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CEQA Lawsuit Fails to Slow High-Speed Rail

Several parties, including the San Francisco Peninsula communities of Atherton, Menlo Park, and Palo Alto, challenged the California High-Speed Rail Authority's decision on where to route trains travelling between the Central Valley and the Bay Area. The court of appeal recently upheld the Authority's program EIR for the routing, but rejected the Authority's argument that federal law preempted the application of CEQA. *Town of Atherton v. California High-Speed Rail Authority*, C070877 (Third District, July 24, 2014).

The court upheld the program EIR the Authority relied on in deciding to approve a high-speed rail route through the Pacheco Pass and several Peninsula communities, rather than a northern route through the Altamont Pass. The court ruled:

- The program EIR properly deferred detailed analysis of the impacts of elevating the tracks on portions of the route through the Peninsula to a second-tier project-level EIR. Information developed shortly before the program EIR was certified showed that an aerial viaduct was the only feasible alignment in some areas of the Peninsula. Petitioners argued that an analysis of the impacts of elevated tracks on Peninsula communities should have been included in the program EIR's comparison of the route alternatives. Nevertheless, the court held it was appropriate for the Authority to review this "site specific" issue in a project-level EIR, rather than in the program EIR.
- Petitioners' challenge to the ridership model used in the EIR simply pointed out a "dispute between experts that does not render an EIR inadequate." The Authority was entitled to choose between divergent expert recommendations.
- The Authority was not required to study additional proposed alternatives, because they either were infeasible or were substantially the same as alternatives analyzed in the program EIR.

The Authority had asked the court of appeal to dismiss the case on the ground the federal Interstate Commerce Commission Termination Act preemptsapplication of state environmental laws such as CEQA under these circumstances. Although the federal statute does not preempt all state and local regulations, the court noted that it creates exclusive federal regulatory jurisdiction and remedies over railroad operations. The court concluded, however, that state regulation was not preempted here, based on an exception to federal preemption which applies when a state acts as a "market participant."

This case was not analogous, the court reasoned, to a private railroad company seeking to build a rail line free of state regulations. Instead, the court wrote, the State itself would determine the high-speed train's route, acquire the necessary property, and operate the train. The Authority also had an "established practice" of complying with CEQA, and the 2008 voter-approved bond measure to fund the high-speed rail network included compliance with CEQA as a project feature. For these reasons, the court held the Authority was required to comply with CEQA.

In sum, the California High-Speed Rail Authority was unable to convince the court that this part of the high-speed rail program was exempt from CEQA review, but it won the court's approval for a program EIR covering a portion of the train's route. While the Authority continues to face several other legal challenges, this decision brings a California high-speed rail network another step closer to reality.

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