

## **Categorical Exemptions Under CEQA -- The Latest on the Unusual Circumstances Exception**

Finally, a CEQA case about rodeos.

In a recent case decided by the Third District Court of Appeal the court upheld the use of a CEQA exemption for a proposed rodeo at a county fairground despite claims it would pollute a nearby creek. [\*Citizens for Environmental Responsibility v. State of California ex rel. - 14th Dist. Agricultural Association\* \(No. C070836\)](#).

Since 1941, various events, including equestrian and livestock shows and the annual county fair took place at the fairground. Given all these animal-related events, the fairground found itself with a fair amount of left over manure, and, beginning in the 1960s, developed practices to collect and remove the manure. These practices were formalized in a manure management plan, written in 2010.

In 2011, Stars of Justice proposed a two-day rodeo at the Santa Cruz County fairground. The 14th Agricultural District, which administers the fairground, found the project exempt from CEQA under the Class 23 Categorical Exemption—an exemption that applies to "normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose."

In granting the exemption, the District noted the long history of similar activities at the fairground. The facility included equestrian/livestock arenas and barns, most of which were constructed in 1941. The existing equestrian facilities had been in existence for at least 50 years, and on average, the fairground sponsored two to four equestrian livestock shows per month for the past 25 to 30 years. In the late 1970s, the fairground hosted at least eight annual rodeos. The District also noted that the rodeo would utilize existing facilities and no construction or physical alternations of the grounds were proposed. Manure would be dealt with as described in the previously adopted manure management plan.

Plaintiffs challenged the exemption on two grounds, first, the manure management plan was mitigation which precluded the use of an exemption, and second, the unusual circumstances exception applied.

### **Manure management was part of the normal operations of the fairground.**

The court disposed of the mitigation argument. The manure management plan was not a new measure proposed for or necessitated by the rodeo project. Rather, it was a preexisting measure previously implemented to address a concern which had been formalized in writing before the rodeo project was even proposed. Therefore, the court concluded, the manure management plan was part of the ongoing "normal operations" of the fairground and not a mitigation measure of the project.

### **There was nothing unusual about the rodeo.**

All categorical exemptions from CEQA are subject to an exception that makes the exemption inapplicable when significant impacts will occur due to unusual circumstances. The court concluded the plaintiff failed to establish unusual circumstances. As a result, the exemption applied. The court stressed that the unusual circumstances

inquiry is exemption-and facility-specific: When determining whether the circumstances of the project differ from the general circumstances covered by the Class 23 categorical exemption for the normal operations of a public gathering facility, it is appropriate to look at the facility's other activities, i.e. events or operations that comprise the normal operations of that facility and compare those circumstances against those presented by the proposed project.

The court rejected the plaintiffs' assertion that the court must compare the circumstances presented by a proposed project to all public gathering facilities in general. This is because the Class 23 exemption, unlike other exemptions, concerns the activities that are "normal operations" of a public gathering facility, and the focus, therefore, should be on the activities that make up a facility's normal operations.

The court also identified criteria that would show an activity presents unusual circumstances under the Class 23 exemption:

- the project proposes a significant change in operation to distinguish the project from normal operations
- unusual environmental risks are presented by the proposed project
- the project is inconsistent with the surrounding zoning and land uses
- the scope and size of the project are dissimilar from other projects at the facility.

The court found that under these criteria, there was nothing to suggest anything unusual compared to the facility's past activities.

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