

Categorical Exemptions for Telegraph Hill Residential Project Upheld

In *Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261, the First District Court of Appeal rejected a series of CEQA challenges to San Francisco's approval of a conditional use permit for the renovation of a historic cottage and the construction of a three-unit residential building. In upholding the city's finding the project was categorically exempt, the court rebuffed the routinely-made argument that the city's exemption finding should be overturned based on "unusual circumstances" exception to the categorical exemptions. **Background.** At the time the city considered the project the property was vacant with the exception of a small cottage built in 1906. During its initial review of the project the city planning department determined that it qualified for two categorical exemptions from CEQA, CEQA Guidelines section 15301(d) (restoration or rehabilitation of deteriorated structures) and CEQA Guidelines section 15303(b) (multi-family residential structure totaling no more than four units). The commission subsequently approved a use permit for the project, which included conditions to address disruption caused by construction. After a neighborhood group appealed both the categorical exemption determinations and the use permit, the Board of Supervisors added additional conditions to address construction-related disruption and to preserve landscaping along the front of the property, and voted to approve the exemptions and use permit. The neighborhood group, calling itself "Protect Telegraph Hill," challenged the approvals, claiming that (1) the conditions of approval on the use permit were actually CEQA mitigation measures that precluded categorical exemption determinations; (2) the project description was inconsistent and inadequate under CEQA; and (3) "exceptional circumstances" prevented the use of categorical exemptions. The court rejected each of these arguments. **Conditions of Approval Not Evidence of Environmental Impact.** Protect Telegraph Hill argued that conditions relating to pedestrian safety and traffic disruption on Telegraph Hill, including additional, similar conditions added by the Board of Supervisors on appeal, were disguised CEQA mitigation. The court rejected this argument on the basis that the conditions were consistent with the city's authority to approve and condition use permits, and did not constitute environmental mitigation. The record showed that the city adopted findings in support of the categorical exemptions independent of the conditions, with the court noting that nothing in the record showed the conditions were imposed "in order to mitigate the project's significant environmental effects as opposed to taking precautions to address the ordinarily anticipated inconvenience and danger that arises when significant construction activity occurs in a congested urban environment like San Francisco's Telegraph Hill." **Project Description Requirements for EIRs Do Not Apply to Categorical Exemptions.** Protect Telegraph Hill argued that the city used an inadequate project description when evaluating the categorical exemptions and approving the use permit. The court noted that CEQA does not impose any particular standards for a project description when a lead agency considers a categorical exemption. The court determined that the project description did comply with the relevant project description requirements, the information required by the local code in order to evaluate an application for an exemption from CEQA. **Unusual Circumstances Exception to Categorical Exemptions Inapplicable.** Lastly, the court rejected Protect Telegraph Hill's argument that the project's location on Telegraph Hill amounts to an unusual circumstance that precludes invocation of categorical exemptions under the exception to the categorical exemptions in CEQA Guidelines Section 15300.2(c). The court noted the project's consistency with the city's general plan, which incorporates a detailed discussion of Telegraph Hill and view preservation, as well as the project's consistency with the site's zoning. Further, the court cited to the fact that the project is located within an infill site in a transit priority area, and pursuant Public Resources Code Section 21099(d), aesthetic impacts of qualifying projects are not considered significant environmental effects. Lastly, the court found that there was substantial evidence to support the city's position that the site's topography and geology did not present unusual circumstances.

Authors



Garrett Colli

Partner

GColli@perkinscoie.com [415.344.7160](tel:415.344.7160)

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)