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DC Circuit Reinstates Federal NEPA Review and Approval of Purple Line Transit Project

On December 19, 2017, the U.S. Court of Appeals for the D.C. Circuit issued a long-awaited [ruling](#) upholding the National Environmental Policy Act (NEPA) review for the new light-rail Purple Line in Maryland. As previously [posted](#), Beveridge & Diamond filed an amicus brief on behalf of the American Road & Transportation Builders Association (ARTBA) that communicated the transportation construction industry's support for the project and sought reversal of the district court's order for a Supplemental Environmental Impact Statement (SEIS) under NEPA.

In a detailed 24-page opinion, the D.C. Circuit reversed the lower court's finding of a NEPA violation and reinstated the federal Record of Decision for the project. Adopting the reasoning of the Federal Transit Administration (FTA), State of Maryland, and B&D's amicus brief, the Court determined that no SEIS was required. The Court rejected Plaintiffs' contention that ridership and safety concerns regarding Metrorail—a distinct transit system—required a new NEPA assessment of the intersecting Purple Line. Such non-environmental concerns did not present a “seriously different picture of the environmental landscape” warranting NEPA supplementation.

The Court also recognized that even the most “extreme” scenario where Metrorail “ceased to exist” would not change the environmental impacts of the proposed Purple Line or the relative environmental impacts of the reasonable range of alternatives. Plaintiffs' submissions of new information to FTA during the litigation in an attempt to belatedly manufacture new issues were instead properly treated as “simply late-filed comment[s] on the analysis in the [Final Environmental Impact Statement].” Finally, the Court deferred to the agencies' “reasonable, fact-intensive, technical determination” not to prepare an SEIS.

The Court's ruling has two principal benefits. First, it finally paves the way for a major, new transportation enhancement to the Washington, DC region. The Purple Line is the largest public-private partnership (P3) project in the nation, with a federal contribution of \$900 million. Its 21 stations will knit together communities along 16 miles between Montgomery and Prince George's Counties, from Bethesda to New Carrollton. This key infrastructure project has been in planning for three decades, and is currently under construction.

Second, the appellate ruling rescinds what otherwise would have been troubling

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NEPA precedent completely misconstruing NEPA's fundamental purpose and requirements. The D.C. Circuit preserved NEPA's focus on agency decision-making informed by a "hard look" at environmental impacts, while maintaining the workability of the process. Rebuffing project opponents' attempts to manufacture novel issues at the eleventh hour, the Court echoed that NEPA "does not require the agency to assess every impact or effect of its proposed action, but only the impact or effect on the environment" – specifically "the physical environment." In doing so, the ruling reinvigorates complex P3 transportation and other infrastructure projects nationwide that may now proceed with reduced risk of courts misinterpreting NEPA to impose novel requirements based on non-environmental factors and ever-changing circumstances.

Beveridge & Diamond offers a full range of counseling, permitting, and litigation services for developers of transportation, energy, water, and municipal infrastructure, including significant experience and capabilities in support of NEPA reviews. For more information, please contact the authors or any member of the Firm's [Natural Resources and Project Development Practice](#).