Parchester Village Neighborhood Council v. City of Richmond (February 24, 2010) 182 Cal.App.4th 305

The City of Richmond (City) entered into a Municipal Services Agreement (MSA) with the Scotts Valley Band of Pomo Indians (Tribe) relative to a 29-acre site that adjoins the City limits and that Tribe is acquiring for a casino site. At the time it entered into the MSA, the federal government had not approved the Tribe's acquisition of the site (although a Draft Environmental Impact Statement (DEIS) had been prepared) and the Tribe had not negotiated a tribal compact with the State of California, as is necessary for it to operate a casino. When approving the MSA, the City found that it was not a project for purposes of CEQA.

As described in this Court decision, the MSA provides the following to the City, in exchange for specified City services:

> "(1) a nonrecurring payment of $8,234,500, $7.1 million of which is earmarked for fire protection and the remainder of which is earmarked for police and public works, (2) an annual contribution of $6 million in years one and two, $8 million in years three and four, $9 million in years five and six, and $9 million adjusted annually by the Consumer Price Index (CPI) in years seven to 20, and (3) an annual payment of $7,459,700, adjusted annually by the CPI, for the 20-year term of the MSA, intended to fund salaries for new police, fire, and public works personnel and equipment. The City also agreed to support the Tribe's fee-to-trust application. The City disavowed any commitment to make physical changes to the environment as a result of the agreement, but indicated an intent to comply with CEQA in the future if necessary."

The Neighborhood Council sued, alleging that the MSA is a CEQA project and that the City failed to prepare the requisite CEQA document before approving the MSA. The trial court held for the Neighborhood Council.

The Court of Appeal reversed the lower court and found that CEQA does not apply. The Neighborhood Council argued that the casino itself is a project that triggers the City's obligation to undertake a CEQA analysis. They claimed that the City could be considered both a lead and responsible agency for the project under CEQA. The City countered that it has no regulatory authority over the casino.

The Court agreed with the City. The casino does not require City approval. Further, "[w]hile the MSA does indicate that the City agreed to support the Tribe's efforts to acquire the land and to obtain the requisite approvals from the BIA and the Governor, this expression of support does not transform the casino into a 'project' so as to trigger the City's preparation of an EIR." Being a supporter of the project did not commit the City to the project in the manner described in the California Supreme Court's *Save Tara* decision.

With regard to the MSA itself triggering CEQA, the Court relied largely on its 2005 decision in *Citizens to Enforce CEQA v. City of Rohnert Park* 131 Cal.App.4th 1594

(MOU agreed to establish a source of funds for potential future improvements if the casino is built was not a project because it merely authorized a funding mechanism). In both situations, the Court concluded, the "agreements set no timeline for the construction of physical improvements and do not obligate the City to undertake any specified construction project" and "acknowledge that CEQA review might be required if the municipality ultimately provides infrastructure related to the casino projects."

The MSA provides that in the future the City may decide on one of three alternative approaches to providing fire protection to the casino (and undertake CEQA analysis) and describes a number of road improvements that the tribe will install if the casino is approved by federal and state entities. The Neighborhood Council argued that these committed the City to particular courses of action and that they contained sufficient information to allow CEQA analysis. The Court disagreed, in light of the *Save Tara* decision. The MSA "merely sets the stage for future negotiations to establish [fire protection]" and therefore did not commit the City to particular actions. The road improvements are outside the City limits and are mitigation measures agreed to by the Tribe in its DEIS. Accordingly, the Court concluded that "it is unclear to us that the City is the governmental agency that has 'agreed' to allow the Tribe to construct these traffic improvements." The City, therefore, is not the appropriate agency to conduct CEQA review.