



# Court Rejects NEPA, Section 4(f) Challenges to Arizona South Mountain Freeway Project

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In a decision of national importance to the transportation community, the U.S. District Court for the District of Arizona rejected National Environmental Policy Act (NEPA) challenges and Section 4(f) challenges to the 22-mile South Mountain Freeway Project in southwestern Phoenix, Arizona. *Protecting Arizona's Resources and Children v. Federal Highway Administration*, No. CV-15-00893 (D. Ariz. Aug. 19, 2016).

The decision has implications for other transportation projects because it affirms that transportation agencies may (1) define a project's purpose and need and the range of alternatives based on the objectives described in an approved regional transportation plan, and (2) in certain circumstances, rely on the socioeconomic projections created by the metropolitan planning organization to form the basis of both the Action and No-Action Alternatives.

Nossaman served as counsel to the Arizona Department of Transportation, and Nossaman partner Robert Thornton argued the cases in the District Court.

## **Purpose of Project May Be Defined by Regional Transportation Plan and Statutory Objectives**

The Court relied on the Ninth Circuit's decision in *Honolulutraffic.com v. Federal Transit Administration*, 742 F.3d 1222 (9th Cir. 2014) and the Department of Transportation's linkage rule, concluding that transportation agencies may frame a project's purpose and need and range of alternatives based on the policies and objectives in the regional transportation plan. Here, the regional transportation plan determined that the most appropriate means of relieving congestion on Interstate 10 in Phoenix was to provide a major transportation corridor, concluding that mass transit options would not sufficiently reduce congestion in the southwestern portion of the Phoenix Metropolitan Area. The Court found the Federal Highway Administration's and Arizona Department of Transportation's (Agencies) reliance on the regional transportation plan to frame the Project's purpose and need was not improper, was consistent with, and

indeed mandated by, federal law. See 23 C.F.R. pt. 450, App. A (explaining the linkage between state planning and NEPA for federally-funded transportation projects).

### **Federal Agency May Use Prior State Studies to Narrow Range of Alternatives**

Plaintiffs claimed that the Agencies failed to consider an appropriate range of alternatives to the Project because the EIS evaluated in detail one build alternative in the Eastern Section. The Court, relying on the Ninth Circuit's decisions in *Honolulutraffic.com and Laguna Greenbelt, Inc. v. Department of Transportation*, 42 F.3d 517 (9th Cir. 1994), found that a federal agency is not required to reconsider or discuss alternatives that have already been rejected in prior state studies. Here the Agencies not only relied upon prior state studies to inform their alternative choices, but conducted their own multi-tiered alternatives screening process that considered both freeway alternatives and alternate modes of transportation.

### **Federal Agency May Rely on Socioeconomic Projections Created by the Metropolitan Planning Organization to Form the Basis of Both the Action and No-Action Alternatives**

Plaintiffs claimed that the environmental analysis for the Project was flawed because both the Action Alternatives and the No-Action Alternative relied on socioeconomic projections approved by the Metropolitan Planning Organization. The Court concluded that use of socioeconomic projections in the analysis of the Action and No-Action Alternatives was reasonable, due to the similarity between this case and the factual circumstances in *Laguna Greenbelt, Inc. v. U.S. Department of Transportation*. The Court noted that the historic growth trends in the region and pace of development have progressed and will continue to progress with or without the Project.

### **Federal Agencies are Not Required to Evaluate Population-Specific Impacts Where Impacts Will Be the Same Throughout the Study Area**

The Gila River Indian Community Plaintiffs argued that the Agencies should have separately considered the Project's potential impacts on the Gila River Indian Community, rather than evaluating the Project's potential impacts for the entirety of the Study Area. The Court disagreed, noting that it was the Plaintiffs' burden to show how and why the analysis of . . . impacts should have differentiated between GRIC members and the population in general in the Study Area and that the Plaintiffs failed to fulfill this burden. In so finding, the Court noted the lengthy involvement of the Gila River Indian Community in the project development process and the Agencies' inclusion of the Community's concerns throughout the Project's Environmental Impact Statement.

### **Compliance with National Ambient Air Quality Standards is Per Se Compliance with NEPA**

The Court rejected Plaintiffs' argument that the Agencies violated NEPA by failing to separately analyze the Project's air quality impacts on children's health. Because the EIS included an air quality analysis that demonstrated compliance with the applicable National Ambient Air Quality Standards (NAAQS), which are meant to protect sensitive populations, like children, the Court determined that the Agencies' analysis was per se sufficient for NEPA purposes.

### **A 15% Level of Design Is Appropriate So Long As Impacts Can Be Analyzed and Mitigated**

Plaintiffs challenged the level of design for the Project, arguing that a 15% level of design does not allow for proper analysis and mitigation of potential impacts. The Court disagreed, noting that federal law constrains

agencies to preliminary design prior to the record of decision, and finding that this level of design did not prevent the Agencies from providing a full discussion of the Project's potential impacts and possible mitigation measures to address and minimize those impacts. This aspect of the decision will benefit P3 projects.

**Federal Agencies May Reject Feasible and Prudent Alternatives That Fail to Meet the Project's Purpose and Need**

The Court rejected Plaintiffs' argument that the Project violated Section 4(f) of the Department of Transportation Act by improperly rejecting feasible and prudent alternatives. Finding that the No-Action Alternative failed to meet both the projected system deficiencies and socioeconomic needs, the Court found rejection of this alternative proper. Similarly, the Court found that other alternatives raised by the Plaintiffs failed to meet the need for the Project, would impermissibly require use of the Community's land, or would provide little relief for existing and future congestion. Based on these determinations, the Court concluded that the Agencies appropriately concluded that no feasible and prudent alternatives would avoid impacting the South Mountain Park Preserve.