

Use Of Future Baseline In CEQA Analysis Approved By California Supreme Court

The California Supreme Court has both resolved a split in the appellate courts and forged new law on the baselines agencies may use to assess projects' environmental effects under CEQA. [Neighbors for Smart Rail v. Exposition Metro Line Construction Authority](#), Case No. S202828 (Cal. Supreme Court, August 5, 2013).

In an unusual 3-3-1 decision, the court's majority held that a lead agency has discretion to measure a project's impacts against a baseline of environmental conditions that are anticipated to exist far in the future and after project operations have begun. But in order to do so, the agency must "justify its decision by showing an existing conditions analysis would be misleading or without informational value." No such showing need be made, however, if an EIR uses a baseline consisting of conditions that will exist when the project *begins* operations rather than a later date; there is no requirement that the baseline consist of conditions existing when environmental review began.

The court addressed an environmental impact report that analyzed the traffic and air quality impacts of an LA Metro rail line extension only by comparing them to conditions that were projected to exist in the year 2030. Therefore, the court confronted the familiar problem raised by section 15125(a) of the CEQA Guidelines, which states: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or ... at the time environmental review is commenced.... *This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.*" (emphasis added.) The latter sentence has caused significant confusion in the CEQA case law, including two recent appellate decisions holding that a lead agency must always use conditions prior to project approval as the baseline for its CEQA analysis.

Faced with the "counterfactual" prospect of requiring EIRs to use an early baseline for traffic and air quality – two conditions that are certain to change by the time a project is constructed and operating – three justices signed an opinion that arrived at a compromise rule, and were joined by a fourth justice on this point. The lead opinion also concluded that the rail project could go forward; a total of six justices agreed. Key elements of the lead opinion:

- "Existing conditions" are not limited to existing conditions as that term is defined in Guideline 15125(a)

Fundamental to the majority's decision is its redefinition of the term "existing conditions" to include conditions later than those existing as of the notice of preparation of the EIR or the beginning of CEQA review. In the majority's view, "existing conditions" can include "environmental conditions that will exist when the project begins operations." Most CEQA practitioners have long used the latter baseline, labeling it "Near Term No Project" (or similar) rather than "Existing Conditions." In this respect the Court's majority has simply changed the vocabulary for a commonly used traffic and air quality baseline.

- An agency may use both an existing conditions and a future conditions baseline:

Use of a future baseline need not be relegated solely to an EIR's analysis of cumulative impacts or its "no project" alternative. Instead, an agency may consider "both types of baseline—existing and future conditions—in its primary analysis of the project's significant adverse effects."

- Exclusive reliance on a baseline that does not capture impacts at the beginning of project operation is suspect:

The majority concluded that agencies have discretion to use a future time "well beyond the date the project is expected to begin operation," as the EIR's sole baseline for impacts analysis. But the use of such a baseline raises concerns that the initial impacts of project operations will be missed, and that long-term projections are less reliable than short-term projections. For these reasons, the majority concluded that a lead agency could rely exclusively on a "distant future" baseline only if the agency could show that use of an "existing conditions" baseline would be "misleading or without informational value."

- *Sunnyvale West* and *Madera Oversight Coalition* are disapproved:

All seven justices disapproved these two recent appellate court decisions "insofar as they hold an agency may never employ predicted future conditions as the sole baseline for analysis of a project's environmental impacts."

- The agency's reliance solely on a 2030 baseline was not prejudicial error:

Although the majority found the Authority had not adequately justified its decision to use only a 2030 baseline for its EIR, the lead opinion – in keeping with an emerging judicial trend – found the error non-prejudicial. Concluding the error did not deprive the public and decision makers of substantial relevant information about the project's likely adverse impacts the signatories to the lead opinion, joined by three other justices, agreed that the project opponents' petition for a writ of mandate overturning the EIR and halting the rail project should be denied.

In a concurring and dissenting opinion, three justices would have held that the EIR did not violate CEQA, and that an agency retains discretion to rely on a baseline of projected future conditions if that selection "is supported by substantial evidence and results in a realistic impacts analysis that allows for informed decisionmaking and public participation." The seventh justice, while agreeing with the lead opinion's new rule, would have found the error prejudicial and would have granted the petition for writ of mandate.

The *Neighbors for Smart Rail* decision embraces use of a future baseline consisting of conditions at the time project operations are expected to begin. In so doing, the decision should restore some order following the period of confused and duplicative analyses ushered in by the *Sunnyvale West* and *Madera Oversight Coalition* cases.

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