

Agency Only Required To Recirculate An Environmental Impact Statement After Close Of Public Comment Period If Changes To The Statement Are "Significant."

In May 2012, the Los Angeles County Metropolitan Transportation Authority ("Metro") approved the Westside Subway Extension Project, which will extend the Metro Purple Line heavy rail transit subway system to the Westside of Los Angeles. The Project will add almost nine miles to the Purple Line with seven new stations. One of the new stations will be located in Century City at Constellation Boulevard. To reach this station, the subway will travel through a tunnel to be constructed under Beverly Hills High School.

During the planning and environmental review process, Metro prepared and circulated a draft environmental impact statement/environmental impact report ("EIS/EIR") for public review and comment. The draft EIS/EIR presented two locations for the Century City station (one at Constellation Boulevard and the other at Santa Monica Boulevard), discussed the potential environmental impacts of both locations, including the impacts of tunneling under the high school, and indicated that the Santa Monica location might not be viable due to seismic risk, but that further studies were being conducted to determine whether that option is viable.

The Beverly Hills Unified School District and the City of Beverly Hills both objected to the placement of a subway tunnel under the high school. The District and the City expressed concerns regarding student and teacher safety during construction and operation of the subway, interference with the District's plans to modernize the high school buildings, interference with the use of the high school as an emergency shelter and crisis center, and decreased value in homeowners' properties.

Following the public comment period, Metro conducted additional studies and ultimately released a final EIS/EIR for the Project. The final EIS/EIR contained detailed responses to each of the comments Metro received on the draft EIS/EIR, including those from the District and the City. The final EIR contained new seismic risk and air quality information, as well as additional information regarding potential environmental issues arising from tunneling under the high school. Metro subsequently certified the final EIS/EIR without recirculating it for public comment and thereafter approved the Project.

The District and the City filed lawsuits challenging Metro's approval of the Project. The District and the City both argued that Metro violated the California Environmental Quality Act ("CEQA") because the final EIS/EIR contained new information and analysis that was not in the draft EIR. The District and the City argued that due to this new information, Metro was required to recirculate the final EIS/EIR for further public comment.

The trial court rejected these arguments and upheld Metro's approval of the Project. The Court of Appeal agreed with the trial court's decision. The Court discussed that an agency's decision not to recirculate an EIR is given substantial deference and is presumed to be correct. The Court held that recirculation of a revised EIS/EIR is not required unless the EIS/ EIR contains "significant new information" and "is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect." On the other hand, an agency is not required to recirculation where the new information added to the EIS/EIR merely clarifies or makes insignificant modifications. In this case, substantial evidence supported Metro's decision not to recirculate the EIS/EIR because the final EIS/EIR was not changed in any way that deprived the public of a meaningful opportunity to comment upon the adverse effects of the Project. As the Court explained: "The new information in the final EIS/EIR merely confirmed that the Santa Monica station was, in fact, not viable because the Santa Monica fault ran through that location, and that an alternate station further east on Santa Monica Boulevard was not viable because it was not possible to rule out the existence of an active fault at that location The elimination of the Santa Monica station as an option did nothing to change the potential environmental impacts of the Project, other than to *eliminate* a potential source of seismic hazard."

Beverly Hills Unified High School District v. Los Angeles County Metropolitan Transportation Authority (2015) Cal. App.4th.