

Ninth Circuit Upholds Environmental Review of Downtown LA "Regional Connector" Subway Project

A federal appeals court has rejected two challenges to the environmental review of the Los Angeles County Metropolitan Transportation Authority's (Metro's) planned subway expansion in Downtown Los Angeles. The "Regional Connector" project, approved in 2012, will create a three-station, underground link through Downtown that will allow passengers to travel from points on the Metro Gold Line to the Blue and Expo lines without having to transfer trains.

In 2013, Japanese Village Plaza, a Little Tokyo-area shopping center, and the owner of the Bonaventure Hotel, filed actions in federal district court against Metro and the Federal Transit Administration (FTA) alleging that the agencies failed to conduct an adequate environmental review of the project under the National Environmental Policy Act (NEPA). Japanese Village Plaza and Bonaventure appealed after the district court granted the agencies' motion for summary judgment on all but one of their claims.

The Ninth Circuit upheld the district court's ruling, concluding that Metro's plan to mitigate noise and vibration from construction of the project was adequate and that mitigation measures addressing the potential for subsidence were sufficiently detailed to "allow for an evaluation of [their] effectiveness." The Ninth Circuit also rejected Japanese Village Plaza's argument that the Environmental Impact Statement (EIS) for the project failed to analyze adequately impacts on off-street parking.

In addressing Bonaventure's claims, the Ninth Circuit rejected the argument that Metro erred in concluding that the use of tunnel boring machine along part of the route was technically infeasible, despite Metro's admission, after the completion of the EIS, that a deeper alignment would allow for tunnel boring (instead of the alternative "cut and cover" construction method). The court emphasized that its review of the agencies' decision must be based on facts available at the time that the decision was made, and that requiring supplemental environmental review for every modification of a project is "unlikely to foster" NEPA's goals of "informed decision-making and public participation."

The Ninth Circuit's ruling follows the California Court of Appeal's October 2015 decision rejecting a challenge to the sufficiency of

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the environmental review of the project under the California Environmental Quality Act (CEQA). These case serve as a reminder that transportation agencies in California are likely to face challenges to the environmental review of major transit project in multiple venues. At the same time, the Ninth Circuit's wholesale rejection of the plaintiffs' claims shows the benefit of conducting a thorough analysis of environmental impacts and mitigation measures in NEPA and CEQA documents.

The Ninth Circuit's opinion is captioned *Japanese Village, LLC v. Federal Transit Administration*, Case No. 14-56837, and is available [here](#).

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