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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PROP "A" PROTECTIVE ASSOCIATION et al.,

Plaintiffs and Appellants,

v.

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY et al.,

Defendants and Appellants;

MATRIX OIL CORPORATION et al.,

Real Parties in Interest and Respondents.

B272381, B281923

(Los Angeles County Super. Ct. Nos. BS145771, BS128995, BS138796, BS140884, BS146670, BS146928)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed in part and reversed in part.

Gianelli & Morris, Timothy J. Morris, and Mary T. Rahmes, for Plaintiff, Appellant, and Respondent Prop "A" Protective Association, LLC (Nos. B272381 and B281023).

Glaser Weil Fink Howard Avchen & Shapiro, Sean Riley, and Elizabeth G. Chilton for Plaintiff and Appellant The Trust for Public Land (Nos. B272381 and B281023).

Glaser Weil Fink Howard Avchen & Shapiro, Sean Riley, Elizabeth G. Chilton; Office of County Counsel, Mary C. Wickham, and Scott Kuhn for Plaintiffs, Appellants, and Respondents Los Angeles County Regional Park and Open Space District, County of Los Angeles, and the Los Angeles County Board of Supervisors (No. B272381).

Miller Barondess, James L. Goldman; Pircher, Nichols & Meeks, and J. Michelle Hickey for Defendant, Appellant, and Respondent Mountains Recreation and Conservation Authority (Nos. B272381 and B281023).

Richards, Watson & Gershon, James L. Markman, and Ginetta L. Giovinco for Defendant, Appellant, and Respondent City of Whittier (Nos. B272381 and B281023).

Law Offices of Woosley & Porter, Jordan T. Porter, and Eric A. Woosley for Real Parties in Interest and Respondents Matrix Oil Corporation and Noble Energy, Inc. (Nos. B272381 and B281023).

Mountains Recreation and Conservation Authority (MRCA) sued Matrix Oil Corporation and Clayton Williams Energy, Inc.[1] (collectively Matrix) and the City of Whittier (Whittier) challenging

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[1] While these appeals were pending, Noble Energy, Inc. acquired Clayton Williams Energy, Inc., and we granted its motion to substitute itself as a party in place of Clayton Williams Energy, Inc.

Whittier's approval of a project to extract oil and gas from land that Whittier had purchased with funds provided under a Los Angeles County, voter-approved law known as Proposition A.[2] These parties settled that litigation in an agreement under which MRCA and Whittier would share oil and gas royalties from the oil drilling project.

Prop "A" Protective Association LLC (PAPA),[3] the Los Angeles County Regional Park and Open Space District (the District),[4] and The Trust for Public Lands (TPL) sued MRCA, Whittier, and Matrix for, among other relief, a writ of mandate to set aside the defendants' settlement agreement on the grounds that it was illegal and an ultra vires act. PAPA and TPL also asserted claims based upon allegations that a document the parties refer to as the "Chevron Declaration" created a conservation easement over the subject property that precludes oil drilling.[5]

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[2] The Legislature authorized Proposition A by enacting Public Resources Code section 5506.9, the Los Angeles County Board of Supervisors adopted it, and Los Angeles County voters approved it in November 1992 as: "Safe neighborhood parks, gang prevention, tree-planting, senior and youth recreation, beaches and wildlife protection." (Prop. A, § 3, capitalization omitted.)

[3] PAPA, a Delaware limited liability company, states that it is comprised of real property owners who have paid annual Proposition A assessments since its passage in 1992 and represents the interests of such taxpayers.

[4] The County of Los Angeles and Los Angeles County Board of Supervisors are named petitioners, as well as the District. For the sake of readability, we refer only to the District.

[5] A conservation easement is defined by statute as "limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement

The trial court determined that the settlement agreement violated Proposition A and the public trust doctrine and, on those grounds, ordered the agreement be set aside. The court also enjoined Whittier from paying, and MRCA from using, proceeds from the oil drilling project in a manner that violates Proposition A or the public trust doctrine. The court further determined that Whittier's entry into the settlement agreement breached another agreement Whittier had made with the District, known as the Project Agreement, and enjoined Whittier from using proceeds from the oil drilling project in a manner that violated the Project Agreement. The court also determined that the Chevron Declaration was not a conservation easement and rejected related claims.

The trial court thereafter granted in part and denied in part PAPA's motion for an award of attorney fees under Code of Civil Procedure section 1021.5, and granted motions by MRCA, Whittier, and Matrix for an award of attorney fees against TPL, under Civil Code section 815.7, subdivision (d).

MRCA and Whittier appealed, and contend that the court erred by invalidating the settlement agreement and restricting the payment and use of project proceeds. TPL and PAPA also appealed, challenging the court's interpretation of the Chevron Declaration.[6]

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and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition." (Civ. Code, § 815.1.)

[6] The District and TPL filed a protective cross-appeal, contending that, if we reverse the judgment setting aside the settlement agreement, the court erred in concluding that MRCA's

PAPA, Whittier, MRCA, and TPL each appealed from the court's orders concerning the awards of attorney fees. We have consolidated the appeals for purposes of this opinion.

For the reasons discussed below, the trial court erred in concluding that the settlement agreement violated Proposition A, the public trust doctrine, and the Project Agreement, and we therefore reverse the judgment to the extent it is based upon those conclusions. We reject the challenges to the court's determination that the Chevron Declaration is not a conservation easement and affirm the parts of the judgment based on that determination.

In light of our conclusions on the merits, we reverse the order granting PAPA's motion for attorney fees. We also reverse the order of attorney fees against TPL with directions to consider, upon motion by MRCA, Whittier, or Matrix, whether an award of attorney fees to MRCA, Whittier, or Matrix is appropriate under the standard announced in *Christiansburg Garment Co. v. EEOC* (1978) 434 U.S. 412 (*Christiansburg*).

FACTUAL AND PROCEDURAL SUMMARY

A. Background

Los Angeles County voters approved Proposition A in 1992 with the express intent "to provide funds to benefit property and improve the quality of life in [Los Angeles County] by preserving and protecting the beach, wildlife, park, recreation and natural lands of [Los Angeles County], providing safer recreation areas for all residents, preventing gangs, developing and improving recreation facilities for senior citizens, planting trees, building trails and restoring rivers and streams." (Prop. A, § 4.) The

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consent to the Chevron Declaration did not violate Proposition A, the public trust doctrine, and the Chevron Declaration.

proposition established the District and charged it with the duty to "take all actions necessary and desirable to carry out the purposes of [Proposition A]."[7] (*Id.*, § 29.)

Proposition A authorized funds for particular projects, including a grant of $9.3 million to Whittier "for acquisition of natural lands and development of related facilities in the Whittier Hills." (Prop. A, § 8, subd. (b)(2)(QQ).) Pursuant to this authorization, Whittier applied in July 1993 for a grant to acquire certain land to "preserve portions of the last remaining chaparral, native oak woodlands and coastal sage scrub ecosystems within eastern Los Angeles County." The District and Whittier thereafter entered into a Project Agreement in which Whittier agreed to certain restrictions on the use of the property and on the handling of income derived from that property.

Whittier used Proposition A funds to acquire two parcels of land in the Whittier Hills.[8] One is a 960-acre parcel (the Property), known as the Chevron tract, which was previously owned by Chevron. The Property became part of the Puente Hills Landfill Native Habitat Preserve.

Whittier's purchase of the Property involved a series of transactions closing on the same date in December 1995: Chevron transferred the Property to TPL; TPL transferred the Property to MRCA; and MRCA transferred it to Whittier. At the time of

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[7] The term "District" is used in Proposition A to refer to both a geographical area with "boundaries coterminous with those of the County" of Los Angeles, and to the Los Angeles County Board of Supervisors acting ex officio as "the District." (Prop. A, §§ 5, 20.) We use the term in the latter sense.

[8] A portion of the funds used to acquire the Property were provided by MRCA and the Santa Monica Mountains Conservancy, which had obtained the funds from Proposition A.

the transactions, Chevron sought to preserve its right to establish a 600-acre conservation easement on the Property in order to fulfill a condition to obtaining a particular permit from the United States Fish and Wildlife Service. To secure this right, Chevron recorded a "Declaration and Easement of Restricted Use," which the parties and the trial court referred to as the Chevron Declaration.

The express purpose of the Chevron Declaration is "to place an easement over a portion of the . . . Property, . . . which land will be retained forever in a natural, undeveloped open space condition (subject to [certain specified uses]) and for wildlife habitat and habitat restoration purposes." The document defines a certain 717-acre portion of the 960-acre Chevron tract as "Restricted Property," and states that the "parties intend that a conservation easement comprising approximately 600 acres . . . shall be recorded over portions of [the] Restricted Property (the 'Conservation Easement Area')." A certain 466 acres (identified in exhibit B to the Chevron Declaration) must be included within the conservation easement. The boundary of the proposed 600-acre conservation easement is not otherwise delineated.

According to the Chevron Declaration, if Chevron does not record a conservation easement within five years, Chevron and the "Grantee" shall, within one year thereafter, agree on the boundary. "Thereafter, [Chevron] shall prepare for [the] Grantee's review and approval a Conservation Easement to be recorded against the designated 600 acres of Conservation Easement Area. Upon Grantee's approval of the form of the easement, [Chevron] shall cause such Conservation Easement to be recorded against the Conservation Easement Area and this Declaration released." Upon execution of the conservation easement, Chevron "shall prepare an amendment to [the Chevron Declaration], whereby the parties agree to release [the Chevron Declaration] from the Restricted Property and substitute therefor the Conservation Easement."

The "Grantee's obligation to cooperate with [Chevron] in obtaining the Conservation Easement . . . shall be limited to a term of five (5) years following the date of recordation of the grant deed transferring ownership of the . . . Property from [Chevron] to Grantee or its designee, after which Grantee shall have no further obligation to cooperate with [Chevron]."

The covenants, terms, conditions, and restrictions set forth in the Chevron Declaration are made expressly "binding upon and inure to the benefit of the parties . . . and shall continue[] as a servitude running in perpetuity with the Restricted Property." The Chevron Declaration "may not be modified or amended without the prior written consent of both [Chevron] and [the] Grantee." The term "Grantee" is defined in the Chevron Declaration to include TPL, MRCA, Whittier, and all successors and assigns to the Property.

Chevron did not reach an agreement with the United States Fish and Wildlife Service, the parties to the Chevron Declaration did not agree on a boundary for the conservation easement contemplated by the Chevron Declaration, and Chevron did not thereafter cause a conservation easement to be recorded against the Property.

On October 28, 2008, almost 13 years after Whittier purchased the Chevron tract and Chevron recorded the Chevron Declaration, Whittier entered into an oil, gas, and mineral lease (the Lease) with Matrix that allowed Matrix to drill for and produce oil and gas on the Property. The Lease further permitted Matrix to construct and operate pipelines, power lines, tanks, buildings, and other structures necessary and proper for its operations. Whittier

would receive a fixed rent per acre plus royalties on the sale of oil and gas produced from the Property.[9]

Whittier did not obtain the District's approval of the Lease and thereby breached the Project Agreement.

On November 28, 2011, Whittier certified a final environmental impact report and approved a conditional use permit for the oil drilling project (the oil drilling project). As approved, the oil drilling project will impact 20.8 acres of the Property and permit up to 60 oil wells on approximately seven acres. Some of the land to be used for the oil drilling project is within the area defined as Restricted Property under the Chevron Declaration. Whittier conditioned its approval of the oil drilling project on the placement of a conservation easement over the portions of the Property not used for the oil drilling project.

In June 2012, Chevron, as "Grantor," and Whittier, as "Successor Grantee," entered into the "Chevron Release," which purported to release the land to be used for the oil drilling project from the Chevron Declaration. In the Chevron Release, Whittier agreed to create, within four years, the conservation easement required by the conditional use permit and to seek from Chevron a complete release of the Chevron Declaration.

Whittier did not obtain the District's, MRCA's, or TPL's consent to the Chevron Release.

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[9] The royalties to Whittier under the Lease are calculated as 30 percent of the first $1,500,000 of proceeds for oil and gas produced each month, plus an additional 1.25 percent on each additional $250,000 in proceeds, up to a maximum of 50 percent. According to an estimate prepared for Whittier, the Lease proceeds to Whittier would be between $7.5 million and $115.4 million per year.

In June 2014, Whittier sent to TPL a proposed conservation easement deed by which Whittier would grant a conservation easement over the Property to a third party, subject to the entitlements granted for the oil drilling project. TPL declined to approve the proposal because it explicitly provided for the oil drilling operations that were approved for the oil drilling project.[10]

B. The MRCA Litigation and the Settlement Agreement

In August 2012, MRCA filed a first amended petition for writ of mandate and complaint against Whittier and the District (the MRCA action). MRCA alleged, among other claims, that Whittier violated Proposition A and the public trust doctrine by approving the oil drilling project, and that Whittier breached the Chevron Declaration by executing the Chevron Release. MRCA further contended that the Chevron Declaration could not be amended without obtaining MRCA's approval and, because MRCA did not give its approval, the Chevron Release was void.

The District filed a cross-complaint and petition for writ of mandate alleging that Whittier had breached the Project Agreement, violated Proposition A and the public trust doctrine, and failed to comply with the California Environmental Quality Act (CEQA).

After a trial in June 2013, the court issued a tentative ruling stating that MRCA had prevailed against Whittier and Matrix on its claims under Proposition A, the Chevron Declaration, and the

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[10] The trial court found that the proposed 2014 conservation easement was "created" and "recorded." The parties have not, however, referred us to any document in our record evidencing the execution or recordation of the proposed 2014 conservation easement.

public trust doctrine. The trial court further found that the Chevron Declaration "qualifies as a conservation easement," that MRCA had standing to enforce the terms of the Chevron Declaration, and ruled that Whittier had breached the Chevron Declaration by executing the Chevron Release without MRCA's consent. MRCA was also entitled to recover damages and specific performance of the Chevron Declaration to determine the boundaries of the conservation easement.

On the District's claims, the trial court found that Whittier breached the Project Agreement, but ruled against the District on its Proposition A and public trust claims on the ground that they were barred by the 90-day statute of limitations applicable to the grant of a conditional use permit. (See Gov. Code, § 65009.) The court rejected the District's CEQA claims on the merits. The court also concluded no judgment could be issued in favor of the District or MRCA pending the determination of damages, and no writ of mandate, final injunction, or order of specific performance would be issued without a final judgment.

On June 13, 2013, the court issued a preliminary injunction, which attached the court's tentative decision and stated that it had become the order of the court. The injunction restrained Whittier and Matrix, among others, from engaging in any activity on the Property in furtherance of or related to the oil drilling project. The preliminary injunction would "remain in full force and effect until a final judgment is entered by the [c]ourt."

In August 2013, prior to the entry of judgment in the MRCA action, MRCA, Whittier, and Matrix entered into the settlement agreement that is the focus of this appeal. Under the settlement agreement, MRCA consented to Whittier's approval of the Chevron Release and agreed to dismiss its lawsuit with prejudice. Whittier agreed to share a portion of any revenue or royalties "realized from the . . . [oil drilling] [p]roject, the Lease, the Property and/or any

portion of the Property." MRCA agreed to use the royalties it receives "for park, recreation, open space, conservation and educational interpretation purposes."

Matrix agreed to pay MRCA $650,000 for MRCA's attorney fees incurred in the litigation. Whittier agreed to reimburse Matrix for this payment from royalties due to Whittier from the oil drilling project. Matrix also agreed not to use "[h]igh volume, high pressure hydraulic fracturing" on the Property.

MRCA, Whittier, and Matrix further agreed to issue a press release, which was attached to the settlement agreement, that provides that the settlement "agreement will ultimately allow the extraction of oil and natural gas, again, from Whittier Hills." The press release further states that MRCA "will receive up to $11.25 million annually," and that Whittier's "goal was and is to maintain the open space assets available to the public while generating a stable income stream which would support [Whittier's] services without tax increases into the future as well as provide funding for infrastructure replacement."

MRCA thereafter dismissed its petition and complaint with prejudice.

The District's claims proceeded to judgment. After resolving postjudgment motions, the court filed an amended judgment in December 2013. The amended judgment required that Whittier obtain the District's consent before entering into any lease or other agreement that changes the use, or disposes, of any portion of the Property or allows the oil drilling project to proceed, and prohibited Whittier and Matrix from activity on the Property pursuant to the oil drilling project until the District approves of this project or July 1, 2015, whichever occurs first. The court also declared "that during the term of the Project Agreement, which expires on June 30, 2015, Whittier is not entitled to spend rental income,

royalties or other proceeds from the Lease in a manner that violates the Project Agreement."

Because MRCA had dismissed its petition and complaint prior to judgment, the court's judgment did not address MRCA's claims and made no statement concerning the Chevron Declaration or the Chevron Release.

The District appealed, and Whittier and Matrix cross-appealed. On June 2, 2015, in an unpublished opinion, we upheld the ruling that Whittier had breached the Project Agreement by entering into the Lease without the District's consent. (*Mountains Recreation and Conservation Authority v. City of Whittier* (June 2, 2015, B253245) [nonpub. opn.] (*MRCA I*).) We held, however, that the District's injunctive and declaratory relief should be permanent, and modified the amended judgment to enjoin Whittier and Matrix from any activity on the Property related to the Lease; and stated that Whittier is not entitled to spend any rental income, royalties, or other proceeds "obtained pursuant to the Lease" in a manner that violates the Project Agreement. We did not address issues concerning Proposition A, the public trust doctrine, the Chevron Declaration, or the Chevron Release.

In a separate appeal from the court's order denying the District's motion for attorney fees under the private attorney general doctrine, we affirmed the court's ruling in an unpublished decision in *Los Angeles County Regional Park and Open Space District v. City of Whittier* (Sept. 29, 2015, B257541) [nonpub. opn.] (*MRCA II*). We explained that the District's success in the underlying litigation was "remarkably limited" because the relief it obtained applied "solely to activity under a particular lease that violated a particular Project Agreement," and the judgment was "binding on only the parties identified in the judgment and impacts only activity under the Lease." (*MRCA II*, *supra*, B257541, at p. 7.)

C. The PAPA Litigation

On November 12, 2013, PAPA commenced Los Angeles County Superior Court case No. BS145771 by filing a petition for writ of mandate and complaint and, on November 26, 2013, filed its first amended petition and complaint in which PAPA sought, among other relief, to have the court declare that the settlement agreement is void as violative of Proposition A and the public trust doctrine.

On January 22, 2014, the District and TPL commenced Los Angeles County Superior Court case No. BS146670, in which they sought mandamus and other relief based on their contentions that the settlement agreement is void as violative of Proposition A, the Project Agreement, and the public trust doctrine, and that the Chevron Release is void because it violates the public trust doctrine and was entered into without TPL's consent. MRCA and Whittier filed a cross-complaint against TPL seeking a determination of TPL's rights under the Chevron Declaration. The PAPA action and the District action were consolidated in April 2014, along with a third action filed by Matrix (Los Angeles Superior Court case No. BS146928).[11]

Whittier, MRCA, and Matrix took the position that although the decision in *MRCA I* precluded Whittier and Matrix from implementing the Lease, it did not prevent them from "implementing the [oil drilling] [p]roject pursuant to authority other than the Lease."

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[11] In its petition and complaint, Matrix challenged the District's decision in October 2013. in which it disapproved of the Lease, the oil drilling project, and the settlement agreement. The trial court denied Matrix's petition, and Matrix did not appeal.

A bench trial of the consolidated actions took place on November 5, and December 3, 2015. On December 3, 2015, the trial court issued a statement of decision explaining that the District prevailed on its claim that the settlement agreement was void because it permitted a change in the use of the Property without the District's consent in violation of the Project Agreement, and it violated Proposition A and the Project Agreement by allowing the oil drilling project's proceeds to be used for purposes not authorized under Proposition A. TPL and PAPA prevailed on their claims that the settlement agreement violated Proposition A's use of proceeds provisions. PAPA further prevailed on its claim that the settlement agreement violated the public trust doctrine.

In contrast to its interim ruling in the MRCA action, the trial court determined that the Chevron Declaration did not establish a conservation easement or impose any use restrictions on the Chevron tract; it was "merely an agreement to record use restrictions on the Restricted Property within a stated time," which had expired. This interpretation, the court stated, "mooted" the question whether TPL had standing to enforce the Chevron Declaration or to object to the Chevron Release. If not moot, the court added, TPL did not have such standing. The court's interpretation of the Chevron Declaration as an instrument that "contained no use restriction" also led it to conclude that MRCA's consent to the Chevron Release did not breach the Chevron Declaration.

The court entered judgment on February 9, 2016, and, after ruling on post-trial motions, an amended judgment on May 11, 2016. In the amended judgment, the court issued a peremptory writ of mandate in favor of the District, TPL, and PAPA commanding that MRCA and Whittier set aside the settlement agreement under Proposition A and the public trust doctrine. The court also issued declaratory and injunctive relief preventing

Whittier from paying, and preventing MRCA from using, any proceeds from the oil drilling project in a manner that violates Proposition A, the Project Agreement, or the public trust doctrine.[12]

Whittier, MRCA, TPL, and PAPA appealed.

DISCUSSION

I. Proposition A

The trial court determined that the settlement agreement's provision for sharing oil drilling project royalties with MRCA violates Proposition A and the public trust doctrine. These violations, the court concluded, rendered the settlement agreement unlawful and the entry into the agreement an ultra vires act. We agree with MRCA and Whittier that that was error.

To be enforceable, a contract must have a "lawful object" (Civ. Code, § 1550, subd. (3)); that is, "it must not be in conflict either with express statutes or public policy." (*Vierra v. Workers' Comp. Appeals Bd.* (2007) 154 Cal.App.4th 1142, 1148; see also *Tiedje v. Aluminum Taper Milling Co.* (1956) 46 Cal.2d 450, 453.) " 'A contract entered into by a local government without legal

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[12] Although the court's statement of decision stated that the District was entitled to a writ of mandate directing the parties to set aside the settlement agreement based upon violation of the Project Agreement, the court, in its amended judgment, limited the bases for mandamus and its order setting aside the settlement agreement to Proposition A and the public trust doctrine. Nor did the court declare that the settlement agreement was either illegal or an ultra vires act on the ground that it violated the Project Agreement. Instead, the operative provisions of the amended judgment limited the District's remedy under the Project Agreement to declaratory and injunctive relief preventing Whittier from paying any proceeds in a manner that violates the Project Agreement.

authority is "wholly void," ultra vires, and unenforceable.' " (*G.L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087, 1092.) An agreement that is not illegal on its face, however, and which can be performed lawfully, is not illegal. (*Crawford v. Imperial Irrigation Dist.* (1927) 200 Cal. 318, 324-325; *Vagim v. Brown* (1944) 63 Cal.App.2d 504, 510.) Courts will interpret a contract to "make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." (Civ. Code, § 1643; see *Robbins v. Pacific Eastern Corp.* (1937) 8 Cal.2d 241, 273.)

Section 16, subdivision (a) of Proposition A (section 16(a)) requires a grant recipient to use property acquired with Proposition A funds "only for the purposes of [Proposition A] and to make no other use, sale, or disposition of the property, except as provided in subdivision (b)" of section 16. (Prop. A, § 16, subd. (a).) The express purposes of Proposition A are "improving the safety of recreation areas for children and senior citizens, preventing gangs by increasing the safety of neighborhood parks, planting trees and acquiring, restoring and preserving beach, park, wildlife, and open space resources." (Prop. A, § 3.) Extracting oil and gas from the property is not encompassed within these purposes, and we agree with the trial court that oil drilling "on a portion of [the Proposition] A property is a change in use" for purposes of section 16(a).

Whittier and MRCA contend that section 16 of Proposition A does not apply to the settlement agreement because it applies only when there is a change in use of the *entire* property, not when there has been a change to "only a small *portion*" of the property. We disagree. Section 16 applies when there is a qualifying change in the use of "the property" acquired with Proposition A funds,

and we decline to add the word "entire" to the phrase. (See, e.g., *Scottsdale Indemnity Co. v. National Continental Ins. Co.* (2014) 229 Cal.App.4th 1166, 1172 [in construing statutes, courts generally will not add words to the statutory language].) Although a de minimus or insubstantial change in use might not trigger the application of section 16, that question is not presented here; the extraction of oil and gas from up to 60 oil wells on seven acres of the Property is a substantial change in the use of the Property and one to which section 16 applies.

Whittier and MRCA further assert that the change of use provisions of section 16 do not apply in this case because the settlement agreement does not itself authorize or implement a change in the use of the Property; the change in use from natural land preservation to oil drilling, they contend, occurred when Whittier approved the conditional use permit for the oil drilling project in 2011. We reject this argument. Although a threshold issue regarding the legality of the royalty-sharing provisions of the settlement agreement is *whether* a qualifying change has occurred, the application of section 16 to the settlement agreement does not depend upon when or how the change in the use occurred.

As MRCA and Whittier point out, Proposition A does not bar a change in the use of the Property; it merely requires that if the grant recipient uses the Property for a purpose other than the purposes identified in Proposition A, the recipient must comply with section 16, subdivision (b) of Proposition A (section 16(b)).

Under section 16(b), when, as here, there is a qualifying change of use, sale, or disposition, the grant recipient is required to either (1) "use" "an amount" determined in the manner described in section 16(b) "for a purpose authorized" in "the category from which the funds were provided," or (2) "reimburse[]" that amount to the District, which, in turn, must use the funds it receives "only

for a use authorized in" "the category from which the funds were provided." (Prop. A, § 16, subd. (b).)

The trial court interpreted section 16(b) as preventing Whittier from using the oil drilling project proceeds for a purpose other than a purpose specified in section 8, subdivision (b)(2)(QQ) of Proposition A (section 8(b)(2)(QQ)); that is, to acquire natural lands and develop related facilities in the Whittier Hills. Because the settlement agreement provides that the oil drilling project proceeds will be shared with MRCA, which could use the funds for a purpose other than a purpose specified in section 8(b)(2)(QQ), the court concluded that the settlement agreement violated Proposition A and constituted an ultra vires act. For the reasons that follow and based on our interpretation of Proposition A, we conclude that the settlement agreement can be performed without violating that statute. Accordingly, the court erred in ordering that it be set aside on that basis.

Section 16(b) has two paragraphs.[13] Under the first paragraph, the "amount" that the recipient must use or reimburse

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[13] Section 16(b) provides: "If the use of the property acquired through grants pursuant to this [proposition] is changed to one other than a use permitted under the category from which the funds were provided, or the property is sold or otherwise disposed of, an amount equal to the (1) amount of the grant, (2) the fair market value of the real property, or (3) the proceeds from the portion of such property acquired . . . with the grant, whichever is greater, shall be used by the recipient, subject to subdivision (a) of this Section, for a purpose authorized in that category or shall be reimbursed to [the District's] Parks Fund and be available for appropriation only for a use authorized in that category."

"If the property sold or otherwise disposed of is less than the entire interest in the property originally acquired, developed, improved, rehabilitated or restored with the grant, an amount equal

to the Parks Fund is "an amount equal to[:] (1) [the] amount of the grant, (2) the fair market value of the real property, or (3) the proceeds from the portion of such property acquired . . . with the grant, whichever is greater." (Prop. A, § 16, subd. (b).) Under the second paragraph, which applies when "the property sold or otherwise disposed of is less than the entire interest in the property," the amount of the grant is not considered; instead, the amount the recipient must use or reimburse is "an amount equal to the proceeds or the fair market value of the property interest sold or otherwise disposed of, whichever is greater." (*Ibid.*) Because the oil drilling project, if it occurs at all, would presumably be accomplished by Whittier leasing a portion of the Property for the extraction of oil and gas, it would involve a disposition of the Property that is less than the entire interest. The second paragraph of section 16(b), therefore, applies.

Under section 16(b), Whittier must either use "for a purpose authorized" in the "category from which the funds were provided" "an amount equal to the proceeds or the fair market value of the property interest sold or otherwise disposed of, whichever is greater," or "reimburse[]" that amount to the Parks Fund. This language requires us to interpret the phrase "category from which the funds were provided" and the term "proceeds," and that we determine the effect of the phrase, "an amount equal to."

In interpreting a law enacted by "initiative, we apply the same principles governing statutory construction. We first consider

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to the proceeds or the fair market value of the property interest sold or otherwise disposed of, whichever is greater, shall be used by the grantee, subject to subdivision (a) of this [s]ection, for a purpose authorized in that category or shall be reimbursed to [the District's] Parks Fund and be available for appropriation only for a use authorized in that category." (Prop. A, § 16, subd. (b).)

the initiative's language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not ambiguous, we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language." (*People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 571.) "Where possible, all parts of a statute should be read together and construed to achieve harmony between seemingly conflicting provisions rather than holding that there is an irreconcilable inconsistency. [Citations.]" (*Wemyss v. Superior Court* (1952) 38 Cal.2d 616, 621.)

The trial court construed the phrase, "the category from which the funds were provided," to mean, in this case, the authorization of Proposition A funds "to the City of Whittier for acquisition of natural lands and development of related facilities in the Whittier Hills." (Prop. A, § 8, subd. (b)(2)(QQ).) Based on this interpretation, the trial court ruled that Whittier was required to use proceeds from the oil drilling project exclusively for that purpose. We conclude that the trial court's construction is too narrow.

Initially, we note that the term "category" is not defined in Proposition A. The word's plain and ordinary meaning—as "a class, group, or classification of any kind"[14]—does not resolve the question because the proposition includes a hierarchy of classifications, from

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[14] (Merriam-Webster Unabridged Dict. (July 2018) http://unabridged. merriam-webster.com/unabridged/category [as of July 16, 2018].)

the relatively large and broadly-stated to the smaller and more specific.

Section 8 of Proposition A (section 8) provides four general categories of authorizations of funds in subdivisions (a), (b), (c), and (d) of that section. Subdivision (a) of section 8 (section 8(a)) authorizes $203.15 million to the County of Los Angeles "for the acquisition, development, improvement, restoration or rehabilitation of real property for regional beaches, recreational facilities, parks and park safety, gang prevention, senior citizen recreation facilities, wildlife habitat, natural lands or improvement of Santa Monica Bay." (Prop. A, § 8, subd. (a).) Section 8, subdivision (b) (section 8(b))—which includes the funds that were used to purchase the Property—authorizes $279.85 million "to the Department of Parks and Recreation for grants to public agencies for the acquisition, development, improvement, rehabilitation or restoration of real property for parks and park safety, senior recreation facilities, beaches, recreation, wildlife habitat or natural lands." (Prop. A, § 8, subd. (b).) Section 8, subdivision (c) of Proposition A authorizes $40 million to the Santa Monica Mountains Conservancy "for the acquisition of park and open space land, development of related recreation facilities," and section 8, subdivision (d) of Proposition A authorizes $17 million to the California Museum of Science and Industry. (Prop. A, § 8, subds. (c) & (d).)

The first three of these general categories are further divided and subdivided into more narrowly defined categories. Section 8(a), for example, has six subcategories, one of which is further divided into 41 sub-subcategories. (Prop. A, § 8, subd. (a)(2)(A)-(OO).) The $279.85 million authorized under subdivision (b) is divided into two parts, the second of which authorizes $204.85 million "for directs grants" in specified amounts to 43 particular cities, with each grant described in a distinct subdivision. The authorization for the

purchase of land in the Whittier Hills, including the Chevron tract, is among these 43 grants and set out in section 8(b)(2)(QQ). Some of the grants to cities are further cleaved into grants for particular projects. (Prop. A, § 8, subd. (b)(2).) For example, an authorization for a $100,000 grant to the City of San Gabriel is divided into $30,000 for "restoration of Smith Park Pool" and $70,000 "for the renovation of Jefferson Gymnasium." (Prop. A, § 8, subd. (b)(2)(KK)(i) & (ii).) The plain and ordinary meaning of "category" could arguably apply to any level of these authorizations.

In construing the term, we are guided by the proposition's express statement of its "intent . . . to provide funds to benefit property and improve the quality of life in [Los Angeles County] by preserving and protecting the beach, wildlife, park, recreation and natural lands of [Los Angeles County], providing safer recreation areas for all residents, preventing gangs, developing and improving recreation facilities for senior citizens, planting trees, building trails and restoring rivers and streams." (Prop. A, § 4.) (See *Palmer v. Agee* (1978) 87 Cal.App.3d 377, 384 [express codification of a legislative purpose is given special consideration in construing a statute].) In addition, section 6 of Proposition A includes findings and declarations by the Los Angeles County Board of Supervisors that describe the benefits of the law in countywide terms. The board stated, for example, that the "protection of beach, wildlife, park, recreation and natural lands are vital to the quality of life in [Los Angeles County], providing important recreational opportunities to all residents of [Los Angeles County]." (Prop. A, § 6, subd. (d).)

The express intent and the views articulated in the board's findings, we believe, would be best supported by allowing the amount determined under section 16(b) to be used under the broadest category that authorized the funds used to purchase the Property. In this case, that category is section 8(b), which, in

its initial paragraph, authorizes funds for use throughout Los Angeles County "for the acquisition, development, improvement, rehabilitation or restoration of real property for parks and park safety, senior recreation facilities, beaches, recreation, wildlife habitat or natural lands" (section 8(b) purposes). This interpretation is strengthened by the fact that Proposition A was a countywide initiative and the funds used for the purchase of the subject property were provided by bonds backed by assessments on parcels throughout Los Angeles County. Because the Property was purchased from resources obtained from throughout Los Angeles County, the amount determined under section 16(b) should reasonably be available for use throughout the county.

This does not mean that the section 16(b) amount *must* be distributed to projects throughout Los Angeles County. Whittier, as the grant recipient with the power under section 16(b) to elect whether to use that amount for section 8(b) purposes or to reimburse the Parks Fund, can decide to use such funds in the Whittier Hills or elsewhere within its community, provided they are used for section 8(b) purposes. Moreover, although the choice of using or reimbursing the section 16(b) funds is expressed in the disjunctive, we see no reason why Whittier could not use some portion for section 8(b) purposes and deliver the remaining portion to the Parks Fund.

Under the trial court's construction, if the City of San Gabriel ever decided to sell or use the property where the Jefferson Gymnasium is located for a purpose other than a gymnasium, it would have to use an amount equal to the proceeds from the sale of the property or its fair market value to renovate the very gymnasium it has decided to sell or use for another purpose. A narrow interpretation of the "category" would thus, in many instances, effectively freeze in place the current use of the property

even when a different use may better serve the intent and purposes of Proposition A.

We now turn to the meaning of the term "proceeds" within section 16(b). The word, which is not defined in the proposition, has a plain and ordinary meaning: "[W]hat is produced by or derived from something . . . by way of total revenue." (Merriam-Webster Unabridged Dict.) (July 2018) http://unabridged.merriam-webster.com/unabridged/proceeds [as of July 16, 2018].) Here, the proceeds derived from the oil drilling project are, at a minimum, the rents and royalties paid pursuant to the project. Proposition A does not qualify or limit the meaning of proceeds to that which the grant recipient receives. Thus, regardless of whether Matrix pays royalties to Whittier, who then pays a portion to MRCA, or Matrix pays Whittier's share of royalties to Whittier and MRCA's share to MRCA, the proceeds, for purposes of section 16(b), are the sum of all proceeds derived from the change in use. Thus, the pertinent amount is the sum of all that is derived from the oil drilling project, regardless of who received them.

Whittier and MRCA contend that the term "proceeds" should be limited to the amount that would be sufficient to replace the property lost by the change of use. They rely on the fact that Proposition A provides Whittier with the alternative of "reimburs[ing]" the Parks Fund with an amount equal to the proceeds. To reimburse, they argue, means " 'to pay back, to make restoration, to repay that expended.' " (*County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 640, quoting Webster's New International Dictionary (2d ed.); Funk & Wagnall's Standard Dictionary.) Applying this definition, Whittier and MRCA assert, Proposition A "requires just that the District be provided with the proportionate value of land, or provided proportionate alternate

land."[15] This implies that any difference between the proceeds from the oil drilling project and the amount paid as reimbursement would be available to Whittier to use without regard to the requirements imposed by Proposition A. As Whittier stated in the press release accompanying the settlement agreement, it could use proceeds to "support [Whittier's] services" and "provide funding for infrastructure replacement."

We reject this interpretation. First, the meaning of the term "reimbursement" is not necessarily as narrow as MRCA and Whittier assert. According to Webster's it also means the more general, "payment of an equivalent." (Merriam-Webster Unabridged Dict. (July 2018) http://unabridged.merriam-webster.com/unabridged/reimbursement [as of July16, 2018].) Moreover, Whittier's interpretation of the provision cannot be reasonably harmonized with other parts of the section. The word reimbursement is used in section 16(b) in connection with only the second alternative for the handling of the section 16(b) amount, i.e., reimbursing the Parks Fund. Under the first alternative, in which the grant recipient must *use* the amount for section 8(b) purposes, no one is reimbursed and Whittier's narrow construction of reimbursement would not apply. Under Whittier's interpretation, therefore, if a grant recipient selected the alternative of using the section 16(b) amount for section 8(b) purposes, it would need to use

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[15] Although it is not clear what MRCA and Whittier mean by "the proportionate value of land," the determination of that value would presumably take into account the existence and value of the oil and gas on the land and reflect the present value of the anticipated future income stream from extracting that oil and gas. In this sense, the difference between the actual proceeds from the project and the proportionate value of the land leased for the project may be inconsequential.

an amount equal to the sum of what is derived from the oil drilling project; but if it selected the alternative of reimbursing the Parks Fund, it would only have to pay the Parks Fund an amount equal to the proportionate value of the land. Whittier's interpretation thus contemplates the calculation of two different amounts: one that applies if the grant recipient elects to use the amount for section 8(b) purposes and a second that applies if the grant recipient elects to reimburse the Parks Fund. The proposition, however, indicates that the grant recipient is obligated to either use or reimburse the Parks Fund "*an amount*" equal to the greater of the proceeds or the fair market value, regardless of the alternative the recipient elects. (Italics added.) That is, the proposition contemplates the determination of a single amount—namely, the greater of the proceeds or the fair market value—and then an election by the grant recipient to use or reimburse *that amount*. Nor is there anything in the text of the proposition to suggest, as Whittier's interpretation implies, that the grant recipient may retain and use for non-section 8(b) purposes a portion of the amount determined under section 16(b). We therefore reject MRCA and Whittier's interpretation.

Next, we consider the effect of the phrase, "an amount equal to," in section 16(b).

The trial court interpreted section 16(b) to mean that Whittier could not use the oil drilling project proceeds for a purpose other than a purpose authorized by Proposition A. As the court explained, the grant recipient "must use *the money* 'for a purpose authorized in that category.' " (Italics added.) The settlement agreement thus violated Proposition A, the court reasoned, because it provided for the payment of the oil drilling project proceeds to MRCA, which could use the money for purposes not authorized under Proposition A, such as spending the money in Ventura

County. This interpretation, we conclude, ignores the qualifying effect of the phrase, an "amount equal to."

In construing a statute, "[s]ignificance should be given, if possible, to every word, phrase, sentence and part of an act." (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 638.) When the phrase, an "amount equal to" is considered, Whittier and MRCA are correct that Proposition A does not restrict their use of "the money" they receive from Matrix. Instead, the statute imposes upon the recipient of the grant—here, Whittier—an obligation to either use for section 8(b) purposes or reimburse the Parks Fund "an amount equal to" the greater of the proceeds or the fair market value of Matrix's leasehold interest. (Prop. A, § 16, subd. (b).) Whittier can lawfully comply with that requirement regardless of what it or MRCA does with the money they receive from Matrix under the settlement agreement.

If, for example, the oil drilling project produces $10 million in proceeds and, pursuant to the settlement agreement, Matrix paid $5 million in royalties to Whittier and $5 million in royalties to MRCA, and MRCA spent its $5 million on projects that do not fulfill any section 8(b) purpose, Whittier could still comply with Proposition A by using "an amount equal" to the proceeds from the oil drilling project—that is, $10 million—for section 8(b) purposes. Because Whittier can thus comply with its Proposition A duty to use or reimburse an amount equal to the project's proceeds and also perform the contractual duty of sharing royalties with MRCA, even if MRCA spends all the money it receives in Ventura County, the settlement agreement is not illegal or an ultra vires act on that basis.

Although the foregoing example demonstrates how the agreement can be lawfully performed, it raises the possibility of a fiscal problem for Whittier if MRCA uses its share of oil drilling proceeds for a non-section 8(b) purpose, such as for projects outside

of Los Angeles County. MRCA resolves this issue by agreeing to use its share of proceeds for section 8(b) purposes only and not opposing a restriction from doing otherwise.[16] In this way, the money that MRCA receives from Matrix would necessarily constitute a use for section 8(b) purposes and, so long as Whittier uses an amount equal to the share of proceeds it receives for section 8(b) purposes, the requirements of section 16(b) will be fulfilled.

Indeed, the amended judgment comes close to accomplishing this result by including declaratory and injunctive relief preventing MRCA from using proceeds from the oil drilling project "in a manner that violates Proposition A." In light of our discussion and MRCA's consent to an appropriate injunction to make the agreement enforceable, these aspects of the amended judgment need only be modified to clarify that MRCA shall not use any funds it receives under the settlement agreement other than for purposes specified in section 8(b).

We next consider the provision in the settlement agreement for the payment of MRCA's attorney fees. In light of our analysis of the "an amount equal to" phrase, Proposition A does not prevent Matrix or Whittier from paying MRCA's attorney fees, and the provision in the settlement agreement providing for such payment does not violate the proposition. If, however, Matrix's payment of MRCA's attorney fees are properly characterized as proceeds from the oil drilling project, Whittier must fulfill its obligation under

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[16] MRCA states in its opening brief that it "has always been, and continues to be, willing to restrict its use of any payments to be received by Matrix under the [s]ettlement [a]greement to the acquisition and preservation of open space in Los Angeles County or whatever location may be approved by the District."

Proposition A to either use an amount equal to such proceeds for section 8(b) purposes or reimburse that amount to the Parks Fund.

Based on the present record, Matrix's payment of $650,000 for MRCA's attorney fees cannot be deemed proceeds from the oil drilling project because it was not produced or derived from that project; Matrix was obligated to pay, and has paid, that amount regardless of whether any oil or gas is ever extracted from the Property.

Under the attorney fees provision, however, "Matrix shall debit fifty percent (50%) from any [r]oyalties to be paid to and retained by [Whittier] . . . until such time as the full $650,000 is debited by and therefore repaid to Matrix." Thus, if Matrix begins extracting oil or gas from the Property and, therefore, producing proceeds, it will reduce the amount it would otherwise pay to Whittier up to $650,000. That amount, though not paid to Whittier, is nevertheless proceeds for purposes of section 16(b), which would trigger Whittier's obligation to either use for section 8(b) purposes or reimburse to the Parks Fund an equivalent amount.

Based on the foregoing interpretation of Proposition A, the settlement agreement can be performed without violating Proposition A. It cannot, therefore, be declared illegal or ultra vires on that basis.

PAPA and TPL further contend that the settlement agreement is also illegal and ultra vires because it conflicts with our decision in *MRCA I*, which effectively enjoined Whittier and Matrix from performing any activity "on the Property in pursuit of, or related to, the Lease," and affirmed the declaratory relief that Whittier may not spend "proceeds obtained pursuant to the Lease in a manner that violated the Project Agreement." (*MRCA I*, *supra*, B253245, at p. 18.) As we explained in *MRCA II*, however, our decision in *MRCA I* was "remarkably limited" and "impact[ed] only activity under the Lease." (*MRCA II*, *supra*, B257541, at p. 7.)

Although the settlement agreement applies to proceeds obtained under the Lease (which cannot occur under *MRCA I*), it also arguably applies to proceeds from the oil drilling project obtained by other means. Nothing in our prior opinions preclude that possibility.

II. The Public Trust Doctrine

The trial court also ordered the settlement agreement set aside based upon PAPA's argument that the agreement violated the public trust doctrine. We reject this basis for relief.

Under the public trust doctrine, the state is considered to hold navigable waterways, submerged lands, and tidelands in trust for the public and, as the administrator of trust resources, has a duty to take the public trust into account in planning and allocating such resources. (See, e.g., *Illinois Central Railroad v. Illinois* (1892) 146 U.S. 387, 452-453; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 433-441, 446; see also Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention* (1970) 68 Mich. L.Rev. 471, 556 [historical scope of the public trust doctrine covers land "below the low-water mark on the margin of the sea and the great lakes, the waters over those lands, and the waters within rivers and streams of any consequence"]; *Golden Feather Community Assn. v. Thermalito Irrigation Dist.* (1989) 209 Cal.App.3d 1276, 1284 [public trust doctrine generally does not extend to non-navigable waterways].) More recently, a California court has extended the doctrine to "undomesticated birds and wildlife," because they have historically " 'been held to belong to no one and therefore to belong to everyone in common.' " (*Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1361, 1363.) The parties have not referred us to any authority, however, that would extend this doctrine to the type of land that is the subject of this action, and we decline to do so

here. (See Araiza, *The Public Trust Doctrine as an Interpretive Canon* (2012) 45 U.C. Davis L.Rev. 693, 723-724 [extending the public trust doctrine beyond its "current water-based focus" to "dry land would represent a major expansion in its scope"].)

The phrase "public trust" has also been used by some courts in the context of determining rights to property that have been deeded or dedicated to a public entity for a particular purpose. The court in *Big Sur Properties v. Mott* (1976) 62 Cal.App.3d 99, for example, considered the interpretation of a deed to the state for certain land to be used as a park. Land so dedicated, the court explained, "is held upon what is loosely referred to as a 'public trust,' and any attempt to divert the use of the property from its dedicated purposes or uses incidental thereto is an ultra vires act." (*Id.* at p. 104; see also *Save the Welwood Murray Memorial Library Com. v. City Council* (1989) 215 Cal.App.3d 1003, 1017 [in considering the enforceability of a restriction in a deed to a city that property be used as a library, the court stated that a "public trust is created when property is held by a public entity for the benefit of the general public"]; *County of Solano v. Handlery* (2007) 155 Cal.App.4th 566, 576 [discussing "public trust doctrine" in case addressing the enforceability of use restrictions in a deed to a county].)

To the extent a "public trust" theory in this second sense applies here, it requires that Whittier act in accordance with the terms of Proposition A. It appears that the trial court understood PAPA's public trust argument in this sense when it explained that the settlement agreement violated the public trust doctrine because it "does not restrict the use of royalties to the required [Proposition] A use." We reject this rationale and the court's conclusion for the reasons discussed above with respect to Proposition A. Although that proposition imposes on Whittier an obligation to use an amount equal to the proceeds for section 8(b)

purposes, that obligation does not preclude sharing the actual proceeds with MRCA.

The trial court further stated that under the public trust doctrine, "Whittier and MRCA were required to affirmatively address whether the diversion of proceeds for non-[Proposition] A purposes would be inconsistent with the public trust." The court relied on *San Francisco Baykeeper, Inc.* v. *State Lands Com.* (2015) 242 Cal.App.4th 202, which considered the application of the public trust doctrine in the context of a permit to mine sand under San Francisco Bay. As the court explained, the state has the " 'duty . . . to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust.' " (*Id.* at p. 234, quoting *National Audubon Society v. Superior Court*, *supra*, 33 Cal.3d at p. 441.) That obligation includes "an 'affirmative duty to take the public trust into account in the planning and allocation of [trust] resources, and to protect public trust uses whenever feasible.' " (*San Francisco Baykeeper, Inc.* v. *State Lands Com.*, *supra*, 242 Cal.App.4th at p. 234.) Because the public trust doctrine does not apply to the terra firma in the Whittier Hills, *San Francisco Baykeeper, Inc.* is inapposite, and we decline to hold that Whittier has the duties implied by that doctrine with respect to the subject property.

III. The Project Agreement

In the amended judgment, the court issued declaratory and injunctive relief preventing Whittier from paying any proceeds "in a manner that violates . . . the Project Agreement." This remedy appears to be based upon the court's finding that the proceeds sharing provisions in the settlement agreement violated the Project Agreement.

The court pointed to paragraph D.4 of the Project Agreement, which provides that "income earned from non-recreational uses of [the Property] shall be used for recreation development, additional acquisition, operation or maintenance at the [Property], unless the District approves otherwise in writing." As the trial court stated, "oil drilling on the Property . . . is a 'non-recreational use,' " which the District did not approve. Therefore, income from such use, if and when earned, must be used for the purposes specified in paragraph D.4 unless the District approves otherwise. In the MRCA action, the trial court effectively incorporated paragraph D.4 into its judgment when it declared that Whittier may not " 'spend any rental income, royalties, or other proceeds obtained pursuant to the Lease in a manner that violates the Project Agreement.' " (*MRCA I*, *supra*, B253245, at p. 10.) No one has asserted that Whittier has violated this judgment.

The trial court, in discussing paragraph D.4, stated that "Whittier need not receive income before violating the Project Agreement, which requires that income from a [Proposition A] property . . . be used on site unless the District approves another use. The [s]ettlement [a]greement allocates income to MRCA without the District's consent, which is a breach." We disagree.

A party breaches a contract when that party fails to perform a contractual duty without justification or excuse. (1 Witkin, Summary of Cal. Law (11th ed. 2018) Contracts, § 872, p. 919.) Even when parties have entered into a contract, the existence of a particular contractual duty can be dependent upon the occurrence of some specified act (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 313; Civ. Code, § 1434), and if that act does not occur, the duty does not arise, and there can be no breach (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1389).

Under paragraph D.4, Whittier's duty to use non-recreational income for specified purposes (or obtain the District's consent to do otherwise) does not arise until it earns such income—a fact that has, apparently, not occurred. Thus, even if the settlement agreement is construed as allocating non-recreational income to a use other than one specified in paragraph D.4, the mere entry into the settlement agreement did not constitute a breach of the Project Agreement.

The Project Agreement also includes a provision for the use of proceeds if property is sold or disposed of that is similar to section 16(b), except that it does not provide Whittier with the option of using the proceeds itself; instead, Whittier "shall reimburse the District an amount equal to the greater of: 1) an amount equal to the proceeds; or 2) the fair market value." For the reasons discussed in our analysis of Proposition A, the proceeds-sharing provisions of the settlement agreement do not conflict with this provision.[17]

The trial court also found that the settlement agreement constituted "a breach of the Project Agreement because it was entered into without [the District's] consent" to a change in use of the Property, and the settlement agreement "breaches the Project Agreement as Whittier's latest means of implementing [the] change of use" that occurred when Whittier approved the conditional use permit for the oil drilling project in 2011. For support of this ruling, the court cited to the following provisions of the Project Agreement:

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[17] To the extent this provision of the Project Agreement conflicts with section 16(b) by omitting Whittier's option to use, rather than reimburse, an amount equal to the proceeds, it is arguably contrary to Proposition A and subject to a construction that includes the option in order to make it lawful. (See Civ. Code, § 1643.)

"Any modification or alteration in the [use of the Property] . . . must be submitted, in writing, to the District for prior approval," and "[n]o modification shall be effective until and unless the modification is executed by both [Whittier] and the District" (Project Agreement, ¶ B.10); Whittier shall "submit for prior District review and approval any and all existing or proposed operating agreements, leases, concession agreements, management contracts or similar arrangements with non-governmental entities, and any existing or proposed amendments or modifications thereto, as they relate to the [Whittier Hills preservation] project or the project site" (Project Agreement, ¶ D.5); Whittier agreed that "it will not, without the prior written consent of the District, . . . permit the use of any portion of the [Property] by any private person or entity, other than on such terms as may apply to the public generally" (Project Agreement, ¶ D.9); and Whittier must obtain the District's consent before permitting use of the Property for any purpose other than the purpose for which it requested Proposition A funds (Project Agreement, ¶ J.1).

The settlement agreement provided for the dismissal of MRCA's lawsuit and the payment of MRCA's attorney fees, MRCA's approval of the Chevron Release, MRCA's agreement to request the dissolution of the court's preliminary injunction, and the sharing of the oil drilling project proceeds. It did not constitute any of the acts that require the District's approval under the Project Agreement: It did not modify or alter the use of the Property (Project Agreement, ¶ B.10); it is not one of the agreements described in paragraph D.5; it did not permit Matrix to use the Property on unique terms (Project Agreement, ¶ D.9); and it did not permit a change of use of the Property (Project Agreement, ¶ J.1). Although the settlement agreement is arguably, as the trial court stated, a means toward implementing the change of use allowed by Whittier's prior grant of the conditional use permit for the oil drilling project, nothing in the

Project Agreement requires that Whittier obtain the District's approval at each step in its implementation.

Because Whittier's entry in the settlement agreement did not constitute a breach of the Project Agreement, we vacate the declaratory and injunctive relief based upon the court's finding of breach.

IV. The Chevron Declaration

After the trial in the MRCA action, the court issued a tentative ruling in which it addressed MRCA's claim that MRCA's consent was required for any amendment of the Chevron Declaration and that Whittier's entry into the Chevron Release breached the Chevron Declaration. The court agreed with MRCA and concluded that Whittier breached the Chevron Declaration by adopting the Chevron Release without MRCA's consent. The court further stated that the Chevron Declaration "qualifies as a conservation easement" that "may be enforced by injunction." One week later, the court issued a preliminary injunction and expressly adopted its tentative statement of decision as the "Order of the Court." Because MRCA dismissed its complaint and petition pursuant to the settlement agreement prior to the entry of judgment, however, the court's rulings regarding the Chevron Declaration were not included in the judgment and we did not consider them in *MRCA I*.

In the PAPA action, PAPA, TPL, and the District argued that the Chevron Declaration constituted a conservation easement (as the court had found in the MRCA action), that the Chevron Declaration could not be amended without TPL's approval, and that MRCA's consent to the Chevron Release constituted a breach of the conservation easement. In evaluating these claims, the court considered declaration testimony from individuals involved in the negotiation and drafting of the Chevron Declaration.

In its statement of decision, the trial court acknowledged the view it expressed in the MRCA action, but ruled that the Chevron Declaration was *not* a conservation easement and did "not contain any use restrictions for the Restricted Property before the [c]onservation [e]asement is created." It was "merely an agreement to record use restrictions on the Restricted Property within a stated time." Once the six-year time period for establishing a conservation easement expired, there remained only "an implied obligation to cooperate with Chevron's recording of a conservation easement." MRCA, the court explained, had only the duty to "act in good faith with respect to designation of the Conservation Easement Area and execution of the Chevron Release" and, in agreeing to the Chevron Release and the 2014 conservation easement, MRCA "validly exercised its discretion."

TPL, on the other hand, acted merely "as a temporary title holder to the Chevron [t]ract to ensure that its successors (Whittier and MRCA) would be bound by the Chevron Declaration's requirements." It therefore did not have standing to enforce the Chevron Declaration or object to the Chevron Release. Moreover, even if it did have standing as a "Grantee," the issue was "mooted by the fact that the Chevron Release contains no use restrictions, and does not affect the [oil drilling] [p]roject"; it merely released the land designated for the oil drilling project from a defined area over which there were no use restrictions.

On appeal, TPL and PAPA contend that the court's ruling in the instant case is barred by the doctrine of collateral estoppel based on its interim ruling in the MRCA action. The trial court rejected this argument because "there was no final judgment in MRCA's favor in the MRCA lawsuit because MRCA settled with Whittier and Matrix" (underlining omitted), and the court's "final judgment did not decide any of the claims involving" the Chevron Declaration. We agree.

The threshold requirements for collateral estoppel are: (1) "the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding"; (2) the "issue must have been actually litigated in the former proceeding"; (3) the issue "must have been necessarily decided in the former proceeding"; (4) "the decision in the former proceeding must be final and on the merits"; and (5) "the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) The party asserting collateral estoppel has the burden of establishing these requirements. (*Ibid.*; *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1247-1248.)

"Collateral estoppel is an equitable concept based on fundamental principles of fairness" (*Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932, 941), and, when there is doubt about its application, "it should not apply" (*Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc.* (2014) 231 Cal.App.4th 134, 186). Moreover, when, as here, a party invokes collateral estoppel offensively, courts have "broad discretion" in determining whether to apply the doctrine. (*Parklane Hosiery Co. v. Shore* (1979) 439 U.S. 322, 331; *Sandoval v. Superior Court*, *supra*, 140 Cal.App.3d at p. 942.)[18]

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[18] "[O]ffensive use of collateral estoppel occurs when the plaintiff seeks to foreclose the defendant from litigating an issue the defendant has previously litigated unsuccessfully in an action with another party. Defensive use occurs when a defendant seeks to prevent a plaintiff from asserting a claim the plaintiff has previously litigated and lost against another defendant." (*Parklane Hosiery Co. v. Shore*, *supra*, 439 U.S. at p. 326, fn. 4.)

Here, the trial court concluded that the fourth requirement was not met in this case because the rulings upon which TPL relies were never final. We agree. Although the court's tentative statement of decision, in which the court interpreted the Chevron Declaration, became a court order and was incorporated into the order for preliminary injunction, that order was not a final determination on the merits. "A preliminary injunction is a *provisional* remedy, and the trial court 'possesses the inherent power to modify its preliminary injunction which is of a continuing or executory nature.' [Citations.] '. . . [U]nless it appears that the court intended a final adjudication of the issue involved, a decision on an application for a preliminary injunction does not amount to a decision on the ultimate rights in controversy.' " (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, *supra*, 129 Cal.App.4th at pp. 1248-1249; see also *Socialist Workers etc. Committee v. Brown* (1975) 53 Cal.App.3d 879, 890 ["an order granting or denying a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy"].) Here, the court's statement of decision indicated that it was an interim, modifiable order by stating that the court could not issue a writ of mandate, a final injunction, or an order for specific performance without a final judgment. (See *Alan v. American Honda Motor Co.*, Inc. (2007) 40 Cal.4th 894, 901 [a statement of decision is not appealable when a formal judgment follows].)

Our conclusion is consistent with our Supreme Court's recent decision in *Samara v. Matar* (June 25, 2018, S240918) __ Cal.5th __ [2018 D.A.R. 6181] (*Samara*). In *Samara*, the Court held that when a trial court has ruled against a party on alternative grounds and the reviewing court affirms the judgment on one ground without reviewing the merits of the alternative ground, the judgment does not have a preclusive effect in a subsequent action that is based on the unreviewed ground. In that situation, the Court stated, the

"preclusive effect of the judgment should be evaluated as though the trial court had not relied on the unreviewed ground." (*Ibid*.) In arriving at this conclusion, the Court overruled a prior decision in which the California Supreme Court "improperly gave effect to a trial court determination that evaded appellate review." (*Id.* at p. __ [2018 D.A.R. 6181, 6185].)

Although the procedural setting in the present case is not identical to the situation in *Samara*, the court's rationale—that preclusive effect should not be given to rulings that evade appellate review—applies forcefully here. Because MRCA dismissed its action and the court's interim ruling regarding the Chevron Declaration was not included in the judgment, that ruling evaded our review in *MRCA I*. It would thus be inappropriate to give it preclusive effect in the PAPA litigation.

TPL also challenges the court's consideration of extrinsic evidence to construe the Chevron Declaration. The trial court rejected this argument on the ground that such evidence was relevant to resolve an ambiguity in the Chevron Declaration, specifically whether TPL had lost its status as a "Grantee," with the right to approve of an amendment to the document, after it transferred ownership to MRCA. Extrinsic evidence to explain the meaning of a writing is admissible to prove a meaning to which the language is reasonably susceptible. (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37; *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391.) As the trial court explained, although TPL was included in the definition of "Grantee" in the Chevron Declaration, the use of the singular, "Grantee," when there were two successors—MRCA and Whittier—to the Property, suggested that the parties intended the word to refer to one or another successor. Because such a meaning was reasonably susceptible from the language, the court did not err in considering extrinsic evidence on that point or, based on such evidence,

determining that TPL lacked standing to challenge the Chevron Release.

TPL and PAPA do not challenge the court's interpretation of the Chevron Declaration on grounds other than collateral estoppel and the court's consideration of parol evidence. Because we reject these arguments, we have no basis for reviewing the court's interpretation that the Chevron Declaration imposed "no use restrictions on the Restricted Property, and the Chevron Release had no legal effect beyond releasing an implied obligation to cooperate with Chevron's recording of a conservation easement." It follows, as the trial court concluded, that MRCA did not breach the Chevron Declaration or violate the public trust doctrine by consenting to the Chevron Release.

V. Attorney Fees Awards

After the entry of judgment in the underlying case, the trial court bifurcated the proceedings concerning the recovery of attorney fees. First, parties seeking an award of attorney fees briefed issues concerning the entitlement to attorney fees. After the court determined which parties, if any, were entitled to recover attorney fees, the parties then briefed issues concerning the amount of the fee awards.

Regarding the entitlement to fees, the court determined that PAPA was entitled to recover fees from MRCA and Whittier, but not from Matrix, and that MRCA, Whittier, and Matrix were entitled to recover their attorney fees from TPL under Civil Code section 815.7. The court denied the District's motion for attorney fees.

Regarding the amount of fees, PAPA requested an award of $918,125.20; the court awarded it $500,000. The court awarded Matrix $187,456.86 against TPL.

PAPA, Whittier, MRCA, and TPL appealed.

A. PAPA's Attorney Fees Award

The court granted PAPA's motion for fees based on Code of Civil Procedure section 1021.5. To obtain an award of fees under the statute, the moving party must establish, among other elements, that it was "a successful party" in the litigation. (Code Civ. Proc., § 1021.5; see *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214.)

In the trial court, PAPA prevailed on its claims that the settlement agreement violated Proposition A and the public trust doctrine. PAPA was thus a successful party and, if the other criteria under Code of Civil Procedure section 1021.5 were met, entitled to an award of attorney fees under that statute.

When, however, the appellate court reverses the judgment upon which the trial court based its award of attorney fees under Code of Civil Procedure section 1021.5, the attorney fees award must also be reversed. (*National Parks & Conservation Assn. v. County of Riverside* (2000) 81 Cal.App.4th 234, 238; *City of Sacramento v. State Water Resources Control Bd.* (1992) 2 Cal.App.4th 960, 978-979.) Here, with the exception of restricting MRCA's use of oil drilling project proceeds to section 8(b) purposes—a remedy that MRCA has never opposed—we have reversed the judgment as to the claims upon which PAPA had prevailed. We therefore reverse the order granting PAPA's motion for fees.

B. MRCA, Whittier, and Matrix's Entitlement to Recover Fees Under Civil Code Section 815.7

TPL contends that the trial court erred in awarding attorney fees to MRCA, Whittier, and Matrix against TPL. We agree.

Although we generally review an order regarding entitlement to or the amount of an award of attorney fees for abuse of discretion (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095), when the award is based on the trial court's interpretation of a statute or an issue of law, we review the order de novo (*Conservatorship of Whitley*, *supra*, 50 Cal.4th at p. 1213).

The court awarded the challenged fees based on Civil Code section 815.7, subdivision (d), which provides that the "court may award to the prevailing party in any action authorized by this section the costs of litigation, including reasonable attorney's fees."

Civil Code section 815.7, subdivision (b), authorizes an action to prohibit or restrain "[a]ctual or threatened injury to or impairment of a conservation easement or actual or threatened violation of its terms." That subdivision further authorizes the grantor or owner of a conservation easement to bring an action to enforce "the interest intended for protection by such easement." (Civ. Code, § 815.7, subd. (b).) Under Civil Code section 815.7, subdivision (c), "the holder of a conservation easement" may bring an action "to recover money damages for any injury to such easement or to the interest being protected thereby or for the violation of the terms of such easement."

In its petition for writ of mandate and complaint, TPL alleged that, in its capacity as "Grantee" under the Chevron Declaration, it was bringing the action to challenge Whittier's entry into the Chevron Release and MRCA's "breach" of the Chevron Declaration by consenting to the Chevron Release. Among other relief, TPL sought a declaration that the Chevron Release was void because TPL, as a Grantee under the Chevron Declaration, had not consented to it. TPL described the Chevron Declaration as "a perpetual conservation easement that may be enforced by injunction pursuant to Civil Code section 815," and that it was seeking to enforce the Chevron Declaration, "which is a

conservation easement." Among other relief, TPL sought specific performance of the terms of the Chevron Declaration and an injunction to prevent Whittier and MRCA from breaching the Chevron Declaration by committing acts in furtherance of the oil drilling project. Based on the allegations in the petition and complaint, the action was authorized by Civil Code section 815.7 as an action to prohibit or restrain an actual or threatened injury to or impairment of a conservation easement or a violation of its terms.

TPL contends that because the trial court ultimately rejected TPL's Chevron Declaration-based claims on the ground that the Chevron Declaration was not a conservation easement, the action was not authorized by Civil Code section 815.7; TPL did not merely fail to persuade the court as to the merits of its claims, but never had the statutory authority to assert them in the first place. Under this view, no one filing a complaint to enforce a conservation easement under Civil Code section 815.7 would be "authorized" to do so unless and until a court adjudicates the existence of the alleged conservation easement in the plaintiff's favor. This interpretation is unreasonable. Just as one need not obtain a judicial declaration of the existence of a contract in order to bring an action alleging breach of the contract, one is "authorized" to bring an action for a threatened injury to a conservation easement based on allegations of such an easement. An action is "authorized" for purposes of Civil Code section 815.7, subdivision (d), we conclude, when it is based upon allegations that, if true, constitute a claim for relief described in Civil Code section 815.7.

Moreover, TPL's view is inconsistent with cases that have interpreted Civil Code section 1717, which authorizes the recovery of attorney fees to the prevailing party on a contract that provides for the recovery of fees. When one asserts a claim based on an alleged contract that provides for the recovery of attorney fees, the defendant who prevails " 'on grounds the contract is inapplicable,

invalid, unenforceable or nonexistent,' " is entitled to recover attorney fees " 'if the other party would have been entitled to attorney's fees had it prevailed.' " (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 870.) Analogously, a defendant in an action to enforce a conservation easement who prevails on grounds that the alleged conservation easement does not exist should be able to recover attorney fees if the other party would have been able to recover attorney fees had it prevailed. Under section 815.7, the trial court would have had discretion to award TPL its attorney fees if TPL had prevailed on its claim to enforce the Chevron Declaration as a conservation easement; the court should therefore have discretion to award attorney fees to the parties against whom the claim was asserted and prevailed by proving that the alleged conservation easement did not exist.

Section 815.7, subdivision (d) of the Civil Code provides that the court may award attorney fees "to the prevailing party." The Legislature uses this phrase when it "intends that the successful side shall recover its attorney's fees no matter who brought the legal proceeding." (*Stirling v. Agricultural Labor Relations Bd.* (1987) 189 Cal.App.3d 1305, 1311.) If, however, "the Legislature desires to authorize the award of fees only to one side or the other, it signals that intent by using such terms as 'plaintiff.' " (*Ibid.*; see also *Jankey v. Lee* (2012) 55 Cal.4th 1038, 1046 ["The Legislature knows how to write both unilateral fee statutes, which afford fees to either plaintiffs or defendants, and bilateral fee statutes, which may afford fees to both plaintiffs and defendants"].) A plaintiff or defendant who prevails in an action authorized under Civil Code section 815.7, therefore, may recover an award of attorney fees.

The Legislature's use of the word "may," rather than "shall," indicates that the Legislature intended the court to exercise discretion in deciding whether to award fees. (Cf. *Jankey v. Lee*, *supra*, 55 Cal.4th at p. 1046.) TPL argues that the court has discretion to award fees and that its discretion should have been exercised to allow fees to the defendants only if they show that the action was frivolous, unreasonable, or groundless. We agree.

Even where a statute makes "no distinction between prevailing plaintiffs and prevailing defendants," "when a statutory provision authorizes attorney fees in public interest litigation, courts have construed this language to create very different standards for plaintiffs and defendants, which has the effect of significantly limiting a trial court's discretion to *deny* fees to a prevailing *plaintiff* or to *award* them to a prevailing *defendant*." (1 Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 3d ed. 2018) § 2.50, p. 2-42.) In *Christiansburg*, *supra*, 434 U.S. 412, the Supreme Court interpreted a statute prohibiting employment discrimination that permitted the prevailing party to recover attorney fees, without expressing any different treatment of prevailing plaintiffs vis-à-vis prevailing defendants. (See 42 U.S.C. § 2000e-5.) Nevertheless, the Court held that, for policy reasons, trial courts should exercise discretion to award attorney fees to a prevailing defendant in such cases only upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith. (*Christiansburg*, *supra*, 434 U.S. at p. 421.) This standard is intended "to encourage private litigation that will enforce important statutory rights," and reduce the chilling effect that fee awards to

defendants would have on such litigation. (1 Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 3d ed. 2018) § 2.69, p. 2-54.)[19]

Although California courts have routinely applied the *Christiansburg* standard in discrimination cases, it is not limited to that context. (See, e.g., *People v. Roger Hedgecock for Mayor Com.* (1986) 183 Cal.App.3d 810, 816 [applying *Christiansburg* standard in case involving violations of Government Code section 91003, subdivision (a), and section 91012].) Other courts have applied the *Christiansburg* standards in cases involving the enforcement of environmental protection laws. (See, e.g., *Citizens For A Better Environment v. Steel Co.* (7th Cir. 2000) 230 F.3d 923, 930-931 [in action to enforce provisions of the Clean Air Act (42 U.S.C. § 7604) attorney fees were available to prevailing defendant only if the plaintiff's "suit was frivolous, groundless, pursued in bad faith, or maintained after its baselessness became apparent"]; *National Wildlife Federation v. Consumers Power Co.* (W.D. Mich. 1989) 729 F.Supp. 62, 63-64 [prevailing defendants may recover litigation costs in suit under Clean Water Act (33 U.S.C. § 1365(d)) "only where the plaintiff's claim is frivolous, meritless or vexatious"]; *Razore v. Tulalip Tribes of Washington* (9th Cir. 1995) 66 F.3d 236, 240 [*Christiansburg* standard applies to prevailing defendants in actions under the Resource Conservation

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[19] As MRCA and Whittier point out, TPL did not argue below that the court should apply the *Christiansburg* standard. The applicable standard for evaluating an award of attorney fees, however, is a question of law on a matter of public interest, which we may consider for the first time on appeal. (*Carver v. Chevron U.S.A., Inc.* (2002) 97 Cal.App.4th 132, 150; see also *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 712 [matters involving the public interest may be considered for the first time on appeal].)

and Recovery Act (42 U.S.C. § 6972(e)) and the Clean Water Act]; *Marbled Murrelet v. Babbitt* (9th Cir. 1999) 182 F.3d 1091, 1095 [*Christiansburg* standard applies to actions to enforce the Endangered Species Act (16 U.S.C. § 1540)].)

Here, in enacting the statutes governing conservation easements, the Legislature declared that "the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California" and that it is "the public policy and in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations." (Civ. Code, § 815.) The provisions of the conservation easement statutes "shall be liberally construed in order to effectuate [this] policy and purpose." (*Id*., § 816.) Conservation easements can be held only by qualified tax-exempt, nonprofit organizations, government entities, and Native American tribes. (*Id*., § 815.3.) In light of the environmental preservation purpose of conservation easements, the strong public policy favoring their use, and the limited types and nature of the entities that may hold them, legitimate private enforcement of them should not be discouraged or chilled by the prospect of having to pay a defendant's attorney fees if the action is defeated. Accordingly, a defendant who prevails in an action brought under Civil Code section 815.7 may recover an award of fees only if the defendant establishes that the action was frivolous, unreasonable, or without foundation.

As noted above, TPL did not argue below that the *Christiansburg* standard applied and the trial court did not consider that standard in evaluating MRCA's, Whittier's, and Matrix's motions for attorney fees. Although our record does not indicate that TPL's action was frivolous, unreasonable, or without foundation, MRCA, Whittier, and Matrix did not have reason to

develop a record or arguments based on these mixed questions of fact and law, and the court did not have the opportunity to consider and determine these issues. The parties and the court should therefore have the opportunity after remand to address the application of the *Christiansburg* standard in this case.

DISPOSITION

The peremptory writ of mandate issued in paragraphs 1(a), 2(a), and 3(a) of the amended judgment directing MRCA and Whittier to set aside the settlement agreement is stricken.

The declaratory relief issued under paragraphs 1(b)(ii), 2(b), and 3(b) of the amended judgment is modified to read: A declaration under Proposition A that MRCA may not use any proceeds from the Project, whether denominated as royalties under the Settlement Agreement or otherwise, other than for purposes specified in the first paragraph of section 8, subdivision (b), of Proposition A and within Los Angeles County.

The permanent injunction against MRCA issued under paragraphs 1(c)(ii), 2(c), and 3(c) of the amended judgment is modified to read: A permanent injunction under Proposition A restraining and enjoining MRCA and its agents, servants, employees, and representatives, whether acting directly or indirectly, from using any proceeds from the Project, whether denominated as royalties under the Settlement Agreement or otherwise, other than for purposes specified in the first paragraph of section 8, subdivision (b), of Proposition A and within Los Angeles County.

The other declaratory and injunctive relief issued in the amended judgment is stricken.

The amended judgment is otherwise affirmed.

The orders granting PAPA, MRCA, Whittier, and Matrix an award of attorney fees are reversed. The court shall, upon motion,

determine whether MRCA, Whittier, or Matrix may recover attorney fees from TPL under section 815.7, subdivision (d), based on the standard announced in *Christiansburg*, *supra*, 434 U.S. 412, and, if so, the amount of such fees.

The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

CHANEY, J.

JOHNSON, J.