



In a Major CEQA Decision, Court of Appeal Affirms Transit Agency's Use of Future Baseline to Evaluate Project Impacts on Traffic, Air Quality & Greenhouse Gas Emissions

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In a decision of great importance to transportation and public works projects, and to all other projects in California, the California Court of Appeal held that in appropriate circumstances lead agencies conducting CEQA review may use projected future conditions to determine the significance of potential impacts of transportation projects on traffic and air quality. Nossaman represented the Exposition Metro Line Construction Authority and Authority Board in the litigation. *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2012) __ Cal.App.4th __ (April 17, 2012, B232655).

In *Neighbors for Smart Rail*, the Second District Court of Appeal in Los Angeles expressly declined to follow a controversial opinion issued by the Sixth District Court of Appeal in *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, in which the court held that, as a matter of law, transportation agencies do not have the discretion to use projected future conditions to evaluate traffic impacts. The *Sunnyvale* court opined that a lead agency is required to use as a baseline the conditions projected to exist no later than the date of project approval. Any further into the future, and the baseline, according to *Sunnyvale*, could not allow for a comparison of project impacts with "existing" conditions under CEQA.

Sunnyvale has confounded transportation planners and CEQA practitioners, and has threatened to delay billions of dollars in new transportation projects throughout California while agencies grappled with the

questions whether and how to conduct an analysis of a long-term project's impacts on currently existing conditions. The *Sunnyvale* analysis would require the agency to determine the significance of a project's impacts by pretending that the project would materialize and reach full utilization as of the date CEQA analysis began, even where the project may not be built or fully operational for many years. Moreover, *Sunnyvale* conflicted with other decisions that held that the lead agency had discretion to select an appropriate environmental baseline provided that the selected baseline was supported by substantial evidence.

Responding to *Sunnyvale*, after considering the relevant provisions of CEQA, the CEQA Guidelines, and other case law, the Court in *Neighbors for Smart Rail* stated: "[W]e reject the notion that CEQA forbids, as a matter of law, use of projected conditions as a baseline. Nothing in the statute, the CEQA Guidelines, or [*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310] requires that conclusion." (Slip Op. at 15.) Instead, the Court concluded that "[a] decision to measure environmental effects of a long-term project by looking at those effects in the long term is neither hypothetical nor illusory. It is a realistic and rational decision." (Slip Op. at 16.)

The Court's Reasoning

The petitioners in *Neighbors for Smart Rail* challenged the approval of Phase 2 of the Exposition Corridor light rail line between Culver City and Santa Monica in Los Angeles County. Following a well-established approach to the analysis of traffic and air quality impacts endorsed by regional transportation and air quality agencies in California, the Exposition Metro Line Construction Authority used official population projections and approved traffic and air quality models to evaluate the potential significance of impacts of the project on traffic and air quality in 2030. The EIR compared traffic and air quality conditions with and without the project to determine the project's potential impact on traffic, air quality, and greenhouse gas emissions. The EIR also disclosed changes in traffic and air quality from the date of the preparation of the EIR, but the Exposition Authority utilized its discretion to use projected future conditions with and without the project to determine the significance of the impacts.

The project opponents claimed that the *Sunnyvale* decision required the Expo Authority to use 2007 as the baseline for determining the significance of traffic and air quality impacts because to use a future projected baseline would result in a comparison of the project's impacts with "hypothetical" future conditions, not "existing conditions." The Court of Appeal rejected the opponents' argument stating:

We agree with the Expo Authority . . . that, in a proper case, and when supported by substantial evidence, use of projected conditions may be an appropriate way to measure the environmental impacts that a project will have on traffic, air quality and greenhouse gas emissions. As a major transportation infrastructure project that will not even begin to operate until 2015 at the earliest, its impact on *presently existing* traffic and air quality conditions will yield no practical information to decision makers or the public. An analysis of the environmental impact of the project on conditions existing in 2009, when the final EIR was issued (or at any time from 2007 to 2010), would only enable decision makers and the public to consider the impact of the rail line *if it were here today*. Many people who live in neighborhoods near the proposed light rail line may wish things would stay the same, but no one can stop change. The traffic and air quality conditions of 2009 will no longer exist (with or without the project) when the project is expected to come on line in 2015 or over the course of the 20-year planning horizon for the project. An analysis of the project's impacts on anachronistic 2009 traffic and air quality conditions would rest on the false hypothesis that everything will be the same 20 years later.

(Slip Op. at p. 19-20, emphasis in original.)

The Court also rejected the many other challenges to the Final EIR advanced by the project opponent. Specifically, the Court concluded that the Final EIR adequately evaluated (1) potential traffic impacts on Sepulveda Boulevard, (2) growth-inducing impacts, and (3) potential cumulative impacts. The Court also ruled that the Final EIR considered a reasonable range of project alternatives, and that there was no significant new information that requires recirculation of the EIR.

What Does This Mean for Your Project?

The Court has certified the part of the opinion concerning the baseline issue. Thus, as legal precedent, it breathes new life into the longstanding approach of state and local transportation agencies to the analysis of traffic and air quality impacts.

But now that there is a split of legal authority, what is a lead agency to do?

Some authorities support an argument that where the holdings of two courts of equal dignity conflict, the latest decision is binding on lower courts, which would mean the legal baseline holding in *Sunnyvale* is no longer good law. However, there are authorities that appear to afford the courts some discretion to adopt and follow the "better rule." Thus, the implications for any given case or project must be carefully considered.

The Bottom Line

Neighbors for Smart Rail is cause for optimism, not only for transportation agencies, but for all Californians who stand to benefit in the long run from rail and other transportation projects designed to reduce air emissions, traffic congestion, and noise.