

## **Airport Challenge Does Not Fly: Court Upholds Use of Addendum for Changes to San Jose Airport Master Plan**

The City of San Jose's use of an addendum for recent modifications to the San Jose Airport's Master Plan has been upheld by the court of appeal. [Citizens Against Airport Pollution v. City of San Jose, H038781 \(6th Dist. July 2, 2014\)](#). In 1988, the City of San Jose began to prepare an update to its 1980 Airport Master Plan to accommodate projected growth in air traffic through a planning horizon year of 2010. The city completed an EIR for the Airport Master Plan update in 1997, and a supplemental EIR in 2003, and also adopted eight addenda to the EIRs from 1997 through 2010. In the eighth addendum, the city analyzed the potential impacts associated with proposed changes to the Master Plan including: (1) changes in the size and location of future air cargo facilities; (2) replacement of previously planned air cargo facilities with 44 acres of general aviation facilities to accommodate a forecasted increase in use by large corporate jets; and (3) modification of two taxiways to improve access for corporate jets.

Citizens Against Airport Pollution filed suit to challenge the eighth addendum, claiming the changes to the Airport Master Plan amounted to a new project requiring preparation of a supplemental or subsequent EIR. The city responded that the proposed changes did not add up to a new project, but rather were adjustments to an existing plan that had already received environmental review, and therefore an addendum was appropriate.

Heavily relying on the principle that the standard for a court's review of an agency's use of an addendum to an EIR is "deferential," the court upheld the city's decision to prepare an addendum, finding substantial evidence in the administrative record that supported the city's determination that "the changes in the project or its circumstances were not so substantial as to require major modifications to an EIR."

The court considered, but declined to decide, whether the 1997 EIR should be considered a program EIR. Instead, the court found that the record contained substantial evidence that use of an addendum was appropriate, even assuming the 1997 EIR was a program EIR, because the proposed changes will not result in any new significant impacts or impacts that are substantially different from those described in the 1997 EIR and the supplemental EIR. Similar to the recent decision by the First District Court of Appeal in *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* ([discussed here](#)), the court found that the substance of the EIR was more important than the name attached to the document, and that the standard for determining whether further environmental review is required the same for both a program and project EIR.

Turning to the substantive claims, the court rejected the claim that the addendum violated CEQA because it did not include the greenhouse gas analysis required by the 2010 amendments to the CEQA Guidelines. Following the reasoning in recent court decisions, the court observed that the potential environmental impacts of GHG emissions have been known since the 1970s and were widely known before the certification of the 1997 EIR and the 2003 supplemental EIR; as a result, the effect of GHG emissions was not "new information" that would trigger the need for further CEQA review.

The court further found that the proposed modifications did not warrant supplemental review of noise impacts, relying heavily on a detailed study comparing the noise analysis in the 1997 EIR and 2003 supplemental EIR to the noise levels projected with the proposed modifications in place. The challenger's air quality claim also fell flat, as the record reflected that the proposed modifications would neither increase the activity levels at the

airport beyond that already identified in the Plan nor would the proposed changes alter the capacity of the airport. Finally, the court agreed with the eighth addendum's conclusion that potential impacts to the burrowing owl did not warrant supplemental review, concluding that it could "reasonably assume" that the burrowing owl mitigation measures incorporated in the addendum "will maintain the environmental impacts on the Airport's burrowing owl population to a less than significant level."

Blog series

## **California Land Use & Development Law Report**

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)