

## **Categorical Exemptions Under CEQA -- California Supreme Court Grants Review of Another Case Involving the Unusual Circumstances Exception**

In a recent case decided by the Third District Court of Appeal the court upheld the use of a CEQA exemption for a proposed rodeo at a county fairground despite claims it would pollute a nearby creek. [\*Citizens for Environmental Responsibility v. State of California ex rel. - 14th Dist. Agricultural Association \(No. C070836\)\*](#).

The California Supreme Court granted a petition to review the court of appeal decision in *Citizens for Environmental Responsibility* on July 9, 2014, pending the supreme court's consideration and disposition of *Berkeley Hillside Preservation v. City of Berkeley*, a case pending before the court which involves questions relating to interpretation and application of the unusual circumstances exception to the categorical exemptions from CEQA.

In *Citizens for Environmental Responsibility* the 14th Agricultural District found a proposed two-day rodeo at the Santa Cruz County fairground exempt from CEQA under the Class 23 Categorical Exemption—an exemption that applies to "normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose."

**Fairground's history of similar activities.** In granting the exemption, the District noted the long history of similar activities at the fairground. The facility included equestrian/livestock arenas and barns, most of which were constructed in 1941. The existing equestrian facilities had been in existence for at least 50 years, and on average, the fairground sponsored two to four equestrian livestock shows per month for the past 25 to 30 years. In the late 1970s, the fairground hosted at least eight annual rodeos. The District also noted that the rodeo would utilize existing facilities and no construction or physical alternations of the grounds were proposed. Manure would be dealt with as described in the previously adopted manure management plan.

**The unusual circumstances exception.** The categorical exemptions from CEQA are subject to an exception that makes the exemption inapplicable when significant impacts will occur due to unusual circumstances. The court concluded the plaintiff failed to establish unusual circumstances which would trigger the exception. The court reasoned that the unusual circumstances inquiry is exemption-and facility-specific: When determining whether the circumstances of the project differ from the circumstances covered by the Class 23 categorical exemption for the normal operations of a public gathering facility, it is appropriate to look at other activities at the facility that make up its normal operations and compare those circumstances against those presented by the proposed project.

**Criteria for identifying unusual circumstances.** The court also identified criteria that would show an activity presents unusual circumstances under the Class 23 exemption:

- the project proposes a significant change in operation to distinguish the project from normal operations
- unusual environmental risks are presented by the proposed project
- the project is inconsistent with the surrounding zoning and land uses

- the scope and size of the project are dissimilar from other projects at the facility.

The court found that under these criteria, there was nothing to suggest anything unusual compared to past activities at the fairground.

**California Supreme Court grants review.** On July 9, 2014 the California Supreme Court granted a petition for review of the Court of Appeal's decision. The supreme court ordered that further action on the matter is deferred pending its decision in *Berkeley Hillside Preservation v. City of Berkeley*, a case pending before the court which raises several issues relating to interpretation and application of the unusual circumstances exception to the categorical exemptions. See our [June, 2012 post](#) for a discussion of the issues before the court in *Berkeley Hillside*.

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