

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA
DEPARTMENT: 02
HEARING DATE: 08/20/08

1. TIME: 9:00 CASE#: MSC07-01090

CASE NAME: PARCHESTER VILLAGE VS. CITY OF
SPECIAL SET HEARING ON: PETITION FOR WRIT OF MANDATE SET BY THE
COURT

- TENTATIVE RULING: *

PETITION/GRANTED

1. AS A PRELIMINARY ISSUE, ALTHOUGH MSA DEFINES TERM PROJECT AS CONSTRUCTION OF GAMING FACILITY (AR 0618), PROJECT FOR PURPOSES OF THIS PETITION IS SOLELY CITY'S ENDORSEMENT AND CONSTRUCTION COMMITMENTS SPECIFIED IN MSA. SEE COUNTY OF AMADOR V. CITY OF PLYMOUTH (2007) 149 CAL. APP. 4TH 1089, 1094-1095.
2. "PROJECT" IS GIVEN A BROAD INTERPRETATION AND APPLICATION TO MAXIMIZE PROTECTION OF ENVIRONMENT. SEE AZUSA LAND RECLAMATION CO. V. MAIN SAN GABRIEL BASIN WATERMASTER (1997) 52 CAL. APP. 4TH 1165, 1189.
3. THERE IS A TWO-PRONGED TEST FOR DETERMING WHETHER A PUBLIC AGENCY'S ACTION QUALIFIES AS A PROJECT UNDER CEQA.
 - a. FIRST CONSIDERATION IS "WHETHER THERE HAS BEEN AN ACTIVITY DIRECTLY UNDERTAKEN BY ANY PUBLIC AGENCY." SEE PUB. RES. CODE § 21065(a); ASSOCIATION FOR A CLEANER ENVIRONMENT V. YOSEMITE COMMUNITY COLLEGE DIST. (2004) 116 CAL. APP. 4TH 629, 639.
 - b. SECOND TEST FOR A "PROJECT" IS WHETHER ACTIVITIES HAVE A "POTENTIAL FOR RESULTING IN EITHER A DIRECT PHYSICAL CHANGE IN THE ENVIRONMENT, OR A REASONABLY FORESEEABLE INDIRECT PHYSICAL CHANGE IN THE ENVIRONMENT. SEE GUIDELINES, § 15378(a); IBID.

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4. INSTANT CASE, THERE IS NO DISPUTE THAT THERE HAS BEEN AN ACTIVITY DIRECTLY UNDERTAKEN BY CITY IN ITS APPROVAL OF MSA.

a. MSA HAS AN EMPHASIS ON FUNDING MECHANISMS, BUT IT ALSO HAS CITY COMMITTING TO A RANGE OF FIRE IMPROVEMENTS IE: NEW FIRE STATION/UPGRADE/OR RELOCATING FIRE STATION; A LIST OF TRAFFIC IMPROVEMENTS IE: ADDITIONAL NORTHBOUND LANE ON RICHMOND PARKWAY, A LEFT-TURN LANE ON THE WESTBOUND PARR BLVD. APPROACH TO RICHMOND PARKWAY, ADDITIONAL THROUGH LANES ON PARK BLVD. A RICHMOND PARKWAY-SAN PABLO AVENUE INTERCHANGE, AND A CLASS II BIKE LANE ALONG GOODRICH AVENUE BETWEEN PARR BLVD. AND RICHMOND PARKWAY; AS WELL AS AN OFFICIAL ENDORSEMENT OF THE TRIBE'S FEE-TO-TRUST APPLICATION.

b. THESE ACTIVITIES HAVE A POTENTIAL FOR RESULTING IN EITHER A DIRECT PHYSICAL CHANGE IN THE ENVIRONMENT, OR A REASONABLY FORESEEABLE INDIRECT PHYSICAL CHANGE IN THE ENVIRONMENT.

5. MSA DOES MENTION FUTURE COMPLIANCE WITH CEQA IF REQUIRED, HOWEVER OPTIONS ARE CONTRACTUALLY LIMITED AND DO NOT PERMIT THE NO-OPTION ALTERNATIVE REQUIRED BY CEQA.

6. ACCORDINGLY, COURT FINDS CITY SHOULD HAVE COMPLIED WITH CEQA BEFORE ENTERING INTO ANY MUNICIPAL SERVICES AGREEMENT.