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California Land Use & Development Law Report



The Ninth Circuit upheld the Federal Aviation Administration's decision to study only the project and the no action alternative in an EIS for a new passenger terminal. However, the court found the FAA violated NEPA by failing to account for the combined noise that could result from the simultaneous operation of different types of construction equipment. *City of Los Angeles v. Federal Aviation Administration*, 63 F.4th 835 (9th Cir., 2023).



As early as 1980, the FAA and the local airport authority began planning to replace the passenger terminal at the Hollywood Burbank Airport, which no longer met federal standards. After a lengthy process that included passage of a local ballot measure in 2016, the FAA commenced preparation of a new Environmental Impact Statement to study the project. The EIS took several more years, and the FAA issued its record of decision in 2021. The City of Los Angeles, which owns 100 acres of the 555-acre airport site, sued.

The court first rejected LA's claim that the FAA violated NEPA by studying only the project and the no action alternative in detail. The court upheld the FAA's purpose and need statement for the project, which was to provide a passenger terminal that meets FAA standards, passenger demand, and building requirements and to improve utilization and operational efficiency of the terminal. It also approved the FAA's screening process, in which the FAA considered 10 project alternatives, including an offsite location, a remote terminal, use of other airports, use of other modes of transportation, reconfiguration of runways, placing the new terminal in another area within the airport, and the no action alternative. The FAA screened out alternatives that did not meet the purpose and need, and those that would not be practical or feasible to implement in light of a development agreement the airport authority had entered into with the city, the ballot measure and other practical considerations such as space availability. The court concluded "Given FAA's unchallenged technical and economic analysis that led to elimination of all alternatives except the proposed action and no action—as well as Los Angeles's failure to identify a viable alternative that FAA did not consider—the circumstances here justify FAA's conclusions."

The court then agreed with LA that the FAA failed to take the required hard look at the environmental consequences of construction noise. The FAA had relied on the Federal Highway Administration Roadway Construction Noise Model User's Guide and assessed the impacts of the loudest type of equipment – a jackhammer – on nearby residences. Though the FAA acknowledged that adding two sounds of the same level would increase sound levels by approximately 3 decibels, the FAA did not try to calculate the combined effects from multiple pieces of equipment operating simultaneously. This was not an inconsequential technical deficiency, but a fundamental error in the agency's noise analysis. Nor was there any support for the FAA's implied assumption that construction equipment would not be run simultaneously. The court accordingly remanded to the FAA to reconsider its construction noise analysis.

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