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California Land Use & Development Law Report

Agency May Take Over Preparation of the Record in a CEQA Case if the Petitioners Unreasonable Delays Preparing It

Where a petitioner in a CEQA case has elected to prepare the administrative record but unreasonably delays such preparation, the defendant agency may prepare the record itself and be awarded costs for doing so. *LandWatch San Luis Obispo Co. v. Cambria Comm. Serv. Dist.*, 25 Cal. App. 5th 638 (2018). LandWatch, a nonprofit organization, filed a petition for writ of mandate alleging that the Cambria Community Services District failed to comply with CEQA when it approved an emergency water supply project. LandWatch elected to prepare the administrative record, subject to the District's certification of its accuracy. LandWatch did not present a draft administrative record index until ten months after filing its petition. There were disagreements over the scope of the index, and the District quickly prepared a revised version of the record. LandWatch then further delayed the production of supplemental documents that it had argued were necessary. With trial nearing, the District prepared the supplemental index for LandWatch. The trial court noted that these delays in litigation put the District in financial distress because the county would not release \$4.3 million in grant funds for the project while litigation was pending. Ultimately, the District prevailed in the CEQA lawsuit and was awarded costs for preparing the record and appendix. LandWatch appealed. The court held that the District properly took over preparation of the record and appendix after unreasonable delay on LandWatch's part. LandWatch had the right to prepare the record, but within the time limit specified by CEQA, which is 60 days from the date of the petitioner gives notice it has elected to prepare it. Because LandWatch did not present the documents to the District for certification until far beyond the time limit, the court found that LandWatch had unreasonably delayed, and thereby forfeited, its right to prepare the record.

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