

Court Upholds San Diego Convention Center Expansion

A court of appeal has rejected Coastal Act and CEQA challenges to the Coastal Commission's approval of expansions at the San Diego Convention Center. *San Diego Navy Broadway Complex Coalition v. California Coastal Commission*, 40 Cal. App. 5th 563 (2019). The court held both that the plaintiff Coalition failed to timely sue all indispensable parties and that its substantive claims lacked merit. The Port of San Diego prepared an environmental impact report for, and approved, Port Master Plan amendments authorizing expansion of the San Diego Convention Center by the City of San Diego and expansion of an adjoining hotel by private developer



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Was Time-Barred The court held the Coalition's case was time-barred by its failure to join the City and One Park in the suit before the Coastal Act's statute of limitations expired 60 days following the Commission's action. Project applicants are indispensable parties to litigation challenging project approvals; but the Coalition asserted that it could add the City and One Park as defendants late in the litigation because the Coalition was "genuinely ignorant" of their involvement when it first filed suit. The court cited multiple documents in the public record - including the EIR, Port hearing agenda, and Port approval documents - that identified the City and One Park as the project applicants, and noted that the Coalition's attorney himself had cited these documents in a letter to the Port objecting to the expansion. The fact that the Commission had stipulated in the litigation that the Port was the, or at least a, "project proponent" did not undermine the ample evidence that the Coalition knew the City's and One Park's roles before it filed suit. Despite its conclusion that the case should have been dismissed on statute of limitations grounds, the court of appeal proceeded to decide the merits of the Coalition's Coastal Act and CEQA claims. **Coastal Act Claims Fail** First, the court rejected the argument that the Coastal Act's

prohibition on conditional approvals of port master plans barred the Commission from requesting, and obtaining the Port's consent to, revisions to the Port's Master Plan Amendment *prior to* the Commission's certification decision. Second, section 30715 of the Coastal Act imposes Commission appellate authority on port master plan amendments approving hotels, certain shopping facilities, and various other commercial uses. The Coalition asserted that the Commission should have applied the appellate rules not only to the hotel but also to 15,000 square feet of potential retail use at the Convention Center. The court of appeal deferred to the Commission's conclusion that this small ancillary component of the large Convention Center expansion did not render the entire expansion appealable. Third, the court found no deficiencies in the Commission's Coastal Act findings or its determination that certain findings were not required. **CEQA Claims Fail** Finally, the court rejected the Coalition's challenges to the Commission's CEQA findings. The Coalition had not sued to challenge the adequacy of the Port's EIR, and the Commission, acting as a responsible agency, was entitled to rely upon that EIR in making its own CEQA findings. The court first rejected the argument that findings of mitigation to a "level of insignificance" were required, observing that CEQA "focuses on substantial reduction, not insignificance." The court also held that the Commission was not required to make findings on the feasibility of a new pedestrian bridge to enhance public access because it had already found other measures effective. The court also observed that substantial evidence supported the Commission's conclusion that the proposed pedestrian bridge was infeasible based on its estimated \$42 million cost, the lack of availability of such funds, and the inability of the Port to guarantee that portions of the bridge outside of its jurisdiction would be constructed. In addition to its guidance on Coastal Act compliance and CEQA mitigation findings, this case is a reminder that even where a challenger's case fails on procedural grounds, courts routinely go on to examine the merits of the challenger's claims.

Authors



[Julie Jones](#)

Partner

JJones@perkinscoie.com [415.344.7108](tel:415.344.7108)

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