

San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District (May 26, 2006) 139 Cal.App.4th 1356

San Lorenzo Valley CARE sued the school district over the closure of two elementary schools and transfer of those students to the District's other two schools. As part of the closure process, the District had first convened an advisory committee to examine the question of school closure and make recommendations to the District Board. The Board followed the committee's recommendations for closure. The Board determined the closures categorically exempt from CEQA and filed a Notice of Exemption several months later.

In a separate later action, the Board voted to move the district office to one of the closed schools and to declare the erstwhile district office and the other closed school surplus property. The Board adopted a negative declaration for that action.

CARE alleged violation of CEQA, the Public Records Act, the Brown Act, and other school-related laws. The trial court dismissed these claims. Our summary will focus on the CEQA issues.

The Court of Appeal distinguished CEQA procedures under a first-tier review (review for exemption) from those requiring an initial study. Determinations made as part of a first-tier review are rightly formalized after the project has been approved. There is no requirement that the agency put its exemption decision in writing, and filing of a notice of exemption is voluntary. No public comment period is provided before the project is approved.

The Court upheld the trial court's decision. The school consolidation issue is a project under CEQA since it involves a discretionary action with the potential to result in physical changes. The categorical exemption is proper in that there is substantial evidence to support the finding that the project falls within the exemption. CARE did not offer sufficient evidence of a potential significant effect to support a claim that the "unusual circumstances" exception applied.

The court examined the statutory exemption for closing a public school or the transfer of students from that school "if the only physical changes are categorically exempt" (PRC 21080.18). Based on the Class 14 exemption (State CEQA Guidelines Section 15314), which exempts minor additions to existing schools where the addition doesn't increase original student capacity by more than 25% or ten classrooms, whichever is less, the court reasoned that closure and transfer would be exempt provided that it would not increase the "original capacity" of the receiving school by more than 25%. The court interpreted original student capacity to be the physical capacity of the school, not its current enrollment. Therefore, because the District's two receiving schools were substantially below capacity, the addition of students still fell below the 25% limit.

Project opponents did not present substantial evidence to support a fair argument that the physical change that would occur as a result of the project would be significant. Mold alleged to be in the existing schools was not a *change* in the existing conditions. The

alleged wastewater problems had been remedied. The alleged seismic hazard was not new, nor was it amplified by the addition of new students. There was no substantial evidence of an unusual circumstance that precluded application of the Class 14 exemption. The alleged traffic impact resulting from adding students to the existing schools was not shown to be unusual in the context of school consolidations.