

*Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (May 8, 2006) 139 Cal.App.4<sup>th</sup> 249

The Community Preservation Group sued the City over its adoption of a categorical exemption for a 14-story, 14-unit apartment house adjacent to Balboa Park. The City applied the Class 32 urban infill exemption. The Court upheld the decision of the trial court in dismissing Community Preservation Group's claims.

The Court has an interesting discussion of the standard of review to be applied to categorical exemptions. It concluded that the determination of whether a categorical exemption applies to a given project is subject to the "substantial evidence" standard. However, the determination of whether any of the exceptions enumerated in Guidelines Section 15300.2 applies to disqualify the project from use of a categorical exemption is subject to the "fair argument" test.

Using this approach, the Court found that there was no substantial evidence in the record to support a fair argument that any of the exceptions (including "unusual circumstances" and scenic views) applied. The City, meanwhile had prepared a traffic study for the project and that, with other evidence in the record (including consistency with the City's land use plan), supported the City's finding that the apartment project fit within the urban infill exemption.