



## School Business Law Update

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### **FIFTH DISTRICT COURT OF APPEAL EXPANDS REQUIRED CEQA ANALYSIS OF DEVELOPMENT IMPACTS ON SCHOOLS**

The common wisdom since the passage of SB 50 in 1998 has been that the sole mitigation for school-related impacts of a project was the developer's payment of a statutorily determined fee to the affected district. The Fifth District Court of Appeal, which covers the central valley, including Kern County, held recently in Chawanakee Unified School District v. County of Madera (2011) 196 Cal.App. 4th 1016, that an EIR can be challenged on the bases of its failing to discuss and analyze the impacts of a project on traffic from the project to existing schools and on the failure to analyze the indirect impacts (noise and dust) related to the possible construction of additional facilities at existing schools.

The District sought a writ of mandate challenging the County of Madera's approval of a large housing development project on the grounds that the project's EIR failed to comply with CEQA and California's Planning and Zoning law. The trial court denied the petition.

The court of appeal analyzed Government Code section 65996 (a) and found that more can be required of the developer. Government Code section 65996 (a), as amended by SB 50, provides that the statutory mitigation measures "shall be the exclusive methods of considering and mitigating the impacts on school facilities that might occur as a result of any legislative or adjudicative act ... involving approval of real property ..." Despite this language, the school district argued that the EIR: (1) failed to analyze the impact of the project on existing schools, (2) failed to analyze the impacts on traffic from travel to and from existing schools, (3) failed to analyze the impacts related to possible construction of additional temporary school facilities caused by the need to alleviate overcrowding and (4) violated California's Planning and Zoning law. The developer and the county argued that section 65996 (a) limited any analysis and required no mitigation beyond that mentioned in the statute (the payment of developer fees).

The court agreed with the developer and county that project impacts on existing school facilities did not need to be analyzed and that the planning and zoning law had not been violated. However, the court did find the EIR deficient in its analysis and possible mitigation of the indirect impacts of students traveling to and from the development to existing schools outside the development until such time as neighborhood schools are built within the development, and the dust and noise caused by the construction of additions, either temporary or permanent, to existing schools prior to construction of schools in the project area, i.e., "the indirect impacts on parts of the school environment that are not school facilities" were not excused from being considered and mitigated, if necessary.

The court remanded the matter to the superior court with directions to vacate its previous order denying the writ of mandate and to enter a new order granting the petition for writ of mandate and compelling the county to (1) set aside the certification of the final EIR, (2) set aside the approvals of the project, and (3) take the action necessary to bring the EIR into compliance with CEQA regarding its analysis of (a) traffic from private and school bus trips to existing schools outside the project area pending the construction of schools within the project area and (b) the potential environmental effects from any construction of additions, either temporary or permanent, to existing schools prior to the construction of schools in the project area.

The holding in this case may provide additional leverage to Districts seeking to negotiate the impacts of a development beyond payment of the statutorily prescribed developer fee. If you have any questions concerning this update or related issues, do not hesitate to contact our office.

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