

Citizens for a Responsible Caltrans Decision v. Department of Transportation
(March 24, 2020) __ Cal.App.5th __

In 2017, Caltrans released a final EIR for two new freeway interchange ramps connecting Interstate 5 and State Route 56 in the San Diego area. The FEIR advised readers that prior to deciding to approve the project Caltrans would circulate the FEIR for review and, if it approved the project, the Coastal Commission (CCC) would file a Notice of Determination and Caltrans would adopt a federal Record of Decision (Caltrans was the lead agency for the project under NEPA). Caltrans then released the FEIR for review and comment. However, without notifying any member of the public or other agencies, Caltrans approved the project a few days before release of the FEIR and then filed a notice of exemption.

The CCC had previously considered this project at a general level as part of its 2014 approval of the North Coastal Corridor Public Works Plan (PWP). The PWP explained its purpose as follows:

A PWP is an alternate vehicle for obtaining approval of large or phased public works projects and remains under the authority of the [CCC] irrespective of coastal permit jurisdictional boundaries. A PWP is an alternative to project-by-project review for public works (which could require multiple [CDP's] for different components of a public works project). A PWP must be sufficiently detailed regarding the size, kind, intensity, and location of development to allow the [CCC] to determine its consistency with the policies in Chapter 3 of the Coastal Act (pre-LCP certification) or the certified LCP (post-LCP certification). Once the [CCC] approves a PWP, no [CDP] is required if the development is consistent with the PWP. Instead, the permittee provides a Notice of Impending Development (NOID) to the [CCC] and other interested persons, organizations, and government agencies. The [CCC] then reviews the NOID for consistency with the approved PWP; if the [CCC] determines that the NOID is consistent with the PWP, the development may proceed. In these cases, however, the [CCC] may still apply conditions to that specific project to ensure consistency with the PWP.

In a footnote, the CCC described the limitations of the PWP:

The [CCC] PWP review and approval process is not intended to supplant the review processes required by [CEQA], [NEPA] or other regulatory schemes; compliance with the CEQA, NEPA and/or other regulatory schemes are addressed at the project level ...

The CCC's 2014 approval of the PWP did not constitute a project-level review of the interchange improvements. The PWP itself stated: "Given that a preferred alternative has not yet been selected for the [Project], this project may be subject to future PWP amendment and a NOID to ensure consistency with the approved PWP, or Caltrans may choose (in consultation with the [CCC] and the city) to submit a [Coastal Development Permit] application to the city. Project alternatives include improvements to local streets, adding auxiliary lanes along I-5 and SR 56, interchange improvements, or southbound-to-eastbound and westbound-to-northbound freeway connector ramps. An environmental document analyzing the alternatives was released in May 2012."

Caltrans's NOE stated that the project was exempt from CEQA under Streets and Highways Code section 103 (which authorizes the Coastal Commission to apply its certified regulatory program to the PWP as equivalent to a "long range development plan"). Citizens for a Responsible Caltrans Decision (Citizens) did not learn of the NOE filing until after the 35-day statute of limitations period for challenging the exemption had run.

Citizens brought suit, arguing that Section 103's CEQA exemption did not apply to Caltrans's approval of the project and Caltrans is equitably estopped from relying on the 35-day statute of limitations. The trial court dismissed the case. The Court of Appeal found the dismissal to be in error and reversed that decision.

Paradoxically, although Caltrans released the FEIR for a 30-day review and comment period, the FEIR itself noted that Caltrans considered the project to be subject to Section 103 and thereby exempt from CEQA. The FEIR was essentially presented for the purpose of public disclosure, not for CEQA compliance.

The Court found that Citizens should be able to bring suit relative to the applicability of Section 103 to the project.

The parties do not cite, and we are unaware of, any cases construing section 103 or, in particular, its specific provision (i.e., § 103, subd. (d)(3)) treating the PWP as a long-range development plan (LRDP). Accordingly, we apply the rules of statutory construction to decide, as a matter of first impression, whether section 103, together with its references to Public Resources Code sections 21080.5 and 21080.9, provide *Caltrans* with an exemption from CEQA's requirement that an EIR be prepared and circulated before approving the *Project*. (Pub. Resources Code, § 21100 et seq.)

Our review of section 103, by itself, does not reveal any language expressly exempting Caltrans from CEQA's requirement that an EIR be prepared or circulated before approving the Project. Caltrans implicitly concedes that, but argues that Public Resources Code sections 21080.5 and 21080.9, which are referenced in section 103, provide such an exemption. We disagree. The plain language of section 103, together with its references to Public Resources Code sections 21080.5 and 21080.9, does not show any intent to exempt Caltrans from CEQA's requirement that an EIR be prepared and circulated before approving the Project. By providing that the PWP be treated as an LRDP to which Public Resources Code sections 21080.5 and 21080.9 apply, section 103, subdivision (d)(3), in effect, provides "that certification of [the PWP] ... by the California Coastal Commission [CCC] ... shall be subject to the requirements of [CEQA]." (Pub. Resources Code, § 21080.9.) Alternatively stated, when read together, section 103, subdivision (d)(3) and Public Resources Code section 21080.9 provide that the CCC, but not Caltrans, must comply with CEQA and, pursuant to Public Resources Code section 21080.5, subdivision (d), prepare substitute environmental documentation when considering the certification and/or approval of the *PWP*. The CCC has a certified regulatory program for approval of LCP's, but *Caltrans* does *not* have any certified regulatory program. (Guidelines, § 15251.) Contrary to Caltrans's

apparent assertion, there is no language in those statutes that expressly provides that Caltrans is exempted from CEQA's requirement that it prepare and circulate *an EIR for the Project* before approving the *Project*. Caltrans either mistakenly conflates the PWP with the Project *or* implicitly argues that the CCC's certification or approval of the PWP necessarily absolves Caltrans of any requirement to prepare and circulate an EIR for the Project. We are unpersuaded that those statutes exempt Caltrans from preparing and circulating an EIR for the Project.

... If, as Caltrans argues, the Legislature had intended section 103 to exempt Caltrans from preparing and circulating an EIR for the Project, the Legislature presumably would have made that intent clear by expressly providing for such an exemption. By not expressly exempting from CEQA Caltrans's approval of the Project while doing so for the CCC's certification or approval of the PWP, we infer the Legislature did not intend to exempt Caltrans's approval of the Project. When the Legislature creates an express exemption from CEQA for a certain plan or project, we cannot infer it also intended to create other exemptions not expressly stated. (Cf. *Wildlife Alive, supra*, 18 Cal.3d at p. 195 ["where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed"]; *City of Coronado v. California Coastal Zone Conservation Com.* (1977) 69 Cal.App.3d 570, 580 ["[w]hen a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded"].)

With regard to the trial court's dismissal of the case, Citizens claimed that equitable estoppel should apply to Caltrans's attempt to invoke the 35-day statute of limitations. The Court agreed. The Court explained:

"The doctrine of equitable estoppel is based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped from obtaining the benefits of his misconduct. [Citation.] Under appropriate circumstances equitable estoppel will preclude a defendant from pleading the bar of the statute of limitations where the plaintiff was induced to refrain from bringing a timely action by the fraud, misrepresentation or deceptions of the defendant." (*Kleinecke v. Montecito Water Dist.* (1983) 147 Cal.App.3d 240, 245 (*Kleinecke*).) "A defendant should not be permitted to lull his adversary into a false sense of security, cause the bar of the statute of limitations to occur and then plead in defense the delay occasioned by his own conduct." (*Ibid.*) "Statutes of limitations are not so rigid that under certain circumstances principles of equity and justice will not allow them to be extended or tolled." (*Id.* at p. 247.)

Upon review of the record, the Court concluded that Caltrans may have acted in a manner that would mislead the public.

Despite its NOE's claim of exemption, Caltrans nevertheless thereafter proceeded to circulate the FEIR for public comment from July 14, 2017, through August 14, 2017, received comments on the FEIR from municipalities, organizations, and the general public, and responded to those comments. Based on those facts, it can be reasonably inferred that Caltrans knew of its position that the Project was exempt from CEQA and

would approve the Project and file an NOE, but nevertheless made misrepresentations to CRCD and the public, as described *ante*, that it would approve the Project only after circulation of the FEIR and then would file an NOD in compliance with CEQA.

... We further conclude that CRCD alleged sufficient facts showing that: (1) CRCD was unaware of Caltrans's position that it was exempt from CEQA and would approve the Project and file an NOE, instead of an NOD, without first circulating the FEIR; and (2) CRCD reasonably relied on Caltrans's misrepresentations that it would circulate the FEIR before approving the Project and would then file an NOD in compliance with CEQA.

In a final topper, the Court noted: "Caltrans does not cite any public interest or policy that supports a position that a government agency should be allowed to make misrepresentations to the public regarding its intent to comply with CEQA in approving a project and then, in effect, secretly approve the project without compliance with CEQA and erroneously file an NOE for the project."