

# Sunnyvale West Neighborhood Assoc. v. City of Sunnyvale

AEP Presentation by Jim Moose and Amy Skewes-Cox  
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*If you are small and wish to take on the big, the first step you  
need to plan before you wage your challenge is your path of  
escape.*

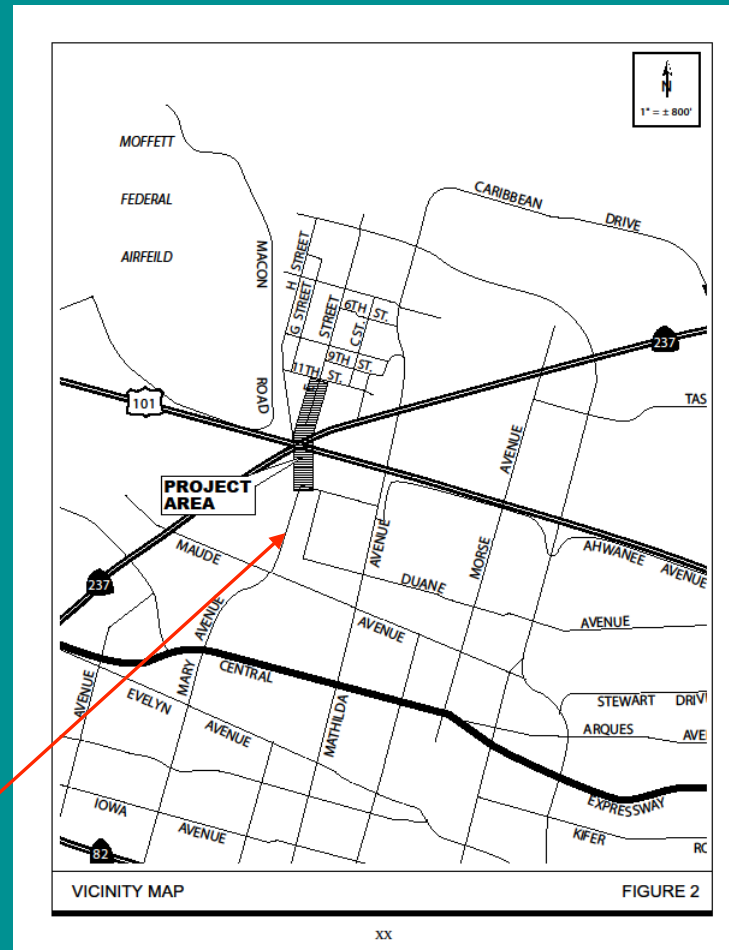
# History of the Case

- Amy retained by City of Sunnyvale to review Final EIR on proposed Mary Avenue Extension
- Suggested recirculation based on DEIR comments and issue of “existing conditions” baseline not being addressed; stated that traffic, air, and noise impacts underestimated since “incremental” contribution to future was so insignificant
- City instead convinced Amy that VTA always evaluated projects using “future baseline” and existing baseline evaluation not required
- City litigation and appeal, including involvement of League of Cities
- City required to redo the EIR using current conditions as baseline

# Map of Project

Bridge to span  
237 and 101 for  
access to  
Moffett  
Business Park

Mary  
Avenue



# Summary of Traffic Projections

- Existing ADT on Mary Avenue  
(S. of Maude Ave.): 13,050
- Future: 26,950
- Percent Change: 107%

# Summary

- City approved EIR for project going through residential neighborhood, including construction of bridge
- EIR utilized estimated cumulative traffic conditions for Year 2020 as baseline for traffic analysis. EIR stated project not expected to be completed until 2020.

# Summary cont'd.

- City developed Year 2020 traffic estimate based on buildout under City General Plan along with development of numerous roadway improvements planned for completion by 2020.
- Petitioner challenged City's approach arguing that pursuant to CEQA Guidelines Section 15125, proper environmental baseline was conditions existing at time of NOP

# Summary Cont'd.

- Court held that by using post-approval future baseline, City failed to proceed in manner required by law.
- Court strongly implied that agencies lack discretion to ever consider projected conditions beyond time of project approval.
- The Court explained that “*by using future traffic conditions as its ‘baseline’, [the City] did not adequately explain to an engaged public how the proposed project was expected to change the present conditions to which they currently lived.*”

# Quote from Court of Appeal

Language implying that there are never circumstances allowing a baseline to reflect a future condition beyond the date of project approval:

We do not construe the word "normally," as used in CEQA Guidelines section 15125, subdivision (a), . . . to mean that a lead agency has carte blanche to select the conditions on some future, post-approval date as the "baseline" so long it acts reasonably as shown by substantial evidence.

· The word "normally" as used in the regulation is most reasonably understood as recognizing, with respect to individual projects not previously analyzed under CEQA, that the physical conditions existing exactly at the time the notice of preparation is published . . . may not be representative of the generally existing conditions and, therefore, an agency may exercise its discretion to apply appropriate methodology to determine the "baseline" existing conditions. Thus, for example, if traffic congestion and vehicular travel has temporarily decreased due to an unusually poor economy . . . a lead agency might use appropriate methodology, perhaps historical data and traffic modeling, to determine the generally existing conditions. Similarly, where evidence shows traffic levels are expected to increase significantly during the environmental review process due to other development actually occurring in the area, the projected traffic levels as of the expected date of project approval may be the appropriate baseline.

# Critical Points

- Can address future baseline in addition to existing conditions, but must be sure to address existing baseline
- For existing baseline to be different from time of NOP, courts historically held that substantial evidence needed to prove that environmental conditions will be different at time of expected project approval (i.e., projects under construction will likely be completed); this approach may be no longer permissible
- Sunnyvale case concluded that future baseline approach contravenes CEQA regardless of whether agency's choice of methodology for predicting future conditions is based on substantial evidence

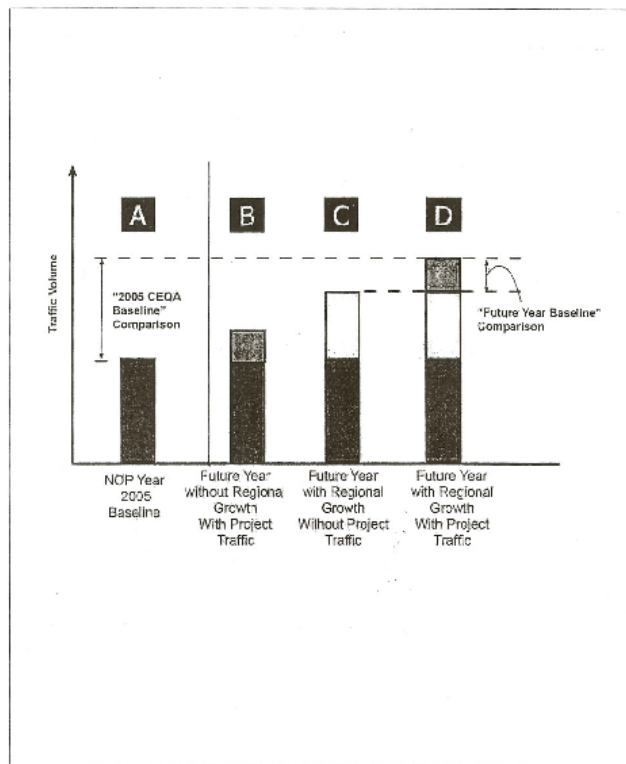


Figure 3.5-3. Analytical Framework for Comparison

# Critical Points Cont'd.

- Projections re: “buildout” dates can be conjecture (as seen with current economy) and can easily be challenged
- Vested approval issue (air permit vs. Conditional Use Permit): under *Communities for a Better Environment v. SCQAMD*, even the existence of vested rights is not a basis for departing from “existing conditions”; rather, if the addition of new mitigation would constitute a “taking,” then EIR should describe such mitigation as “legally infeasible”

# Implications for Larger Projects that are Long Term and Planning Related

- Specific Plans with 20-25 year horizons<sup>[1]</sup>
- General Plans
- Roadway Projects

<sup>[1]</sup> Example might be large scale plan where about 11 million square feet proposed over 25-yr horizon. Traffic to look at

- a. Baseline
- b. Baseline plus full buildout
- c. Baseline plus 2015 cumulative traffic
- d. Baseline plus 2015 Cum. Traffic plus 2015 Project Traffic (Phase 1)
- e. Baseline plus 2035 Cum. Traffic
- f. Baseline plus 2035 Cum Traffic plus Project 2035 Project Traffic (buildout).

# Results of Impact Analysis

- Scenario of “b” will show extensive SU impacts and will have to include a myriad of mitigation measures such as need to construct interchange or major road widenings.
- Because project only contributes to a portion of the total impact, and mitigation largely outside control of applicant (regional improvements), need to conclude that impact is significant and unavoidable (SU).

# Implications for Mitigation Measures

- 25-yr projects: SU impacts unless feasible fee programs in place
- Need to recommend phasing of improvements and monitoring at specific phases to identify impr.
- Need for extensive Findings of Overriding Consideration
- May result in more regional Fee Programs that can help to guarantee fair share contributions towards regional roadway and other improvements

# How this Case affects CEQA Work

- May need to do multiple model runs
- Need to show how to achieve proportional mitigation (“existing plus project” may not do so)
- Scenarios with too little mitigation vs. too much mitigation or too early (growth inducement) (cumulative or interim model runs might be better for formulating mitigation)

# Questions and Answers

