

PROTECT NILES v. CITY OF FREMONT

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A recent unpublished opinion by California’s First Appellate District highlights the risk that CEQA lead agencies face when they approve projects with potential visual or traffic impacts based on a negative declaration. In *Protect Niles v. City of Fremont*, the appellate court held that personal observations by members of a community could constitute substantial evidence of these impacts, notwithstanding professional reports finding no impacts.

The case concerned a development of 98 townhomes in the City of Fremont. The development was proposed on a six-acre site in the historic Niles district. The City adopted a Mitigated Negative Declaration. As to visual impacts, the initial study concluded the development was visually compatible with the surrounding area. With respect to traffic, a traffic study prepared for the project concluded that project-related traffic would not exceed the applicable thresholds of significance. Residents in the area, however, offered testimony that contradicted both findings. Residents claimed the new buildings did not blend into the historic neighborhood and testified that traffic conditions were worse than described in the traffic study. The comments by these residents successfully persuaded the trial court that a fair argument that significant impacts existed for visual compatibility and traffic.

On appeal, the First Appellate District noted that while aesthetic judgments are inherently subjective, personal observations on non-technical issues can, in appropriate cases, constitute “substantial evidence.” Applying this principle here, the court observed that the residents’ aesthetics claims were not based on “vague notions of beauty or personal preference” but were instead “grounded in inconsistencies with the prevailing building heights and architectural styles of the Niles neighborhood and commercial core.” As for traffic, the court explained: “personal observations of traffic conditions where they live, and commute may constitute substantial evidence even if they contradict the conclusions of a professional traffic study... This is especially true where, as here, residents cite specific facts that call into question the underlying assumptions of a traffic study.”

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