

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



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As part

of PG&E's Community Pipeline Safety Initiative, PG&E conducted an in-depth review of trees located near its gas transmission pipelines and identified a total of 245 trees in the East Bay Regional Park District that were located too close a pipeline. The District and PG&E agreed that the trees would be removed and that PG&E would fund the cost of removing the trees and installing replacement trees. On March 21, 2017, after a public hearing, the District adopted a resolution accepting the PG&E funding and authorizing the District's general manager to execute documents and agreements necessary to accomplish the purposes of the resolution. On July 31, 2017, Save Lafayette Trees (Appellants) and the District entered into an agreement to toll all applicable statutes of limitations for 60 days. PG&E did not consent to the tolling agreement. Appellants filed their lawsuit on September 29, 2017. The Court of Appeal held that Appellants' CEQA challenge was time-barred under

CEQA's 180-day statute of limitations. The court explained that because PG&E was a necessary and indispensable party to that claim, PG&E was required to consent to the tolling agreement. Because the tolling agreement was signed only by Appellants and the District, the court determined it was ineffective and Appellants were required to have filed their challenge within 180 days after adoption of the District's resolution. Appellants argued that even in the absence of the tolling agreement, the CEQA cause of action was still timely because the 180-day limitations period did not begin to run on the date the District adopted the resolution. Appellants claimed that neither the District's online agenda notice for the public hearing nor the accompanying description of the Resolution mentioned or implied that any trees would be removed as part of PG&E's funding proposal and therefore did not provide Appellants adequate notice. The court rejected this argument, finding that judicially noticed documents, including the Resolution itself, showed that the District would accept funding from PG&E for the removal of trees. As such, the public was given the necessary constructive notice of the project on March 21, 2017, and the CEQA claim was properly dismissed as time-barred.

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