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[COURT INVALIDATES EIR'S USE OF A BASELINE PREDICATED ON FUTURE, POST-APPROVAL CONDITIONS FOR ANALYSIS OF PROJECT'S IMPACTS](#)

[Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council, No. H035135 \(6th Dist., December 16, 2010\)](#)

By [Kyndra Joy Casper](#)

In *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* ("Sunnyvale"), the California Court of Appeal, Sixth District (the "Court") invalidated the use of a baseline consisting of future, post-project approval conditions to analyze a project's impacts in an Environmental Impact Report ("EIR"). This decision may have widespread effects because the use of a future baseline has become a widespread industry practice particularly for analysis of traffic and circulation impacts.

The California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA") generally requires preparation and certification of an EIR on any proposed project that may have a significant effect on the environment before the project is approved. The EIR must include, among other things, a detailed statement setting forth all significant effects on the environment of the proposed project. The State CEQA Guidelines, 14 California Code of Regulations Section 15000 et. seq. (the "Guidelines") implementing CEQA state with regard to an EIR's description of a proposed project's environmental setting: "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 if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." Guidelines, § 15125(a).

In *Sunnyvale*, the EIR for the proposed Mary Avenue Extension Project ("MAE") used projected traffic conditions in the year 2020, based on expected growth under the City of Sunnyvale's general plan and in neighboring communities, as its baseline to evaluate the MAE's traffic and related impacts. The EIR did not consider the MAE's traffic and related impacts on the existing environment. The superior court granted a peremptory writ of mandate compelling the City of Sunnyvale City Council ("City Council") to set aside its approval of the proposed MAE and its certification of the Final Environmental Impact Report.

The City Council appealed, arguing that the EIR's use of 2020 conditions as a baseline offers the most accurate and informative portrayal of the environmental impact of the MAE. Respondents, Sunnyvale West Neighborhood Association and named individuals, maintained that the impacts of the project must be measured against current, existing physical conditions and a comparison against a baseline as it might exist in 2020 cannot substitute for a comparison with current, existing conditions. The Court affirmed.

The Court first examined whether the decision to use a 2020 baseline constituted a failure to proceed as required by law, as concluded by the superior court. In reviewing the agency actions under CEQA, a court's review extends "only to whether there was a prejudicial abuse of discretion." Guidelines §21168.5. Abuse of discretion is established if the agency has not proceeded

in a manner required by law or if the determination or decision is not supported by substantial evidence.

The City Council insisted that the decision to use a baseline of the traffic conditions projected for the year 2020 was a fact-based, discretionary determination supported by substantial evidence in the administrative record. The City Council relied significantly upon *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal. App. 4th 99 (2001), which the City argued gave it discretion to use a future baseline. In *Save Our Peninsula*, the court had stated that “. . . where the issue involves an impact on traffic levels, the EIR might necessarily take into account the normal increase in traffic over time. Since the environmental review process can take a number of years, traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline against which to measure the impact of the project.” *Save Our Peninsula*, 78 Cal. App. 4th at 125 - 126.

The Court acknowledges that the California Supreme Court, in *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th 310 (2010), endorsed *Save Our Peninsula's* holding. However, it noted that the Supreme Court "never sanctioned the use of predicted conditions on a date subsequent to EIR certification or project approval as the 'baseline' for assessing a project's environmental consequences." The Court could not uphold the use of the future baseline "since that approach contravenes CEQA regardless whether the agency's choice of methodology for projecting those future conditions is supported by substantial evidence." It was further noted that the "industry practice" of evaluating transportation improvement projects based on future scenarios does not alter CEQA's mandates. The Court also noted that even if it were to assume that use of the projected 2020 conditions as a baseline did not constitute a failure to proceed in a manner required by law, the administrative record did not contain substantial evidence to support the decision to deviate from the norm.

Pursuant to CEQA, prejudicial abuse of discretion is required to invalidate an EIR. The City Council argued that prejudice could not be shown because the project's traffic and related impacts were evaluated under future traffic conditions much worse than those presently existing, which resulted in a more conservative and realistic assessment and overstated the adverse effects of the project. While acknowledging the argument had "some surface appeal", the Court held that the error was prejudicial because the failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation. Further, it noted that even if a complete analysis of the project's traffic and related impacts on the existing environment would have produced no findings of different or greater significant environmental effects than were found based on the anticipated traffic conditions in 2020 and such analysis would not have altered the City Council's decisions, such circumstances do not establish a lack of prejudice for purposes of CEQA review. CEQA requires a "straightforward assessment of the project's full impact on existing conditions . . ." for the EIR process to serve its "core informational purpose."

However, the Court did not rule that discussions of foreseeable changes and expected future conditions were unneeded in an EIR. To the contrary, it noted that such discussions may be necessary in the cumulative impacts and "no project" alternative analysis for full compliance with CEQA.

This decision is important as it limits the lead agencies discretion in determining the baseline conditions to use for impact analysis in an EIR. A lead agency cannot use conditions on a date subsequent to EIR certification or project approval as the baseline for assessing a project's environmental consequences. The use of an improper baseline will be considered a failure to proceed in the manner required by law and a prejudicial abuse of discretion resulting in the invalidation of an EIR. Lead

agencies will have to assess impacts on existing conditions rather than on the industry practice of assessment based on future scenarios.

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