Blogs
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California Land Use & Development Law Report

Court Defers to San Diego’s Approval of Bridge in Balboa Park

Giving a green light to construction of a new bridge in the historic Balboa Park, a court has reaffirmed a city's discretion to interpret and apply its own general plan and zoning ordinances notwithstanding conflicts with specific general plan policies protecting historic resources. *Save Our Heritage Organization v. City of San Diego et al.*, No. D063992 (4th Dist., May 28, 2015). The Balboa Park bridge project includes a new bypass bridge and paid parking garage, allowing the main portion of Balboa Park to return to a vehicle-free zone, but adversely affecting a significant historic resource in the park. Opponents challenged the project, raising several issues regarding consistency with applicable land-use plans. The San Diego Municipal Code requires that permits for site development "not adversely affect the applicable land use plan." The opponents argued that because the project conflicted with several policies protecting historic resources in the City's general plan, the project would necessarily have adverse effects on the plan. Rejecting this interpretation, the Court of Appeal held that projects need not conform to all policies of a land use plan but have to generally be "in agreement or harmony." The City's findings acknowledged inconsistencies with several general plan policies, but concluded that the project "would not adversely affect the General Plan and the project as a whole would be consistent with several of the goals and policies of San Diego General Plan." Noting the great deference accorded a local agency's determination of consistency with its own general plan, the court concluded that substantial evidence supported the City's finding that the project would be consistent with a majority of the applicable goals and policies. The opponents also challenged the City's determination that there would be no "reasonable beneficial use" of the property if the project were denied -- a finding required under the City's Municipal Code for approval of projects with adverse impacts on historical resources. The opponents argued that this finding could not be made where, as here, there was evidence in the record that *some* beneficial use was currently being made of the property. The court disagreed. Focusing on the word "reasonable" and the deference owed to the City's determination, the court found that substantial evidence supported the City Council's findings that Balboa Park would not have a *reasonable* beneficial use without the project due to escalating traffic congestion and vehicular-pedestrian conflicts. Lastly, because the new parking garage would provide paid parking, the opponents alleged a violation of the California Statutes of 1870, which required Balboa Park to be used for the purposes of a "free and public park." The court held the 1870 statute did not apply, having been supplanted by the City's reincorporation in 1872 and approval of the City's charter in 1889. The *Save Our Heritage* decision follows a trend of judicial deference toward local agency approvals of projects that have clear conflicts with specific general plan policies but are consistent with the majority of applicable goals and policies – at least where, as here, the agency's weighing and balancing of plan policies is reflected in carefully prepared findings.

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