

GOVERNMENT CODE DOES NOT REQUIRE ANALYSIS OF ENVIRONMENTAL IMPACTS DIRECTLY RELATED TO SCHOOL FACILITIES

Chawanakee Unified School District v. County of Madera (June 21, 2011, F059382) __ Cal.App.4th __ (certified for partial publication)

July 1, 2011 by *Robyn Christo*

In a partially published opinion, the Court of Appeal for the Fifth Appellate District, interpreted Government Code Section 65596(a) (as revised by the Leroy F. Greene School Facilities Act of 1998 [“Senate Bill 50”]), and examined the effect of language restricting the “methods of *considering* and mitigating [project-related] impacts on *school facilities*” (italics added) on an environmental impact report (“EIR”). In the published portion of its opinion, the court found that impacts directly related to school facilities do not require consideration under the California Environmental Quality Act (“CEQA”). On the other hand, the reasonably foreseeable non-school impacts caused by a project must be analyzed in an EIR.

The EIR in question was prepared for a project that proposed to develop 1,574 acres in the County of Madera (“County”) into a mix of residential, commercial, light industrial, open space, recreational and other public uses (“Project”). The Project’s 5,200 dwelling units were estimated to accommodate approximately 13,850 people, including 3,200 school-aged children; thus requiring new school facilities – two elementary schools and, possibly, one junior high school.

Plaintiff (the local school district) argued, *inter alia*, that the EIR failed to comply with CEQA because it failed to analyze the Project's *direct* impacts on existing school facilities as well as *indirect* impacts on school facilities caused by the Project. The County argued that Senate Bill 50's addition of the word "considering" limited a lead agency's responsibility to identify, analyze and evaluate impacts all school-related environmental impacts, whether directly or indirectly caused by the Project.

The court rejected the school district's contention that the County violated CEQA because the EIR lacked analysis of impacts to "existing school facilities that will be forced to accommodate hundreds of students beyond current overcrowded conditions." Senate Bill 50's addition of the word "considering" "obviates the need for an EIR to contain a description and analysis of a development's impacts on school facilities."

On the other hand, the court found that SB 50's substitution of the phrase "on school facilities" for "*related to school facilities*" (italics added) narrowed the exemption. While "related to" required consideration of "both direct effects on school facilities and indirect effects on parts of the environment other than school facilities" "the prepositional phrase 'on school facilities' limits the type of impacts that are excused from discussion . . . to the adverse physical changes to the school grounds, school buildings and 'any school-related consideration relating to a school district's ability to accommodate enrollment.'"

Therefore, the court held, the indirect impacts on the physical environment that are caused by a Project's school facilities (other than school facilities themselves), must be considered. For example, traffic impacts caused by students driving (or bussing) to and from the facility and impacts to noise and air quality caused by the construction of school facilities must be considered in order to comply with CEQA.

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