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March 15, 2010

Richmond Casino Case: How Early Is Too Early for CEQA?

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In *Parchester Village Neighborhood Council v. City of Richmond*, the California Court of Appeal recently held that the City of Richmond's decision to enter into a Municipal Services Agreement (MSA) with a Native American tribe did not constitute a "project" requiring California Environmental Quality Act (CEQA) review, even though the agreement effectively committed the City to a particular course of action. *Parchester* helps to define the scope of *Save Tara v. City of West Hollywood*, in which the California Supreme Court held that an Environmental Impact Report (EIR) needed to be completed where the city had effectively committed to approving a senior housing development project, even though its agreement with the developer was ostensibly conditioned on compliance with CEQA.

The Court's 2008 decision in *Save Tara* left cities and developers wondering at what point in the process of negotiating preliminary agreements for development projects they would have to initiate environmental review under the CEQA. While *Save Tara* caused local agencies to be skittish about entering into early agreements with project proponents without first conducting environmental review, the *Parchester* decision has clarified that an early agreement may be acceptable, provided that it does not amount to an "approval" of a specific "project."

This case arose when Scotts Valley Band of Pomo Indians of California began pursuing plans to build a 225,000 square foot gaming facility on 30 acres of unincorporated land in West Contra Costa County, adjacent to the City of Richmond. The City, concerned that the casino would have a significant impact on neighboring businesses and residents, proceeded to negotiate the MSA with the tribe to provide a means for funding the provision of city services to the proposed casino. The MSA provided for millions of dollars in yearly payments to fund police, fire, and public works equipment and personnel, but it did not identify specific physical improvements. The agreement also contemplated that the City would comply with CEQA in the future if any activities under the MSA would cause environmental impacts. A coalition of neighborhood and environmental groups challenged the MSA, claiming that it constituted approval of a project subject to CEQA, and therefore the City was required to complete environmental review at the earliest possible date.

The court concluded that when the City entered the MSA, it did not approve a "project" that would trigger CEQA review. The "project" could not be the casino development itself because it would be located outside the City and beyond its jurisdictional reach. Nor was the City's commitment to support the tribe's application to the Secretary of the Interior in support of the development considered a "project." CEQA does not prohibit a local agency from "being a proponent or advocate" of a project, and moreover, drafting a letter in support of the tribe's proposal would not have determinative influence over the Secretary's decision. Rather, the court found that the MSA functioned primarily as a mechanism for funding future activities that may or may not even be implemented. To the extent that the MSA contemplated future changes that could physically impact the environment, those changes were either not within the City's jurisdiction or not ripe for consideration under CEQA.

As the Supreme Court emphasized in *Save Tara*, an agency "cannot be deemed to have approved a project … unless the

proposal before it is well enough defined to provide meaningful information for environmental assessment." In contrast to the contract at issue in that case, Richmond's MSA merely established funding mechanisms and set the stage for future determinations regarding potential physical improvements in locations as yet to be determined. The Court of Appeal noted that as a practical matter, it is "difficult to conceive of how an EIR could be used to sensibly evaluate a project that has not yet been assigned a physical location."

Finally, the court noted that although an agreement's conditioning of approval on future CEQA compliance does not in itself allow a local agency to defer CEQA review – as *Save Tara* made clear – such a condition is still relevant to the determination of whether "approval" has in fact occurred. This case helps clarify that a preliminary agreement can still be acceptable under CEQA, so long as it does not amount to unconditional "approval" of a defined "project."

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