

Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (2013) 57 Cal.4th 439

In 2010, the Exposition Metro Authority prepared and certified an EIR for the second phase of the light rail line along the Exposition Corridor connecting downtown Los Angeles and Santa Monica (phase one was approved in 2005). The second phase was anticipated to be completed and begin operations in 2015. The Construction Authority prepared and certified an EIR for the project. The EIR described the existing environmental conditions and used that as the baseline for analyzing most environmental issues. However, for purposes of air quality, greenhouse gas emissions, and traffic analyses, the Construction Authority applied a 2030 baseline reflecting the Southern California Association of Governments' (SCAG's) 2030 regional demographic projections and its list of transit service and road improvements expected to be in place by 2030.

Neighbors brought suit, arguing among other things that a 2030 baseline was inconsistent with the CEQA Guideline's provision that the existing condition at the time of release of the NOP or at the initiation of the CEQA process is "normally" the baseline. The Court of Appeal found no fault in the 2030 baseline, holding that in a growing area it made sense to utilize a future projection as the baseline because existing conditions would not reflect conditions at the time the project reached full operation. It upheld the baseline and the Authority's EIR.

The Supreme Court, in a split opinion worthy of King Solomon, held that the EIR's 2030 baseline year for traffic and air quality impact analysis was improper, but that it did not result in a "prejudicial error" that would require the Court to invalidate the EIR. The Court reached the following conclusions:

- "[T]hat existing conditions is the normal baseline under CEQA, but that factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decisionmakers."
- "CEQA and the Guidelines dictate a rule less restrictive than *Sunnyvale West*'s but more restrictive than that articulated by the Court of Appeal [in this case]. Projected future conditions may be used as the sole baseline for impacts analysis if their use in place of measured existing conditions—a departure from the norm stated in Guidelines section 15125(a)—is justified by unusual aspects of the project or the surrounding conditions. That the future conditions analysis would be informative is insufficient, but an agency does have discretion to completely omit an analysis of impacts on existing conditions when inclusion of such an analysis would detract from an EIR's effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public."
- "[I]n appropriate circumstances an existing conditions analysis may take account of environmental conditions that will exist when the project begins operations; the agency is not strictly limited to those prevailing during the period of EIR"

preparation. An agency may, where appropriate, adjust its existing conditions baseline to account for a major change in environmental conditions that is expected to occur before project implementation. In so adjusting its existing conditions baseline, an agency exercises its discretion on how best to define such a baseline under the circumstance of rapidly changing environmental conditions. (*Communities for a Better Environment, supra*, 48 Cal.4th at p. 328.) [] we find nothing precluding an agency from employing, under appropriate factual circumstances, a baseline of conditions expected to obtain at the time the proposed project would go into operation.”

- “[T]he burden of justification articulated above applies when an agency *substitutes* a future conditions analysis for one based on existing conditions, omitting the latter, and not to an agency’s decision to examine project impacts on *both* existing and future conditions. As the *Sunnyvale West* court observed, a project’s effects on future conditions are appropriately considered in an EIR’s discussion of cumulative effects and in discussion of the no project alternative. (*Sunnyvale West, supra*, 190 Cal.App.4th at pp. 1381-1382.) But nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project’s significant adverse effects. (*Pfeiffer, supra*, 200 Cal.App.4th at p. 1573; *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 707.) The need for justification arises when an agency chooses to evaluate *only* the impacts on future conditions, foregoing the existing conditions analysis called for under the CEQA Guidelines.” (footnote omitted)
- “Even when a project is intended and expected to improve conditions in the long term—20 or 30 years after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. Though we might rationally choose to endure short- or medium-term hardship for a long-term, permanent benefit, deciding to make that trade-off requires some knowledge about the severity and duration of the near-term hardship. An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project’s impacts in the meantime, does not “giv[e] due consideration to both the short-term and long-term effects” of the project (Cal. Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA’s informational purpose well. The omission of an existing conditions analysis must be justified, even if the project is designed to alleviate adverse environmental conditions over the long term.”
- “*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council, supra*, 190 Cal.App.4th 1351, and *Madera Oversight Coalition, Inc. v. County of Madera, supra*, 199 Cal.App.4th 48, are disapproved insofar as they hold an agency may never employ predicted future conditions as the sole baseline for

analysis of a project's environmental impacts.”

The Authority asserted that because the project is located in an area of rapid change, projections of traffic and air quality in the year 2030 (when the rail line would reach maximum ridership) offered a more realistic view of baseline conditions than did existing conditions. After reviewing the record, the Court disagreed, finding that there was no substantial evidence to support that assertion. It noted that “[t]he expectation of change may make it important for the agency to *also* examine impacts under future conditions (whether in the significant impacts analysis, the cumulative impacts analysis, or the discussion of the no project alternative), but it does not constitute substantial evidence supporting a determination that an existing conditions analysis would be uninformative or misleading.” The Court looked at ridership as “a characteristic of the *project in operation*, not a characteristic of the *environmental baseline* against which project impacts are measured.”

The Authority argued that one reason that 2030 is a reasonable baseline year was because 2030 is also the planning horizon for transportation projects under SCAG's Regional Transportation Plan and that is consistent with federal funding requirements for transportation projects. The Court dismissed this claim as well. It opined that “an EIR must be judged on its fulfillment of CEQA's mandates, not those of other statutes,” particularly when there is no issue of conflict or incompatibility between CEQA and the other statutes.

At this point, having lost the argument over its use of a 2030 baseline year, one would expect that the Authority would see its EIR invalidated and its approval of the Expo line overturned. That did not happen in this case.

The Court examined the question of whether the shortcomings in the EIR's analysis of traffic and air quality impacts resulting from using a baseline set too far in the future actually constituted a prejudicial error that would deprive the public and decision makers of substantial relevant information about the project's likely significant impacts. After reviewing the evidence, the Court held that, in this particular case, it did not. In the words of the Court:

To comply fully with CEQA's informational mandate, the Expo Authority should have analyzed the project's effects on existing traffic congestion and air quality conditions. Under the specific circumstances of this case, however, its failure to do so did not deprive agency decision makers or the public of substantial information relevant to approving the project, and is therefore not a ground for setting that decision aside.

While overshadowed by the baseline discussion, this case also had some interesting things to say about the feasibility of mitigation that requires the cooperation of other agencies.

The EIR recognized that the project could result in an adverse spillover of parking in

neighborhoods near those planned stations that would not include parking facilities. It included a mitigation measure committing the Authority to monitoring changes in parking after the opening of the transit line. If a parking shortage occurred, then the Authority would help the affected jurisdiction create an appropriate permit parking program. If a permit program was inappropriate, then the Authority would work with the jurisdiction to implement another solution such as time-restricted, metered, or shared parking. The Authority's adopted Section 15091 findings stated that it had adopted mitigation as part of the project *and* that the mitigation was within the responsibility of another public agency that can or should adopt the mitigation. As required, the findings were supported by substantial evidence.

Neighbors argued that this mitigation was not enforceable because it relied on the actions of the affected local jurisdictions. The Court disagreed. The mitigation measure committed the Authority to monitoring and helping local jurisdictions reach a solution to spillover parking. "Neighbors's (*sic*) speculation a municipality might not agree to a permit parking program—which MTA would pay for and which would benefit the municipality's own residents—is not sufficient to show the agency violated CEQA by adopting this mitigation measure."