Blogs
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Court Upholds Class 1 Exemption for Improvements to Amusement Park in City of San Diego

The court of appeal found that an amended and restated lease requiring upgrades and improvements to an existing amusement park was exempt from the requirements of CEQA under the Class 1 exemption. *San Diegans for Open Government v. City of San Diego*, 31 Cal.App.5th 249 (2018). In 1987, the City of San Diego entered into a long-term lease with a private developer to revitalize and renovate Belmont Park, an amusement park. The lease included a development plan that described the permitted uses on the property. Shortly after execution of the lease, the city's voters approved Prop. G, which limited development of Belmont Park to recreational and visitor-serving parkland uses but exempted certain of the improvements called for under the lease. In 2015, the city executed an amended and restated lease for Belmont Park which provided that the lessee would make $5.9 million in structural repairs, upgrades, and improvements to existing facilities. The lease recited that the developer had already made $18 million in improvements to the premises. The city determined that the lease was exempt from CEQA under the Class 1 exemption for the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structure, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." The court rejected the plaintiff's argument that the Class 1 exemption did not apply because the amended lease called for the construction of new facilities. The court stated that the key issue in determining the applicability of the Class 1 exemption is whether the project involves the "expansion of use beyond that existing at the time of the lead agency's determination." Since the $18M in improvements had already been completed at the time of the city's determination, they were considered existing facilities and the $5.9M in refurbishment of improvements were within the categories of allowed uses set forth in the 1987 Lease and therefore fell "squarely within the existing facilities exemption[.]" The court similarly rejected the plaintiff's argument that the "unusual circumstances exception" applied, under which "[a] categorical exemption shall not

be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Cal. Code Regs., tit.14, §15300.2.) The plaintiff argued that unusual circumstances existed because Prop. G expressed the voters' distinct interest in minimizing the environmental impacts in this particular part of the City, and there was a reasonable possibility that there would be traffic and noise impacts due to a significant increase in visitors to the site. The court rejected this argument, finding it "entirely speculative" whether the amended lease would result in a significant increase in visitors, and whether, in turn, the increase in visitors would result in increased traffic and noise. The fact that the lease recited that the City would obtain over $100 million in revenues over the course of the lease did not establish that the lease would result in increased traffic and noise. Moreover, the court stated, even if there had been evidence that the lease would result in increased traffic and noise, plaintiff had not shown that the increased traffic and noise would be the result of anything in Prop. G.