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California Construction and Industrial Materials Association v. County of Ventura

Court of Appeal, Second District, Division 6, California - November 13, 2023 - Cal.Rptr.3d - 2023 WL 7478994

Opponents of project, an ordinance creating overlay zones to protect wildlife migration corridors in rural portions of county, separately petitioned for writs of mandate to require county to vacate the ordinance.

The Superior Court denied petitions. Opponents appealed, and the appeals were consolidated.

The Court of Appeal held that:

- As a matter of first impression, county was not "permitting a use" within meaning of the Surface Mining and Reclamation Act (SMARA) when it adopted ordinance creating overlay zones to protect wildlife migration corridors;
- Substantial evidence supported county's finding that project fell within categorical exemptions from the California Environmental Quality Act (CEQA);
- Opponents failed to carry burden of showing unusual circumstances in order for exception to the categorical CEQA exemptions to apply; and
- There was no substantial evidence to support fair argument that there was reasonable possibility that project would have an adverse effect on the environment.

County was not "permitting a use" within meaning of Surface Mining and Reclamation Act (SMARA) provision requiring a lead agency to prepare statement specifying reasons for permitting proposed use and forward a copy to State Geologist for review when it adopted ordinance creating overlay zones to protect wildlife migration corridors in rural portions of the county; phrase did not include changes in permitting requirements, and while opponents of the ordinance argued that the overlay zone project permitted a "use," namely a wildlife corridor, the use was by wildlife, which could not seek permission from the county.

Opponents of project, a county adopted ordinance creating overlay zones to protect wildlife migration corridors in rural portions of the county, failed to show it was reasonably probable that they would have obtained a more favorable result in the absence of county's alleged error under the Surface Mining and Reclamation Act (SMARA) in not preparing a statement specifying its reasons for permitting proposed use and forwarding a copy thereof to the State Geologist, as required to obtain writ of mandate requiring county to vacate the ordinance; there were numerous public comments on the project, as well as State Geologist's comments that project threatened extraction of mineral resources, and even had county forwarded a formal statement of reasons, nothing in SMARA gave State Geologist power to stop or modify the project.

Substantial evidence supported county's finding that ordinance creating overlay zones to protect wildlife migration corridors in rural portions of the county fell within categorical exemptions from

California Environmental Quality Act (CEQA) pertaining to actions taken by a regulatory agency to assure maintenance, restoration, or enhancement of a natural resource and procedures for protection of the environment, since wildlife was a natural resource entitled to protection, and evidence provided included studies and other documents citing need to preserve wildlife corridors and establishment of development standards compatible with wildlife movement, as well as preservations by experts.

Opponents of project, a county adopted ordinance creating overlay zones to protect wildlife migration corridors in rural portions of the county, failed to distinguish the project based on its size for purposes of establishing unusual circumstances, as required for exception to categorical exemptions from California Environmental Quality Act (CEQA) to apply; opponents claimed that project was significantly larger than other projects in its class, but they cited no such evidence, and cases they cited showed the opposite, as those projects covered entire counties or even the entire state.

Opponents of project, a county adopted ordinance creating overlay zones to protect wildlife migration corridors in rural portions of the county, failed to distinguish the project based on its location for purposes of establishing unusual circumstances, as required for exception to categorical exemptions from California Environmental Quality Act (CEQA) to apply; opponents cited no evidence that other projects in the challenged project’s exempt class did not overlay similar resources, as neither mining nor ordinances that attempted to preserve wildlife were unique to the county, and exemption to which opponents compared the project was not one on which the county was relying.

There was no substantial evidence to support fair argument that there was a reasonable possibility that project, a county adopted ordinance creating overlay zones to protect wildlife migration corridors in rural portions of the county, would have an adverse effect on the environment, as was required for exception to categorical exemptions from California Environmental Quality Act (CEQA) to apply; project opponents argued that project prohibited or hampered mining or access to a permitted mine, but that was speculative, and opponents pointed to no requirements that could not also have been imposed under former requirements for a mining conditional use permit, which required applicants to show proposed development would not be detrimental to public interest, health, safety, convenience, or welfare, and that was consistent with county’s plan.

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