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## Sierra Club Takes U2's The Edge To Court Over Malibu Plan

By **Bonnie Eslinger**

Law360, New York (April 18, 2017, 11:06 PM EDT) -- A California appellate court heard oral arguments Tuesday over the Sierra Club's challenge to a Malibu development plan by U2 guitarist The Edge, with the rocker's attorney warning that overturning the California Coastal Commission's approval would take the parties right back to where they started when litigation kicked off in 2011.

The Sierra Club filed suit in January 2016, about a month after the California Coastal Commission approved a development proposal put forward by The Edge, whose real name is David Evans, and several partners to build five mansions along a Malibu ridge. The suit alleges the Commission neglected its obligation to study and mitigate the significant environmental impacts of the residential development.

The Sierra Club's writ of mandate also alleges the Commission abused its discretion under legal pressure, since Evans and his partners sued in 2011 after a prior version of the project with the houses more spread out over the 156-acre property was rejected by the agency.

Tuesday's hearing in the courtroom of Los Angeles Superior Court Judge James C. Chalfant focused on two main concerns: whether the Commission should be considered the "lead agency" under the California Environmental Quality Act and thus should have done a more extensive environmental review of the project, and if it would be considered a regulatory taking if the project isn't approved or is reduced further in size.

As the hearing wrapped, an attorney for Evans and his partner, Stanley Lamport of Cox Castle & Nicholson LLP, reminded the court that their litigation had been stayed.

"If the court were to overturn the commission approval and remand it back to the commission and the commission does not reapprove the project, then we go back to the 2011 lawsuit," the attorney said. "So that case is not over until this is over in some fashion."

Judge Chalfant did not announce a decision at the end of the hearing, but said he needed more time to consider the matter and would try to issue a ruling by the end of the week.

He kicked off oral arguments by asking Lamport and counsel for the California Coastal Commission, Supervising Deputy Attorney General Jamee Jordan Patterson, about the undisputed fact that the Commission was the sole decision maker for the development permit.

"The obvious question is why is that?" the judge said. "Why is the Coastal Commission the

only body making a decision?"

After being told that the Commission only has to consider Coastal Act issues, not other environmental concerns, the judge pressed the matter.

"Do these issue just go away — noise, traffic, air emissions — they just go away?" he asked.

At the end, the attorney for Evans said: "If the court were to overturn the commission approval and remand it back to the commission and the commission does not reapprove the project, then we go back to the 2011 lawsuit. ... So that case is not over until this is over in some fashion."

The two attorneys told the judge that a prior decision he made, saying the Coastal Commission violated CEQA in approving a different Malibu project, was reversed in 2011 by a state appellate court.

"The Ross court held that the 'requirements imposed on a lead agency for preparation of an environmental impact report' are not applicable to the Commission's environmental decision-making," said Patterson, reading from the Commission's filing with the court, which cited the Ross v. California Coastal Commission ruling.

The Commission isn't obligated to do an extensive environmental review, she said.

The judge said a California Supreme Court ruling, Sierra Club v. State Board of Forestry, found that even if a formal study isn't required, the state's environmental mandates still apply.

The Sierra Club also contended that the commission wrongly determined in its 2015 decision that under a Local Coastal Program approved after the 2011 denial, there were provisions that allowed for some development of the property in order to avoid a "taking" by not allowing an "economically viable use" of the property.

Lamport told the court that although it would cost nearly \$78 million to build the five homes, due to the infrastructure needed to build the development, "you could not get to a positive economic result until you got to five houses."

Evans purchased the Santa Monica mountain property in 2005, according to the Sierra Club's suit. In June 2011, the Commission denied the project because the site is very hilly and covered with native vegetation and rock outcroppings that are considered "Environmentally Sensitive Habitat Areas," under the Coastal Act.

After Evans and the others sued in 2011, the Commission allowed them to resubmit their applications with a plan to cluster the homes to reduce the project footprint. That project was unanimously approved.

The Sierra Club is represented by Dean Wallraff of Advocates for the Environment.

The California Coastal Commission is represented by California Supervising Deputy Attorney General Jamee Jordan Patterson.

The real parties in interest are represented by Stanley W. Lamport and Kurt G. Whitman of Cox Castle & Nicholson LLP.

The case is The Sierra Club v. California Coastal Commission, case number BS160383, in the Superior Court of the State of California for the County of Los Angeles.

--Editing by Philip Shea.

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