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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CHAWANAKEE UNIFIED SCHOOL DISTRICT, Plaintiff and Appellant, v. COUNTY OF MADERA et al., Defendants and Respondents; RIO MESA HOLDINGS, LLC et al., Real Parties in Interest and Respondents.	F059382 (Super. Ct. No. MCV045383) **OPINION**

APPEAL from a judgment of the Superior Court of Madera County. James E. Oakley, Judge.

Barth & Tozer and Thomas W. Barth for Plaintiff and Appellant.

David A. Prentice and Douglas W. Nelson for Defendants and Respondents.

Sanger & Olson, John M. Sanger and Charles R. Olson for Real Parties in Interest and Respondents.

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*Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, only the Introduction, part IV. of the Discussion, and the Disposition are certified for publication.

INTRODUCTION

Chawanakee Unified School District (School District) filed a petition for writ of mandate challenging the County of Madera's (County) approval of a development project on the grounds that the project's environmental impact report (EIR) failed to comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.)[1] and that the project's specific plan failed to meet the consistency requirement of the California Planning and Zoning Law (Gov. Code, § 65000 et seq.). The trial court denied the petition. School District appealed.

In the published portion of this opinion, we address (1) the meaning of a statutory provision that states capped development fees and certain other provisions "shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result" of approval of the development of land (Gov. Code, § 65996, subd. (a)) and (2) the affect of this provision on the contents of an EIR. Because these issues of statutory construction are pure questions of law, the facts and proceedings in this case are not published.

In the unpublished portion of this opinion, we conclude the CEQA claim has merit. The EIR inadequately analyzes the project's potential environmental impacts during the period when students from the new development would attend existing, off-site schools (i.e., before schools are built within the project area to accommodate those students), which impacts include (1) increases in traffic near and on the way to existing schools and (2) environmental impacts from the construction of additional facilities at existing schools.

We also conclude that School District failed to demonstrate that the project's specific plan violated the Planning and Zoning Law by being inconsistent with County's general plan.

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[1] Further statutory references are to the Public Resources Code unless otherwise indicated.

The judgment will be reversed and the matter remanded for issuance of a writ of mandate.

FACTS*

County Planning Documents

County's board of supervisors adopted a general plan (General Plan), containing all mandatory elements, in October 1995. Since its adoption, the General Plan has been amended on topics such as housing, noise, groundwater, land use, transportation and dairy standards.

Also in 1995, County adopted the Rio Mesa Area Plan to provide more detailed policies and guidance for the area known as Rio Mesa. That area is roughly triangular-shaped and is south of Roads 145/206, east of State Route 41 and west of the San Joaquin River (the boundary between Fresno and Madera Counties). The Rio Mesa Area Plan treats Rio Mesa as an area of likely growth and attempts to organize that growth by designating three village planning areas for its 15,000 acres. From north to south, they are North Fork Village, Rio Mesa Village and Avenue 12 Village.

The Rio Mesa Area Plan is integrated into the General Plan, but has not been updated since its adoption.

In 2004, the Madera County Transportation Commission (MCTC), a joint powers agency that includes County, the City of Madera and the City of Chowchilla, adopted the Madera County 2004 Regional Transportation Plan pursuant to Government Code section 65080 to help implement the General Plan. As part of the regional transportation plan, MCTC created a traffic forecasting model (MCTC Model). The MCTC Model was used in evaluating traffic impacts in this case. The application of the MCTC Model is involved in one of the disputes raised in the appeal. (See pt. V.C., *post*.)

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*See footnote, *ante*, page 1.

The Project

In February 2006, Tesoro Viejo, Inc., requested that County initiate the environmental review process for a proposed development of 1,574 acres included in the Rio Mesa Area Plan. The proposed project, called Tesoro Viejo, encompassed almost all of the area designated in the Rio Mesa Area Plan as the Rio Mesa Village and included a mix of residential, commercial, and light industrial uses plus areas for open space and recreation as well as other public uses. The proposal stated the development would contain up to 5,200 dwelling units and estimated it would accommodate 13,850 people with a school-age population of about 3,200 students. The proposal also stated that the project was expected to include two elementary schools and might include a junior high school that would be used in conjunction with the North Fork Village property.

The materials that the developer presented to County for use in preparing an EIR included a draft specific plan for the Tesoro Viejo project and various environmental studies. The draft specific plan was analyzed in the draft EIR and an amended specific plan was included in the final EIR.

In November 2006, County issued a notice of preparation of a draft EIR for the Tesoro Viejo project, which informed the public that an environmental scoping meeting was scheduled for December 14, 2006.

Over a year later, in February 2008, County published a notice stating that a draft EIR for the Tesoro Viejo project was available for public review and comment. School District, through its consultant Community Systems Associates, Inc., submitted comments on the draft EIR in a 300-page letter dated March 21, 2008.

County reviewed the comments of School District and others and set forth its responses in chapter 9 of the final EIR. In September 2008, County announced that the final EIR was available for review and that the planning commission would hold a public hearing on September 23, 2008, to consider certifying the final EIR and approving the Tesoro Viejo specific plan. Agencies and members of the public were allowed to submit

written comments to the County's planning commission before the meeting. Also, oral testimony was received at the meeting.

School District's consultant submitted a 252-page letter dated September 22, 2008, that stated its view of the final EIR's shortcomings.

After the planning commission meeting, County's consultant, PBS&J, prepared a report dated November 20, 2008, that responded to the comments submitted before and during that meeting. The report stated that no new issues were raised at the meeting and, therefore, recirculation of the EIR was not necessary to comply with CEQA Guidelines.[2] This report relies on responses to comments set forth in the final EIR and asserts that School District did not provide significant information regarding a new or substantially increased environmental impact.

On December 8, 2008, County's board of supervisors held a public meeting to consider approving the final EIR, the specific plan and related rezoning, an infrastructure master plan, a water supply assessment, and a development agreement, all of which concerned the Tesoro Viejo project.

On December 9, 2008, County filed a notice of determination that stated it had approved the Tesoro Viejo project.

PROCEEDINGS[*]

In January 2009, School District and individual plaintiffs filed a petition and complaint against County, its board of supervisors and its planning commission, and named The McCaffrey Group, Inc., and Tesoro Viejo, Inc., as the real parties in interest. County, The McCaffrey Group, Inc., and Tesoro Viejo, Inc., demurred, which the trial court granted in part with leave to amend.

In April 2009, School District and individual plaintiffs filed a verified pleading they labeled "Amended Class Action Petition for Writ of Mandate … and Complaint for

[2]The term "CEQA Guidelines" refers to the regulations that implement CEQA and are codified in California Code of Regulations, title 14, section 15000 et seq.

[*]See footnote, *ante*, page 1.

Declaratory Relief." The pleading's 11 causes of action asserted (1) the EIR failed to comply with CEQA, (2) the General Plan and Rio Mesa Area Plan were outdated and thus invalid, and (3) the specific plan was inconsistent with the General Plan and Rio Mesa Area Plan. The pleading (1) alleged Rio Mesa Holdings, LLC and Tesoro Viejo, Inc., were the owners of the land proposed for development and the applicants for the land approvals sought for the Tesoro Viejo project and (2) named them as the real parties in interest (RPI).

After the parties briefed the matter, the trial court held a hearing on the petition in late August 2009. The court concluded the EIR was adequate and the specific plan was not inconsistent with the General Plan. In September 2009, the trial court filed a judgment denying School District's petition.

In November 2009, School District filed a notice of appeal.

DISCUSSION

I. CEQA Standard of Review*

Sections 21168 and 21168.5 set forth the standard of review applied by courts in any proceeding challenging an agency decision under CEQA. Both sections limit judicial review of the agency decision to two questions: (1) Whether the record, viewed as a whole, contains substantial evidence to support the decision; and (2) whether the agency abused its discretion by failing to proceed in the manner required by law. (§§ 21168, 21168.5; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392, fn. 5.)

This standard of review is applied by both superior and appellate courts when they review the public agency's decision for compliance with CEQA. (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1577-1578.) Because appellate courts and superior courts conduct the same inquiry, appellate courts are not

*See footnote, *ante*, page 1.

bound by the superior court's determinations. (*Ibid*.) In other words, appellate courts independently review the agency's decision in CEQA matters.

> "When assessing the legal sufficiency of an EIR [as an informational document], the reviewing court focuses on adequacy, completeness and a good faith effort at full disclosure. [Citation.] 'The EIR must contain facts and analysis, not just the bare conclusions of the agency.' [Citation.] 'An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.' [Citation.] Analysis of environmental effects need not be exhaustive, but will be judged in light of what was reasonably feasible. When experts in a subject area dispute the conclusions reached by other experts whose studies were used in drafting the EIR, the EIR need only summarize the main points of disagreement and explain the agency's reasons for accepting one set of judgments instead of another. [Citations.]" (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390-1391.)

"As frequently occurs, many of the disputes in this case center on the question whether relevant information was omitted from the [EIR]. Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. (§ 21005, subd. (b).) This court has previously explained, '[a] prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' [Citations.]" (*Association of Irritated Residents v. County of Madera*, *supra*, 107 Cal.App.4th at p. 1391.)

II. Project Description*

A. Background

Draft EIR's must contain the information required by CEQA Guidelines sections 15122 though 15131. (CEQA Guidelines, § 15120, subd. (c).) The required information includes a description of the project. (*Id.*, § 15124 [project description].)

The four mandatory items that must be included in an EIR's project description are: (1) a detailed map with the precise location and boundaries of the proposed project,

*See footnote, *ante*, page 1.

(2) a statement of project objectives, (3) a general description of the project's technical, economic, and environmental characteristics with consideration of supporting public service facilities, and (4) a statement briefly describing the intended uses of the EIR and listing the agencies involved with and the approvals required for implementation. (CEQA Guidelines, § 15124.) Aside from these four items, the CEQA Guidelines advise that the project description should not "supply extensive detail beyond that needed for evaluation and review of the [project's] environmental impact." (*Ibid*.)

Courts discussing the adequacy of a project description often refer to the following principle: "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; see *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 657.) An inaccurate project description may distort the balancing process of public decisionmakers by giving them a false impression of the environmental costs, available mitigation measures, and feasible alternatives. It may also distort public input on those matters. (*County of Inyo v. City of Los Angeles*, *supra*, at pp. 192-193.)

B. Contentions of the Parties

School District contends that the project was not accurately defined because the description of school services was contrary to the applicable legal standards and minimized or ignored School District's jurisdiction over such matters. More specifically, School District contends (1) the description's heavy reliance on charter schools was contrary to the legal standards for the establishment and operation of charter schools and (2) the projections about future school needs "were completely contrary to the required schools, acreage, locations, and critical design factors, defined by State standards, regulations for construction of schools, and local policies adopted by [School District] …." School District argues that these defects led to the description of the school services component of the specific plan being based on speculation. That speculation, School District asserts, included the possibility of boundary adjustments of the local school districts or the creation of a new school district.

County and RPI contend that the project description in the EIR is legally adequate and satisfies the four requirements set forth in CEQA Guidelines section 15124.

C. Analysis

We begin our analysis by referring to the specific provision that applies to the parties' contentions. Subdivision (c) of CEQA Guidelines section 15124 provides that a project description shall contain: "A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities." (*Ibid*.)

The parties appear to agree, and we concur, that schools either are among the project's characteristics or are "supporting public service facilities" for purposes of CEQA Guidelines section 15124. Therefore, using the language from the Guideline, the issue presented in this case can be phrased as follows: With respect to schools, did the EIR contain an adequate and accurate "general description of the project's … characteristics, considering … supporting public service facilities"?

Chapter 3 of the EIR is devoted to describing the project and contains 33 pages, including several maps of the project site. Section 3.7 of the EIR is titled "Proposed Project Characteristics" and subsection 3.7.6 addresses public services with a separate heading for fire protection, police protection, and schools. As revised in the final EIR, the paragraphs in subsection 3.7.6 relating to schools provide:

> "When completely occupied, the Tesoro Viejo Project will accommodate an estimated 15,650 people, with a school age population of approximately 3,600 students. The Tesoro Viejo Project area itself is expected to include two to three public elementary schools in the '5 Points'/Central neighborhood and either or both the Town Center and North Canal neighborhood. A potential high school campus site is tentatively reserved in the Town Center area, as well as an additional elementary school should student enrollment justify the need. However, if an elementary school is included in the Town Center, there may be no elementary school in the North Canal neighborhood. Essentially, the third elementary school and the high school will be provided should student enrollment justify the need. The school or schools in the Town Center neighborhood would be connected to athletic playing fields to the southeast of the Madera Canal. The fields would serve both the high school and

> community uses at nights, on weekends, and during the summer. The Town Center's highly accessible location provides the potential to site educational institutions that can become a core element for the Tesoro Viejo community and the larger community of Rio Mesa.
>
> "Depending on ultimate requirements, locating schools in the Town Center may result in a reorganization of land uses around the Town Center to maintain the proposed amount of Town Center Mixed Use and High Density Residential land uses. This reorganization may result in the loss of some area of Medium Density Residential land use, but housing can be recovered through shifting land uses or increasing densities in other residential areas. Alternately, schools may be relocated within the core area.
>
> "In total, at least 30 acres of the Project Site have been identified for school uses, not including some portion of the Town Center. It is anticipated that the Applicant will finance and construct these schools, and it is possible that they will be operated as charter schools pursuant to the California Charter Schools Act, as well as those sections of the Education Code that apply to charter schools. The California Charter Schools Act is contained in Part 26.8 of the Education Code (EC), Sections 47600 through 47664."

Figure 3-4, located at pages 3-11 and 3-12 of the EIR, is a map of the project area that shows the conceptual land use plan using 14 colors to designate the types of land use. Light blue designates schools, and two locations within the plan area are designated with this color. In addition, the two potential locations for schools were indicated in light blue in the Tesoro Viejo neighborhood map included in the EIR as figure 3.5.

We conclude that the project description was both adequate and accurate. It satisfied the requirement for a *general description* of the project's characteristics and gave consideration to the current absence of supporting public service facilities in the project area and the need for such facilities in the future. Specifically, the EIR indicated that the lack of existing facilities (1) would necessitate the construction of one new fire station, (2) might ultimately lead to a sheriff's substation being located in the Town Center, and (3) was expected to result in the construction of two or three elementary schools and possibly a high school within the project area.

The details that School District contends should have been part of the project description concern applicable legal standards and projections about how the project's need for school facilities would be satisfied in the future. We conclude that these details are relevant to the evaluation of the project's potential environmental impact, but that CEQA Guidelines section 15124 does not require those details be included in the project description.

One of the policies underlying the requirement for an accurate project description is to provide the public with accurate information so that their comments on potential environmental impacts, mitigation measures and feasible alternatives are not distorted. In this case, that policy objective was met. School District understood the proposed project well enough to submit 300 pages of comments, approximately five pages of which addressed matter related to charter schools and over six pages of which addressed the analysis of the project's impacts on the school districts. Consequently, this case does not present a situation where aspects of the project were omitted from the description and thus avoided public scrutiny.

In summary, we conclude that the description of the project contained in the EIR satisfied the requirements of CEQA Guidelines section 15124 and that School District has failed to demonstrate a prejudicial error occurred in the description.

III. Environmental Setting*

County and RPI's appellate brief addresses the possibility that School District's argument regarding the project description could be interpreted as a claim that the EIR's description of the environmental setting was legally inadequate. School District's opening brief and its reply brief do not assert inadequacy in the description of the environmental setting as a basis for challenging the EIR. Nevertheless, because County and RPI have raised the issue concerning the description of the environmental setting and

*See footnote, *ante*, page 1.

because a review of that topic will provide background for our discussion of potential environmental impacts, we will address it briefly.

The Guidelines state that an EIR must include a description of "the physical environmental conditions in the vicinity of the project …." (CEQA Guidelines, § 15125, subd. (a).) This environmental setting usually constitutes the "baseline physical conditions" used by the lead agency in (1) identifying the potential environmental changes that will be caused by the project and (2) determining whether those changes (i.e., the environmental impacts) are significant for purposes of CEQA. (*Ibid*; see *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 289-290 [difference between existing physical conditions and predicted future conditions are the project's relevant environmental effects].) Consequently, accurately identifying the baseline conditions is the first step in the process of determining the significance of the project's potential environmental effects. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125.)

Chapter 4 of the EIR is titled "Environmental Analysis." Section 4.12 of the EIR addresses public services and recreation. The topic of schools is addressed in subsections 4.12.9 through 4.12.12, with the first of these subsections describing the environmental setting as it relates to schools.

Subsection 4.12.9 of the EIR states that the vast majority of the project site is included in School District and a very small area of the project site (south of Avenue 14) is included in the Golden Valley Unified School District. Figure 4.12-1a in the EIR is an aerial map that depicts which parts of the project site are in each district. Table 4.12-1 provides information regarding the operating capacity of schools serving the project site, the current enrollment, projected enrollment for the next two school years, and the shortfall between capacity and projected enrollment. This information is provided separately for elementary schools, middle schools and high school. All three categories of schools were projected to be over capacity in the 2008-2009 school year.

Anyone reading the EIR, whether a member of the public or a public official, would understand the following baseline conditions: (1) There are no schools located at the site of the development. (2) Nearby schools that might provide services to residents with school-age children are operating over their intended capacity. Therefore, we conclude that the description of the environmental setting as it relates to schools adequately describes "the physical environmental conditions in the vicinity of the project" and complies with CEQA Guidelines section 15125, subdivision (a).

IV. Senate Bill No. 50

One of the parties' disputes over the adequacy of the EIR's analysis of environmental impacts arises from a disagreement over the meaning of certain provisions contained in the Leroy F. Greene School Facilities Act of 1998 (Stats. 1998, ch. 407), Senate Bill No. 50 (1997-1998 Reg. Sess.), which sometimes is referred to as SB 50. Among these provisions is a restriction on the "methods of considering and mitigating impacts on school facilities" caused by a development project. (Gov. Code, § 65996, subd. (a).) The parties dispute how this restriction affects the EIR, particularly its discussion of environmental impacts involving students who will live in the project's residential development.

A. Background

During the first decade after CEQA's enactment, questions arose concerning CEQA's application to development projects that caused an increase in student enrollment and overcrowding in schools. For example, in *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123, the appellate court addressed an issue of first impression concerning "whether the impact of increased student enrollment is cognizable under [CEQA]." (*Id*. at p. 126.) The court determined that, in the circumstances of that case, such an impact was within the purview of CEQA. (144 Cal.App.3d at p. 126.) The circumstances mentioned by the court included "ample evidence of present overcrowding, projections of gradually increasing high school enrollment, and the necessity for construction of at least one new high school …." (*Id*. at

p. 131.) The court also determined that the EIR for the 552-unit residential development was inadequate because it contained no discussion of the project's impacts on schools and merely stated no mitigation measures were required. (*Id*. at p. 132.)

After California's judiciary established the principle that CEQA's mitigation measures applied to the impacts on schools caused when a residential development project leads to increased student enrollment, the Legislature addressed the topic of impacts on schools. In 1986, it enacted a complex statutory scheme to govern the imposition of school facilities fees on those seeking the governmental approvals needed to develop real estate. (*Corona-Norco Unified Sch. Dist. v. City of Corona* (1993) 13 Cal.App.4th 1577, 1582 (*Corona-Norco*).) The school facilities legislation (1) allowed school districts to levy a charge against new developments to fund construction of school facilities but capped the amount that could be charged and (2) limited the types of mitigation requirements local government could impose against a development project to alleviate the project's impacts on school facilities. (*Id*. at pp. 1582-1583.) Stated generally, the capped school facilities fees became the sole measure for mitigating the impacts of increased enrollment.

The school facilities legislation and its relationship to CEQA were discussed by the court in *Corona-Norco*, *supra*, 13 Cal.App.4th 1577. In that case, the school district filed petitions for writ of mandate to compel the city to rescind approvals of tentative tract maps for two residential developments. (*Id*. at p. 1580.) The school district's legal theories included claims that the EIR failed to describe the adverse environmental impact of the proposed projects on local school facilities and services, failed to describe feasible mitigation measures, and failed to incorporate mitigation measures into the conditions for project approvals. (*Id*. at p. 1581.) The petitions supported these claims by alleging the school district's facilities were seriously overcrowded, the proposed developments would exacerbate the overcrowding, and the statutorily authorized fee was insufficient to fund the construction of facilities needed to relieve the overcrowding. (*Ibid*.)

The trial court sustained a demurrer to the school district's petitions and the school district appealed. (*Corona-Norco, supra*, 13 Cal.App.4th at p. 1580.) The court of appeal affirmed, stating:

> "The gravamen of the District's CEQA claims is that the City had a duty, in conducting CEQA review, to impose conditions in addition to the [statutorily authorized] fee to lessen the alleged impacts of the development projects on local school facilities. This position must fail [because] the District's position does not acknowledge the strict limitations on local agencies' powers in [Government Code] sections 65995 and 65996." (*Id.* at p. 1587.)

The court of appeal refused to return the case for further CEQA analysis because, under the school facilities legislation, "the trial court could not require the City to impose additional mitigation conditions, nor could it require the City to set aside the project on the basis of inadequate mitigation, even if CEQA violations were found." (*Corona-Norco, supra*, 13 Cal.App.4th at p. 1587.)[3]

The next historical development leading to the enactment of SB 50 occurred when the courts of appeal issued decisions that narrowed the application of the limits on mitigation contained in the school facilities legislation and thereby expanded the reach of CEQA. Those decisions concluded the legislation applied only to adjudicative decisions of local government, such as the issuance of building permits. (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2011) § 14.28, p. 716.) Under this narrow view, developers who were requesting legislative actions, such as approvals of general plan amendments, specific plans or rezoning, were not protected by the provision that limited mitigation measures to the capped school facilities fee. (E.g.,

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[3]We note that the court in *Corona-Norco* was considering the former version of Government Code section 65996, subdivision (a), which referred to "the exclusive methods of mitigating environmental effects *related to* the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project" (Stats. 1992, ch. 1354, § 6, italics added) and the fact that courts usually construe broadly the term "related to." (E.g., *CPF Agency Corp. v. Sevel's 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034, 1044 ["related to" in federal preemption provision is interpreted quite broadly].)

Mira Development Corp. v. City of San Diego (1988) 205 Cal.App.3d 1201, 1218 (*Mira*) [restrictions in Gov. Code, § 65996 did not apply to zoning decision].)

For example, in *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212, the court considered a county's argument that (1) the capped school facilities fee was the only measure it could impose to mitigate the impact of future development on the school facilities, (2) the school facilities legislation preempted the field of school facilities financing which precluded it from imposing fees in excess of the capped school facilities fee, and (3) it could not impose other non-fee mitigation measures to ameliorate the adverse effects of development on school facilities. (*Id*. at p. 1229.) The court disagreed with the third part of this argument and concluded that the county had the authority to consider and provide for mitigation measures to address the general plan amendment's contribution to student overcrowding and adverse impacts on inadequate school facilities within the plan area. (*Id*. at p. 1234.) The mitigation measures that the court regarded as permissible included reducing the density of residential development and imposing controlled phasing of residential development in areas of the school district with inadequate school facilities. (*Ibid*.)

The Legislature reacted to the judicial decisions that narrowed application of the limits on fees and mitigation (i.e., expanded the application of CEQA) by enacting SB 50. The following provides an overview of the school facilities legislation after the enactment of SB 50:

> "SB 50 employs three primary means to preempt the field of development fees and mitigation measures related to school facilities and to overturn [*Mira* and its progeny]. First, it provides for a *cap on the amount of fees, charges, dedications or other requirements* which can be levied against new construction to fund construction or reconstruction of school facilities. Second, SB 50 *removes denial authority* from local agencies by prohibiting refusals to approve legislative or adjudicative acts based on a developer's refusal to provide school facilities mitigation exceeding the capped fee amounts, or based on the inadequacy of school facilities. Third, it *limits mitigation measures* which can be required, under the California Environmental Quality Act or otherwise, to payment of the statutorily capped fee amounts and deems payment of these amounts 'to provide full

and complete school facilities mitigation[.]'" (9 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 25.49, pp. 25-213 to 25-214, fns. omitted.)

B. Statutory Text

1. Government Code section 65996, subdivision (a)

The version of Government Code section 65996, subdivision (a) in effect prior to the enactment of SB 50 listed certain statutory provisions as "the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project.…" (Stats. 1992, ch. 1354, § 6.)

SB 50 changed subdivision (a) of Government Code section 65996 to provide that, notwithstanding CEQA or any other provision of law, Education Code section 17620[4] and certain provisions for interim urgency measures "shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act … involving [the approval of the] development of real property …." The Legislative Counsel's Digest described this change as follows:

> "(7) Existing law sets forth the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or establishment of conditions for the approval of a development project under [CEQA].
>
> "This bill would, notwithstanding any other provision of law, instead, set forth exclusive methods of considering and mitigating impacts on school facilities which occur or might occur as a result of any legislative or adjudicative act by any state or local agency involving, but not limited

[4]Education Code section 17620 authorizes the governing board of any school district to levy a charge against any construction within the boundaries of the district for the purpose of funding construction or reconstruction of school facilities, subject to the limits "set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code." The limits include a cap on the school impact fee imposed on residential construction ($1.93 per square foot) and commercial construction ($0.31 per square foot). (Gov. Code, § 65995, subd. (b)(1), (2).) The caps are adjusted every two years for inflation. (*Id.*, subd. (b)(3).)

to, the planning, use, or development of real property or any change of governmental organization or reorganization." (Legis. Counsel's Dig., Sen. Bill No. 50 (1997-1998 Reg. Sess.).)

2. Other provisions

Beside subdivision (a) and its reference to "the exclusive methods of considering and mitigating impacts on school facilities," other provisions in Government Code section 65996 mention mitigation and define the term "school facilities":

> "(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding [Government Code] Section 65858, or [CEQA], or any other provision of state or local law, a state or local agency may not deny or refuse to approve [the] development of real property … on the basis that school facilities are inadequate.
>
> "(c) For purposes of this section, 'school facilities' means any school-related consideration relating to a school district's ability to accommodate enrollment. [¶] …[¶]
>
> "(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section." (Gov. Code, § 65996.)

The Legislature's findings and declaration of policy regarding financing school facilities and mitigation of development impacts on those facilities is addressed in Government Code section 65995, subdivision (e):

> "[T]he financing of school facilities and the mitigation of the impacts of land use approvals … on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, … and the mitigation of the impacts of land use approvals … on the need for school facilities, to the exclusion of all other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, 'school facilities' means any school-related consideration relating to a school district's ability to accommodate enrollment."

Subdivision (h) of Government Code section 65995 provides that payment of the statutory fee is "deemed to be full and complete mitigation of the impacts of any

legislative or adjudicative act, or both, involving [the] development of real property … on the provision of adequate school facilities." Furthermore, a public agency may not refuse to approve the development of real property based on the developer's refusal to provide school facilities mitigation that exceeds the amount authorized by statute. (Gov. Code, § 65995, subd. (i).)

C. Contentions of the Parties

School District contends that "SB 50 does not eliminate the requirement under CEQA for full disclosure of significant environmental effects of development on school services." School District argues that Government Code section 65996 "contemplates that the decision-maker on land use approvals has the advantage of a full analysis and disclosure of school-related environmental effects of a project, in order to consider alternative mitigation measures."

In contrast, County and RPI contend that SB 50 strictly limits consideration, as well as mitigation, of school-related impacts. They argue that the addition of the words "considering and" in Government Code section 65996, subdivision (a) expands the statute beyond mitigation to include identification, analysis and evaluation. They also argue the change from "environmental effects related to the adequacy of school facilities" to "impacts on school facilities" expanded the scope of the prohibition to include any impacts on a school district's ability to accommodate enrollment (i.e., overcrowding, interim facilities, permanent facilities and all other physical and financial aspects).

D. Analysis

A reviewing court's "fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.]" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) This task begins by scrutinizing the actual words of the statute, giving them their usual, ordinary meaning. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.) Courts sometimes obtain the ordinary meaning of words by referring to a dictionary. (*Wal-Mart Stores, Inc. v. City of Turlock, supra,* 138 Cal.App.4th at p. 294 [dictionary definitions used by this court in interpreting CEQA

Guidelines]; *Leavitt v. County of Madera* (2004) 123 Cal.App.4th 1502, 1514 [dictionary definitions used to interpret CEQA provisions].)

The language in Government Code section 65996, subdivision (a) at issue in this case includes four changes enacted by SB 50. First, the former provision's phrase "exclusive methods of mitigating" was expanded to "exclusive methods of considering and mitigating." Second, the term "environmental effects" was replaced with "impacts." Third, the term "related to" was changed to "on." Fourth, the phrase "the adequacy of school facilities" was shortened to "school facilities." As a result of these changes, Government Code section 65996, subdivision (a) now refers to "the exclusive methods of considering and mitigating impacts on school facilities …."

The parties dispute the meaning of SB 50's addition of the word "considering" to the statute. No published case has addressed the meaning of this change, but one practice guide has stated:

> "In the authors' view, because the statute states that the statutory fees are the exclusive means of considering as well as mitigating school impacts, it limits not only the mitigation that may be required, but also the scope of impact review in the EIR and the findings for school impacts." (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 14.28, p. 717.)

The authors appear to believe the word "considering" encompasses (1) setting forth information in the EIR, (2) evaluating the information and (3) using it to reach a decision about certifying the EIR and approving the project. (CEQA Guidelines, § 15090, subd. (a)(2) [lead agency shall certify "that the decisionmaking body reviewed and *considered* the information contained in the final EIR prior to approving the project" (italics added)].)

The dictionary definition of the word "consider" has been set forth in a published decision of the court of appeal: "*Consider* is 'to view attentively … to fix the mind on, with a view to careful examination; to think on with care; to ponder; to study; to meditate on; …'" (*Gonzales v. Interinsurance Exchange* (1978) 84 Cal.App.3d 58, 63.) Under this definition, evidence is "considered" if it is weighed by the court. (*Ibid*.)

When this dictionary definition is plugged into the statute in place of the word "considering," Government Code section 65996, subdivision (a) provides that the capped statutory fee and certain interim urgency measures "shall be the exclusive methods of [viewing attentively, examining carefully, studying] and mitigating impacts on school facilities …."

Setting forth a description and analysis of impacts on school facilities in the EIR would be another method of examining and studying those impacts. Because the methods set forth in Government Code section 65996, subdivision (a) are exclusive, that provision obviates the need for an EIR to contain a description and analysis of a development's impacts on school facilities. Based on this interpretation, we reject School District's claim that the EIR violates CEQA because it lacks any analysis of the environmental consequences for the existing school facilities that will be forced to accommodate hundreds of students beyond current overcrowded conditions.

SB 50's substitution of "impacts" for "environmental effects" is not a change that is critical in this case. The terms "impacts" and "effects" are synonymous. (CEQA Guidelines, § 15358.)

SB 50's substitution of "on" for "related to" indicates a narrowing of the statute. The term "on" has numerous definitions, including being "used as a function word to indicate position over and in contact with that which supports from beneath" and being "used as a function word to indicate the object of action or motion …." (Webster's 3d New Internat. Dict. (1986) pp. 1574, 1575.) In contrast, the term "related to" generally is interpreted broadly by courts. (E.g., *Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 873 [term "related" is broad and commonly understood to encompass both logical and causal connections]; *CPF Agency Corp. v. Sevel's 24 Hour Towing Service*, *supra*, 132 Cal.App.4th at p. 1044 ["related to" in federal preemption provision is interpreted quite broadly].) Use of the term "related to" with "environmental effect" appears to include both direct effects on the school facilities and indirect effects on parts of the environment other than the school facilities. The

Guidelines' definition of "effect" uses the term "related to" in its expansive description of indirect or secondary effects. (CEQA Guidelines, § 15358, subd. (a)(2).) In contrast to the breadth of "related to," the use of the term "on" indicates a direct relationship between the object (i.e., school facilities) and the impact and excludes impacts to other parts of the physical environment.

Consequently, the phase "impacts on school facilities" used in SB 50 does not cover all possible environmental impacts that have any type of connection or relationship to schools. As a matter of statutory interpretation, we conclude that the prepositional phrase "on school facilities" limits the type of impacts that are excused from discussion or mitigation to the adverse physical changes to the school grounds, school buildings and "any school-related consideration relating to a school district's ability to accommodate enrollment." (Gov. Code, § 65996, subd. (c).) Therefore, the project's indirect impacts on parts of the physical environment that are not school facilities are not excused from being considered and mitigated.

Applying this statutory construction leads us to conclude that an impact on traffic, even if that traffic is near a school facility and related to getting students to and from the facility, is not an impact "on school facilities" for purposes of Government Code section 65996, subdivision (a). From both a chronological and a molecular view of adverse physical change, the additional students traveling to existing schools will impact the roadways and traffic before they set foot on the school grounds. From a funding perspective, the capped school facilities fee will not be used by a school district to improve intersections affected by the traffic. Thus, it makes little sense to say that the impact on traffic is fully mitigated by the payment of the fee. In summary, we conclude the impact on traffic is not an impact on school facilities and, as a result, the impact on traffic must be considered in the EIR.

The question about the construction of additional school facilities (either temporary or permanent) at an existing site is not as clear cut as the traffic issue because of the causal connection between the overcrowding created by the project's students and

the construction to alleviate the overcrowding. We conclude, however, the reasonably foreseeable impacts of that construction on the non-school physical environment are not "impacts on the school facilities" and are not excluded from consideration in the EIR. For illustrative purposes only, the impacts on the non-school physical environment that might result from the construction include dust that degrades air quality and noise caused by the construction activity. These types of impacts to the non-school physical environment are caused *indirectly* by the project and should be considered in the EIR. (See CEQA Guidelines, § 15358, subd. (a)(2) [indirect effects caused by the project].)

V. Analysis of Environmental Impacts*

The interpretation of SB 50 adopted in this opinion does not eliminate all of the CEQA claims raised by School District about the adequacy of the analysis of environmental impacts contained in the EIR. The remaining claims concern whether the EIR adequately analyzed certain of the project's interim environmental effects related to the use of existing, off-site schools. We refer to these effects as interim because they would cease once schools built within the project area were able to accommodate the students living in the residential development part of the project. School District's claims concern two types of interim environmental effects—the increase in traffic at or on the way to existing schools and the impacts from construction of additional facilities at existing schools made necessary by the overcrowded conditions.

A. Exhaustion and Waiver

County and RPI contend that School District is precluded from raising new issues on appeal, including the claims that (1) the EIR's traffic analysis does not account for private and school bus trips to existing schools outside the project area and (2) the EIR failed to consider the potential impacts from new construction at existing schools.

Subdivision (a) of section 21177 generally prohibits persons from suing for noncompliance with CEQA unless the alleged grounds for noncompliance were presented

*See footnote, *ante*, page 1.

to the public agency during the public comment period or during the hearing on project approval. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909.) The person attempting to raise the issue in a judicial proceeding bears the burden of demonstrating that the issue was raised at the administrative level. (*Ibid*.) The purpose of the issue exhaustion requirement in section 21177 is to promote efficiency and fairness by giving the public agency the opportunity to act on the issue and render litigation unnecessary. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 629.) Based on this purpose, an objection made during the administrative process must be sufficiently specific to notify the agency that it should evaluate and respond to the issue. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville*, *supra*, at p. 909.)

In this case, the parties' contentions raise the question whether School District's comments were sufficiently specific to satisfy the exhaustion requirement and allow School District to pursue the issue in court. Initially, we note that section 21177 and the principle of issue exhaustion do not require the CEQA issue to have been raised with as much specificity as possible. Instead, less specificity is required to satisfy the exhaustion requirement than is required to preserve an issue for appeal in a judicial proceeding. (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 712.) This lesser degree of specificity is allowed because "citizens are not expected to bring legal expertise to the administrative proceeding." (*Ibid*.)

1. Interim traffic conditions

School District's 300-page comment letter dated March 21, 2008, included a section that addressed traffic. The part of the traffic section that County designated comment No. 424 included the following: "The Traffic Study is based on the County traffic analysis model. [School] District notes that this model and the Traffic Report … also does not address the bussing and transportation needs of [School] District in terms of interim accommodations of students.…"

Also, School District's 252-page comment letter dated September 22, 2008, asserted that (1) its schools were overcrowded at that time, (2) the proposed residential development would cause further overcrowding without the provision of adequate facilities, and (3) overcrowding would result in seven enumerated consequences including "[i]ncreased traffic and circulation problems around schools and increased bussing throughout the community."

We conclude the foregoing written comments were sufficient to notify County that it should have evaluated and responded to the issue of the project's impacts on traffic near or on the way to existing schools during the period when students living in the new development would attend those schools—that is, before schools were built within the project area to accommodate those students. Therefore, we reject the argument that School District failed to exhaust this issue during the administrative process.

2. Construction of additional facilities at existing sites

School District contends that the record shows it raised concerns about the impact of students from the project attending off-site existing schools and that County and RPI were aware of these concerns, which included construction at existing schools. School District's reply brief refers to a November 20, 2008, report prepared by County's consultant, PBS&J, which responded to public comments presented at the September 23, 2008, planning commission meeting. The report indicated that School District raised the issue of overcrowding and its consequences and stated:

> "The District also wants these potential impacts included in the EIR. In order to accommodate students at current District schools, permanent and interim structures will need to be built. The District wants the Final EIR to address the impacts of these additional facilities on the existing school sites, including but not limited to site utilization, wastewater treatment, water and utility service increases, parking demands, traffic and circulation, loss of open space, and State site and design compliance."

School District contends that this report clearly demonstrates that the issue of construction of additional facilities at existing sites was raised during the administrative

process.[5] We agree. The report's reference to "additional facilities on the existing school sites" is specific enough to show that School District presented the issue about the potential environmental effects resulting from the construction of additional facilities to accommodate new students from the development until school facilities are built in the project area.

In summary, we conclude that the issue exhaustion requirements set forth in section 21177, subdivision (a) were satisfied with respect to the adequacy of the EIR's analysis of (1) traffic from private and school bus trips to existing schools outside the project area pending the construction of schools within the project area and (2) the potential environmental effects from the construction of additions, either temporary or permanent, to existing schools prior to the construction of schools in the project area.

B. Interim Impacts and School District's Decisions

County and RPI contend that the potential impacts from traffic and construction at existing schools outside the project area would occur only if School District decides not to provide on-site schools, which is not what the project or the EIR contemplates. They also contend that if School District refuses to provide on-site schools and engages in intensive school busing, that activity would be a School District project requiring its own review.

These contentions by County and RPI appear to be related to their argument that the EIR does not defer analysis of any school-related environmental impact. They assert that the EIR's analysis was based upon what was known at the time and that, where future development is unspecified or uncertain, no purpose can be served by requiring an

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[5]At oral argument, counsel for County asserted the report reflected points raised *after* the comment period was closed and, therefore those points could not be used to satisfy the issue exhaustion requirement. This argument overlooks the statutory language that authorizes the consideration of grounds of noncompliance presented "prior to the close of the public hearing on the project before the issuance of the notice of determination" (§ 21177, subd. (a)) and the way courts have applied that language (*Galante Vineyards v. Monterey Peninsula Water Management Dist*. (1997) 60 Cal.App.4th 1109). Here, School District presented the comments prior to the December 8, 2008, hearing and thereby satisfied the statutory requirement for issue exhaustion.

EIR to speculate about the future environmental consequences. (*Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 193.) The arguments and assertions of County and RPI, however, are not directed at interim conditions at existing schools. Instead, they are directed at the construction of new schools within the project area and reference the fact that specific sites have not been designated for these on-site schools.

Because the arguments presented by County and RPI do not respond directly to the issues raised by School District concerning *interim effects at off-site existing schools,* we conclude (1) their argument does not defeat School District's point and (2) the argument need not be addressed further other than to note the potential interim effects concern a "reasonably foreseeable indirect physical change[] in the environment" caused by the project. (CEQA Guidelines, § 15064, subd. (d); see *id.*, § 15144 [drafting an EIR involves some forecasting and agencies must use best efforts to find out and disclose all it reasonably can].)

Based on these conclusions, we will proceed to the question whether the EIR adequately discussed and analyzed the potential interim effects at off-site existing schools related to traffic and construction.

C. Adequacy of Traffic Analysis

County and RPI contend that "the MCTC Rio Mesa Traffic Model's forecasts discussed in EIR Section 4.13 actually do inherently account for travel to off-site schools. [Citation.]" School District responds to this contention by asserting that (1) County and RPI have ignored the issue of potential environmental effects of off-site schooling of students during the interim phases of the project and (2) the traffic model used is based on forecasts for the year 2025, not interim conditions, and does not address detailed, project-specific impacts or mitigation of those impacts.

In arguing that the EIR actually addresses the traffic impacts raised by School District, County and RPI cite to the portion of the administrative record that contains their response to the comment from School District that they designated comment No. 84. That response states:

> "The traffic impacts of the Proposed Project were predicted using the MCTC Transportation Model and are discussed in [EIR] Section 4.13 (Transportation/Traffic). The estimates of Project-related trips include trips generated for all purposes (i.e., commuting, shopping, leisure, etc.). The total number of trips estimated includes school-related trips. Therefore, the analysis in the Draft EIR includes the issues addressed by the commenter."

In response to School District's comment designated No. 424, the final EIR states: "The travel demand model includes trips generated by the schools within the project site and throughout the model, and distributes those trips accordingly." The rest of that response discusses bus traffic.

Because the final EIR responded to School District's comment by relying on the MCTC Model, our inquiry is narrowed to whether the traffic model does in fact analyze the impact of additional students at existing off-site schools during the period before the construction of on-site schools.[6] Our review of the record leads us to conclude that it does not.

Minutes from the Rio Mesa/Southeast Madera County Transportation Planners meeting of March 23, 2007, addressed MCTC updates to the traffic model. In connection with the topic of scope of the traffic studies, the minutes addressed analysis scenarios as follows:

> "1) What future years? [¶] Only a 2025 scenario needs to be analyzed in detail in the EIRs. Neither Ray nor Caltrans saw any utility in an Existing + Project or an interim year such as 2015.
>
> "2) Merits of a single Rio Mesa buildout / 'Super-cumulative' analysis. [¶] There was a consensus that this was a valid approach. Ray believes that the full Rio Mesa analysis can be done separately from the project EIRs, should be aimed only an identifying theoretical right of way needs (not detailed impacts and mitigation), and can simply be incorporated by reference into the project EIRs."

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[6]Our conclusion that the final EIR should consider interim traffic impacts is based in part on CEQA Guidelines section 15126.2, subdivision (a) which states: "Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects."

These excerpts from the minutes indicate that the traffic model was not designed or intended to address a detailed impact such as the traffic conditions at or on the way to existing schools during the period before on-site schools are built in the Tesoro Viejo project. Consequently, we reject County and RPI's contention that the EIR "identifies and analyzes all of the Project's significant school-related environmental effects."

D. Construction at Off-Site School Facilities

The final EIR does not analyze the potential environmental impacts from the construction of additional facilities at off-site schools. The appellate brief of County and RPI admits as much when they argue that these potential additions have "never been proposed for the Project." Similarly, they argue that the "Project's objectives call for schools in the Project and the EIR analyzes their impacts. If [School District] wishes to propose something else, then that is [School District's] project—not the one analyzed in the EIR."[7]

In view of the position taken by County and RPI, we need not set forth in detail contents of the final EIR to demonstrate that the document did not analyze the potential for environmental impacts resulting from construction of additional facilities at off-site schools. On remand, County should revise the EIR to address this topic in a manner that complies with CEQA.

VI. Planning and Zoning Law Standard of Review[*]

School District raises two issues under California's Planning and Zoning Law. First, is the Rio Mesa Area Plan legally sufficient as a foundation for the Tesoro Viejo

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[7]The "it's not my project" argument is unconvincing. The fundamental questions are whether School District's reaction will cause reasonably foreseeable indirect physical changes to the non-school environment and whether any such changes are significant. (See *County Sanitation Dist. No. 2 v. County of Kern, supra*, 127 Cal.App.4th at p. 1581 [test for strength of nexus between project and indirect physical change is whether change is reasonably foreseeable impact that may be caused by project; reactions of third parties to project were reasonably foreseeable under facts and circumstances presented].) The EIR should address those questions.

[*]See footnote, *ante*, page 1.

specific plan? Second, is the Tesoro Viejo specific plan inconsistent with the mandatory actions defined by the General Plan and Rio Mesa Area Plan?

The first issue regarding the legal sufficiency of the Rio Mesa Area Plan presents a question of law. (*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 292, disapproved on another ground in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11.) As such, that issue is subject to independent review on appeal. (See *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 801 [questions of law are subject to independent review].)

The second issue, which concerns consistency among plans, is subject to judicial review under a deferential standard. Some courts state that they "review decisions regarding consistency with a general plan under the arbitrary and capricious standard." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.) This is the standard of review referenced by both sides in their appellate briefs. Alternatively, other courts have stated that they review an administrative agency's consistency determinations for an abuse of discretion. (*Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 940; *Families Unafraid To Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1338.) We concur in the view that the two formulations of the standard of review are the same in substance. (*Endangered Habitats League, Inc. v. County of Orange*, *supra*, at p. 782, fn. 3.) Consequently, we will use the arbitrary and capricious formulation of the standard of review in this opinion because it is employed by the parties in their briefing.

Under the arbitrary and capricious standard of review, we will inquire "whether the [administrative] decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." (*Endangered Habitats League, Inc. v. County of Orange*, *supra*, 131 Cal.App.4th at p. 782.) Courts "defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it" (*ibid*.), which is the same as saying the finding will be upheld if supported by substantial evidence. (*Id*. at p. 782, fn. 3.)

We note, as a last point regarding the standard of review, that we are reviewing an agency determination, not the decision of the trial court. Consequently, our review is independent of the trial court's decision. (See *California Native Plant Society v. City of Rancho Cordova*, *supra*, 172 Cal.App.4th at p. 637 [question on appeal is same question presented to trial court].)

VII. Rio Mesa Area Plan's Legal Sufficiency[*]

A. Contentions of the Parties

1. School District

School District contends that the Rio Mesa Area Plan was legally insufficient as a foundation for the Tesoro Viejo specific plan because it was outdated in two respects.

First, School District challenges policy 4.2 from the land use plan component of the Rio Mesa Area Plan.[8] That policy stated: "The Rio Mesa area should be consolidated into one school district. This can be accomplished by joining an existing district or creation of a new separate district." School District contends this policy was not "current with existing conditions, after substantial consolidation and revisions of district boundaries between 1995 and 2005." School District also contends that the outdated policy was significant in this case because County allowed RPI to use the policy's reference to possible changes of school district boundaries as an excuse to disenfranchise School District from the land use planning process.

Second, School District contends the Rio Mesa Area Plan was outdated because it did not identify accurately the jurisdiction of existing school districts, which meant that the Tesoro Viejo specific plan was not rooted in the reality of current conditions affecting school services. Section 2.3.2 of the Rio Mesa Area Plan, "Infrastructure and Services Setting," summarized the educational services provided in the Rio Mesa project area as

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[*]See footnote, *ante*, page 1.

[8]The stated purpose of the goals and policies of the land use plan component was to "provide a framework for the mix and allocation of uses within the land use plan."

follows: "The school districts which serve the Rio Mesa community are the Chawanakee Joint School District …, the Madera Unified School District … and the Sierra Joint Union High School District."

2. County and RPI

County and RPI contend the Rio Mesa Area Plan is legally sufficient because (1) there is no statutory requirement that directs general plans to address school district boundaries, (2) the Tesoro Viejo specific plan was not affected by any alleged inadequacy in the description of those boundaries, and (3) there is no implied statutory duty to update a general plan to account for changed school district boundaries.

B. Policy 4.2 of the Rio Mesa Area Plan

In analyzing the challenge to policy 4.2 of the Rio Mesa Area Plan, we will review the two sentences of that policy separately.

First, is policy 4.2 out of date because it states that the "Rio Mesa area should be consolidated into one school district"? We conclude this statement of a policy preference for one school district in the Rio Mesa area was not rendered obsolete by events that occurred after the adoption of the Rio Mesa Area Plan in 1995. The Tesoro Viejo specific plan acknowledges that there are two school districts in that plan's area. Therefore, it is not out of date for the Rio Mesa Area Plan to still state a policy preference for one school district.

The second sentence of policy 4.2 of the Rio Mesa Area Plan states that a single school district "can be accomplished by joining an existing district or creation of a new separate district." This sentence appears to be an accurate statement of ways in which the policy of a single school district could be achieved. School District has not argued, and we have located nothing in the record that suggests, this sentence presents outmoded or obsolete ways of establishing a single school district in the Rio Mesa area.

Based on the foregoing, we conclude that School District has failed to establish that policy 4.2 of the Rio Mesa Area Plan is, in fact, out of date.

C. Identification of School Districts

It is undisputed that section 2.3.2 of the Rio Mesa Area Plan, which states that the Rio Mesa community is served by "the Chawanakee Joint School District …, the Madera Unified School District … and the Sierra Joint Union High School District," is no longer accurate. The inaccuracy is established by, among other things, subsection 4.12.9 of the EIR, which states that the project site is included in School District and the Golden Valley Unified School District, and contains an aerial map showing which parts of the project site are in each district.

Consequently, the legal issue presented is whether the stale information about school districts contained in the Rio Mesa Area Plan rendered the General Plan legally inadequate.

To be legally adequate, a general plan must substantially comply with the statutory requirements for plans. (*Garat v. City of Riverside, supra*, 2 Cal.App.4th at p. 293.) In other words, "the standards of adequacy are defined by the statutes related to general plans." (*Ibid*.) The party challenging the adequacy of the general plan has the burden of demonstrating the plan is inadequate. (*Ibid*.)

School District has cited, and we have located, no statute that requires general plans to describe, identify, or list the school districts that cover the general plan area. Furthermore, except for the provisions in Government Code section 65588 concerning the housing element of a general plan, "there is no statutory requirement that the general plan be revised according to any particular schedule." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 788, citing *Garat v. City of Riverside, supra*, 2 Cal.App.4th at p. 296.) Although a county may have "an implied statutory duty to keep its general plan current" (*DeVita*, at p. 792), School District has not cited any case that extends this duty to a part of the General Plan that is not required by statute.

Consequently, because School District has not demonstrated that the General Plan's description of the local school districts was required by statute, it has failed to

show that any obsolescence in that description violates a statutory requirement and renders the General Plan inadequate.

Finally, we note that the dated information about school districts in section 2.3.2 of the Rio Mesa Area Plan was not used as a basis for the Tesoro Viejo specific plan. Section 2.4 of the Tesoro Viejo specific plan, labeled "Schools—A Center of Community Activity," recognized that the project area lay within two school districts:

> "While it is recognized that there are two school districts encompassing a portion of Tesoro Viejo's land, it is also known that there are currently no schools within a reasonable distance (not even within five miles) of Tesoro Viejo, especially not within walking distance for elementary school age children or bicycling distance for older children, a major priority for Tesoro Viejo. Tesoro Viejo's planning is based on the Rio Mesa Area Plan, which calls for a new school district for Rio Mesa. Since it is not known if or when that will occur, the Tesoro Viejo Specific Plan has had to include other options for community-based schools within Tesoro Viejo."

The foregoing demonstrates the description of "the Chawanakee Joint School District …, the Madera Unified School District … and the Sierra Joint Union High School District" contained in the Rio Mesa Area Plan was not relied upon in the preparation of the Tesoro Viejo specific plan.

VIII. Consistency with the General Plan*

A. Contentions of the Parties

School District contends that the Tesoro Viejo specific plan was not consistent, and did not comply, with mandatory requirements of the General Plan and Rio Mesa Area Plan. School District asserts County had mandatory duties to consult, cooperate, and coordinate with it during the land use planning process. School District argues County violated these duties by not affirmatively cooperating with it and failing to respond to its concerns.

School District's reply brief summarizes its position as follows: "The complete absence of any substantive effort by the County to engage [School District] in the land-

*See footnote, *ante*, page 1.

use planning process for Tesoro Viejo is directly contrary to the mandatory duties defined by the general plan."

County and RPI contend that the Tesoro Viejo specific plan's provisions regarding schools are consistent with the General Plan, and some of the provisions relied upon by School District are advisory only. They assert that School District is pursuing its claims to get RPI to pay over $100 million for schools, which is many times the development fee authorized by SB 50.

B. Policies

Section 3 of the General Plan addresses public facilities and services. Schools are among the public facilities and services addressed in the General Plan, with the stated goal of "provid[ing] for the educational needs of Madera County residents." To achieve this goal, the General Plan enumerates 13 policies. School District references the following school siting policies in its opening brief:

> "3.I.1 The County shall work cooperatively with school districts in monitoring housing, population, and school enrollment trends and in planning for future school facility needs, and shall assist school districts in locating appropriate sites for new schools.
>
> "3.I.2 The County's land use planning should be coordinated with the planning of school facilities and should involve school districts in the early stages of the land use planning process. [¶] … [¶]
>
> "3.I.4 The County shall include schools among those public facilities and services that are considered an essential part of the infrastructure and shall work with local school districts to see that facilities and services are provided to meet educational needs. [¶] … [¶]
>
> "3.I.7 Specific plan and area plans shall identify school facilities required to serve the development encompassed by the plans and shall provide a mechanism to ensure that the school facilities will be available concurrent with the need for the facilities."

School District's opening brief also references the following mitigation measures from the March 1995 final EIR for the Rio Mesa Area Plan:

> "4.15.5.1 The school districts are responsible for determining the exact locations of school facilities.… Specific sites will be determined by

availability and most appropriate locations related to the area they will serve. [¶] … [¶]

"4.15.5.5 Development projects shall not be approved unless the decision making body finds that provisions for reservation of school sites are adequate to meet the needs of the school district.

"4.15.5.6 Residential rezone, general plan amendment, tentative/parcel/final map requests shall not be approved unless accompanied by a finding that school facilities to accommodate projected students consistent with service level standards will be available in a timely manner to serve the project or that the project includes phasing conditions to ensure coordination of residential construction and school construction consistent with policy."

The board of supervisors of County adopted a resolution that included the finding that the Tesoro Viejo specific plan was consistent with the General Plan and was "compatible with the objectives, policies, general land uses, and programs of those plans for the reasons set forth in the staff report prepared for this project, and in the EIR prepared for this project, which are incorporated herein." In addition, subsection 4.12.10 of the final EIR sets forth General Plan policies 3.I.3, 3.I.5 and 3.I.7, discusses those policies, and concludes that the proposed project complies with the policies.

C. Analysis of Policy Compliance

Initially, we note that this is not a case where the petitioner is claiming that a particular provision or clause in a specific plan is inconsistent with a general plan. Instead, School District is claiming that County did not fulfill mandatory duties during the process that led to project approval.

1. Coordination

School District contends County violated General Plan policy 3.I.2 because "[t]he required coordination of land use planning and the planning of school facilities was not accomplished by the County in this case."

County and RPI contend there was no violation of this policy or inconsistency because (1) the policy is advisory, not mandatory, and (2) the numerous communications

with School District constitute substantial evidence that coordination and involvement did occur.

Policy 3.I.2 of the General Plan states that "County's land use planning *should* be coordinated with the planning of school facilities and *should* involve school districts in the early stages of the land use planning process." (Italics added.)

The contentions of the parties raise an issue regarding the proper interpretation of policy 3.I.2 of the General Plan. Generally, courts interpret the word "should" as advisory rather than mandatory like the word "shall." (*People v. Webb* (1986) 186 Cal.App.3d 401, 409, fn. 2; *Cuevas v. Superior Court* (1976) 58 Cal.App.3d 406, 409 ["should" used in statute as recommendation, not mandate].) We conclude such an interpretation is appropriate in this instance and, therefore, agree with County's position that General Plan policy 3.I.2 is advisory, not mandatory. Because the policy is advisory, County's actions do not constitute a violation of a mandatory coordination requirement, such as that discussed in *California Native Plant Society v. City of Rancho Cordova*, *supra,* 172 Cal.App.4th at pages 639 through 642. Thus, the interpretation of the word "coordination" adopted in that case does not compel a conclusion that County violated a mandatory policy in this case.

With respect to the advisement to involve school districts early in the planning process, County and RPI note that County had numerous communications with School District, notified it of all the hearings, and addressed its long comment letters to the draft EIR and the final EIR. We conclude that these actions by County demonstrate that it did not act arbitrarily, capriciously, or in a manner that was procedurally unfair towards School District regarding the strategy set forth in policy 3.I.2 of the General Plan.

2. Working cooperatively

Policy 3.I.1 of the General Plan states that County shall work cooperatively with school district in *monitoring* school enrollment trends and in *planning* for future school facility needs.

The record shows that County did work with School District regarding its enrollment. For example, table 4.12-1 in the EIR provides information regarding the operating capacity of schools serving the project site, the current enrollment, projected enrollment for the next two school years, and the shortfall between capacity and projected enrollment. This is substantial evidence that County has cooperated with School District in monitoring enrollment trends.

With respect to the policy's requirement to work cooperatively to plan for future school facility needs, the Tesoro Viejo specific plan contains provisions regarding future school facilities and the educational needs the development will generate. Thus, the specific plan is consistent with the General Plan in this regard, and County did not violate a duty to plan for future school facility needs.

Lastly, County's consistency finding necessarily includes an implied finding that it worked cooperatively with School District with regard to monitoring enrollment and planning for future school facility needs. We recognize that the record shows County and School District disagreed on various matters, but it does not establish that (1) the disagreements arose from County's unwillingness to cooperate or (2) the degree of cooperation with School District on the topic of future facility needs was so lacking that, applying the arbitrary and capricious standard of review, we can conclude that County's finding regarding cooperation is not supported by substantial evidence. (See *Neilson v. City of California City* (2007) 146 Cal.App.4th 633, 641 [where conflicting inferences can be drawn from the evidence, we accept all reasonable inferences supporting administrative findings].)

3. Policy 3.I.7 of the General Plan

The General Plan's policy 3.I.7 regarding the siting of school facilities requires the identification of school facilities required to serve the development and a mechanism to ensure the facilities are available concurrent with the need for them.

School District contends County violated General Plan policy 3.I.7 by failing "to correct the scheme by [RPI] to define a fictional system of schools within the project,

which does not comply with [School District's] policies and standards." School District contends County did not correct the error because County allowed RPI to use outdated policy 4.2 of the Rio Mesa Area Plan, which referenced possible changes in the school boundaries.

Before discussing this specific argument, we will describe some of the provisions of the Tesoro Viejo specific plan that attempt to comply with policy 3.I.7 of the General Plan. First, subsection 2.4.1 of the Tesoro Viejo specific plan addresses school facilities siting, composition, and relationship to trails and streets. Second, section 5.6 of the Tesoro Viejo specific plan is entitled "School Implementation," and subsection 5.6.1 addresses school facility construction, discussing the possibility of charter school operations within the development, but also mentions the possibility that schools and school sites will be transferred to the relevant school district. With regard to such transfer, the subsection states: "However, precise details on such matters will have to await the development of a detailed plan for schools to occur later."

We conclude that School District's claim that General Plan policy 3.I.7 was violated by the use of a fictional system of schools lacks merit because it does not present the entire picture. The Tesoro Viejo specific plan does not rely completely on the implementation of charter schools. It also considers the possibility that school facilities will be transferred to the relevant school district. The specific plan's reference to the "relevant school district" is broad enough to cover the possibility that a new school district will be formed for the Rio Mesa area as well as the possibility that School District still will cover most of the project area at the time of the transfer. Covering both of these possibilities is appropriate in view of our conclusion that policy 4.2 of the Rio Mesa Area Plan was not out-of-date as contended by School District. (See pt. VII.B., *ante*.)

In summary, we conclude that School District has not carried its burden of showing that County's consistency findings were arbitrary, capricious, unsupported by substantial evidence or procedurally unfair. Therefore, the trial court correctly denied School District's claim under the California Planning and Zoning Law.

DISPOSITION

The judgment is reversed. The matter is remanded to the superior court with directions to vacate its order denying the petition for writ of mandate and to enter a new order that grants the petition for writ of mandate and compels County to (1) set aside the certification of the final EIR, (2) set aside the approvals of the project, and (3) take the action necessary to bring the EIR into compliance with CEQA regarding its analysis of (a) traffic from private and school bus trips to existing schools outside the project area pending the construction of schools within the project area and (b) the potential environmental effects from the construction of additions, either temporary or permanent, to existing schools prior to the construction of schools in the project area.

The superior court shall retain jurisdiction over the proceedings by way of a return to the writ.

Costs on appeal are awarded to plaintiff.

_____
DAWSON, Acting P.J.

WE CONCUR:

_____
KANE, J.

_____
VORTMANN, J.*

*Judge of the Tulare Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.