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Prevailing Party Can Recover Reasonable and Necessary Legal Fees Incurred in Preparing the Administrative Record

In the recent case of *No Toxic Air, Inc. v. Lehigh Southwest Cement Company, Inc.* (July 28, 2016, H040047) __ Cal.App.4th ____, the Court of Appeal determined a trial court has authority to award attorneys' fees incurred in preparing an administrative record to the prevailing party. The trial court found such costs were reasonable and necessarily incurred, but that it lacked legal authority to award the fees. Since it determined the trial court did have the necessary authority, the Court of Appeal reversed the trial court and found Lehigh, as the prevailing party, should recover the legal fees it necessarily incurred in preparing the administrative record.

Case Background

In 2011, Santa Clara County adopted a resolution finding Lehigh's quarry operations were a legal non-conforming use. *No Toxic Air* filed a petition for writ of mandate challenging the County's resolution. The trial court denied the petition, and the Court of Appeal affirmed the trial court's decision.

Lehigh then asserted that, as the prevailing party, it was entitled to recoup costs associated with the preparation of the administrative record, including labor costs of paralegals and attorneys to assemble the record. The trial court denied Lehigh's request. As the trial court stated: . . . I think the fees were reasonable. I think they were necessary and essential. I just couldn't find an appellate decision that would support me. The trial court further remarked that it could not understand how any party could have prepared the large record in that case without attorney assistance.

Courts Decision

Code of Civil Procedure section 1094.5 allows the prevailing party to recover the expense of all or any part of the record borne by that party. A trial court has discretion to determine whether any particular cost incurred to prepare

an administrative record was necessary and reasonable, but as noted, the trial court believed it lacked legal authority to award fees to Lehigh. After the trial court's decision, a Court of Appeal, in *Otay Ranch, L.P. v. County of San Diego* (2014) 230 Cal.App.4th 60, upheld an award of attorneys' fees incurred by the prevailing party in preparing the administrative record for an action filed under California Environmental Quality Act or CEQA.

In deciding Lehigh's appeal, the Court found that the rationale of the *Otay Ranch* case supported an award of Lehigh's legal fees incurred in preparing the record. The labor costs for attorneys and paralegals should be considered the same as other labor costs incurred in creating the administrative record as long as the trial court finds such costs were reasonable and necessarily incurred. This is also consistent with a policy of shifting the costs and expenses of preparing the record away from the public and to the party bringing the lawsuit. Thus, the Court found Lehigh could recover the costs incurred by attorneys and paralegals in preparing the administrative record especially since the trial court found the costs were reasonable and necessary.

What This Means To You

This case provides legal authority supporting an award of attorney and paralegal costs incurred in preparing the administrative record to the prevailing party. However, any party claiming such costs must convince the trial court that the legal costs were reasonable and necessary. The party challenging the request must convince the trial court that such costs were not reasonably and necessarily incurred.

Questions?

If you have any questions concerning this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult:

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