TENTATIVE RULINGS
SPECIAL SET LAW & MOTION CALENDAR
Wednesday, January 21, 2026, 3:00 p.m.
Courtroom 17 – Hon. Christopher M. Honigsberg
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

24CV05218, Pfendler v. City of Petaluma

Respondent County of Sonoma (the "County") demurs to the Third Cause of Action brought under the California Environmental Quality Act ("CEQA") in Petitioners Nicholas Pfendler, Donald McKinney, James Heppelmann, Mary Hable, Richard Tavernetti, and Randall Smith's ("Petitioners") First Amended Petition for Writ of Administrative Mandate and Complaint ("FAPC").

The demurrer is **SUSTAINED with leave to amend** as to the County under California Public Resources Code section 21167(d), which time-bars Petitioners' CEQA claim. The parties' requests for judicial notice are **GRANTED**.

I. PROCEDURAL HISTORY

On February 20, 2024, Permit Sonoma approved the Encroachment Permit No. ENC23-0369 (the "Permit") to "add rock, from shoulder backing of Sonoma Mountain Rd to existing gate, for year-round

accessibility at driveway to Lafferty Ranch Open Space." (FAPC, Exhibit A; Demurrer Memorandum of Points and Authorities ["MPA'], 2:6-9.) The Permit's approval was with stated supplemental conditions and standards for construction activity. (FAPC, Exhibit A.) Under the Permit, the applicant (referring to Respondent City of Petaluma or "City") is responsible for determining that the location of the proposed work stays entirely within the public right-of-way. (FAPC, Exhibit A; MPA, 2:9-13.)

Petitioners allege that the City prepared an Environmental Impact Report ("EIR") and the Lafferty Ranch Park Management Plan ("Management Plan") which evaluated the impacts and identified required mitigation for actions the City is to facilitate. (FAPC, ¶ 3.) They claim that the Permit caused and continues to cause the encroachment and use of Petitioners private property located between Sonoma Mountain Road and the gate to Lafferty Ranch (the "Property") for public access without a legal right to do so. (*Id*. at ¶ 4.)

Petitioners brought this action for quiet title and for declaratory, injunctive, and other relief against Respondents under CEQA. (FAPC, 1:25-28, 2:1-2.) Petitioners challenge Respondent's "actions taken and requirements disregarded" in issuing and performing work under the Permit. (*Id*. at ¶ 1.) Petitioners claim that Respondents violated CEQA and other cited authority and regulation. (*Id*. at ¶ 1, Exhibit A.)

Pursuant to Code of Civil Procedure ("C.C.P.") section 430.10(e), the County demurs to Petitioners' Third Cause of Action for Violation of CEQA for: (1) Petitioners' failure to comply with the statute of limitations set forth in Public Resources Code section 21167(a); and (2) Petitioners' failure to allege a claim upon which relief can be granted due to CEQA not applying to ministerial actions. (Notice of Demurrer and Demurrer, 2:2-6.)

The parties dispute the date on which point the statute of limitations began to run on Petitioners' CEQA claim. The parties' disagreement stems from whether Chapter 15 or Chapter 26 of the Sonoma County Code ("S.C.C.") is applicable for the Permit here. Per the Court's request, the parties submitted supplemental briefing on this issue, which the Court considers below.

II. REQUEST FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) The Court may take judicial notice of "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably

indisputable accuracy." (C.C.P. § 452(h).) However, while courts may take notice of public records, they may not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Subject to the above limitations, the Court **GRANTS** the parties' requests for judicial notice of:

1. Sonoma County Code of Ordinances, Chapter 11, section 11.04.010;
2. Sonoma County Code of Ordinances, Chapter 15, Article II;
3. Sonoma County Code of Ordinances, Chapter 15, Article III;
4. Sonoma County Code of Ordinances, Chapter 23A, Article I;
5. Sonoma County Code of Ordinances, Chapter 26; and
6. Sonoma County Ordinance No. 6516, and the corresponding changes it made to the Sonoma County Code of Ordinances Chapter 26, Article 92, section 26-92-040.

III. THE COUNTY'S DEMURRER

Legal Standard for Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

Analysis

I. CEQA Ministerial Projects Exemption

Under the California Code of Regulations section 15369, "ministerial" describes "a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of

carrying out the project." The public official merely applies the law as well as fixed standards or objective measurements to the facts and uses no special discretion or personal, subjective judgment in reaching a decision. (Code Regs., tit. 14, § 15369.) The statutory distinction between a discretionary project by a public agency, to which CEQA does apply, and a purely ministerial project, to which CEQA does not apply, "implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an EIR, or its functional equivalent, environmental review would be a meaningless exercise." (*Health First v. Mar. Joint Powers Auth.* (2009) 174 Cal.App.4th 1135, 1143.) Doubt whether a project is ministerial or discretionary, or a hybrid of both, should be resolved in favor of the latter characterization to "afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*People v. Dep't of Hous. & Cmty. Dev.* (1975) 45 Cal.App.3d 185, 194.)

The County argues that the County Code, under section 15-17, states that if a city applies for an encroachment permit, the County shall not deny the application because a city "is entitled as a matter of right to a permit," subject to standard conditions. (MPA, 6:23-27.) Thus, the County issued the Permit to the City by law, which indicates that the Permit was a ministerial permit subject to standard conditions. (*Id*. at 6:25-28.) For this reason, the County argues that CEQA does not apply to the County's issuance of the Permit because it is ministerial.

Petitioners argues that the County's action in issuing the Permit was discretionary because the County's own ordinances provided it with sufficient ability to mitigate potential environmental harm during the issuance of the Permit. (Opposition, 8:4-6.) Furthermore, they argue that the County's actual exercise of, and retention of discretion over the Permit was significant enough to allow for meaningful changes to the project to mitigate environmental concerns. (*Id*. at 8:20-26.)

As mentioned above, doubt whether a project is ministerial or discretionary should be resolved in favor of the latter characterization to afford the fullest possible protection to the environment. The parties dispute whether the County's issuance of the Permit was ministerial or discretionary because of the added conditions under the Permit to mitigate environmental concerns. As such, the Court will resolve that doubt by finding that the decision to issue the Permit was discretionary.

II. CEQA Statute of Limitations

Depending on the allegations in a CEQA action, the statute of limitation is set by the subsections of and governed by California Public Resources Code section 21167. When a CEQA action alleges that a

public agency improperly determined that a project is not subject to CEQA pursuant to section 21080(b), that action shall be commenced within 35 days from the date of the filing by the public agency of the notice authorized by subdivision 21108(b) or 21152(b). (Pub. Res. Code § 21167(d).) Section 21080(b) identifies various projects to which CEQA does not apply, including but not limited to, ministerial projects proposed to be carried out or approved by public agencies. If a public agency fails to file the notice as required under sections 21108(b) or 21152(b), then the CEQA action shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project. (Pub. Res. Code. § 21167(d).)

As alleged in the Amended Writ, the County "issued the Permit without the filing Notice of Exemption from CEQA or any other CEQA documentation." (FAPC, ¶ 20.) For that reason, the County argues that the 180 days statute of limitations set forth under Pub. Res. Code section 21167(d) applies here. Petitioners agree that the 180 days statute of limitations set forth under section 21167(d) applies, but as detailed below, the parties disagree on the date from which to toll the 180 days. (FAPC, ¶¶ 19-21.)

The Court finds that the 180-day statute of limitations set by section 21167(d) is applicable here.

III. Applicable Chapter of Sonoma County Code of Ordinances

a. Demurrer, Opposition, and Reply

Petitioners argue that Sonoma County Code section 26-92-040 allows a broad right to appeal "any administrative order, requirement, permit, or determination made by the planning director." (Opposition, 4:10-13.) As the permit was issued pursuant to the determination of the former Planning Director, Petitioners argue that the County Code authorized the administrative appeal made on February 29, 2024, and a final decision was issued rejecting the appeal on March 11, 2024. (*Id*. at 5:27-28, 6:1-11.) Petitioners claim that March 11, 2024, is the final decision date for statute of limitations purposes and that they brought this action 179 days after, but within the 180-day statute of limitations. (*Id*. at 6:11-14; FAPC, ¶ 20.)

The County argues that Petitioners' allegation that their CEQA claim is timely because they attempted to appeal the Permit under Sonoma County Code section 26-92-040(b) is unavailing because that code section only applies to decisions made pursuant to "this chapter" meaning Chapter 26, rather than Chapter 15, which is the applicable code chapter here. (MPA, 5:22-28, 6:1-11.) The County states that "approval" under CEQA Guidelines section 15352 means the decision by a public agency which

commits the agency to a definite course of action in regard to a project, and for a permit, the approval occurs upon issuance of a permit. (Reply, 2:6-13.) Thus, the County's position is that the final decision date on Petitioners' administrative appeal is not the correct date to toll the statute of limitations for Petitioners' CEQA claim, but rather it is the date on which the Permit was issued and approved by the County on February 20, 2024. (*Id*. at 2:14-25; MPA, 5:3-9.)

b. Supplemental Briefs

In Petitioners' supplemental brief, they argue that Chapter 26 should be considered as pre-empting Chapter 15 because all permits and licenses issued by the County are subject to and controlled by Chapter 26 instead of just the ones issued pursuant to Chapter 26 as the County argues. (Petitioners' Supplemental Brief, 2:5-22.) While nothing on the face of the Permit establishes that it was issued under either Chapter 15 or 26, Petitioners argue that Chapter 26 is applicable because it applies to all permits and licenses, irrespective of what department or government employee issues them under the language in section 26-92-210. (*Id*. at pp. 2-4.)

In the County's supplemental brief, they argue that Chapter 15, Article III, is the only chapter that applies to encroachment permits and section 15-10 of Article III specifically states that any permit issued pursuant to Article III must comply with it and the permit's terms. (County's Supplemental Brief, 2:4-15.) The Permit authorizes adding rock "from shoulder backing of Sonoma Mountain Rd to existing gate" which is a county-maintained road and the Permit authorizing work within the County's right-of-way falls squarely under the control of Chapter 15, Article III, which governs that work. (*Id*. at 2:15-22.) The County notes that, by contrast, no section under Chapter 26 authorizes the issuance of encroachment permits, but rather sets forth standards for permit applications pertaining to land uses such as zoning permits, use permits, design review approval, variance permits, and applications for rezoning, under section 26-02-020. (*Id*. at pp. 2-3.) Thus, the encroachment work authorized on the face of the Permit is governed by Chapter 15, Article III, while nothing on the face of the Permit indicates that Chapter 26 applies. (*Id*. at pp. 3-4.) Finally, the County again points out that there is no right of administrative appeal under Chapter 15, Article III. (*Id*. at 5:1-19.)

In Petitioners' supplemental reply, they state that the Permit was not "approved" under CEQA until March 22, 2024, and that Chapter 15 does not exclusively govern encroachment permits and Chapter 26 still allows an appeals process broadly for all permits. (Petitioners' Supplemental Reply, pp. 4-7.) The County in its Reply reiterates the arguments made in the demurrer and supplemental brief and points to the definition of "permit" and "zoning ordinance" under section 26-04-020 and argues that both clearly

express the types of permits that they apply to, which does not include encroachment permits. (County's Supplemental Reply, 2:4-24.) The County also emphasizes that "approval" occurs at the earliest feasible date when environmental review can occur prior to a commitment to the proposed activity or the activity being completed itself. (*Id*. at 5:1-17.) If CEQA approval occurred at the latest possible date or even after the completion of a project as Petitioners claim it does, the County states that it would defeat the purpose of CEQA. (*Ibid*.)

c. Application

Based on the parties' arguments and the code sections judicially noticed, the Court finds that Chapter 15 applies to the Permit rather than Chapter 26. Chapter 15 clearly applies to the type of work that was described in the Permit and Chapter 26 defines the permits it applies to and it does not include encroachment permits issued under Chapter 15. On the Court's reading of section 26-92-040, the Court interprets subsection (b) as giving a right of administrative appeal to any interested person regarding discretionary orders, requirements, permits, or determination made pursuant to "*this chapter*" meaning Chapter 26.

Furthermore, the Court finds that "the date of the public agency's decision to carry out or approve the project" as stated under Pub. Res. Code section 21167 cannot mean a date after the project is already completed and all conditions upon which a permit was issued are met as was proposed by Petitioners. If the Court were to interpret CEQA approval to mean what Petitioners propose, then it would entirely interfere with the text and purpose of CEQA to have an environmental assessment completed *prior* to the commitment or completion of a project, as held in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376.

The Court ultimately finds that based on the arguments and evidence the CEQA approval date of the Permit was February 20, 2024, the date on which the County decided "to carry out or approve the project" with its stated conditions. Petitioners' CEQA claim is time-barred against the County because it was not brought within the 180-day deadline under section 21167.

I. Leave to Amend

Finally, the County requests that leave to amend not be granted to Petitioners under *Save Lafayette Trees v. City of Lafayette* (2019) 32 Cal.App.5th 148, because pleadings that disclose the action is barred by a statute of limitations do not have a reasonable possibility of being cured by amendment. (MPA, 7:5-15.) As the County issued and approved the Permit on February 20, 2024, the County argues that no

amendment can cure the jurisdictional defect in Petitioners' time-barred CEQA claim. (County's Supplemental Brief, pp. 5-6.)

Petitioners argue that they should be afforded the right to amend, which ought to be granted when there is any reasonable possibility the defect can be cured, as supplementing additional facts can easily be accomplished. (Opposition, 10:3-10.) They argue that "approval" under CEQA Guidelines is considered given when the project is "finaled" or "closed" and Petitioners argue this did not happen until March 22, 2024, when the County was assured by the City that all of its conditions would be met and the project had been carried out. (Petitioners' Supplemental Brief, pp. 5-6.)

Although the Court questions whether Petitioners can cure this defect, the Court believes that courts of appeal have consistently encouraged giving petitioners/plaintiffs an opportunity to amend and attempt to cure any defects. This is especially true when, as in this case, the petitioner makes arguments, more than simply boilerplate template, that an opportunity at amendment will cure any deficiency. Specifically, in pages 7 and 8 of their December 12, 2025, supplemental brief, Petitioners argue they will be able to cure this deficiency. The Court will give them an opportunity.

IV. CONCLUSION

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend** as based on the arguments and evidence submitted Petitioners' CEQA claim is time-barred per Pub. Res. Code section 21167(d) as to the County. The parties' requests for judicial notice are **GRANTED**. The County shall submit a written order consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).