

Supreme Court Declines Review of CEQA Decision Upholding EIR's Use of Existing Operations Baseline

In *Citizens for East Shore Parks* the court of appeal upheld use of existing "on the ground" conditions, including ongoing operations, as the baseline for CEQA review of long-term renewal of a State Lands Commission lease of property used for a marine terminal. On March 14, 2012 the California Supreme Court denied a petition for review of the court of appeal's decision.

The case involved a challenge to the commission's renewal of a lease of land used by Chevron for a marine terminal in San Francisco Bay. The terminal and the refinery served by the terminal have been in operation since the early 1900's. After Chevron's lease expired, it sought a 30-year lease renewal from the Commission.

The EIR on the lease renewal treated existing terminal facilities and ongoing terminal operations as the baseline for its impact analysis. As a result, the EIR treated the environmental impacts of operations at the terminal as existing environmental conditions, rather than as new impacts that would result from lease renewal.

The court of appeal rejected the claim that disclosure of the true impacts of renewing the lease required that environmental conditions without an operating marine terminal be used as basis for the EIR's impact analysis. Noting that the "existing environmental setting" is normally used as the baseline for CEQA review, the court ruled the EIR properly used an existing conditions baseline which reflected what was "actually happening" at the site at the time the commission started preparing it.

Citizens for East Shore Parks v State Lands Commission, 202 Cal.App.4th 549 (2011).

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