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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

LYNBROOK-MONTA VISTA UNITED,

Plaintiff and Appellant,

v.

FREMONT UNION HIGH SCHOOL  
DISTRICT et al.,

Defendants and Respondents.

H038553

(Santa Clara County

Super. Ct. No. CV192050)

Appellant Lynbrook-Monta Vista United (LMU) challenges the trial court’s denial of its motion for attorney’s fees under Code of Civil Procedure section 1021.5.<sup>1</sup> LMU sought its attorney’s fees after it was partially successful in its action against respondent Fremont Union High School District (the District) under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The trial court denied the motion on the ground that LMU’s “action did not convey a *significant* benefit and did not convey it on the general public or anything approaching a large class of persons.” We find no abuse of discretion and affirm the order.

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<sup>1</sup> Subsequent statutory references are to the Code of Civil Procedure unless otherwise specified.

## **I. Factual Background**

The District prepared draft environmental impact reports (EIRs) for proposed improvements to athletic fields at Lynbrook and Monta Vista high schools. One of the objectives of these two projects was to permit the football teams at these schools to host their own home games, which they had been playing at other high schools due to the lack of facilities at Lynbrook and Monta Vista high schools. The primary noise issue concerned evening football game noise. There would be six of these evening football games at each school each year.

The draft EIRs acknowledged that evening football games would significantly increase the existing noise levels at “the nearest residences” to the athletic fields to a level that would exceed that permitted under the noise ordinances in the cities in which these schools were located. This noise impact would extend more than 1000 feet from the sites. The draft EIRs identified the noise impact from these six football games at each school as significant. As to mitigation, the draft EIRs concluded: “There are no feasible measures that would reduce project-generated noise levels to a less than significant level at nearby residences.” The draft EIRs proposed as a mitigation measure that noise levels generated by the PA systems be controlled, but the draft EIRs conceded that this would not reduce the noise levels to less than significant. The draft EIRs did not propose noise barriers as a mitigation measure though they discussed them. The noise impacts of these projects were plainly identified in the draft EIRs as “significant and unavoidable.”

The alternatives sections of the draft EIRs discussed a “Reduced Use” alternative. Under this alternative, the six evening football games would remain unchanged, but other evening uses of the athletic fields would be limited in frequency and duration. The primary environmental superiority of this alternative was a 73 percent reduction in lighting use. The draft EIRs’ discussion of the reduced use alternative included this passage: “Although lit evening games and practices at the main field and track would continue to substantially increase noise levels at nearby residences and exceed city

standards, especially during football games, *the long-term impact is considered less than significant* because these increases in ambient noise levels would be infrequent, of relatively short duration, and similar to those commonly associated with high schools. While the noise generated during football games exceeds the City's standard, high schools commonly host outdoor sporting events and other activities that generate noise.” (Italics added.) At the same time, the draft EIRs stated that the reduced use alternative “would considerably *reduce the magnitude of the significant unavoidable long-term noise impact* that is anticipated to occur under the proposed project.” (Italics added.) Thus, the draft EIRs were not clear as to whether the reduced use alternative would reduce the noise impact to less than significant.

The District subsequently circulated amended draft EIRs. The amended draft EIRs asserted that the reduced use alternative *would* reduce the significant noise impacts “to a less than significant level” because, they asserted, “the increases in ambient noise levels [during football games] would be infrequent, of relatively short duration short duration [*sic*], and similar to those commonly associated with high schools.” The amended draft EIRs continued to reject noise barriers and other suggested mitigation measures on the grounds that these measures would not reduce the noise impact to less than significant. The amended draft EIRs included responses to comments on the draft EIRs. One comment noted that the draft EIRs had claimed that the reduced use alternative would reduce the noise impact to less than significant but had failed to provide support for this claim. As the comment explained, reduced use would only change the duration of the noise, not the level of the noise.

The District certified final EIRs containing the amended draft EIRs, comments, and responses to comments. It selected the reduced use alternative as the environmentally superior alternative, found that the reduced use alternative would have no significant environmental impacts, and approved the reduced use alternative as the

selected alternative for both projects. No additional noise mitigation measures were adopted.

## **II. Procedural Background**

LMU is a group of people who are neighbors of the two high schools or live in the “general vicinity” of these two schools. LMU filed a petition for a writ of mandate challenging on a number of grounds the District’s certifications of the final EIRs and approvals of the projects. The trial court granted the petition in part. It found that the final EIRs’ findings that the reduced use alternative had “no significant noise impacts” were not supported by substantial evidence. The court noted that the EIRs acknowledged significant, unavoidable noise impacts from evening home football games but “inexplicably” claimed that the significant noise impacts would be reduced to less than significant by reduced usage, even though the number of evening home football games would not be reduced. The court rejected LMU’s other claims. It ordered the District to set aside its certifications and approvals and directed it to comply with CEQA.

In January 2012, the District circulated revised draft EIRs. The revisions affected only the amended draft EIRs’ discussion of the reduced use alternative, the mitigation measures for noise impacts, and the noise assessment. The revised draft EIRs stated that the reduced use alternative would “considerably reduce the magnitude of the significant unavoidable noise impact that is anticipated to occur under the original project evaluated in the Draft EIR, but it would remain a significant unavoidable impact, nevertheless.” “[T]he noise would still result in a significant unavoidable impact, because it exceeds the City’s normally acceptable exterior noise level standard . . . .” Although the revised draft EIRs discussed additional possible noise mitigation measures, they did not propose that any of these measures be adopted because they were infeasible, would create other impacts, and/or would not reduce the noise to less than significant. The revised draft

EIRs suggested that only the 45 closest residences to the projects would be affected by the significant noise impact of the projects.

After the revised draft EIRs circulated, but before the District had considered certifying them or approving the projects, LMU filed a motion for attorney's fees under section 1021.5. LMU asserted that it had satisfied all of the criteria for an award. It claimed that its action had conferred a significant benefit on the public because its "action will assure that the impacts of the Projects are properly assessed and mitigated, thus conferring a significant benefit to the environment and to the public at large." LMU asserted that, as a result of its action, the District had now acknowledged that the noise impacts were significant and analyzed additional mitigation measures. In LMU's view, this was a significant public benefit because the public would now have an additional opportunity to comment on this issue. LMU also argued that the benefit had not been limited to the neighbors closest to the projects but had extended to "the cities as a whole" because the cities had commented on the revised EIRs.

LMU argued at the hearing on its motion that its action had produced three significant benefits to the public. First, the District had to prepare revised EIRs and circulate them. This gave the public another opportunity to comment. Second, because the District had to acknowledge that the noise impact was significant, it was required to "consider and adopt" mitigation measures or alternatives that would reduce that impact. Third, if the District decided not to adopt mitigation measures or alternatives, it would have to make a statement of overriding considerations, which would require the District's Board to "go on record that they are willing to approve a project with significant environmental impacts" thereby making them accountable to the public. "It gives [the voters] the opportunity to respond to that decision in the voting booth. This is a real benefit under our democratic process and it's one C.E.Q.A. is specifically designed to further."

The District's opposition to LMU's motion asserted that LMU's action had not conferred a significant benefit on the general public or on a large class of persons. It argued that the noise impacts "can only affect the few people within the zone that experiences sound exceeding the threshold, and not the general public." The District asserted that the comments on the revised EIRs were "largely the same as before" and raised the same issues so LMU's action had not achieved anything of significance.

The trial court denied the motion on the ground that LMU's "action did not convey a *significant* benefit and did not convey it on the general public or anything approaching a large class of persons." LMU timely filed a notice of appeal.

### **III. Discussion**

"Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any." (§ 1021.5.) "The burden is on the claimant to establish each prerequisite to an award of attorney fees under section 1021.5." (*Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2010) 187 Cal.App.4th 376, 381.)

"The decision whether to award attorney fees pursuant to [section 1021.5] lies within the discretion of the trial court and will not be disturbed on appeal absent a prejudicial abuse of discretion resulting in a manifest miscarriage of justice." (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1125.) "However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees and costs in this

context have been satisfied amounts to statutory construction and a question of law.’” (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.)

LMU claims that de novo, rather than abuse of discretion, review is merited here because the issue before us is one of “statutory interpretation.” It characterizes the “statutory interpretation” issue as “whether forcing the District to comply with CEQA conferred a substantial public benefit and satisfied the other criteria under section 1021.5.”

The question of whether LMU’s action “conferred” a “significant benefit” does not require us to interpret the nature of section 1021.5’s criteria. The meaning of section 1021.5’s “significant benefit” criterion has long been well established. “In determining whether a significant benefit has been conferred on the general public or a large class, courts must perform ‘a realistic assessment of all the relevant surrounding circumstances.’” (*New West Charter Middle School v. Los Angeles Unified School Dist.* (2010) 187 Cal.App.4th 831, 849.) “The trial court must determine the significance of the benefit and the size of the class receiving that benefit by realistically assessing the gains that have resulted in a particular case.” (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 635.) When a trial court performs a “‘realistic assessment’” of the “‘relevant surrounding circumstances’” to determine the “significance of the benefit and the size of the class receiving” it, it acts as a factfinder and exercises its discretion. A “‘realistic assessment’” to determine the significance of “gains” necessarily requires the exercise of discretion. No statutory interpretation is involved.

LMU’s reliance on *Serrano v. Stefan Merli Plastering Co., Inc.* (2011) 52 Cal.4th 1018 (*Serrano*) is misplaced. *Serrano* concerned the proper application of a prior California Supreme Court decision that had held that section 1021.5 “fee awards are to be imposed only on parties whose conduct adversely affected the public interest.” (*Serrano*, at p. 1026.) Both the trial court and the Court of Appeal in *Serrano* had misinterpreted that holding as placing further limitations on what actions could meet the section 1021.5

requirement that the action result in “the enforcement of an important right affecting the public interest.” (*Serrano*, at pp. 1024-1025, 1027.) The California Supreme Court clarified that the prior decision had not changed section 1021.5’s requirements but instead carved out a very narrow exception, and it remanded the case for the trial court to exercise its discretion under a correct understanding of the law. (*Serrano*, at pp. 1027-1030.) Since the issue in *Serrano* was a legal one, the California Supreme Court naturally applied a de novo standard, but nothing in *Serrano* says anything about the standard of review applicable to a trial court decision that an action did not confer a significant benefit on the public.

LMU also cites this court’s decision in *Roybal v. Governing Bd. of Salinas City Elementary School Dist.* (2008) 159 Cal.App.4th 1143 (*Roybal*) as support for its claim that we must apply a de novo standard of review. In *Roybal*, this court first acknowledged that we ordinarily apply a deferential abuse of discretion standard when we review trial court decisions on section 1021.5 motions. (*Roybal*, at p. 1148.) It then stated: “If, on the other hand, the underlying facts are largely undisputed *and the issue calls for statutory construction*, it is a question of law that is reviewed de novo.” (*Roybal*, at p. 1148, italics added.) This court then proceeded to apply an abuse of discretion standard to each section 1021.5 requirement including the significant benefit prong. (*Roybal*, at pp. 1148-1151.)

*Roybal*, like *Serrano*, provides no support for LMU’s claim that a de novo standard of review is appropriate here. There are no issues of statutory construction before us in this case, and we do not face any unresolved legal issues. The sole question is whether the record supports the trial court’s finding that LMU failed to satisfy the significant benefit prong. Hence, we apply the deferential abuse of discretion standard of review, which requires us to defer to both the trial court’s implied findings of fact and its discretionary decisions.

LMU claims that its action satisfied section 1021.5's significant benefit prong "by assuring that the Projects' impacts will be properly assessed and mitigated, and that the public will have an additional opportunity to provide input on the Projects . . . ." It argues that its action resulted in the District being required "to disclose for the first time" that the projects would have a significant environmental impact and recirculate the revised EIRs disclosing this impact and "evaluating new mitigation measures," and "forced the District to adopt a statement of overriding considerations" in order to approve the projects.

The trial court could have reasonably concluded that LMU's action did not result in a *significant* benefit to the public or a large group of people. The original draft EIRs *did disclose* that the *proposed* projects would have significant noise impacts, so it is not true that these impacts were disclosed for the first time as a result of LMU's action. LMU's action resulted in changes to the amended draft EIRs' analysis of the reduced use alternative, not to their analysis of the original proposed projects. The analysis of the reduced use alternative was not factually inaccurate in the amended draft EIRs. The errors were in the amended draft EIRs' assessment of the *significance* of the noise impact. The amended draft EIRs erroneously characterized the noise impacts as less than significant simply because the noise would be of limited duration. This error was plainly evident to the public, as noted in a comment on one of the draft EIRs that was circulated with that amended draft EIR and therefore available to the public prior to the approval of the final EIRs.<sup>2</sup>

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<sup>2</sup> LMU argues that this error resulted in the District failing to adopt mitigation measures or alternatives to reduce the noise impact. This is a skewed view of the facts. The District adopted the reduced use alternative to mitigate impacts, including the noise impacts. The amended draft EIRs erroneously characterized this alternative as reducing the noise impact to less than significant, but the alternative did reduce the noise impact. In addition, no additional feasible mitigation measures or other alternatives existed, so the revisions could reasonably be found not to be a significant benefit.

While LMU's action resulted in the correction of this error, no significant additional data regarding the noise impacts of the projects was disclosed to the public in the revised draft EIRs. Because no additional data was disclosed to the public, the court could have reasonably concluded that, viewed realistically, the additional opportunity for public comment was not a *significant* benefit. The revised draft EIRs did analyze some additional mitigation measures, but since those measures were rejected as infeasible or otherwise inappropriate, the court could have concluded that this analysis too did not provide a significant benefit to anyone.

As the District had not yet considered whether to certify the revised EIRs and whether to approve the projects at the time of the trial court's decision on LMU's motion, the District's subsequent decision to issue statements of overriding considerations could not have played a role in the trial court's decision.<sup>3</sup> In any case, the District's decision to approve, after LMU's action, the very same projects with no modifications and no additional mitigation measures did not suggest that LMU's action had resulted in a significant benefit to the public or a large group of people. While the District's approval of the projects after LMU's action required the issuance of statements of overriding considerations, a realistic assessment of all of the circumstances could have reasonably led the trial court to conclude that the issuance of statements of overriding considerations was not a significant benefit as it merely confirmed the District's prior position, set forth in the amended draft EIRs, that the limited-duration noise impacts were of little consequence.

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<sup>3</sup> The District seeks judicial notice of rulings in LMU's subsequent action challenging the District's certifications of the revised EIRs and approvals of the projects. Since these rulings took place after the trial court ruled on LMU's motion, they could not have played a role in the trial court's decision, and we therefore deny the request for judicial notice.

LMU claims that the trial court improperly failed to “focus on the nature of the statutory rights that were vindicated . . . .” We see no indication in the trial court’s order that it failed to consider the appropriate criteria under section 1021.5. “The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment. [Citation.] The doctrine is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.” (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58.)

Not only would the doctrine of implied findings require us to presume that the trial court utilized the appropriate considerations, the trial court’s order reflects that it did so. The trial court quoted in its order the following pertinent language from the California Supreme Court’s decision in *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917 (*Woodland Hills*): “Of course, the public always has a significant interest in seeing that legal strictures are properly enforced and thus, in a real sense, the public always derives a ‘benefit’ when illegal private or public conduct is rectified. Both the statutory language (‘significant benefit’) and prior case law, however, indicate that the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation.” (*Woodland Hills*, at p. 939.) The trial court did not cite the sentence that followed, but it clearly applied it. “We believe rather that the Legislature contemplated that in adjudicating a motion for attorney fees under section 1021.5, a trial court would determine the significance of the benefit, as well as the size of the class receiving benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case.” (*Woodland Hills*, at pp. 939-940.)

The California Supreme Court’s decision in *Woodland Hills* established that the vindication of a statutory right does not necessarily establish a “significant benefit” under

section 1021.5. Instead, a trial court considering a section 1021.5 motion is tasked with making a “realistic assessment . . . of the gains” attributable to the moving party’s action. (*Woodland Hills, supra*, 23 Cal.3d at pp. 939-940.) LMU’s reliance on its vindication of a statutory right under CEQA therefore was inadequate on its own to justify a finding of a significant benefit. The trial court properly focused on the “gains” realized as a result of LMU’s action, and it found that those gains were not significant. The fact that only very minor revisions were made to the EIRs as a result of LMU’s action supports the trial court’s finding.

LMU expends considerable effort expounding on the importance of CEQA requirements and the public interests that CEQA protects. LMU claims that, “if an action enforces [CEQA’s] underlying policies or advances public participation and agency accountability, it has conferred a significant benefit on the public.” This is not always true. We recognize the importance of CEQA, and we acknowledge that CEQA litigation generally serves the public interest. However, that does not mean that all successful CEQA enforcement litigation confers a significant benefit on the public or a large group of people. “The significant benefit criterion calls for an examination whether the litigation has had a [significant] beneficial impact on the public as a whole or on a group of private parties which is sufficiently large to justify a fee award. This criterion thereby implements the general requirement that the benefit provided by the litigation inures primarily to the public. [Citation.] In contrast, the question whether there was an important public interest at stake merely calls for an examination of the subject matter of the action—i.e., whether the right involved was of sufficient societal importance.” (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1417, disapproved on another point in *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1151.) CEQA litigation serves an important public interest that is of “sufficient societal importance,” but that satisfies only section 1021.5’s requirement that the

litigation “resulted in the enforcement of an important right affecting the public interest.” (§ 1021.5.) It does not ipso facto satisfy section 1021.5’s “significant benefit” criterion.

Because the record supports the trial court’s finding that LMU failed to satisfy the significant benefit element of section 1021.5, we find no abuse of discretion in the court’s denial of LMU’s motion.

#### **IV. Disposition**

The order is affirmed.

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Mihara, J.

WE CONCUR:

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Premo, Acting P. J.

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Grover, J.