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## **Does a project's impact on the "character of the community" need to be evaluated under CEQA?**

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Harry Rogers owned and operated a horse boarding facility called the Stock Farm, in the City of Poway, California – a city that proudly calls itself the "City in the Country." Rogers wanted to shut down the Stock Farm and subdivide his land into residential lots. Not surprisingly, some of the town folk were not pleased. In proceedings before the City Council, members of the public passionately opposed the project, asserting the project would damage the community's rural, horse-friendly character.

After the city approved Rogers's subdivision, a local group sued the city and Rogers under the California Environmental Quality Act ("CEQA"), alleging, among other things, that the replacement of the horse boarding facility with residences would adversely impact "community character." The trial court agreed and entered judgment in favor of the local group, setting aside the city's approval of the project and requiring the city to prepare an Environmental Impact Report ("EIR") before re-approving the project.

But the court of appeal reversed, and in so doing provided helpful guidance to distinguish between cases in which "community character" must be addressed under CEQA, and those in which it need not be.

### **Preserve Poway v. City of Poway**

In *Preserve Poway v. City of Poway* 199 Cal.Rptr.3d 600 (Mar. 9, 2016), the court examined the circumstances under which CEQA requires a lead agency to evaluate a project's impact on the character of the

community. First, the court recognized that CEQA requires review of only “environmental” issues – not economic or social issues. *San Franciscans for Responsible Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1516. CEQA defines “environment” as “the *physical conditions* which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.” Pub. Res. Code, §21060.5 (emphasis added). Thus, a CEQA analysis must focus on a project’s physical changes to the environment. 14 Cal. Code Regs., §15131(a).

Nevertheless, some courts have held that a project’s impact on the character of a community must be addressed under CEQA to the extent that a project impacts “aesthetic” resources. See e.g., *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4<sup>th</sup> 357, 363, 374-375 (colorful school playground’s aesthetic impacts on historic character of neighborhood); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4<sup>th</sup> 903, 937 (visual “tunneling” or “canyoning” effect of long double rows of houses flanking a narrow private street); *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4<sup>th</sup> 477, 485, 492 (condominium project’s impacts on public and private ocean views); *Ocean View Estates Homeowners Assn., Inc. v. Monctito Water Dist.* (2004) 116 Cal.App.4<sup>th</sup> 396, 402-402 (overall aesthetic impact on public and private views of aluminum reservoir cover); *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4<sup>th</sup> 885, 889, 901 (neighbor complaints that less development would preserve the beauty of the area).

In this case, however, the court found that the impacts of Harry Rogers’s project were not aesthetic impacts. Project opponents decried the loss of the Stock Farm and its replacement with residential lots, because the Stock Farm teaches kids in the community valuable life lessons, keeps them out of trouble, and helps them excel in school and life. The Stock Farm brings families closer together, and the project would take more “country” out of the “City in the Country,” contributing to the decay of the city’s rural feel.

The court held that these impacts were not physical impacts on an aesthetic resource, but rather, were psychological and social impacts

that need not be considered under CEQA.

Appendix G of the CEQA guidelines provides criteria by which a lead agency can determine whether a project has a significant impact on aesthetic resources. Those criteria include whether the project would have a substantial adverse impact on a scenic vista or other scenic resources such as trees, rock outcroppings, or historic buildings; or whether the project would substantially degrade the existing visual character or quality of the site and its surroundings; or whether it would create a new source of substantial light or glare. In this case, the court held that the city adequately evaluated the project's impacts under these criteria, and properly concluded that the project would not have a significant impact on aesthetics.

### **Conclusion**

Thus, complaints about a project's impact on the character of the community should be carefully reviewed to assess whether the impacts complained of constitute physical impacts affecting an aesthetic resource, or whether they are merely psychological or social impacts.

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