Blogs
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CEQA YEAR IN REVIEW 2021

A Summary of Published Appellate Opinions Under the California Environmental Quality Act

Introduction

The courts issued relatively few published CEQA decisions in 2021, with no California Supreme Court activity and no blockbuster court of appeal opinions. But two cases addressed topics of great current interest: wildfire and climate change impacts. One court also settled an important question under CEQA's frequently invoked categorical exemption for infill development projects. And in a big year for exhaustion of administrative remedies as a prerequisite to litigation, three decisions reemphasized the key role played by local administrative procedures in the CEQA process.

Exemptions. Three decisions on exemptions from CEQA came out during the year. In one, the court had no trouble upholding application of the categorical exemption for small infill projects to a new gas station in a large shopping center, rejecting an argument that because the entire shopping center comprised more than 5 acres, the project, which would be built on only 2.5 acres, failed to meet the exemption's limitation to 5-acre "project sites." In a second case, a court rejected an attempt to apply the existing facilities exemption to operations of an unlined landfill, ruling that unlined landfills did not constitute "facilities." Finally, in a case involving the State Water Resources Control Board's program for registering small water diversions when it receives a completed registration form, the court concluded: "CEQA does not regulate ministerial decisions—full stop." ***Negative Declarations***. The two negative declaration cases decided during the year addressed key topical issues. In a case in which neighbors raised concerns about evacuation during wildfires, the court concluded the objections were grounded in speculation rather than fact-based opinion, and upheld the negative declaration. In the other case, the court found the agency had plainly erred by relying on a faulty climate action plan consistency checklist to find the project would not have a significant greenhouse gas impact. ***Environmental Impact Reports.*** Several of the decisions involving EIRs are noteworthy. The court of appeal reviewing the EIR for a new resort at Squaw

Valley found it fatally flawed on multiple counts: Its description of the environmental setting failed to highlight the features of Lake Tahoe that make it a unique regional resource, and its analysis of water quality, air quality and construction noise impacts was insufficient. By contrast, a court held that an EIR on a plan to restore natural resources and improve visitor facilities in a wilderness recreation area passed muster, even though it only considered one alternative — the no project alternative. Another opinion in an EIR case provides useful guidance on the often perplexing requirement that EIRs identify "inconsistencies with the applicable general plan." The deference due to a local jurisdiction in the interpretation and application of its own general plan under the Planning and Zoning Law cannot be evaded through a CEQA claim an EIR is defective by failing to "inform the public" of an inconsistency the agency has not itself found. ***Subsequent CEQA Review.*** The only decision involving subsequent CEQA review addressed a set of somewhat puzzling claims. The plaintiff challenged a decision by the State Lands Commission, acting as a responsible agency, to prepare a supplemental EIR, rather than a subsequent EIR, on limited changes to a previously approved desalination plant. The court found no merit to appellant's novel arguments that the commission was required to "step in as lead agency" and prepare a subsequent EIR on "the project as a whole" and that a supplemental EIR focusing on the project changes constituted improper "piecemeal" environmental review. ***CEQA Litigation.*** Several thought-provoking opinions issued during the year involved CEQA litigation. In one, a court of appeal rejected a trial court order that allowed the agency to cure a defective mitigated negative declaration by preparing an EIR limited to three potentially significant impacts. The court held that environmental review for a project cannot be split between two documents—a negative declaration and an EIR—and ruled that a "full EIR" was required. In a decision that may cheer those who argue CEQA lawsuits are too often filed for improper purposes, the court found an aggrieved developer had identified evidence sufficient to allege a claim for malicious prosecution against a neighbor who had attacked the mitigated negative declaration for the developer's project. Public agencies and project proponents should note, however, that behavior as egregious as that alleged against the neighbor in this case is, thankfully, rare. Somewhat improbably, three of last year's decisions involving CEQA litigation addressed a rarely asked question: What happens if the plaintiff doesn't join the real party in interest in the lawsuit before the time to do so runs out? The answer differs depending on the circumstances, but in sum: If a real party in interest is not sued timely and the real party is found to be "indispensable" as defined in the Code of Civil Procedure, then the suit will be dismissed. Three other procedural decisions also provide an important reminder for both potential litigants and public agencies: To the extent a project opponent does not perfect its CEQA claims by following the local agency's procedures for internal appeal of a CEQA determination, the opponent cannot pursue those claims in court. Finally, one case decided during the year, although not surprising in its legal analysis, will likely be best remembered for its history: After 27 years, the litigation over the EIRs on the Monterey Agreement—the agreement that changed the Department of Water Resource's policies for allocating water supplied by the State Water Project—finally slogged its way to the finish line with an appellate court decision that resolved the remaining appeals in DWR's favor, and a determination by the California Supreme Court that it would not review that decision. The following summaries identify the key issues in the cases decided in 2021. Each of these case summaries links to a post on this site that provides a more detailed description of the court's opinion.

A. EXEMPTIONS FROM CEQA

Court Upholds Infill Development Categorical Exemption for Gas Station in Existing Shopping Center

Protect Tustin Ranch v. City of Tustin **70 Cal. App. 5th 951 (2021)** The petitioner challenged the City of Tustin's approval of a conditional use permit for a new Costco gas station in an existing 12-acre shopping center. The city found the project qualified for the infill development exemption in CEQA Guidelines section 15332. The project opponent objected that the exemption is limited to a development on a "project site" of no more than five acres. The court ruled, however, that the "project site" was the 2 ½ acres that would be altered by the project, not the entire shopping center. The court also rejected the claim the project would have significant

impacts due to unusual circumstances, agreeing with the city's finding that the project circumstances were not unusual: the gas station was not significantly different from other Costco gas stations in the state; the project was consistent with the general and specific plans, the zoning, and development and design standards; and the project would be consistent with the surrounding commercial setting.

Existing Facilities Exemption Does Not Apply to Unlined Landfills

Los Angeles Dep't of Water & Power v. County of Inyo **67 Cal. App. 5th 1018 (2021)** The court held that CEQA's "existing facilities" categorical exemption in CEQA Guidelines §15301(a) does not apply to unlined landfills. It concluded that the term "facilities" in the Guideline does not include unlined landfills, reasoning that "it is reasonable to characterize landfill operations as involving an alteration in the condition of land rather than exclusively as the operation of a facility." Citing the history of the Guideline's adoption and the rule that categorical exemptions should be read narrowly, the court also found that "unlined landfills do not constitute a suitable class for a categorical exemption."

Registrations of Small Water Diversions with State Water Board Are Exempt Ministerial Acts

Mission Peak Conservancy v. State Water Resources Control Board **2021 WL 5917917 (No. A162564, 1st District, December 20, 2021)** The right to divert a small amount of water from a stream into a storage facility can be acquired by registering the use with the State Water Resources Control Board. The registration is deemed completed when the Board receives a registration form that contains details about the proposed water use, diversion, and storage and other specified information, along with the required fee. The court held that the registration process is ministerial and therefore exempt from CEQA. The Board applies fixed criteria when it reviews a registration form and does not exercise discretion when determining it is complete. Further, while the Department of Fish and Wildlife has authority to require conditions to mitigate environmental impacts, the Board does not have discretion to modify CDFW's conditions, or to impose any such conditions itself.

B. NEGATIVE DECLARATIONS

Comments About Existing Wildfire Hazards Near Project Did Not Trigger Requirement for an EIR

Newtown Preservation Society v. County of El Dorado **65 Cal. App. 5th 771 (2021)** The case involved a bridge replacement project in El Dorado County that included creation of a temporary evacuation route that would be available during project construction. The county's mitigated negative declaration determined the project would not impede implementation of an adopted emergency response or evacuation plan and would not expose people or structures to new or increased risks due to wildland fires. Project opponents argued an EIR was required, contending that testimony by residents and firefighters showed the project would have significant impacts on resident safety and emergency evacuations in the event of wildfires. The court of appeal disagreed, finding the evidence insufficient to support a fair argument the project might exacerbate existing environmental hazards. Many comments "lacked factual foundation and failed to contradict the conclusions by agencies with expertise in wildfire evacuations with *specific* facts." And other comments from two aerial firefighters expressing concerns about emergency evacuations were speculative and unfounded opinion because it was not shown they had experience or expertise in determining, directing, or effecting evacuations.

All Projects Require a Complete Climate Action Plan Consistency Analysis to Benefit from Streamlined GHG Review Under CEQA

McCann v. City of San Diego **70 Cal. App. 5th 51 (2021)** To ease the burden of calculating GHG emissions for every project, a lead agency may adopt a Climate Action Plan which, if detailed and adequately supported, may

be used to evaluate a project's contribution to cumulative GHGs. A finding of consistency with the Climate Action Plan provides sufficient evidence for an agency to conclude the project has no significant cumulative GHG impact. In this case, the court found the city erred by relying on an exclusion from its consistency checklist in finding a utility undergrounding project would not have a significant GHG impact. The city's checklist excluded from a Climate Action Plan consistency determination projects that, like the undergrounding project, did not require a certificate of occupancy. The court found no rational basis for this exclusion and noted that several Climate Action Plan GHG reduction measures could well apply to the undergrounding project. The city was required to make a project-specific consistency determination, regardless of the scope of its consistency checklist.

C. ENVIRONMENTAL IMPACT REPORTS

Court Invalidates EIR for Development of Resort Near Lake Tahoe

Sierra Watch v. Placer County **69 Cal. App. 5th 86 (2021)** The court found the EIR for development of a proposed 94-acre resort at Squaw Valley inadequate on multiple grounds. The EIR did not adequately address Lake Tahoe — a unique resource — as part of the environmental setting and, as a result, failed to provide a meaningful analysis of project impacts on the lake. The EIR's analysis of impacts from Vehicle Miles Traveled was also deficient; it did not reach a conclusion on the applicable significance threshold or supply the information necessary to evaluate the impact of the project's increase in traffic on Lake Tahoe's air and water quality. And attempts to supplement the VMT analysis after the final EIR was published came "far too late" in the CEQA process. Finally, the EIR did not properly assess noise impacts. The decision to analyze only noise impacts on sensitive receptors within 50 feet of expected construction activity was an act of "arbitrary line drawing" that improperly foreclosed evaluation of impacts beyond that boundary.

In Limited Circumstances an EIR's Alternatives Analysis Can Be Confined to the No-Project Alternative

Save Our Access-San Gabriel Mountains v. Watershed Conservation Authority **68 Cal. App. 5th 8 (2021)** *Save Our Access* challenged the EIR for a project to improve a recreation area within the Angeles National Forest. The project was designed to restore natural resources damaged by heavy recreational use, upgrade visitor facilities, develop new trails and river access, and improve existing roads and parking. The draft EIR provided a full analysis of only one alternative to the proposed project, the "no project" alternative. The court rejected the claim that CEQA requires that a range of alternatives be evaluated in an EIR and cannot be limited to the no project alternative. It explained that the alternatives evaluated in an EIR must be able to attain most of the project's basic objectives and, at the same time, be able to avoid or reduce at least some of the project's significant impacts. The project opponent, however, failed to identify any feasible alternatives that could do so. Notably, its inability to do so likely reflected the fact that the project was carefully designed to achieve an optimal balance between the project's goals of restoring and preserving natural resources and the enhancement of recreational use.

A Revised and Recirculated Draft EIR That Entirely Replaces the Prior Draft EIR Is Not Required to Summarize Each Change Made to the Prior Draft

Save Civita Because Sudberry Won't v. City of San Diego **2021 WL 5937417 (No. D077591, 4th Dist. 1st Div., December 16, 2021)** CEQA Guidelines section 15088.5(g) requires that when a lead agency revises a draft EIR and recirculates it for review and comment, the revised draft EIR must "summarize the revisions made to the previously circulated draft EIR." The court found the summary in a revised draft EIR sufficient under this standard. The first draft EIR had evaluated a community plan amendment at a program level, while the revised draft EIR was a project-level EIR which entirely replaced the prior draft EIR. It was not necessary for the

revised draft to provide a specific description of each change made to the prior draft; the prior draft EIR had been revised so extensively that a summary of each of the changes made to it would not provide useful information. The revised draft EIR explained that it entirely replaced the prior EIR, made clear the overall nature of the changes, and gave notice that the final EIR would respond to comments on the revised draft EIR, but not to comments on the prior draft EIR it replaced, and that was sufficient.

Court In CEQA Case Applies the Deferential Standard in the Planning and Zoning Law When Determining Whether the Project Is Inconsistent with the Applicable General Plan

Stop Syar Expansion v County of Napa **63 Cal. App. 5th 444 (2021)** The CEQA Guidelines state that an EIR must discuss any "inconsistencies" between the proposed project and any provisions of the local general plan. The court in this case addressed the standard to apply in determining whether the EIR provided an adequate analysis of this question. A petitioner may file suit against a city or county under the Planning and Zoning Law alleging that it has taken an action that is inconsistent with the requirements of its general plan. In such cases, courts afford great deference to the jurisdiction's interpretation and application of its own general plan. The petitioner here did not assert such a claim under the Planning and Zoning Law, but rather alleged that the EIR was deficient because it failed to "inform the public" the quarry expansion project was inconsistent with various provisions of the county's general plan. Citing prior case law, the court held that the petitioner could not evade the Planning and Zoning Law's deference to local agency decision making by framing an inconsistency claim as an informational failure under CEQA.

CEQA Compliance Can Take Time: Litigation Over Monterey Agreement Comes to an End, After 27 Years

Central Delta Water Agency v. Department of Water Resources **69 Cal. App. 5th 170 (2021)** In 1994, the Department of Water Resources entered into an agreement with State Water Project contractors, called the "Monterey Agreement," in an effort to settle disputes over water allocations under its long-term water supply contracts. Broadly, the Monterey Agreement modified formulas incorporated in the contracts for allocating water among contractors, changed certain operations of SWP facilities and provided for the transfer of 20,000 acres of farmland for development of a water bank in Kern County. In 2000, a court of appeal found the EIR inadequate and ordered that DWR prepare and certify a new EIR. After DWR did so, further legal challenges were brought which resulted in an order upholding most of the new EIR but requiring that it be revised to reevaluate the environmental impacts of the water bank's operations. Completion of the revised EIR then led to still more litigation. Ultimately, the cases involving the new EIR and the revised EIR made their way up to the court of appeal, which consolidated the cases and issued decision that rejected all of the arguments on appeal. After more than a quarter century, the Monterey Agreement saga was finally concluded on January 5, 2022, when the California Supreme Court denied petitions seeking review of the court of appeal's decision.

D. SUBSEQUENT ENVIRONMENTAL REVIEW

State Lands Commission's Supplemental EIR for Modifications to Proposed Desalination Plant Upheld Against Procedural and Piecemealing Claims

California Coastkeeper Alliance v State Lands Commission **64 Cal. App. 5th 36 (2021)** The State Lands Commission, acting as a responsible agency under CEQA, used a supplemental EIR to consider certain changes to a proposed desalination plant approved in 2010 by lead agency the City of Huntington Beach, but not yet constructed. The court rejected claims that the Commission 1) was required to assume the role of lead agency and prepare a subsequent, rather than supplemental, EIR; and 2) engaged in improper "piecemealing" of the environmental review because it did not reexamine the entire project as a comprehensive whole. First, the argument that the Commission was required to assume the role of the lead agency could not be squared with the

provisions of CEQA and the Guidelines that allow a responsible agency to prepare a "supplemental EIR" that augments the analysis in a prior EIR. Second, the rule barring piecemeal review does not extend to situations in which CEQA review for the entire project was already completed and the project is later changed due to circumstances that were not foreseen at approval. The changes considered in the Commission's EIR were proposed largely in response to new State Water Resources Control Board standards for desalination plants that were not foreseeable when the 2010 EIR was certified.

E. CERTIFIED REGULATORY PROGRAMS

Coastal Commission Must Complete Environmental Review Under Certified Regulatory Program Before Approving Permit

Friends, Artists and Neighbors of Elkhorn Slough v. California Coastal Commission **2021 WL 5905714 (No. H048088, 6th Dist., December 14, 2021)** The court of appeal found that the California Coastal Commission erred by approving a coastal development permit for a residential development before environmental review for the project had been completed. The court concluded the staff report for the Commission hearing was insufficient to serve this purpose. It did not contain the complete discussion and analysis of the issues that must be provided *before* the Commission makes its decision. Because that information was not provided until a second report was prepared, *after* the Commission had acted, the court found its decision invalid.

F. STREAMLINED CEQA REVIEW

Certification of Howard Terminal Project for Streamlined CEQA Review Under AB 734 Was Not Subject to AB 900 Deadlines

Pacific Merchant Shipping Association v. Newsom **67 Cal. App. 5th 711 (2021)** The court held that special legislation providing fast-track judicial review to the Oakland Athletics' Howard Terminal Project did not impose a deadline for the Governor to certify the project for streamlined environmental review under CEQA. The special legislation, AB 734, was modeled on the earlier AB 900, which established fast-track administrative and judicial review procedures for "environmental leadership development projects," but was limited to leadership projects certified by the Governor by January 1, 2020. AB 734 included no such deadline. The plaintiff argued that, because the AB 900 Guidelines applied to projects certified under AB 734, the Governor's authority to certify the project had expired on January 1, 2020. The court concluded, however, that the Legislature's decision to adopt AB 734 as single-project legislation meant that the statutory deadlines specific to AB 900 did not apply.

G. CEQA LITIGATION

An Invalid Negative Declaration Can't be Cured by Preparing a Limited EIR

Farmland Protection Alliance v. County of Yolo **71 Cal. App. 5th 300 (2021)** The Third Appellate District ruled that a trial court could not order a remedy that required preparation of an environmental impact report limited to the potentially significant impacts that led to invalidation of the project's negative declaration. The trial court found substantial evidence supported a fair argument that the project may have a significant effect on three wildlife species and ordered the County to remedy this deficiency by preparing an EIR that would address the project's impacts on the three relevant species. The court of appeal characterized the question before it as whether an agency can comply with CEQA by preparing a negative declaration for some of a project's impacts, and an EIR to address other impacts found to be potentially significant. The court found no basis for such bifurcation. CEQA requires that an EIR be prepared if *any* aspect of the project may have a significant effect on the environment. Thus, the court concluded that once a negative declaration is invalidated, the agency must

prepare what it referred to as a "full EIR" for the proposed project—not an EIR confined to discrete impacts that would result from the project.

Failure to Exhaust Administrative Remedies by Appealing a CEQA Determination as Provided by Agency Regulations Precludes a Later CEQA Suit

Schmid v. City and County of San Francisco **60 Cal. App. 5th 470 (2021)** The plaintiffs challenged removal of a bronze sculpture from the "Pioneer Monument" in the Civic Center area of San Francisco, alleging that the city's Historic Preservation Commission unlawfully approved removal of the sculpture based on a categorical exemption from CEQA. The court of appeal affirmed the trial court's ruling that the plaintiffs failed to state a cognizable claim under CEQA because they did not exhaust administrative remedies by appealing the Commission's exemption determination to the Board of Supervisors. The common law requirement that all available administrative remedies be exhausted prior to filing suit applies to CEQA cases. The plaintiffs presented their CEQA objections to the city's Board of Appeals, but that board did not have jurisdiction; under the city's administrative code, any appeal of a CEQA determination must be presented to the Board of Supervisors. Plaintiff's failure to appeal the Commission's CEQA decision to the Board was a fatal failure to exhaust administrative remedies.

A Project Opponent Is Not Required to Present Its CEQA Objections to the Agency If Prior Notice of Its Proposed CEQA Exemption Is Not Given

Los Angeles Dep't of Water & Power v. County of Inyo **67 Cal. App. 5th 1018 (2021)** The court rejected the argument that LADWP's suit challenging the county's exemption finding was barred because LADWP had failed to state its objections to the exemption determination during the Board of Supervisors' hearing. The meeting agenda and other materials in the record showed that the county's intent to rely upon an exemption was not disclosed until the waning moments of the Board's hearing, so the court found LADWP was not required to object because adequate prior notice had not been given.

An Objecting Party Must Comply with Agency's Appeal Procedures in Order to Exhaust Administrative Remedies

Stop Syar Expansion v County of Napa **63 Cal. App. 5th 444 (2021)** County ordinances authorized the planning commission to certify an EIR and approve the project, subject to appeal to the county board of supervisors. An appeal to the Board required an "appeal packet" identifying "the specific factual or legal determination of the approving authority which is being appealed, and the basis for such appeal." The county ordinance also specified that any issue not raised in the appeal packet was waived. The petitioner described several objections in its appeal packet, which the board of supervisors duly addressed in its decision. But then the petitioner attempted to pursue other CEQA claims in the lawsuit it filed. The court of appeal held all of the new claims were barred, holding administrative remedies provided by a local agency's ordinances must be fully exhausted as set forth in the agency's procedures before an alleged violation of CEQA can be raised in court.

Failure to Include Real Parties in Interest in a CEQA Suit Does Not Warrant Dismissal of the Entire Case if the Unnamed Parties Are Not Indispensable

Save Berkeley's Neighborhoods v. The Regents of the University of California **70 Cal. App. 5th 705 (2021)** After approving a student housing and academic building project, the U.C. Regents issued a notice of determination identifying two other parties as undertaking the project. The plaintiff sued the Regents within CEQA's 30-day statute of limitations, but failed to include the other parties, so the plaintiff could not proceed against them. The question was then whether the CEQA lawsuit could proceed against the Regents alone, or must be dismissed because the other two parties were "indispensable." The court held that while CEQA requires

that persons identified in a notice of determination be joined as parties, it does not require that the suit be dismissed if they are not joined within 30-day period to do so. Instead, a court must apply the equitable test in Code of Civil Procedure 389 for determining indispensability to decide whether failure to join a real party in interest on time requires dismissal of the entire case. Applying that test, the court concluded the absent parties were not indispensable, so the case could proceed without them. The court found a "strong unity of interest" between the Regents and the absent parties, which meant that the interests of those parties should be adequately protected by the Regents' defense of the case.

Case Properly Dismissed for Failure to Join the Right Party as Real Party in Interest Even Though Agency Did Not Provide Plaintiff with Corrected Notice of Determination

Organizacion Comunidad de Alviso v. City of San Jose **60 Cal. App. 5th 783 (2021)** The court affirmed dismissal of the plaintiff's CEQA action because the plaintiff failed to timely join an indispensable real party in interest (Microsoft Corporation) within thirty days after the City of San Jose filed a corrected Notice of Determination identifying Microsoft as the project applicant. The city's first NOD identified the incorrect project applicant and was sent to the plaintiff. The city's second NOD correctly identified Microsoft as the applicant but was not sent to the plaintiff, despite plaintiff's request for notice. The plaintiff filed its initial petition for writ of mandate within 30 days of the filing of the first NOD, naming the incorrect real party in interest. Plaintiff filed a first amended petition more than 70 days after the second NOD was filed, correctly naming Microsoft as the real party. The court of appeal concluded the initial petition was defective for failing to join Microsoft as a party and the amended petition was untimely because it was filed more than 30 days after the city filed the second NOD. This untimely filing meant the case had to be dismissed; Microsoft was an indispensable party and had not been joined in the suit before the time to do so ran out. Although the city violated CEQA by failing to send the second NOD to the plaintiff in response to its request for notice, the court held that such a violation did not excuse the amended petition's untimeliness under CEQA.

Agreement to Extend Statute of Limitations for CEQA Claim Was Ineffective Because It Did Not Include an Indispensable Party

Save Lafayette Trees v. East Bay Regional Park District **66 Cal. App. 5th 21 (2021)** The court found that a CEQA challenge to a decision approving removal of trees adjacent to PG&E gas pipelines was time-barred because an agreement to toll the statute of limitations did not include PG&E. The East Bay Regional Park District adopted a resolution accepting PG&E funding to remove trees on District property that were close to natural gas lines. Save Lafayette Trees and the District then agreed to toll all applicable statutes of limitations for a suit to challenge the resolution for 60 days. PG&E did not consent to the tolling agreement. Save Lafayette Trees later filed a CEQA lawsuit after the 180-day CEQA statute of limitations had expired, but within the purported tolling period. The court of appeal found that because PG&E was an indispensable party to the CEQA claim and did not consent to the tolling agreement, the agreement was ineffective, and the case therefore was barred by the statute of limitations.

Developer Established a Prima Facie Case That Project Opponent Lacked Probable Cause and Acted with Malice in Pursuing CEQA Litigation

Dunning v. Johnson **64 Cal. App. 5th 156 (2021)** A developer established a probability of prevailing on its claims for malicious prosecution where the evidence showed that the neighboring landowner lacked probable cause for pursuing CEQA litigation and acted with malice. The court rejected Clews Horse Ranch's CEQA challenge to the City of San Diego's negative declaration for Cal Coast's construction of a private secondary school adjacent to Clews's commercial horse ranch and equestrian facility. Both the trial and appellate courts concluded that Clews failed to show there was substantial evidence supporting a fair argument that the project

may have a significant effect on the environment. In an ensuing malicious prosecution action filed by Cal Coast against Clews, the defendants filed an anti-SLAPP motion contending that Cal Coast failed to make a prima facie showing that Clews pursued the CEQA litigation without probable cause and with malice. The court of appeal upheld the denial of the anti-SLAPP motion, first finding that defendants did not have probable cause for pursuing at least one of their CEQA claims—namely that an EIR was necessary to assess the project's noise impacts. Second, the court found that there "clearly [was] sufficient evidence from which it can be found that Clews Horse Ranch pursued the CEQA Litigation with malice," an essential element of a malicious prosecution claim. The evidence showed that Clews consistently and aggressively opposed any use and development on the project site. Clews harassed prior owners of the site, restricted prior owner's access to the property, and "deployed hostile and spiteful behaviors to dissuade site owners from developing their land." This evidence and reasonable inferences from it constituted a *prima facie* showing that Clews harbored similar improper motives when pursuing the CEQA litigation.

Topics

CEQA