rental units were subject to rent control laws and nothing remained

to be done in the trial court]; *Carroll v. Civil Service Commission* (1970) 11 Cal.App.3d 727, 730, 732–733 [in action to compel a commission to restore a discharged employee's job, a court order was found appealable where the order determined the commission abused its discretion in affirming the discharge and the order clearly implied or expressly required that the employee would be restored to his job].)

Instead, as in *County of Los Angeles*, the remand order here simply sent the matter back to the Board for reconsideration without deciding the issues in the petition or intruding on the discretion of the County or the Board to freely make a decision on remand. (See *County of Los Angeles*, *supra*, 22 Cal.App.5th at pp. 186–187; see also *Ng v. State Personnel Board* (1977) 68 Cal.App.3d 600, 604 [order that remanded matter to personnel board for reconsideration because its decision did not reference the hearing transcript was interlocutory].)

Mountain Peak argues the remand order here is appealable because, as a practical matter, the order may evade review without an immediate appeal. Relying on language in the remand order stating that the matter will return to trial court for hearing if the County affirms its decision and that the matter will "proceed accordingly" otherwise, Mountain Peak argues the order "categorically states that the matter will return to the Superior Court *only if* the County affirms the original use permit approval after consideration of the post-approval Atlas Fire evidence." Mountain Peak also claims that if the County denies the use permit on remand, SCG's case will become moot and "[i]n such event, Mountain Peak would have no means to appeal the remand order."[4]

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[4] Amicus curiae California State Association of Counties also makes these arguments.

We are unpersuaded. Contrary to Mountain Peak's assertion, the remand order does not categorically state the matter will return to superior court only if the County affirms its original decision. Rather, the order plainly contemplates that if the County affirms its decision on remand, then the matter will return to the trial court for a hearing, and that if the County denies the use permit on remand, then the matter will "proceed accordingly." Not only is the order devoid of any language suggesting the trial court's lack of authority or jurisdiction to review the County's post-remand decision, but Mountain Peak presents no developed argument or legal authority indicating the trial court would in fact be powerless to review a post-remand decision denying the use permit. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.) Indeed, Mountain Peak acknowledges, and so seems to concede, that if the County were to deny the use permit on remand, then it could file its own petition for administrative mandamus seeking review.

Mountain Peak suggests such a hypothetical administrative mandamus action would not provide a satisfactory avenue for judicial review because it would operate as a challenge to the County's decision rather than the court's remand order. Mountain Peak, however, indicates it would argue in such a hypothetical action "that the County erroneously considered the Atlas Fire evidence and denied the use permit on that basis." Moreover, Mountain Peak presents no developed argument or legal authority supporting its assertion that it could not appeal from final judgment in such a hypothetical administrative mandamus action and argue the propriety of the County's original pre-remand decision. (Cf. *County of Los Angeles*, *supra*, 22 Cal.App.5th at pp. 186–187.)

Mountain Peak also insinuates such a hypothetical administrative mandamus action would not provide a satisfactory avenue for judicial review

of the remand order because "the claims, parties, standard of review, and administrative record in such a case would be significantly different from this present action." Specifically, Mountain Peak asserts that in such a hypothetical mandamus action, it would bear the burden of proving that the County acted without jurisdiction and did not proceed in the manner required by law, or that substantial evidence in the augmented administrative record did not support the findings underlying the denial of the use permit. But Mountain Peak offers no explanation and cites no authority indicating that such shifts in claims, parties, or burdens compel the conclusion that meaningful judicial review will be evaded.

Mountain Peak further contends that even if it could appeal the remand order by initiating a new administrative mandamus action, the County and the Board would have no such opportunity to appeal the remand order.

First, the argument ignores the fact that the County and Board have not actually appealed the remand order here. Although the County and Board filed a document purporting to join in and adopt Mountain Peak's opening appellate brief, the only notice of appeal in the appellate record unambiguously identifies "[r]eal parties in interest Mountain Peak Vineyards, LLC and Hua 'Eric' Yuan" as the parties appealing. The trial court's register of actions in the appellate record contains no indication that the County or Board filed a notice of appeal. We thus have no appellate jurisdiction to grant or deny any relief on behalf of the County or the Board. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 670 ["[T]he timely filing of an appropriate notice of appeal or its legal equivalent is an absolute prerequisite to the exercise of appellate jurisdiction"]; Cal. Rules of Court, rules 8.100(a)(1), 8.104(b).)

Second, Mountain Peak cannot be heard to complain of some other party's perceived inability to obtain judicial review, when its own ability to obtain judicial review is unimpeded.

Finally, Mountain Peak contends the remand order is an appealable final judgment because it was issued pursuant to section 1094.5, subdivisions (e). Under subdivision (e), Mountain Peak argues, the remand order could be effectuated only through a *final* judgment entered in accordance with section 1094.5, subdivision (f).

This argument fails, as it completely ignores the trial court's reliance on case law—such as *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499 (*Voices of the Wetlands*)—in issuing the remand order. In *Voices of the Wetlands*, the Supreme Court interpreted subdivisions (e) and (f) of section 1094.5. As the court explained, "subdivision (f) of section 1094.5 indicates the form of *final judgment* the court may issue in an administrative mandamus action," but "nothing in subdivision (f) . . . purports to limit procedures the court may appropriately employ *before* it renders a final judgment. A more general statute covers that subject. [S]ection 187 . . . broadly provides that whenever the Constitution or a statute confers jurisdiction on a court, 'all the means necessary to carry it [(that jurisdiction)] into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding *be not specifically pointed out* by this Code or the statute, *any suitable process or mode of proceeding may be adopted* which may appear most conformable to the spirit of this Code.' " (*Voices of the Wetlands*, at p. 526.) *Dhillon* also clearly counsels that it is the nature of the particular remand order that determines its appealability. (*Dhillon*, *supra*, 2 Cal.5th at p. 1116.) Given the nature of the remand order at issue in this case and the trial court's reliance on authority beyond

subdivisions (e) and (f) of section 1094.5, we conclude the order is interlocutory and not appealable.

B. Mountain Peak's request to treat the appeal as a petition for writ of mandate

Mountain Peak argues that if we determine the remand order is interlocutory and nonappealable, we should treat the purported appeal as a petition for extraordinary writ. While correctly recognizing that this court has the authority to treat a purported appeal as a petition for extraordinary writ in unusual circumstances, Mountain Peak fails to identify any unusual circumstance that justifies treatment of the appeal as a writ petition.

Mountain Peak also argues we should treat this appeal as a petition for extraordinary writ because the remand order may otherwise evade appellate review. We reject this for the reasons already stated. (See *ante*, pp. 11–13.) Ultimately, we see no reason to exercise our discretion to treat the purported appeal as a writ petition. (See *County of Los Angeles*, *supra*, 22 Cal.App.5th at p. 188; *City of Los Angeles v. Superior Court* (2015) 234 Cal.App.4th 275, 280–281.) As indicated, we summarily denied the County's and Mountain Peak's petitions for writ of mandate or prohibition seeking to set aside the remand order. (See *ante*, p. 6.) Furthermore, the issues raised in this purported appeal may be reviewed if and when we are presented with an appeal from a final judgment on the County's post-remand decision. Accordingly, we dismiss Mountain Peak's purported appeal.

DISPOSITION

The appeal is dismissed. SCG shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

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Fujisaki, Acting P.J.

WE CONCUR:

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Petrou, J.

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Jackson, J.

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