

San Diego Navy Broadway Complex Coalition v. City of San Diego (June 17, 2010) 185 Cal.App.4th 924

In 1992, the City entered into a development agreement for the redevelopment of a portion of the waterfront in downtown San Diego. The agreement set out the parameters for the future development of office, hotel, retail, and public attraction (museum) space on the site. The development agreement also set out a development plan and urban design guidelines to control the aesthetic design of future development. Under the agreement, the development would submit applications to the Center City Development Corporation (CCDC) so that the CCDC could review the proposed developments for consistency with the design guidelines. The City certified an EIR at the time it entered into this agreement.

In 2006 and 2007, a developer submitted plans to the CCDC for its review. The CCDC determined that the project was consistent with the urban design guidelines and concluded that no additional CEQA review was required. The Coalition appealed the CCDC's decision to the City Council, who denied the appeal and ratified the CEQA determination. The Coalition filed a timely lawsuit that claimed, among other things, that the consistency determination is a discretionary project subject to CEQA and that the City should have prepared a subsequent EIR to address the project's impacts on greenhouse gas emissions and climate change. The City and developer countered that the City had considered the project under Public Resources Code 21166, as required for subsequent projects, and that none of the triggers for a subsequent or supplemental EIR was present. Further, under *Friends of Westwood v. City of Los Angeles* (1987) 191 Cal.App.3d 259, they asserted that the limited review afforded the City under the urban design guidelines does not rise to the level of a discretionary action. The trial court held in favor of the City.

The Court of Appeal upheld the lower court's decision. The Court examined whether the review of the project's aesthetic design under the urban design guidelines was a discretionary project for CEQA purposes. Based on *Friends of Westwood* and similar cases, the Court concluded that discretion includes not only the ability to deny a project, but also the ability and authority to mitigate environmental damage to some degree. Absent this, the project would not be subject to CEQA (nor to Public Resources Code 21166, in particular). As a result, no subsequent document and no analysis of global climate change were required.

“...To hold that an agency must prepare a subsequent or supplemental EIR concerning an environmental issue over which its discretionary authority does not extend would be inconsistent with *Friends of Westwood* and its progeny, and with the statutory presumption against additional environmental review, as discussed in the case law interpreting section 21166. (citation)

“The fact that the CCDC could arguably exercise discretionary authority to alter the aesthetics of the Project so as to make the Project consistent with the development agreement does not demonstrate that the CCDC had the authority to modify the Project in accordance with a proposed updated EIR so as to reduce the

impact of the Project on global climate change. The limited scope of the CCDC's discretionary authority in conducting consistency reviews is underscored by the fact that the development agreement provides that the CCDC could not "unreasonably" withhold its consistency determinations," and that the CCDC could "not require any change which is inconsistent with the Environmental Impact Statement [relied upon for the 1992 EIR] for the Project..." The development agreement thus makes clear that the CCDC's role in performing a consistency review is strictly limited to determining whether [the developer's] submittals were consistent with the aesthetic guidelines contained in the development agreement."