

## City Suing School District Can Recover Attorneys' Fees, But Loses Most CEQA Claims

Decisions by school districts and colleges to build new schools or expand existing ones frequently lead to CEQA challenges from local cities. In the most recent of these conflicts to reach the court of appeal, the City of Maywood won confirmation that it was eligible to recover attorneys' fees from a school district, but saw most of its CEQA claims rejected. California's "private attorney general" statute allows some successful litigants in public interest litigation to recover their attorneys' fees from the losing side. But before a court can award these fees, it must find that the litigation imposed a financial burden on the winners that was "out of proportion to their individual stake in the matter." Until 2010, courts were split on the question whether the "individual stake" that might bar a fee award could be nonpecuniary (*e.g.*, a strong personal interest in the welfare of a sibling), or had to be pecuniary (*e.g.*, protection of the value of the plaintiff's property). In *Conservatorship of Whitley*, the Supreme Court resolved the split, holding that an individual litigant's personal, nonpecuniary motives could not disqualify the litigant from obtaining fees.

In *City of Maywood v. Los Angeles Unified School District*, a city bought a multitude of CEQA claims challenging a school district's decision to build a high school in the city. The city ended up winning only one of those claims. Relying on authorities that pre-dated *Whitley*, the district argued that the city could not recover any attorneys' fees, in part because the city had sued to "protect its citizens' interests in ensuring that the environmental consequences of the project were fully disclosed and adequately investigated." Unsurprisingly, the court of appeal held that *Whitley* was controlling; the nonpecuniary interests, no matter how strong, of a public agency, like those of a private party, were irrelevant to the agency's ability to collect attorneys' fees under the private attorney general statute.

The court also examined six claimed CEQA inadequacies in the district's EIR for the high school. The single claim the court upheld was a challenge to the EIR's conclusion that the school's pedestrian safety impact would not be significant, due to a pedestrian bridge that would span the busy street bisecting the school site. The court examined the administrative record and concluded it did not support the EIR's conclusion because there was no evidence that pedestrians would be obligated to use the bridge. In the ruling of more significance to other projects, the court rejected the city's claim that the EIR's cumulative impacts analysis should have included a proposed freeway expansion project. Endorsing a fact-specific approach, the court ruled that even though a notice of preparation of an EIR for the freeway project had been issued, the freeway project was not sufficiently certain to allow for meaningful cumulative impacts analysis and therefore was properly omitted. The *City of Maywood* holding regarding the private attorney general doctrine is a straightforward application of the *Whitley* decision. The court's lengthy analysis of the city's CEQA claims reflects a trend toward increasing judicial attention to the details of CEQA records -- and inclusion of those details in published decisions. [City of Maywood v. Los Angeles Unified School District](#), B233739, B236408, 2nd Dist. 7th Div. (July 31, 2012) (full publication order August 14, 2012).

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