

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



evidence  
in malice.

Clews

Horse Ranch sued to challenge a decision by the City of San Diego to approve Cal Coast's construction of a private secondary school adjacent to its commercial horse ranch and equestrian facility. Clews claimed the city's use of a mitigated negative declaration instead of an EIR violated CEQA because the project would have significant impacts on historical resources, fire hazards, noise, and transportation and traffic. The trial court denied the petition and the court of appeal affirmed, concluding 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 the ensuing malicious prosecution action filed by Cal Coast against Clews and its attorneys, the defendants filed an anti-SLAPP motion contending that Cal Coast failed to make a prima facie showing that the defendants pursued the CEQA litigation without probable cause and with malice. The court of appeal upheld the denial of the anti-SLAPP motion, 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. Under CEQA, the question is whether a project will affect the environment of persons in general, not particular persons, and the only evidence in the record concerning noise levels related to the expected impact on the operation of Clews Horse Ranch. The

court rejected defendants' claim that project noise would adversely affect the surrounding community in general, finding that the cited evidence consisted of speculative and generalized warnings that did not constitute substantial evidence. The court also 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. On the other hand, the evidence did not support a determination that Clews' attorneys likewise acted with malice. Clews' improper motives in pursuing the CEQA litigation could not be imputed to the attorneys, and the demonstrated lack of probable cause in bringing the litigation was insufficient by itself to establish malice.

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