

Appellate court clears way for Presidio Parkway Project to move forward as a Public-Private Partnership

On August 8, 2011, the 1st District Court of Appeal broke new ground when it published a decision holding that Phase 2 of the Presidio Parkway project can move forward as a public-private partnership (P3). The Presidio Parkway Project is the first project to reach award under California's new public-private partnership statute, Streets and Highways Code section [143](#). The project was challenged on three separate grounds by the Professional Engineers in California Government (PECG), an engineers' union. The Court of Appeal affirmed the trial court's ruling approving the California Department of Transportation's (Caltrans) use of the new statute, and should encourage the consideration of P3s as a project delivery method in California.

The case, Professional Engineers in California Government v. Department of Transportation, is among the first brought by a union to stop a P3 project, an area that is growing in the United States as cities and states struggle financially to rebuild their crumbling infrastructure. PECG brought suit challenging Caltrans' use of the new P3 authority for what is also known as the "Doyle Drive Replacement Project." The project will replace 1.6 miles of Doyle Drive, which serves as the southern approach to the Golden Gate Bridge.

The lawsuit alleged that Caltrans and the San Francisco County Transportation Authority (SFCTA) impermissibly used the new P3 authority. PECG argued that permitting third-party engineers to perform the engineering for the project in lieu of Caltrans employees violates the statute. Under the current arrangement, Hochtief Concessions and Meridiam Infrastructure will design, construct, operate and maintain the road for a term of 30 years after construction completion. PECG also claimed that P3 projects in California must be funded solely by tolls or user fees.

The Court of Appeal affirmed the February 2011 decision by Judge Wynne Carvill of the Alameda County Superior Court, rejecting all of PECG's arguments. First, the Court held that under section [143](#), Caltrans employees or direct consultants are not mandated to perform all of the preliminary planning and design services associated with the project. Second, the project is "supplemental to existing facilities" and fits squarely within the definition of a transportation project pursuant to section 143(a)(6). Third, the Court explained that funding for P3 projects awarded

under section 143 need not be confined to tolls or user fees, and that the legislation authorized a much broader use of innovative methods of financing. Although unlikely to be granted, PECG will have until September 16, 2011 to seek review from the California Supreme Court.

While the Court of Appeal's ruling is obviously pivotal for the Presidio Parkway Project, it should also encourage the use of P3s as a project delivery method for other public projects in California. P3s create unique opportunities to bring the financial and management resources of the private sector to public infrastructure projects, while sharing risks and rewards. Increasingly, P3s are being considered by agencies throughout the state in an effort to rebuild our infrastructure in spite of budgetary challenges. The result in this case should pave the way for more innovative approaches to public infrastructure projects while also reducing the financial risk to California's public entities.

A complete copy of the Court of Appeal Decision can be found [here](#).

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