



Historical Correction? Second District Holds City’s Policy Decision To Remove And Relocate “Offensive” Statue That Was Replica of Earlier Historic Landmark Qualified For CEQA’s Common Sense Exemption Because Substantial Evidence Supported City’s Finding That, Despite Its Earlier Erroneous Listing, Replica Was Never Actually A Historically Significant Resource

By [Arthur F. Coon](#) on June 12, 2023

In an opinion filed May 12, and later certified for publication on June 8, 2023, the Second District Court of Appeal (Div. 6) upheld the City of San Buenaventura’s decision to remove a bronze statue of Father Junipero Serra from its location in front of City Hall and relocate it to the San Buenaventura Mission; the Court affirmed the trial court’s judgment denying a writ petition challenging the City’s decision on various grounds, including alleged CEQA violations. *Coalition for Historical Integrity v. City of San Buenaventura* (2023) __ Cal.App.5th __.

Factual and Procedural Background And Trial Court Litigation

A concrete statue of Serra was dedicated in 1936 in front of the Ventura County Courthouse, which later became the City Hall, and in 1974 that statue was designated by the City as a historic landmark, Landmark No. 3. A decade later, the aging concrete statue was deteriorating badly, and it was replaced with a bronze replica statue dedicated in 1989, beneath which a plaque stating “Landmark No. 3” was placed.

In 2002, the City created a list of historic landmarks and placed the bronze statue, designated as Landmark No. 3, on it. The same year, at City’s request, the County Recorder recorded the 1974 minute order designating the original concrete statue a historic landmark. In 2005, the City’s General Plan EIR

included the bronze statue in an appendix listing landmarks, and marked its location as a historical site. In 2007, in the process of preparing its Downtown Specific Plan, the City commissioned the Historic Resources Group (HRG) to conduct a survey to determine whether existing historic landmarks retained sufficient historic integrity to remain eligible for such designation; HRG's survey concluded the bronze statue did and the specific plan listed it as a historic resource.

In summer 2020, attitudes and values changed, the bronze statue – now considered “offensive” by significant members of the community – was met with protests and vandalism, and the City's mayor, a Chumash tribe representative, and the pastor of the Mission San Buenaventura met and then signed a letter suggesting the statue should be relocated to “a more appropriate non-public location.” The City again hired HRG to analyze the historicity of both the original concrete statue and the bronze replica; this time HRG concluded that the bronze statue failed to meet historic landmark criteria because, *inter alia*, it did not meet the threshold criterion for a local designation of being at least 40 years old. The City's Historic Preservation Committee then voted that the bronze statue wasn't Landmark No. 3 and isn't eligible for historic landmark status. The City Council then met; it also found the statue doesn't meet historic designation criteria, found its decision to relocate the statue exempt from CEQA under the “common sense” exemption, and voted to relocate the statue to the Mission.

Plaintiff and Appellant then sued, the trial court denied its writ petition and TRO application, and the City removed the statue.

The Court of Appeal's Decision

The Court of Appeal observed that CEQA protects the environment, which includes “objects of historic or aesthetic significance” (Pub. Resources Code, § 21060.5), and CEQA includes a statutory presumption that “[h]istorical resources included in a local register [as defined]... are presumed to be historically or culturally significant... unless the preponderance of the evidence demonstrates [otherwise].” (§ 21084.1.)

While the Coalition argued the bronze statue was designated as a historic landmark in 1974 and was thus presumptively historical, the City disagreed, countering that only the original concrete statue was so dedicated. The Court noted that, in any event, the statutory presumption of historical significance can be rebutted by a preponderance of the evidence, and that the City's finding (based on the 2020 HRG report) that the bronze statue is not historically significant must be upheld if supported by substantial evidence. (Citing *Friends of Willow Glen Trestle v. City of San Jose* (2016) 2 Cal.App.5th 457, 467-468, my 8/15/16 post on which can be found [here](#).) The Court found the 2020 HRG report constituted substantial evidence supporting the City's determination; notwithstanding the Coalition's objections to it as lacking foundation as an expert report, the Coalition itself relied on a 2007 HRG report, and “municipal agencies can properly consider and base decisions on evidence that would not be admissible in a court of law.” (Citing *Floresta, Inc. v. The City Council of the City of San Leandro* (1961) 190 Cal.App.2d 599, 608-609.)

Further, while the Court acknowledged “that for most of the statue's history the City viewed the original concrete statue and its bronze replacement as one[,]” it noted that nothing prevented the City from changing that view and that “[i]t is beyond question that the original concrete statute and its bronze replacement, are in fact two different statues.” The City rebutted any statutory resumption by its evidence-supported “finding that the statue was never culturally or historically significant.” Accordingly, CEQA's common sense exemption, which applies “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment” (CEQA Guidelines, § 15061(b)(3)), applied to exempt City's decision to remove the non-historic statue from CEQA.



The Court of Appeal proceeded to swiftly reject all of the Coalition's remaining arguments, holding that nothing in the Specific Plan or Municipal Code barred City's action, and finding that allegations of unlawful bias and prejudice on the part of the City Council members were misplaced as its decision to remove the statue was a quasi-legislative policy decision, and not a quasi-judicial determination to which such concepts would apply.

Questions? Please contact [Arthur F. Coon](#) of Miller Starr Regalia. Miller Starr Regalia has had a well-established reputation as a leading real estate law firm for more than fifty years. For nearly all that time, the firm also has written Miller & Starr, California Real Estate 4th, a 12-volume treatise on California real estate law. "The Book" is the most widely used and judicially recognized real estate treatise in California and is cited by practicing attorneys and courts throughout the state. The firm has expertise in all real property matters, including full-service litigation and dispute resolution services, transactions, acquisitions, dispositions, leasing, financing, common interest development, construction, management, eminent domain and inverse condemnation, title insurance, environmental law and land use. For more information, visit www.msrllegal.com.

www.ceqadevelopments.com