Blogs
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California Land Use & Development Law Report

Court Reaffirms City’s Discretion to Identify Local Historic Resources

In Citizens for Restoration of L Street v. City of Fresno, an appellate court affirmed that the substantial evidence test, not the fair argument test, governs an agency's determination whether buildings or districts should be treated as historical resources under CEQA.

Background

This case concerned a proposed residential infill development project in the City of Fresno that would demolish the Crichton Home, which was designated as a heritage property by the city's preservation commission in 2007. Under the city's code, heritage properties are not designated as historical resources in the local register, but are nonetheless worthy of preservation. The Crichton Home, however, had fallen into disrepair and most of its historic integrity had been lost.

The city's initial study found the project would not result in any significant environmental impacts and that the Crichton Home was not a historical resource. The preservation commission then considered and approved a mitigated negative declaration and issuance of a demolition permit.

Plaintiffs appealed the preservation commission's approvals, asserting that the commission did not have authority under the city code to make CEQA determinations. The city council denied the appeal, finding that the commission had the requisite authority to make a determination on the mitigated negative declaration and upheld the commission's decision to approved it. Plaintiffs filed suit, alleging that the city had failed to comply with CEQA.

The trial court found that the commission was not authorized to approve the mitigated negative declaration. The court also found, however, that the city had correctly applied the substantial evidence standard in determining the project did not threaten "historical resources" protected by CEQA. The court subsequently issued a writ of mandate directing the city council to conduct a hearing on whether to approve the mitigated negative declaration. Both sides appealed.

The substantial evidence standard, not the fair argument standard, applies to a public agency's determination of historicity.

Plaintiffs argued that the fair argument standard applies to the threshold question whether a building or site is a historical resource under CEQA. In plaintiffs' view, whether a project site contains a building that is a historical resource should be reviewed under the same fair argument standard applied to whether a project site contains habitat of an endangered plant or animal.

The court rejected this argument, finding that the substantial evidence standard applied to the commission's determination of historicity. Historical resources are treated differently than endangered plants and species because they are governed by different statutes. Relying on legislative history, the court concluded that CEQA's provisions concerning historical resources were intended to allow a lead agency to make a discretionary decision about the historic significance of certain resources. The position that only a fair argument is needed to demonstrate historic significance is inconsistent with that discretion. The court found that the preservation

commission's determinations were supported by substantial evidence and consequently upheld the determinations.

CEQA permits delegating a lead agency's authority to a commission, but such delegation must be clear.

CEQA allows public agencies to delegate the authority to make a final CEQA determination and approve a project to a subordinate body, provided that they also provide for an appeal to the agency's elected decision-making body if it has one. Therefore, the court concluded, the city had the authority the delegate the authority to approve the mitigated negative declaration and the project to the preservation commission.

The court, however, also decided that the city had not delegated the authority to approve the mitigated negative declaration for the project to the commission. While the preservation commission had the authority to approve demolition permits of heritage properties, the court found it did not have decision-making authority over the project, nor was there any explicit delegation of authority to approve the mitigated negative declaration. The court was not persuaded that the preservation commission's authority to provide review and comments on permit actions gave it authority to approve or disapprove the mitigated negative declaration.

The court also rejected the city's alternative argument that the city council's subsequent denial of the appeal constituted a de novo review of the mitigated negative declaration and that this cured any defect in the proceedings before the preservation commission. The court found that the city council had failed to act as the decision-making body in approving the demolition permits and failed to abide by the notice procedures and make the findings required by CEQA.

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