New Case Limits Local Agency Obligations Under CEQA

In general, the California Environmental Quality Act ("CEQA") applies to "discretionary projects proposed to be carried out or approved by public agencies" (California Public Resources Code Section 21080(a)), but are the post-approval decisions of the local agency, including the decision to not abandon a project, subsequent discretionary approvals that also require CEQA analysis? In a recent case before the California Sixth Appellate District, the court answered both questions in the negative, rejecting an argument that would have significantly increased the administrative burden for local agencies.

The project at the center of the case of Willow Glen Trestle Conservancy v. City of San Jose (2020 Cal. App. LEXIS 423) was the City of San Jose's plan to demolish the Willow Glen railroad trestle ("Trestle") and to replace it with a "new steel pedestrian bridge that would serve as a link in the city's Three Creeks Trail system." The Trestle, which was built in 1922, was not considered an historical resource at the time the City conducted its initial CEQA analysis and the project was approved with a mitigated negative declaration ("MND").

After an initial Streambed Alteration Agreement ("SAA") from the California Department of Fish and Wildlife ("CDFW") expired, the City of San Jose applied for a new SAA that would allow for the diversion of the Los Gatos Creek during the demolition of the Trestle and the construction of the new pedestrian bridge. Having determined that "the project would not have any significant impacts on fish or wildlife "with the measures specified in the 2014 MND and the [SAA], " CDFW issued a new SAA.

However, in the intervening years, the California State Historical Resources Commission listed the Trestle on the California Register of Historical Resources, a designation, that had it been in effect at the time the City of San Jose originally considered the project, would have required the City to assess the project's impact on the Trestle. Hoping for a new environmental review that would address this change in the Trestle's designation, the Willow Glen Trestle Conservancy ("Conservancy") filed suit claiming that the City's actions in obtaining the updated SAA was a discretionary approval by the City and necessitated a supplemental environmental review. The superior court rejected these arguments and ruled that "the acts by the City involved in obtaining the new SAA did not involve any "new discretionary approval" by the City."

On appeal, the Conservancy argued that "entering into the discretionary [SAA] that is the final discretionary approval required prior to moving forward with the demolition of the [trestle]" violated CEQA. Specifically, the Conservancy claimed that the City's act of seeking and accepting the SAA was a "discretionary approval on [the] project" under CEQA Guidelines section 15162(c) that justified supplemental environmental review." The court noted that while CDFW's issuance of the second SAA was a discretionary act, it was CDFW that exercised the discretionary power and not the City. The court characterized the Conservancy's argument as an attempt "to equate any action in connection with a project with an "approval on" or an "approval for" the project" and concluded that "[t]he City's post-approval actions implementing the project did not constitute "approval" within the meaning of CEQA Guidelines section 15162(c)."

In support of its position, the Conservancy had suggested that because "[a]n agency always retains authority to change course in implementing its own project" the "failure to abandon the project was itself a new "discretionary approval for the project." Rejecting this novel argument, the court ruled that "[n]othing in Public Resources Code section 15162 suggests that an agency's post-approval choice not to abandon its project constitutes an "approval for the project" that justifies further environmental review."

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