

COURT'S RULING ON CASES BS113440 & BS113479

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BS113440 and BS113479

ORDER

GREATER WEST LA CHAMBER OF COMMERCE's petition for Peremptory Writ is **GRANTED**. CCP §§ 1085, PRC § 21168.5.

WESTWOOD SOUTH OF SANTA MONICA BLVD. HOA's petition for Peremptory Writ is **GRANTED**. CCP §§ 1085, PRC § 21168.5.

The CITY OF LOS ANGELES is **ORDERED** to fully comply with the requirements of the California Environmental Quality Act by conducting an appropriate, complete and comprehensive environmental study for the project. Any project approvals already obtained, including the approval and notice of exemption for the "revised" initiative, are invalid. Respondents are restrained from any actions in furtherance of the project unless the resulting document has been prepared, publically circulated, and approved in a manner required by law.

STATEMENT OF DECISION

Project Description

A three phase traffic improvement plan to change the traffic circulation throughout portions of the City of LA and the City of Beverly Hills. The plan, dubbed the Pico/Olympic Plan, was to be implemented without any environmental review by order of the Mayor to the City Department of transportation.

In the first phase of the plan, the city would eliminate almost all existing street parking along approximately 6 miles of Olympic Blvd and the corresponding length of Pico Blvd during the rush hour 7-9 am and 4-7 pm. The resulting decrease in parking would be "addressed at a later date." With phase two, the city plans to direct traffic to specified streets with directional friendly signals. The signal timing would favor travel and left turns in one direction on Olympic and in the other direction on Pico. The City has dropped phase three and instead proposed to change the parking lanes to travel lanes peak hours. In place of creating a pair of "virtual One -Way" streets, the City's plan is to combine the two components to achieve a "preferential flow direction."

Standard of Review

A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment. Pub. Res. Code §§ 21100, 21151; 14 CCR §§ 15002(f)(1), (f)(2); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75. An agency's "decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1996) 42 Cal. App. 4th 608, 609. Here, the undisputed evidence is that City Council Transportation Committee meetings on the proposed activity were abruptly suspended and the City's Department of Transportation (DOT) was instructed to implement "phase one" of the plan by the Mayor. In this instance, where the city has not prepared any environmental document, the "fair argument" standard applies. See Gentry v. City of Murrietta, (1995) 36 Cal. App. 4th 1359, 1399; Stanislaus Audobon Society, Inc. v. County of Stanislaus (1995) 33 Cal. App. 4th 150, 155; Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1992) 29 Cal. App. 4th 1597, 1602.

CEQA incorporates a "three-tiered process to ensure that public agencies inform their decisions with environmental considerations"; (1) preliminary review, (2) initial study, and (3) EIR. Davidon Homes v. City of San Jose (1997) 54 Cal. App. 4th 106, 112-13. The first tier is jurisdictional, requiring that an agency conduct a preliminary review in order to determine whether CEQA applies to a proposed activity." 14 CCR §§15060, 15061; Davidon Homes, supra, 54 Cal. App. 4th at 112. CEQA applies if the activity is a "project" under the statutory definition, unless the project is exempt. PRC §§ 21065, 21080.

Statutory Exemption

"This division does not apply to a project for restriping of streets and highways." PRC § 21080.19 (referring to division 13 of the Public Resources Code also known as the California Environmental Quality Act). Respondents contend that this statutory exemption applies to part of the project. The court would be inclined to agree if restriping was the only element of the project.

Here, we have a project that deals with two major streets, Olympic and Pico, and proposes a number of actions. First, it eliminates public parking on those streets between the hours of 7-9 am and 4-7 pm and forces that parking onto surrounding residential streets. Second, it adds one lane of vehicle traffic in each direction for

each street. Third, it directs traffic to specific streets with directional friendly traffic signals. These signals would favor travel and left turns in one direction on Olympic and in the other direction on Pico.

Although adopted 1984, the court could not find any cases that discuss this “restriping” exemption. A case cited by respondents, Surfrider Foundation v. California Coastal Commission (1994) 26 Cal. App. 4th 151, discusses whether a project covered by a statutory exemption and categorical exemption is subject to an exception which would require compliance with CEQA. The Surfrider court observed that while categorical exemptions are subject to an exception, a statutory exemption is not. Id. at 156.

In Surfrider, the court considered whether resulting adverse environmental impacts (parking in adjacent areas and creating alternate beach access routes) had a causal connection to the statutory exemption (parking fees) or to the categorical exemption (the installation of fee collection devices.) Id. The Court of Appeal found that any such causal effect was not from construction of the small structures at issue, but rather from the underlying imposition of fees “which is statutorily exempt from CEQA without regard to the categorical exemption exception.” Id.

Here the court must also decide whether any reasonable possibility of a significant effect on the environment flows from the restriping or from the other minor alterations. In simpler terms, the court must decide whether this a “restriping project to relieve traffic congestion” with minor alterations to existing facilities or a major implementation of a new preferential flow traffic with significant environmental impacts which includes as an restriping as an element. The court favors the latter characterization.

At least some of the reasonably significant effects suggested by petitioners, parking displaced to residential neighborhoods, increased traffic on connecting streets, and decreased access to businesses during peak hours, appear to result from the “minor” alterations in this case. The parking restrictions, preferential timing of signals, etc. are the cause of concern, not the restriping.

Of course, restriping alone would not achieve the projects goals and since all phases of a project must be considered as “the whole of the action”, it cannot be considered as a separate project. Burbank-Glendale Pasadena Airport Authority v. Hensler (1991) 233 Cal. App. 3d 577, 592. The project description must include

reasonably foreseeable future activities that may become part of the project. Laurel Heights Improvement Association v. Regents of the University Of California (1988) 47 Cal. 3d 376. Segmentation of the project is not permissible. Bozung v. J.AFCO (1975) 134 Cal. 3d 263, 283-84.

Categorical Exemption

Certain types of projects having no significant effect on the environment are categorically exempt from CEQA under 14 CCR § 15301. These include minor alterations of existing public facilities involving “negligible or no expansion of use”. 14 CCR § 15301 (emphasis added). Examples include existing highways and streets. 14 CCR § 15301(c). “The key consideration is whether the project involves negligible or no expansion of an existing use.” 14 CCR § 15301. Here the stated purpose of the activity is to “improve heavily traveled corridors of Olympic and Pico Boulevards”. The first phase proposes to eliminate curbside parking and add a lane of traffic in each direction on Pico and Olympic during peak hours. In other words, the very purpose of the project is to expand the use of the existing streets. To claim that the project will not expand the current use and is therefore exempt, seems inconsistent with the stated purpose.

Furthermore, a categorical exemption “shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” 14 CCR § 15300.2(c). Unless such effects are obvious, the agency must conduct an initial study, during which it must consult with other interested public agencies. 14 CCR §§15063(a),(c)(1),(g), 15365. Although there is no administrative record to examine, a public records request did not produce an initial study of the project. The court must assume no initial study was prepared. There is also a fair argument that the activity will have a significant impact on the physical environment of the community. See Chamber’s Exhibit A, Exhibit C.

When a public agency decides a project is exempt from CEQA and the agency determines to carry out the project, the agency may file a notice of exemption. 14 CCR § 15062(a). The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency’s decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply. 14 CCR 15062(d). These petitions were timely filed. The court notes that a notice of

exemption for a “revised Olympic West Pico East Initiative” was executed March 25, 2008. The court finds that the approval and adoption of this “revised” project incorporates many of the elements of the activity which is the subject of this lawsuit and also invalidates the approval of the revised project.

Courts have repeatedly affirmed that the fair argument standard is a low threshold test. League for Protection of Oakland's Historic Resources v. City of Oakland (1997) 52 Cal. App. 4th 896. Accordingly, the petitions are granted. Petitioners have achieved their goal by these petitions.

Evidentiary objections

Defendant's objections to the declarations submitted by the petitioners are overruled except for ¶¶ 4 and 5 of Butler's declaration.

Prevailing parties to prepare proposed Judgment and Writ.