

Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments (Nov. 10, 2009) 179 Cal.App.4th 113

In 2008, the Association of Governments placed a transportation sales tax on the Countywide ballot without first preparing an EIR on the measure and its associated expenditure plan. Measure A was adopted by the voters in November 2008.

Sustainable Transportation Advocates brought suit alleging that the transportation sales tax expenditure plan identified specific projects that should have been analyzed in a CEQA document before the measure was placed on the ballot. The trial court dismissed its petition for a writ of mandate. The Court of Appeal affirmed that dismissal.

The Court examined the question of whether Measure A and its accompanying Investment Plan actually committed the Association of Governments to undertake the proposed projects. The Investment Plan identified the projects to be funded by Measure A by anticipated total cost, location, and a brief description. All of the projects funded by Measure A would be subject to CEQA analyses at such time as they are funded, and prior to full design and construction. A substantial portion of the funding for these projects would come from sources than the sales tax.

The Court considered the Supreme Court's *Save Tara* decision with regard to the detail of information known about the project, as well as the Association of Government's level of commitment to these projects. The Court found that approval of Measure A did not commit the Association of Governments to these projects, nor foreclose alternatives or mitigation measures that would otherwise be considered under CEQA review. The Investment Plan's description of each project lacked details and specifications such that it would allow "flexibility to meet mitigation measures set forth in a subsequent EIR." In addition, Measure A's provision allowing the Association of Governments to amend the Investment Plan, including deleting projects, indicated that it had not committed itself to any project. The fact that full funding of any of the projects was not a certainty, given the substantial amount of outside funding required, was also an indicator of a lesser commitment.

The Court distinguished this case from ballot measures held subject to CEQA under the *Friends of Sierra Madre* and *Fullerton Joint Union High School District* cases. Unlike those cases, Measure A did not commit the Association of Governments to a specific course of action.

"Unlike City's actions in *Save Tara*, respondent's actions did not demonstrate that, as a practical matter, it had committed itself to the implementation of the transportation projects in the Investment Plan. Measure A does not qualify as a project within the meaning of CEQA because it is a mechanism for funding proposed projects that may be modified or not implemented depending upon a number of factors, including CEQA environmental review. (CEQA Guidelines § 15378, subd. (b)(4).) In approving Measure A, respondent was "performing its legislative duty to obtain financing for County transportation needs." (*Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County*

Assn. of Governments, supra, 167 Cal.App.4th at p. 1240.) In adopting the Investment Plan, respondent was merely complying with the statutory requirement that, prior to the call of an election to approve a local transportation sales and use tax, "[a] county transportation expenditure plan shall be prepared for the expenditure of the revenues expected to be derived from the tax imposed . . ." (Pub. Util. Code, § 180206, subd. (a).) Without such a plan, the electorate would lack sufficient information to intelligently vote on whether to impose a local transportation sales and use tax. Thus, the Investment Plan functioned as an informative document rather than a commitment by respondent to the projects specified in the plan. “