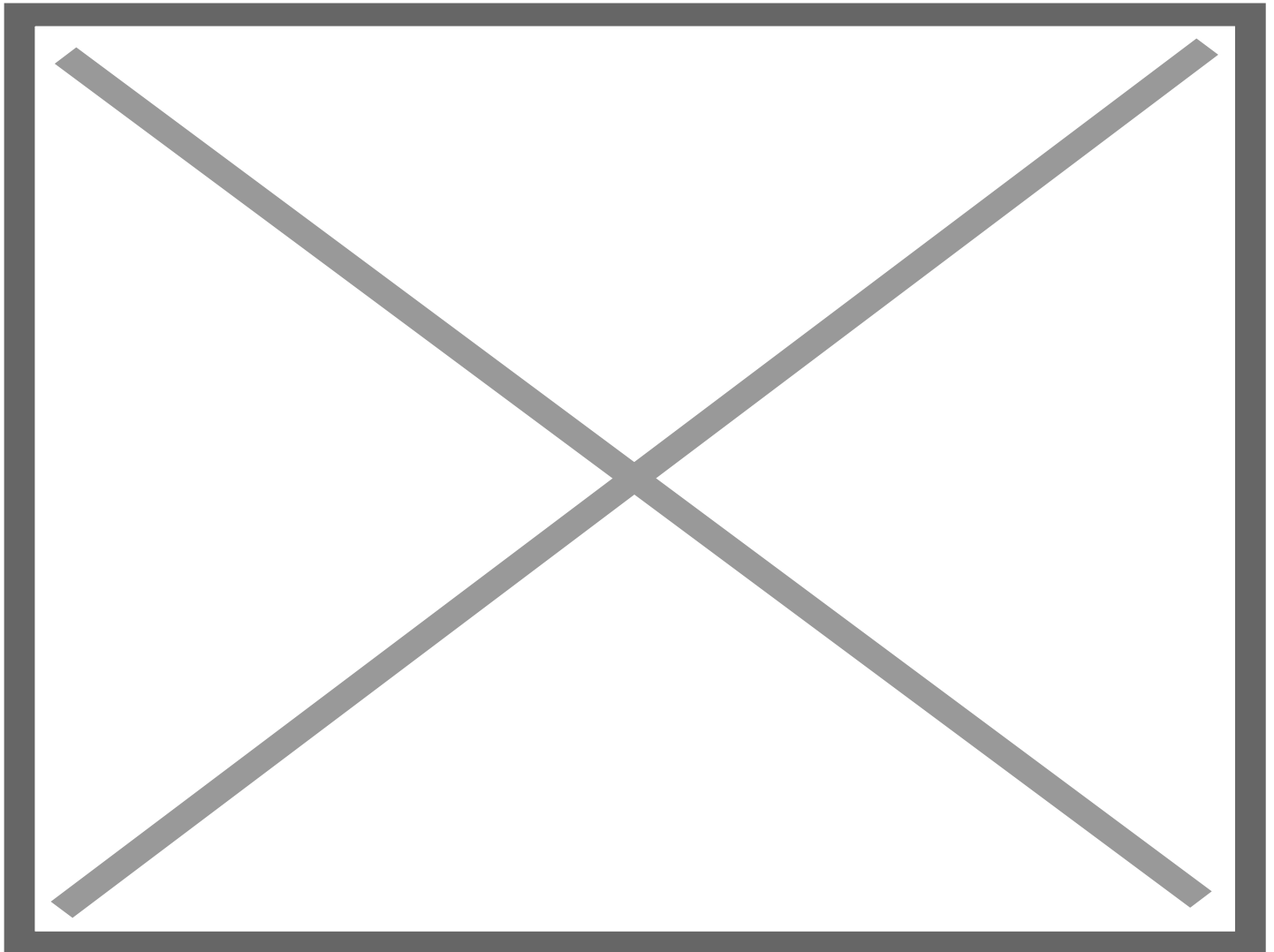


## Homeowners Association Land Use Approval Process Is Protected Activity Under Anti-SLAPP Statute

The California Court of Appeal for the Fourth District has determined that the actions of a homeowners association undertaken in accordance with its land use approval process are protected activities in furtherance of free speech under California's anti-SLAPP statute. *Golden Eagle Land Investment, L.P. v. Rancho Santa Fe Association*, 19 Cal. App. 5th 399 (2018) **Background.** Two developers proposed a joint project to build residential housing units for senior citizens on property near Rancho Santa Fe, California. Because the project would exceed local density restrictions, the developers sought approvals from both the County of San Diego and the Rancho Santa Fe Association. Initially, the association expressed support for the development. But that changed following an association meeting at which community members expressed opposition to the project. Following the meeting, the association sent communications to the county recommending the county follow current zoning requirements until the association determined whether it would approve the project.



After the developers failed to secure the necessary approvals, they filed suit against the association asserting nine

causes of action alleging violations of the Common Interest Development Open Meeting Act, breach of fiduciary duties, fraud, and interference with business relations. While the complaint separated these theories into separate causes of action, the crucial allegations common to each were that the association initially expressed to the developers that it supported the project; the association refused the developers' request to reschedule an "informational public meeting" to discuss the project; the meeting agenda did not adequately describe the meeting; and the association improperly influenced the county to reject the project. In response, the association filed a special motion to strike all nine causes of action under California's anti-SLAPP statute, Code of Civil Procedure § 425.16. The trial court granted the association's motion as to eight causes of action, but denied the motion as to the cause of action for violations of the Open Meeting Act. The trial court ruled that the association's alleged activities were not protected under sections 425.16(e)(1) or (2) of the Act as activities occurring during an "official proceeding." **The Court of Appeal's Decision.** The court of appeal held that the trial court erred in finding the association's alleged violations of the Open Meeting Act were not based on protected conduct in furtherance of free speech, and upheld the trial court's rulings striking the developers' other claims. Application of the anti-SLAPP statute requires a two-step analysis. First the defendant must demonstrate that the cause of action arises from protected activity. If the defendant does so, the burden then shifts to the plaintiff to demonstrate that it is likely to prevail on its claims. Regarding the Open Meeting Act cause of action, asserted by only one of the developers, the court concluded that it was unclear whether the association's activities should qualify as "official" governmental actions under the statute. The court held, however, that the anti-SLAPP statute applied because the activities complained of—communicating with project applicants, setting agendas, and sending emails and letters—were all within the quasi-governmental responsibilities of the association. As a result, the association's actions fell within the broader protections of section 425.16(e)(4) as "conduct in furtherance of the exercise the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." Under the second prong, the court held that the developer could not demonstrate a probability of success on the merits because it was not a member of the association and therefore lacked standing to seek relief under the Open Meeting Act. For the remaining causes of action based on the association's alleged breach of fiduciary duties, fraud, and interference with business relations, the court held that the crux of these causes of action was the same as the set of allegations giving rise to the Open Meeting Act cause of action. Thus, these causes of action also arose from protected activities. And because the developers did not show they could prevail on the merits of those claims, the trial court did not err by striking them. **Conclusion.** While the court acknowledged that the case presented a "close question as to the applicability" of the anti-SLAPP statute, it broadly held that that the association's activities concerning property entitlements "are matters of public interest" and therefore are protected activities in furtherance of free speech. The court did not suggest any limitations or provide any guidance as to how broad a segment of the public must be affected for the challenged activities to be considered as in the public interest.

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