

**COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE**

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| COUNTY OF SAN DIEGO, |) | 4th Civil No. D046728 |
| |) | |
| Plaintiff and Appellant, |) | (San Diego Superior Court |
| |) | Case No. GIC 835329) |
| v. |) | |
| |) | |
| GROSSMONT-CUYAMACA COMMUNITY |) | |
| COLLEGE DISTRICT, |) | |
| |) | |
| Defendant and Respondent. |) | |
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Appeal from a Judgment of the Superior Court,
County of San Diego, State of California
Honorable Linda B. Quinn, Judge

APPELLANT'S REPLY BRIEF

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INTRODUCTION

In its Respondent's Brief, the Grossmont-Cuyamaca Community College District ("District") continues its shell game, attempting to divert attention from the pivotal truth: the District is responsible under CEQA for mitigating the impacts of its construction project. The District's argument, that the County is imposing a prohibited assessment, necessarily rests on the erroneous premise that the County has a preexisting obligation to make road improvements to accommodate traffic to be generated by the District's campus expansion. Nothing in the law or the record supports that premise.

Similarly, the District's assertion of a legal prohibition against making the road improvements recommended by its own consultants rests on the unsupported assumption that the District may expend funds only to satisfy obligations specifically enumerated by statute. Not only does the District fail to cite authority for such a broad prohibition, its conclusion ignores express authorization to expend funds for construction.

This Court should reject the District's attempt to escape its fundamental obligations under the state's environmental laws.

ARGUMENT

I

THE DISTRICT CANNOT SELECTIVELY EXEMPT ITSELF FROM THE MITIGATION REQUIREMENTS OF CEQA

The District does not dispute that it is subject to CEQA. Instead, it carves out a single requirement, mitigation of traffic impacts, and conjures up a prohibition on compliance. The District's argument does not, and cannot, provide a legal distinction between mitigation of traffic impacts and mitigation of any other significant adverse impacts of the project.

The District accepts its responsibility to mitigate for impacts on air quality (AR 266), aesthetics and visual quality (AR 281), biology (AR 307-311), cultural resources (AR 317-318), hydrology and water quality (AR 346), paleontology (AR 373-374), and noise (AR 391). (AR 1070-1085; Respondent's Brief ["RB"], p. 4.) Yet, opposing the obligation to mitigate for traffic impacts, it claims it cannot expend funds for anything other than educational purposes. (RB, pp. 12-13.) The District does not explain how funding the preparation of its EIR and mitigating certain impacts is permitted if, in fact, it is authorized only to spend money to provide education services.

A. The District May Legally Use its Funds for Traffic Mitigation.

The District's selective presentation of restrictions on its use of funds must be rejected. The District is authorized to utilize its funds to construct facilities. (Ed. Code §§ 81800-81839 ["Community College Construction Act of 1980"]¹.) The District does not address these provisions, but instead cites to an Education Code provision limiting to the "extent feasible" the use of specified funds for instructional improvement and accountability. (RB pp. 12-13, citing Ed. Code § 14020.1.)

Education Code section 14020.1 pertains only to the "amount transferred to Section B of the State School Fund pursuant to Section 8.5 of Article XVI of the State Constitution." Section 8.5 of Article XVI allocates funds "[i]n addition to the amount required to be applied for the support of

¹ The CEQA Guidelines are expressly adopted as part of the regulations under the Community College Construction Act. (5 Cal. Code Regs. § 57100.) Pursuant to the regulations, the "Chancellor shall withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met." (*Id.* at § 57121(f).)

school districts and community college districts pursuant to Section 8.” Section 8 specifies funds to be allocated to community college districts. Thus, section 14020.1 restricts only a portion of state funds provided to the District. Nothing in the record identifies the amount of money the District receives under either section. What is clear, however, is that the District receives funds that are not limited by section 14020.1.

Reliance on section 14020.1 as a broad limitation on expenditures is further undermined by Education Code section 81952, which provides that the District “may use for the payment of the costs of acquisition, construction or completion of any project, any funds made available to the board by the State of California or any other funds provided by the board from any source.” (Ed. Code § 81952.)

The District acknowledges the receipt of some project funds from a bond issuance under Proposition R (RB 3, AR 17-20), but argues that such funds cannot be used to mitigate traffic impacts. The District’s argument ignores the fact that District has the authority to determine the purpose of the bonds in the first instance. (Ed. Code § 81901 [district may issue bonds to construct any project], § 81947 [governing board declares purpose for which bonds shall be expended].) In addition, the District is authorized by statute to pay “any other public body” that is to perform work necessary for the construction of the project. (Ed. Code § 81949.)

Moreover, nothing in the record demonstrates that Proposition R legally prohibits the use of bond funds for all legitimate costs of construction, including compliance with CEQA.²

² In contrast, repeated references are made to the prohibition against using bond funds for administrators’ salaries. (AR 2, 3, 6, 7, 12, 19, 24, 36, 42, 43, 46, 50, 57, 62, 73 [§ 1(a)], 78, 80 [§ 3(a)], 84, 86, 96, 100; see, Ed. Code § 15278(b)(2) [citizens’ oversight committee is to ensure “no funds

While the District asserts that the requisite citizens' oversight committee "exists to ensure that the Proposition R funds are spent 'only on buildings, classrooms, labs and grounds.'" (RB, p. 3), the applicable statutory provision actually charges the committee with "[e]nsuring that bond revenues are expended only for the purposes described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution." (Ed. Code § 15278(b)(1).) The constitutional provision in turn indicates that a community college district may obtain bond funds "for the construction, reconstruction, rehabilitation or replacement of school facilities." (Cal. Const., art. 13A, § 1, subd. (b)(3).) Thus, there is no legal prohibition against using Proposition R funding for mitigation of the construction project's impacts.

Given the District's general obligation to comply with CEQA (and absent any statutory provision or case law to the contrary) there is no basis to exclude costs of CEQA compliance from the cost of construction.

B. The CEQA Mitigation Requirement is Not a Special Assessment.

Essential to its special assessment argument is the factually and legally erroneous assertion that the County is responsible for imposing CEQA's mitigation requirements on the District. Eliminating this false premise leaves the equally untenable argument that the state is imposing a special assessment on the District.

Citing the "broad definition" of a special assessment, the District makes no attempt to describe how CEQA's mitigation requirement is "a compulsory charge placed by the state upon real property within a pre-

are used for any teacher or administrative salaries or other school operating expenses."].)

determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein.” (*San Marcos Water District v. San Marcos Unified School District* (1986) 42 Cal.3d 154, 161, citation and internal quotation marks omitted.) The fact that mitigation is required only when a decision to develop is made negates the claim that it is a compulsory charge. (See, *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 596 [special assessments are compulsory charges imposed on specific real property; development fees are “usually imposed in connection with the development of real property and are not considered special taxes”]; see also, *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 944 [“most taxes are compulsory rather than imposed in response to a voluntary decision to develop”; internal quotations and citation omitted].)

The District emphasizes the Supreme Court’s reliance on the purpose of the expenditure to determine whether it is a prohibited assessment, but mischaracterizes the purpose of the mitigation obligation. (RB, p. 16.) Here again the District’s position depends on accepting the false premise that the County (not the state’s environmental statute) imposes the obligation in the first instance. In addition, the District apparently envisions vast infrastructure improvements instead of the finite mitigation measures proposed by its traffic consultant. (See Section II.A., below.)

C. Public Policy Supports CEQA Compliance.

The District asserts a strong policy basis for its refusal to comply with CEQA. (RB, pp. 17-20.) Essentially, it argues that the state funding it receives should not be expropriated by the County for road improvements.

The argument ignores the fact that a necessary consequence of the District's refusal to mitigate its adverse impacts on traffic will be that the County may be forced to expend its limited funds to subsidize the District's expansion program. As the District observed, such siphoning of funds violates public policy.

Furthermore, the District's policy argument rests upon the mistaken claim that state funds cannot be used to improve local roads. (RB, p. 19.) State law expressly authorizes the use of state money for local roads. (Sts. & Hy. Code § 2150 ["All money received by a county from the Highway Users Tax Fund and all money deposited by a county in its road fund shall be expended by the county exclusively for county roads"]; Sts. & Hy. Code §§ 2100-2107.9; Rev. & Tax. Code §§ 7301, 7351, 8601, 8651, 60001, 60050.) Thus, applicable law provides no policy grounds for excusing the District from its statutory obligation.

II

THE DISTRICT'S INFEASIBILITY CLAIM IS MERITLESS

A. The Record Does Not Substantiate the District's Economic Claims.

Contending that it properly determined traffic mitigation measures to be wholly infeasible, the District repeatedly refers to excessive costs and the need to exercise the power of eminent domain.³ (RB, pp. 13, 14 27, 28.) Here again the District rests its claims on an unfounded premise, i.e., that the County purports to require the District to make the very improvements the County repudiated.

³ The record contains no evidence that condemnation would be required. In response to the County's request that the District identify alleged right-of-way constraints (that might necessitate condemnation), the District merely indicated that it assumed property acquisition would be needed. (AR 1090, comment 10 and response to comment 10.)

Katz, Okitsu & Associates, the District's traffic consultant, recommended specific measures for intersection and road segments to mitigate the impacts to be caused by the District's project. (AR 544-547.) The recommendations include restriping, revising signal phasing and timing, and reconfiguring intersections to add turn lanes. (AR 544, 546.) The economic feasibility of these proposed measures was not examined.

Instead, in the EIR, the District hypothesized that the County would build out all nearby roads to the maximum extent permitted by the Circulation Element of the General Plan, after which the roads would accommodate the traffic added by the District's project. (AR 126-130, 220-233, 237-242.) The County objected, commenting that it had no plans to make the improvements relied upon by the District. (AR 1087-1090.)

In the final EIR, the District continued to rely on the illusory "County plans" and modified its mitigation measures only to state that "to the extent permitted by law the District may work with the County" to mitigate traffic impacts. (AR 1027-1028.) The District then uses this false predicate to argue: (1) the cost of the extensive improvements is disproportionate to the project's traffic impacts, so the District should only pay its proportionate share; and (2) the County is demanding payment. (RB, pp. 13-15.)

In fact, what the County requested was that the District provide a realistic discussion of potential mitigation measures. (AR 1087-1091.) No such discussion was provided. Nor did the District provide any information about the actual costs of any of the measures identified by its consultant. Consequently, the District's claim of infeasibility must be rejected. (See, *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1030 [mitigation measures "not facially infeasible";

estimated costs of \$3 million over 15 years were minimal compared to other plan costs].) The trial court's finding that the record supported the District's infeasibility determination was error.

B. The Jurisdiction Argument is Fatally Flawed.

Citing to the Streets and Highways Code, the District asserts that because the County has sole jurisdiction over roads, it is precluded from making improvements. (RB, pp. 14, 27.) Although it is true that the statute entrusts the Board of Supervisors with the general supervision, management and control over county roads (Sts. & Hy. Code § 940), the Board adopted a regulatory ordinance under which the District may obtain a permit to construct the needed improvements. (CT 113-123, 125 [County's request for judicial notice of regulatory code provisions was granted].) The District's jurisdiction argument simply ignores the County ordinance.

CONCLUSION

This is a straightforward case that has been shrouded in the illusion of complexity. Discarding the inaccurate statements of fact and law reveals a blatant attempt to avoid CEQA compliance. The District was obligated to accurately assess potential mitigation measures for its traffic impacts. It did not. The trial court erred in denying the County's writ petition. The judgment of the court below should be reversed.

DATED: 1/19/06

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 14(c)(1))

Pursuant to California Rules of Court, Rule 14(c)(1), I certify that the text of this brief consists of 2,164 words as counted by the Microsoft Word 2003 word-processing program used to generate the brief.

DATED: 1/19/06

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I, LEE WOLFE, declare:

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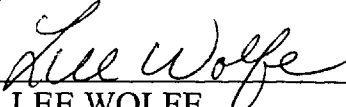
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| People : Other | Office Of The State Attorney General P.O. Box 85266 San Diego, CA 92186 |
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