

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 02/22/11

DEPT. SE H

HONORABLE THOMAS I. MC KNEW, JR. JUDGE

T. FRALA

DEPUTY CLERK

HONORABLE JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. RODRIGUEZ Deputy Sheriff

NONE

Reporter

11:00 am

BS125233

Plaintiff NO APPEARANCE  
Counsel

NEIGHBORS FOR SMART RAIL  
VS  
EXPOSITION METRO LINE  
CONSTRUCTION AUTHORITY, ET AL.  
'CEQA'

Defendant NO APPEARANCE  
Counsel

**NATURE OF PROCEEDINGS:**

RULING ON SUBMITTED MATTER PETITION FOR WRIT OF  
MANDAMUS 12/21/10;

The Court having reviewed the argument made by counsel  
on December 21, 2010 and the briefs and declarations  
filed makes the following ruling.

SEE ATTACHED ORDERED.

A copy of this order is faxed this date to:

JOHN M. BOWMAN (310) 746-4499  
ROBERT D. THORNTON (949) 833-7878  
LLOYD W. PELLMAN (213) 612-7801

<p align="center"><b>MINUTES ENTERED</b> 02/22/11 <b>COUNTY CLERK</b></p>
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#BS125233

**ORDER**

NEIGHBORS FOR SMART RAIL's petition for writ of mandate is **DENIED**.  
CCP §§ 1085, 1094.5(f), PRC § 21168.5.

Petitioner's request for judicial notice is **GRANTED** in part. EC §§ 452, 453.  
The court takes judicial notice of the Framework element of the general plan  
(Exhibit A). The request is otherwise **DENIED**. Extra record evidence cannot be  
considered. Western States Petroleum Ass'n v. Superior Court (1995) 9 Cal. 4th  
559, 578. There is no evidence that the exhibits were before the decision making  
body at the time the decision was made. They are not part of the administrative  
record. Declaration of Valk.

**Project Description**

The project is an extension of a high capacity, high-frequency transit service from  
the westside of Los Angeles to Santa Monica, known as the Exposition Corridor  
Transit Project Phase 2. The project generally follows the Exposition right of way  
from downtown Los Angeles to Santa Monica. This phase will be about 7-8 miles  
from the terminus of Phase 1 at Venice and Robertson in Culver City to Santa  
Monica. The project has several at grade crossings of major north-south streets.

**Standard of Review**

A challenge to an EIR is reviewed for an abuse of discretion. PRC § 21168.5.  
"Abuse of discretion is established if the agency has not proceeded in a manner  
required by law or if the determination or decision is not supported by substantial  
evidence." Id. The court must uphold a decision if there is substantial evidence in  
the record to support the agency's decision. PRC § 21168; Laurel Heights  
Improvement Ass'n v. Regents of the Univ. of California (1988) 47 Cal. 3d 376,  
392. Substantial evidence is "enough relevant information and reasonable  
inferences from this information that a fair argument can be made to support a  
conclusion, even though other conclusions might also be reached. Id., 14 CCR §  
15384(a). Petitioner bears the burden of presenting credible evidence that the  
agency's findings and conclusions are not supported by "substantial evidence."  
Jacobson v. County of Los Angeles (1977) 69 Cal. App. 3d 374, 388. The question  
under the substantial evidence test is not whether there is substantial evidence to  
support the conclusions of the opponents of a project; the question is only whether  
there is substantial evidence to support the decision of the agency approving the

project. Laurel Heights Improvement Ass'n v. Regents of the Univ. of California (1988) 47 Cal. 3d 376, 407. A challenge to an EIR must lay out the evidence favorable to the other side and show why it is lacking. Sierra Club v. City of Orange (2008) 163 Cal. App 3d 523, 541.

The purpose of an EIR is "to inform the public and its responsible officials of the environmental consequences of their decisions before they are made." Laurel Heights Improvement Ass'n v. Regents of the Univ. of California (1993) 6 Cal. 4th 1112, 1123. In determining the adequacy of the environmental analysis, the court does not "pass on the correctness of the report's environmental conclusions, but only on its sufficiency as an informative document." Laurel Heights Improvement Ass'n v. Regents of University of California (1988) 47 Cal. 3d 376, 392. An EIR is presumed adequate. . . , and the petitioner has the burden of proving otherwise. Barthelmey v. Chino Basin Mun. Water Dist. (1995) 38 Cal. App. 4th 1609, 1617.

### **Baseline**

The FEIR explains the methodology used to evaluate traffic impacts. The impact threshold for intersections used in this FEIR utilizes the Highway Capacity Manual (HCP) operations methodology to quantify existing and future conditions at all intersections with and without the proposed project. AR 350, 1055. The existing and future air quality conditions were evaluated using methods and significance levels recommended by the SCAQMD. AR 504 15310-12, 15352-54. CEQA requires evaluation of the project's effects on both existing and future conditions. 14 CCR § 15126.6(e)(3)(b). Because a "No Project" will not preserve the existing physical conditions, it is not only reasonable, but necessary, to take this dynamic approach of determining impact and significance over time. See Save Our Peninsula Committee v. Monterey County (2001) 87 Cal. App. 4th 99, 125 ("in some cases it is necessary to consider conditions over a range of time.") By analyzing delay as a result of the project at a higher number of congested intersections in year 2030, the FEIR adopted a more rigorous test for identifying significant traffic impacts. AR 17, 218-34, 350. To analyze the project's effects on transportation assuming that the project's operation is the only change that will occur, is absurd. The very reason for the project is to address long term transportation concerns. Substantial evidence supports the use of this baseline.

At the hearing, petitioners argued that a newly published opinion limits an agency's discretion to determine a baseline other than the existing conditions. In Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council

(2011) 109 Cal. App. 4th 1351, the Court of Appeal affirmed the trial court's grant of peremptory writ of mandate which set aside a certification of an EIR for a road improvement project. The court held that a baseline as it might exist in the future cannot substitute for a comparison with current existing condition. *Id.* The Appellate Court observed: "Although 'neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the *existing* condition baseline', nothing in the law authorizes environmental impacts to be evaluated **only** against predicted conditions more than a decade after EIR certification and project approval." *Sunnyvale, supra*, 109 Cal. App. 4th at 1380 (citation omitted, italics in original, emphasis added). The Court also noted that substantial evidence did not support the decision to deviate from the norm and use future conditions, rather than existing conditions, as a baseline. *Id.* at 1383.

Here, however the circumstances are different. First, as discussed above, EXPO did discuss both the existing and future conditions when analyzing traffic impacts. AR 350, 1055. At the hearing, respondent's presented a summary illustrating how the level of service at the five worst intersections would be affected by "no build" and LRT alternatives. What is clear from the examples, and ostensibly clear to the preparers of the EIR, was that the level of service would worsen at these intersections no matter what. AR 10706-708 (existing conditions), 10757, 10759-60, 10770, 10778 (no build and LRT projections). This fact is not concealed or otherwise misrepresented in the EIR. The lead agency did not, as in *Sunnyvale*, omit any evaluation of existing conditions.

What EXPO did, unlike the City of Sunnyvale, was to provide substantial evidence to support the decision to use this comparison of future impacts in addition to the existing conditions. EXPO apparently believed, as does this court, that the comparison of future conditions in this situation provides more meaningful information to the public and to the decisionmakers. As mentioned above, EXPO selected a methodology suggested by SCAQMD and the HCP to analyze both the existing and future conditions. The City of Sunnyvale, on the other hand, was merely guessing at a completion date and arbitrarily picked 2020 as a baseline. *Sunnyvale, supra*, 109 Cal. App. 4th at 1384.

Petitioner argued that perhaps the year 2015 should have been used. There is no evidence in the record that this was raised during the administrative process and no substantial evidence was presented that would have made this baseline any more reasonable than the one chosen by the lead agency based on substantial evidence.

### **Traffic Impacts**

The methodology used to evaluate traffic impacts is based on the High Capacity Manual approved by the Federal Transit Administration. AR 10718. The Traffic Study evaluated 90 intersections on the Westside. AR 336-340. The study included all of the intersections adjacent to at grade crossings and nearby intersections that could be affected. AR 10704-09. The analyses showed that there would be no significant effects to any impacted intersection as a result of the project. AR 10724-30, 10754-62. CEQA does not require an analysis to be exhaustive. Dry Creek Citizens Coalition v. County of Tulare (1999) 70 Cal. App. 4th 20, 26. It requires only that an EIR reflect good faith effort at full disclosure. 14 CCR § 15151. There is no evidence that the traffic analysis is inadequate. As to petitioner's argument that the study ignored Sepulveda Blvd as a recognized alternate to the 405, the LADOT confirmed that project operations at Sepulveda Blvd. "would not impact the operation at adjacent signalized intersections." AR 38391.

### **Growth Inducing Impacts**

Two mixed use developments along the route of the proposed project are not indirect effects of the project. At the time the EIR was prepared, no application had been filed on one of the projects and thus it could not be considered. Although, there was some indication that the second project was proposed during the preparation of the EIR, no formal application was on file until after the NOP for the project was filed. CEQA does not require analysis of hypothetical projects. 14 CCR § 15064(d). Even so, "lead agencies may limit discussion on effect to a brief explanation as to why those effects are not potentially significant. PRC §§ 21002.1(e), 21100(c). The EIR explains that the project will not result in any significant growth inducing impact. AR 861-862. The EIR also discloses land use plans that support transit oriented development within 0.5 miles of proposed stations. AR 619, 10117-9, Table 2-2. The project is compatible and consistent with existing and future land uses. AR 616-21, 10101, see also 218, Table 1.2-1, AR 219-22, 345, 616, 10126-29. In light of the all the local and regional plans, EXPO found that the project will not have any significant growth inducing impacts.

Notwithstanding petitioner's argument, transit oriented development will have beneficial effects through reduced vehicle miles, fewer air emissions, and reduced energy consumption. The record supports this conclusion throughout. See, e.g., AR 506-510, 866-7, 8278-9487, 353-54, 861-62, 106-107.

### **Cumulative Impacts**

A cumulative impact must be analyzed in an EIR only if: (1) the combined impact of the project and other projects is significant and (2) the project's incremental effect is cumulatively considerable. 14 CCR §§ 15064, 15126(a). The adequacy of cumulative impact analysis is also reviewed under the substantial evidence test. San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal. App. 4th 713, 726-27. If the lead agency determines that a project's incremental effect is not cumulatively considerable, the EIR need only briefly describe the basis for its findings. City of Long Beach v. LAUSD (2009) 176 Cal. App. 4th 899, 909. Furthermore, petitioner has raised the issue of traffic generated by future developments for the first time in its opening brief, despite several long comment letters addressing other alleged defects. 1568, 1783-90, 46957, 46971, 46972-74. Nevertheless, the EIR discusses why the project's contribution to air quality is not cumulatively considerable. AR 866. It will have beneficial air quality effect. Id. No further explanation is needed but the FEIR goes on to explain that the project is fully conforming to the 2007 Air Quality Management Plan, the State Implementation Plan and that all pollutant levels would be below the SCAQMD localized significance thresholds. AR 867.

The FEIR may and did rely on a summary of projections rather than address each and every one of the 24 projects listed in table 5.4-1. AR 866, 331-438, 10693-12247. The same holds true for the FEIR's discussion of cumulative impacts for traffic and other categories. AR 866-872. There is no requirement that the FEIR cumulative impact analysis use both the "summary of projections" and the "list of projects approach." 14 CCR §§ 15130 (b)(1)(A), (B).

### **Mitigation Measures**

The FEIR evaluated the effect of the project on parking in the Project area. AR 10777-95. It concluded that the proposed parking for the project may be less than peak period demand at four of the proposed stations. Mitigation Measures were adopted. AR 54-55, 413-14. The measure adopts a monitoring program, a performance standard and requirement to work with local agencies to develop a permit program. AR 113, 1063, 1064. The FEIR explains the parking supply situation and its plan to deal with physical and design constraints unique to each station. AR 1186, 411, 10793-95. METRO has agreed to reimburse local jurisdictions for the costs associated with permit parking. AR 113, 1769. Courts have upheld as adequate a deferred mitigation measure to meet a performance standard. Sacramento Old City Association v. City Council (1991) 229 Cal. App

3d 1011, 1029. Mitigation measure MM TR-4 is a viable solution in neighborhoods which may experience parking impacts. AR 1768.

Thirty-five parking spaces are slated for elimination on the south side Colorado Ave. AR 14. Replacement parking is proposed to offset this loss. AR 431-32, 1062. CEQA does not require an EIR to evaluate how a mitigation measure will be funded. Additionally, design options are suggested which will retain the on street parking on Colorado. AR 432.

Noise impacts will be reduced below the moderate impact level at all identified receptors. AR 6742, 19-120. Sound walls, berms, low impact frogs and insulation are options which EXPO will implement to ensure that noise levels are reduced to less than significant. AR 120-121, 675-683. The FEIR outlines the method of accomplishing these options. AR 675. The EIR identifies the parties responsible for implementing, monitoring and enforcing the mitigation measures.

Safety impacts are discussed in the EIR and the document acknowledges that emergency vehicles traveling on streets that intersect the projects at grade crossings may experience some additional delay. Measure MM SAF-1 was adopted ensuring that METRO will work with the cities to develop emergency response routes. AR 123. EXPO found that this would reduce impact to the delivery of community safety services to less than significant level. AR 727, 69-70.

In response to comments, EXPO undertook additional studies of the at grade crossings at Overland Ave, Westwood Blvd, Sepulveda Blvd, Barrington Ave, and Centinella Ave. AR 0723-724. The report confirmed that at-grade crossings would be operated in a safe manner. AR 12099-12137. LADOT concurred in that conclusion. AR 38386-93.

Eighteen mitigation measures are identified to reduce construction impacts. AR 123-31. These include keeping at least one lane open in each direction; detours, if necessary, ; traffic circulation plans; and major highways to remain open. AR 123-124, 823-24, 1072, 1796. EXPO found that these mitigation measures would reduce the impact of construction to less than significant. Regulatory approval is an adequate performance standard. Endangered Habitats League v. County of Orange (2005) 131 Cal. App. 4th 777, 794. Further, EXPO revised the mitigation

measures to incorporate comments from LADOT. AR 823-24, 70-72. Multiple layers of criteria must be met before highways can be closed during construction. The court finds that EXPO fully complied with the requirements of CEQA as it relates to mitigation measures.

### Alternatives

“An EIR need not consider every conceivable alternative to a project.” 14 CCR § 15126.6. “The level of specificity of an EIR is determined by the nature of the project and the ‘rule of reason’ rather than any semantic label accorded to the EIR.” Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency (2000) 82 Cal. App. 4th 511, 533. Absolute perfection is not required. Concerned Citizens of South Central L. A. v. LAUSD (1994) 24 Cal. App. 4th 826, 839. The EIR considered nine alternatives in addition to the “No Build” and “TSM” alternatives and conducted detailed analysis of six alternatives in the FEIR. AR 288-301. These included alternative modes and alternative routes. Petitioner claims that EXPO manipulated the alternatives and arbitrarily chose a narrow range of alternatives so that the project would appear to be better from a cost and environmental standpoint than the other choices. Plaintiff has not produced any evidence to support his theory and the record contradicts this theory.

Alternatives LRT 3 and LRT 4 (the Venice /Sepulveda alignments) were included in response to and as a result of comments from opponents of LRT 1 and LRT 2. The “No Build” alternative is required and the TSM (Traffic System Management) alternative (which would combine bus and other improvements without significant capital improvements) provided the decisionmakers with a “No Build Plus” option. The fact that EXPO did not pursue petitioner’s selection of alternatives is not the requirement of CEQA. In fact, EXPO did evaluate those alternatives and decided to eliminate them from the detailed analysis because they would not generate enough boardings to meet the projects objectives.

Petitioner’s argument that an alternative with grade separation crossings in segment one was not considered is untrue because every at-grade crossing was evaluated. AR 346, 12033-12137, 1058-60, 12099-137, 303-306. Additionally, it was found that grade separations would not reduce any significant impacts and each would cause potentially significant impacts. These impacts include disruption of gravity fed storm drains, potential flooding of underground stations, increased construction impacts, increase haul loads and routes, etc, and finally considerable increase in costs (\$224.3 million). AR 304-5 The aerial structure design option



would result in creating a large physical barrier bisecting the neighborhood, create construction impacts similar to the trench option and increase costs (\$65.9 million) without significant reduction of other impacts. Accordingly, these two options for segment one were not retained for further detailed analysis. AR 306, 91. The record supports that EXPO evaluated a reasonable range of alternatives.

### **Recirculation**

Recirculation is required when “any significant new information is added to the EIR after notice ...of the availability of the draft EIR... but before certification.” 14 CCR § 15088.5(a). New information includes changes in the project and in the environmental setting as well as additional data or other information. 14 CCR § 15088.5(a). If the new data, information or alternative is significant, then recirculation is required. *Id.*, see also PRC § 21092.1. The information provided in response to comments did not require recirculation. The information did not identify any new impacts or a substantial increase in the severity of an impact. CCR § 15088.5(a)(1),(2). If anything, the information added (five additional sound walls, signal phasing, and parking surveys) served to lessen the severity of an impact. The recalculation of GHG emissions, although representing a net annual increase in greenhouse emissions, did not exceed the threshold of significance adopted by regulatory agencies and therefore does not represent a substantial increase in the severity of an impact. AR 527-528.

Petitioner’s “South Star Report” does not constitute significant new information because, as discussed above, the at grade crossings at Overland Ave and Westwood Blvd will not have any significant impacts.

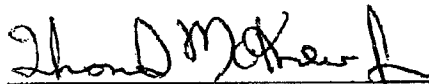
### **Findings**

In light of the goals and objectives of the project and the larger regional and sub-regional planning goals, EXPO determined that the Light Rail Transit (LRT) alternatives all provided substantial benefits over the “No Build” and TSM alternatives. AR 92. The adopted alternative (LRT 2) was determined to have environmental benefits, performance efficiency and cost effectiveness benefits superior to the other LRT alternatives. AR 92-95, 95-96, 106-109, 88. These factors were considered in selecting it as the only option which would achieve most of the project alternatives. AR 96.

It is presumed that public entities have complied with the law, and petitioners bear the burden of proving otherwise. Al Larson Boat Shop, inc. v. Board of Harbor Commissioners (1993) 18 Cal. App. 4th 729, 740. EXPO carefully made its decision concerning the project with its environmental consequences in mind. Petitioner has not established that there was any prejudicial abuse of discretion. Accordingly, the respondent's decision should be upheld. The petition is denied.

SO ORDERED.

DATED: FEB 22 2011

  
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JUDGE OF THE SUPERIOR COURT  
THOMAS I. MC KNEW, JR.

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\*\*\* RX REPORT \*\*\*  
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RECEPTION OK

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