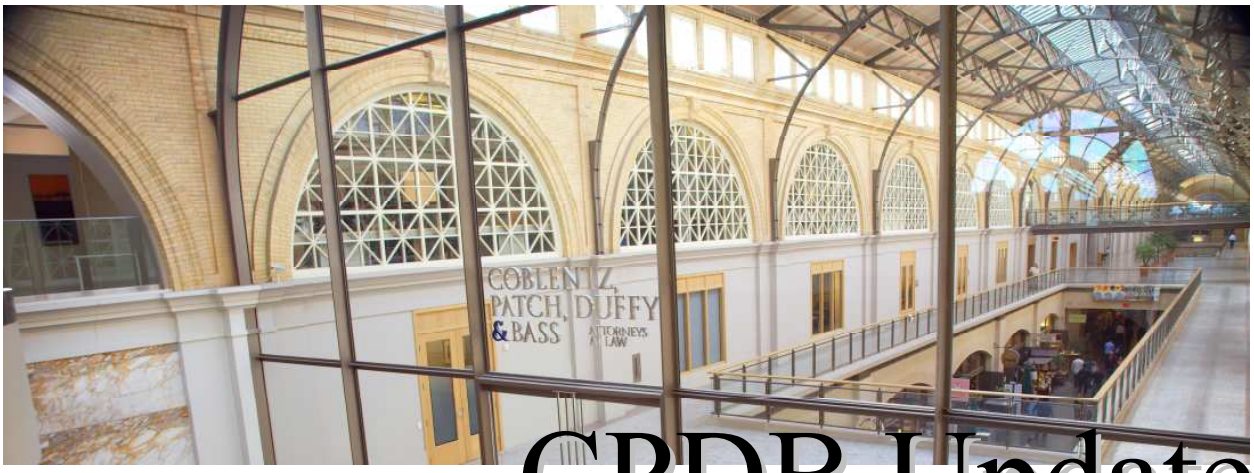

Real Estate CPDB Update

June 2011

Litigation and Real Estate Teams Win CEQA Action for the San Francisco Forty Niners

In *Cedar Fair v. City of Santa Clara.* (2011) 194 Cal.App.4th 1150, Coblentz, Patch, Duffy & Bass litigation attorneys Jonathan Bass and Charmaine Yu prevailed in a CEQA action challenging the proposed stadium for the San Francisco Forty Niners football team.

Prior to the certification of a final environmental impact report, the City of Santa Clara and the Forty Niners agreed on a term sheet that contained detailed descriptions of the proposed stadium. The term sheet, negotiated on behalf of the Forty Niners by Coblentz attorneys Harry O'Brien, Alan Gennis, and Venessa Henlon, was non-binding and contingent on the approval of a final environmental impact report. Cedar Fair, the owner of an amusement park adjacent to the proposed stadium site, challenged the term sheet, arguing that it was a project "approval" which could only occur after environmental review was complete, and that it therefore violated the principles laid down by the California Supreme Court in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

The Forty Niners moved to dismiss the case on the ground that the term sheet did not constitute a binding approval by the City of the stadium project, and that it did not commit the City to the project in advance of environmental review. The trial court agreed, and dismissed the case on demurrer. The Court of Appeal affirmed the trial court's ruling.

The appellate court recognized the difficult challenge posed by these kinds of public-private project negotiations a complex project like a football stadium requires intense negotiation and cooperation between private parties and public agencies, often prior to the commencement of any environmental review. At the same time, courts cannot permit the internal momentum of the approval process to become so great that the eventual environmental review is simply a "rubber stamp." The court held that the term sheet represented a legitimate exercise of the government's discretion, did not exceed

the bounds established by *Save Tara*, and therefore did not constitute a premature project "approval" within the meaning of CEQA.

This decision is one of only three that have interpreted the Supreme Court's ruling in *Save Tara*, and it provides the most detailed guidance available to developers and public agencies engaged in preliminary negotiations concerning major projects subject to CEQA review. Since *Save Tara*, project opponents have frequently challenged preliminary agreements as violative of CEQA, but few of those challenges have generated published appellate decisions. The legal standards applicable to such pre-EIR agreements are now much clearer.

This is the latest in a string of CEQA-related appellate decisions in which Mr. Bass has represented the winning side: *Martin v. City and County of San Francisco.* (2005) 135 Cal.App.4th 392; *San Franciscans Upholding the Downtown Plan. v. City and County of San Francisco.* (2002) 102 Cal.App.4th 656; *San Franciscans for Reasonable Growth v. City and County of San Francisco.* (1987) 193 Cal.App.3d 1544; *San Franciscans for Reasonable Growth v. City and County of San Francisco.* (1987) 189 Cal.App.3d 498; and *Foundation for San Francisco's Architectural Heritage. v. City and County of San Francisco.* (1980) 106 Cal.App.3d 893.

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