

SECOND DISTRICT COURT OF APPEAL AFFIRMS AGENCY DISCRETION TO DETERMINE THE BASELINE FOR ENVIRONMENTAL IMPACT REVIEW UNDER CEQA

In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 205 Cal.App.4th 552, the Second District Court of Appeal upheld a lead agency's discretion to determine the proper baseline for environmental review, including the discretion to choose a future baseline in appropriate cases. The case is particularly important because two recent cases held that agencies could not properly rely on a future baseline to measure a project's impacts even when the project was years away from actual construction. The decision stands as an important affirmation of the discretion afforded to an agency completing environmental review of a project.

In *Neighbors for Smart Rail*, petitioners challenged the Exposition Metro Line Construction Authority's (Expo Authority) certification of an EIR and project approval for a portion of the Exposition Corridor Transit Project, a light rail line running between downtown Los Angeles and Santa Monica. Petitioners' primary legal challenge was aimed at the Expo Authority's choice of the environmental baseline for analyzing traffic, air quality, and greenhouse gas impacts. Petitioners also attacked the adequacy of the EIR's cumulative traffic impacts analysis, mitigation measure adequacy, the range of alternatives, and whether recirculation was required. The court rejected all of petitioners' claims.

The most significant holding concerns an agency's determination of the proper baseline for assessing a project's traffic, air quality, and greenhouse gas emissions impacts. Petitioners cited the two cases that rejected future baselines, *Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, and *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, and argued that the Expo Authority erred as a matter of law by using an environmental baseline based on estimated air and traffic conditions in 2030. The Expo Authority identified 2030 as the project's planning horizon and relied on official demographic projections to estimate traffic congestion and air quality conditions in that year.

The *Neighbors* court declined to follow *Sunnyvale West* and *Madera Oversight* and concluded that neither CEQA's statutory provisions nor the CEQA Guidelines place such a constraint on agencies. Instead, the court concluded 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."

With this holding, *Neighbors for Smart Rail* affirms the flexibility CEQA affords agencies tasked with completing environmental review. It is also consistent with the basic holding on environmental baseline determinations set forth by the California Supreme Court in *Communities for a Better Environment v. South*

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Coast Air Quality Management District (2010) 48 Cal.4th 310 (CBE). In CBE, the court stated that agencies cannot use never-achieved but permitted levels of emissions as the baseline for modification to an existing refinery. After rejecting that illusory baseline, the court noted that baseline is not inflexible, and agencies enjoy discretion to set the proper baseline, subject to review for support by substantial evidence. In contrast to the Supreme Court's statement, the courts in *Madera Oversight* and *Sunnyvale West* treated baseline issues as compliance with law matters to be independently determined by the reviewing court.

Petitioners are seeking review of this decision by the California Supreme Court. The Supreme Court should decide by the end of July whether or not to grant review.

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