

Client Alert.

January 5, 2011

Court Questions Use of “Modified” Baseline Approach in Transportation Improvement EIR

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The City of Sunnyvale failed to comply with the California Environmental Quality Act (CEQA) when it analyzed the potential impacts of a major street extension by comparing them to traffic, noise, and air conditions that were projected to exist without the street extension in 2020 (the expected completion date for the project), ruled the California Court of Appeal, Sixth District in a recent decision. The court’s decision, *Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council*, concluded that under the facts of the case, the use of such a future or “modified” baseline approach to assess the project’s impacts did not fulfill CEQA’s requirement that an Environmental Impact Report (EIR) determine whether a project would significantly impact the existing environment.

Under the CEQA Guidelines, the baseline is “normally” the physical conditions as “they exist at the time the notice of preparation [NOP] is published, or if no notice of preparation is published, at the time environmental analysis is commenced.” The EIR in the *Sunnyvale* case used a baseline for traffic and related impacts that assumed 2020 traffic levels and conditions based on a full build-out of the City’s General Plan and other planned road improvements. This approach was consistent with the guidelines of the Santa Clara Valley Transportation Authority (VTA) for conducting such analyses, as the VTA is Santa Clara County’s Congestion Management Agency. Nonetheless, the court concluded that the use of such assumptions “made it impossible for decision makers and the general lay public to readily grasp the traffic and related impacts of the project itself on the environment as it presently exists.” Based on this, the court invalidated the City’s modified baseline approach as a matter of law.

Although the court was critical of the use of future conditions in this case, it did recognize that there may be circumstances when, if the physical conditions at the time of consideration of a project may not be representative of existing conditions, an agency may exercise its discretion to use a different baseline. The court identified two examples of when this might be appropriate: (1) if traffic congestion and vehicular traffic has temporarily decreased due to an unusually poor economy so that traffic conditions at the time (of the NOP) are inconsistent with the usual historic conditions; or (2) if evidence shows traffic levels are expected to increase significantly during the environmental review process due to other development actually occurring in the area. However, on the facts in *Sunnyvale*, the court concluded that the use of a future, post-approval baseline “cannot be upheld since that approach contravenes CEQA regardless [of] whether the agency’s choice of methodology for projecting those future conditions is supported by substantial evidence.”

In general, the modified baseline approach makes practical sense for assessing the on-the-ground traffic impacts for many projects and, for that reason, it is in widespread use around the state. Given this, it would not be surprising if the California Supreme Court or the legislature addresses this court’s overly technical legal analysis. In the meantime, although the direct application of this decision is limited to the Sixth District (Santa Clara, Santa Cruz, San Benito, and Monterey Counties), the *Sunnyvale* case may have implications for governmental agencies preparing EIRs for other

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developments. Accordingly, those involved with projects that may use a future or modified baseline approach will want to consider the potential implications of this decision.

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