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Sour Grapes for Environmental Activists: Court of Appeal Affirms Issuance of Permit to Develop Vineyard over CEQA Challenge

In *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, the Court of Appeal held that the Agricultural Commissioner of Sonoma County (Commissioner) correctly issued an erosion-control permit without consideration of the California Environmental Quality Act (CEQA) because issuance of such a permit is a ministerial act and the Commissioner had no authority to mitigate any potential environmental impacts in a meaningful way.

The County of Sonoma enacted an ordinance that requires growers to obtain an erosion-control permit before establishing or replanting a vineyard. Real parties in interest applied for such a permit. Their permit application included information about wetland and seasonal swales on the land, run-off drainage, and erosion mitigation controls. As part of the application process, an inspector for the Commissioner visited the site and reviewed the application using a checklist. After finding that the application complied with the ordinance, the Commissioner issued real parties in interest an erosion-control permit. Subsequently, the Commissioner issued a notice declaring that issuance of the permit was a ministerial act and exempt from CEQA review.

Petitioners, Sierra Club and Center for Biological Diversity, challenged the Commissioner's determination that issuance of the permit was exempt from CEQA review. They argued that the erosion-control ordinance was vague such that issuance of a permit was a discretionary act and not merely ministerial. The trial court disagreed with petitioners and ruled in favor of the Commissioner and the real parties in interest.

The Court of Appeal affirmed "because most of the provisions that potentially confer discretion did not apply to the [real parties in interest's] project, and petitioners fail to show that the few that did apply conferred on the Commissioner the ability to mitigate potential environmental impacts to any meaningful degree." Specifically, the Commissioner's consideration of the real parties in interest's application was a ministerial act because it was "confined by a series of finely detailed and very specific regulations." To the extent that the ordinance conferred discretion to the Commissioner concerning the real parties in interest's permit, petitioners failed to demonstrate that the Commissioner "could mitigate potential environmental impacts to any meaningful degree" by exercising that discretion. As a consequence, CEQA review would be a meaningless exercise.

Given the time and expense of CEQA review, attorneys should consider whether a project is subject to the ministerial act exception to CEQA. This case is important because it provides significant guidance on the applicability of that exception.

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