

Bond Case Briefs

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ZONING & LAND USE - CALIFORNIA

Don't Cell Our Parks v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - March 15, 2018 - 2018 WL 1324601

Residents' group brought declaratory judgment action and petition for writ of mandate, challenging city's approval of project to construct wireless telecommunications facility in city park.

The Superior Court denied petition. Group appealed.

The Court of Appeal held that:

- Under city charter, city had discretion to determine whether a particular use would change the use or purpose of a dedicated park, as would trigger requirement of ratification by two-thirds vote for such a change;
- Project at issue did not change use or purpose of park; and
- Project consisted of the construction and location of a new small facility or structure, and thus project was exempt from California Environmental Quality Act (CEQA).

Under city charter, city had discretion to determine whether a particular use would change the use or purpose of a dedicated park, as would trigger requirement of ratification by two-thirds vote for such a change; this determination necessarily fell within city's control and management authority.

Project for construction of wireless communications facility in city park did not change use or purpose of dedicated park and thus did not trigger requirement, under city charter, for two-thirds approval by voters; project's footprint would only occupy .14 percent of total ground area of park, project equipment would be painted tan and surrounded by native shrubs, and project would benefit park visitors by providing enhanced wireless communication coverage.

Project for construction of wireless communications facility in city park consisted of the construction and location of a new small facility or structure, and thus project was exempt from California Environmental Quality Act (CEQA), where project entailed an unmanned cell tower disguised as a tree, plus an equipment enclosure, and project would be 534 square feet including above-ground branch diameter of faux tree.