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October 09, 2023

Fair Argument Standard Did Not Apply to Claim Regarding Exception to CEQA's Historical Resources Categorical Exemption



This case addressed both application of CEQA's categorical exemption for renovation of historical resources and application of an exception to the exemption that turned on the question whether the project complied with Secretary of Interior standards regarding renovation of historic structures.

The court ruled that this issue is to be reviewed under the substantial evidence standard rather than the fair argument standard. *Historic Architecture Alliance v. City of Laguna Beach*, 96 Cal.App.5th 186 (2023).

The Kirbys sought to expand and renovate their house in Laguna Beach, which was listed in the city's historic register. During processing of their application, the Kirbys revised their project to conform to recommendations from the city's historic resources consultant, its heritage committee and city staff, all to bring the project into consistency with Secretary of Interior standards.

The city found the project exempt under CEQA Guidelines section 15331, the historical resources exemption. That exemption applies to the "maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties" Two historic resources groups sued, alleging the City violated CEQA.

The appellate court acknowledged that "The Secretary's Standards are the benchmark that CEQA uses to establish whether a project will have a significant adverse impact on a historical property." It confirmed that the substantial evidence standard applies to a determination whether a project fits within a categorical exemption, and concluded that substantial evidence supported the city's determination that the project was consistent with the Secretary's standards and therefore fit within the section 15331 categorical exemption.

The court noted that mitigation measures may not be used to support a categorical exemption but rejected petitioners' argument that the changes made to the project throughout processing constituted mitigation measures. "Prior to the City's approval, revisions were made . . . so the project was consistent with the Secretary's Standards; these revisions were not mitigation measures as used in the context of CEQA's mitigated negative declarations, negative declarations, or EIRs."

The court then rejected petitioners' argument that an exception to the categorical exemption applied, which should be evaluated under the fair argument standard. Petitioners relied on the exception in CEQA Guideline section 15300.2(f), which states "a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource." Pursuant to prior case law, the determination whether the exception applies is reviewed under the fair argument standard. Under this standard, an agency must determine whether the record shows substantial evidence of a fair argument that there may be a significant environmental effect. The agency is not permitted to weigh the evidence or come to its own conclusion about whether there will be a significant effect.

The court explained that once a city has determined that the project complies with the Secretary's Standards under the substantial evidence standard, the issue has been resolved and need not be reconsidered in the context of applying the exception under the fair argument standard. The court explained:

[T]he single inquiry to be determined is whether the project complies with the Secretary's Standards. During this inquiry, the agency considers the evidence and argument of the opposing sides. If the agency finds the project follows the Secretary's Standards, the agency's finding establishes the project does not have a significant impact on the historical resource and the historical resource exception would not bar reliance on the historical resource exemption.

The court concluded that the fair argument standard did not apply and affirmed a trial court judgment denying the writ.

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