

April 30, 2010 | Posted By

[Supercenters Do Not Automatically Trigger Requirement To Study Urban Decay Effects In An EIR](#)

[Patricia Melom v. City of Madera, ___ Cal. App. ___ \(March, 24, 2010, No. MCV037258\)](#)

By [Phillip Tate](#)

Retail "supercenters" do not automatically trigger the need to study urban decay effects in an environmental impact report ("EIR"). Rather, the project or the change in the project should be the focus of the inquiry as to whether additional study is needed, and not the type of retail store.

In *Patricia Melom v. City of Madera*, Case No. MCV037268 (Ct.App. March, 24, 2010), Melom argued that the City of Madera (the "City") had violated the California Environmental Quality Act ("CEQA") by approving a development agreement for a retail shopping center project without preparing a subsequent or supplemental EIR after the largest retail space on the site plan grew significantly in square footage from what was originally studied in the EIR. The City had originally certified an EIR for the proposed retail center with approximately 795,000 square feet of gross floor area in November 2006. The conceptual site plan in the EIR showed the shopping center being divided into approximately 30 retail spaces, the largest of which was 125,000 square feet. The developer submitted a refined site plan in March, 2007 that showed a reconfiguration of the retail spaces within the shopping center. While the square footage for the entire shopping center remained unchanged at approximately 795,000 square feet, the largest retail space grew to approximately 198,484 square feet and was designated as a Target Supercenter.

After the Director of the Community Development Department approved the site plan administratively, an Addendum to the EIR was prepared stating that there were no substantial changes to the project which would require major revisions to the EIR. The City Planning Commission approved the Addendum and the development agreement in July 2007 and the City Council followed suit on August 1, 2007. Melom subsequently filed suit.

The trial court dismissed Melom's suit, finding that the City did not violate CEQA. Melom appealed, claiming that [Bakersfield Citizens for Local Control v. City of Bakersfield \(2004\) 124 Cal.App.4th 1184 \(Bakersfield\)](#) and [American Canyon Community United for Responsible Growth v. City of American Canyon \(2006\) 145 Cal.App.4th 1062 \(American Canyon\)](#) both require a government entity to prepare an EIR addressing

“potential urban decay effects” whenever a governmental entity approves a project that includes a so-called “supercenter.”

The Court of Appeal disagreed, stating that while *Bakersfield* and *American Canyon* both used the word “supercenter” as a generic term, neither case defined the word, nor is it defined in any statute or CEQA Guideline. The court went on to explain that the test under CEQA is whether an agency proposes or intends to carry out or approve a project that would have a significant effect on the environment, not whether a store is classified as a “supercenter” or not. When there is a change to such a project, the question then becomes whether those changes would require a major revision of a previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The court clarified that it is the project or the change in the project that is the focus of the inquiry; not whether the project or change in the project is of a certain type (i.e., a supercenter). As such, the court held that the inclusion of a supercenter does not automatically trigger the need to examine the urban decay effects in an EIR.

Authored By:

[Phillip M. Tate](#)

(213)617-5575

PTate@sheppardmullin.com