

From: [Hill, Shannon](#)
To: [Hillary Gitelman](#); [Karl Heisler](#); [Linda S. Peters](#)
Cc: [Downtown West Project](#); [Keyon, David](#)
Subject: FW: Sharks Sports & Entertainment Comments Re Downtown West (Google) Draft EIR File GP19-009, PDC19-039, PD19-029; SCH #2019080493
Date: Tuesday, December 8, 2020 5:31:56 PM
Attachments: [Exhibit E Watry Design Google Downtown West Project Review Memo 7 December 2020 \(10570526xA1026\).pdf](#)
[Exhibit F Circlepoint Memo 7 December 2020 \(10570517xA1026\).pdf](#)
[Exhibit G CEQA Portal Paper Baseline and Environmental Setting Topic Paper 08-23-16 7 December 2020 \(10570522xA1026\).pdf](#)
[Exhibit H CEQA Portal Paper Project Description 2-10-20 7 December 2020 \(10570529xA1026\).pdf](#)
Importance: High

Please refer to the attached comments on the DEIR from Silicon Valley Law Group on behalf of Sharks Sports & Entertainment LLC.

Thanks,

Shannon Hill, Planner

Planning, Building & Code Enforcement | Environmental Review Section

City of San José | 200 East Santa Clara Street

Shannon.Hill@sanjoseca.gov | (408) 535 - 7872

From: Jeffrey Lawson <jsl@svlg.com>
Sent: Tuesday, December 8, 2020 12:25 PM
To: Hill, Shannon <Shannon.Hill@sanjoseca.gov>
Cc: 'Jim Goddard (JGoddard@sapcenter.com)' <JGoddard@sapcenter.com>; 'Lucy Lofrumento' <lal@LMALLP.com>; Klein, Nanci <Nanci.Klein@sanjoseca.gov>; Day, Cameron <Cameron.Day@sanjoseca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>
Subject: RE: Sharks Sports & Entertainment Comments Re Downtown West (Google) Draft EIR File GP19-009, PDC19-039, PD19-029; SCH #2019080493
Importance: High

[External Email]

Ms. Hill
Here is email #2.
Thx



Jeffrey S. Lawson

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Subject: Sharks Sports & Entertainment Comments Re Downtown West (Google) Draft EIR File GP19-009, PDC19-039, PD19-029; SCH #2019080493
Importance: High

Dear Ms. Hill

Attached please find Sharks Sports & Entertainment LLC Comments Regarding Google's Downtown West Mixed-Use Plan Draft Environmental Impact Report File Nos.: GP19-009, PDC19-039, and PD19-029; SCH #2019080493.

This is email #1

There are several attachments so this will take 3 emails to submit. If you have any trouble receiving all of this material please contact me. Also, if you have any other questions or concerns please contact me.

Best



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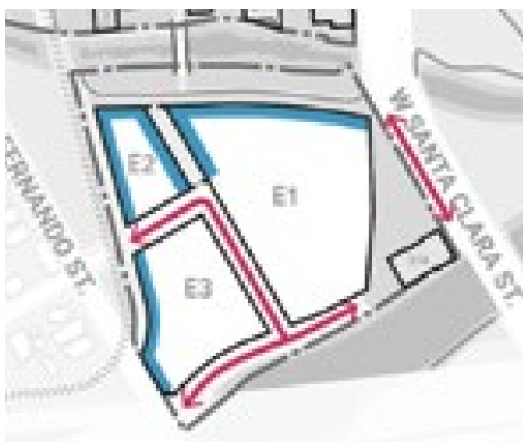
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**WATRY DESIGN, INC.**

Date:	12.07.2020	WDI No.:	05098.313
Project:	SAP Center		
From:	Michelle Wendler		
To:	Jim Goddard		
Regarding:	SSE/Google Downtown West Project Review		

Per your request, we have reviewed the 10.20.2020 Google Land Use documents and Draft EIR for the Downtown West Project for the purposes of understanding the impacts related to parking on SAP Center and the surrounding area.

1. There are not details provided on how many parking stalls would be located at each individual site in the DEIR or Land Use documents. The documents only list a broad total number for each phase of construction. Per Table 2-3 on page 2-67 of the DEIR they reference total counts by phase. In Table 2-3 there is a footnote which says, *"Includes a portion of the residential spaces could be available for shared use by office employees. Some commercial parking could also be provided at off-site location(s), should such off-site parking be developed separately from the project in the future."* Without specific detail on the amount of parking in each location, it is not possible to evaluate the impact of parking to the surrounding area. Normally documents show the location of parking and amount of parking within each building as well as the configuration of whether the parking is above, or below ground or within a building, standalone parking structure or parking lot in order to understand the impacts of the parking within the area. Since parking will be removed that services SAP Center, which is required to be close to the arena, not specifically identifying the location and amounts of parking makes it impossible to evaluate the possible impacts.
2. Documents show curb cuts as being allowed from W. Santa Clara Street to the Delmas (E1) sites on page 296 of the Downtown West Design Standards Guidelines, but in the enlarged site view on pages 136 and 138, it is not clear where this might occur. Entry/exits to underground parking on W. Santa Clara Street are important for event customer use of this site for parking. The illustrative drawings in general do not show actual curb cuts, as documents usually would. Therefore, it is not possible to determine whether they can adequately serve access for parking or to understand impacts associated with curb cuts.



3. With the extension of Cahill Street running along the west side of SAP Center, entrance and exit paths from the concourse level landings that currently bring people into Lot ABC parking area will need to be

modified to get patrons down to the new street level grade. Per page 2-40 it states the ABC lots are 7-8 feet above the street, which is true, but the concourse level where the patrons exit from is an additional 8 feet higher for a total of 16' of elevation that the design needs to address. The documents do not adequately describe the northwest entrance and its importance to SAP Center. This is one of the main entrances to the arena and its design is of utmost importance to the ongoing operations of the facility and its identity. The document does not provide any sort of drawing or analysis to demonstrate how this will be accomplished and how it will be addressed within the proposed right of ways of the Cahill St. extension, so it is not possible to determine the full impact to the Arena. Normally there would be drawings demonstrating the design including floor plans, sections and elevations. In order to understand the impacts the documents should provide more detailed design drawings for review.

4. In Appendix H there are a few questions regarding the shared parking analysis. For the office parking the base rate of 2.5/1000, which is the unreduced rate, is used to begin the calculation but for the residential parking, the reduced rate of 0.4/du is used to begin the calculation instead of 1.0/du, which is the unreduced rate. Generally, the analysis uses the base unreduced rate to begin the calculation. Table 3 in Appendix H explains the results of the shared analysis. The calculations use multiple scenarios of mode shift, which is shifting from single occupant vehicle (SOV) to another mode. Based on the calculations using the ULI model, the mode shift that would be equivalent to the City's zoning ordinance reduction methodology of 2.5/ksf reduced to 1.1/ksf would be approximately 63%. In order to achieve this, the City requires substantial TDM measures be employed. It is not clear what additional TDM measures will be utilized beyond the base City code requirements to assume a further reduction to 65%. For the mode shifts of 70% and 75% the analysis assumes that "market forces" will reduce the demand. No evidence has been provided demonstrating that the "market forces" described currently exist in San Jose today, or how the project will have control over the "market forces" to create the ability for the reduction.
5. In Appendix H, it notes that some of the mode shift would utilize taxi/TNC which requires curb space for pick up and drop off. It is not clear where these curb spaces will be located so it is not possible to determine the impacts that they might have.
6. There is a conflict in the representation of the stall counts required by the base City code.
 - a. Per page 2-21 of the DEIR text it references a total a requirement of 10,290 total off-street spaces (7,782 commercial spaces and 2,508 residential spaces).
 - b. Per page 3.13-64,65 of the DEIR text it references a total a requirement of 10,290 total off-street spaces (7,782 commercial spaces and 2,508 residential spaces).
 - c. Per Downtown West: Mixed-Use Rezoning and Development Plan Draft Local Transportation Analysis Appendix H Parking Analysis for Commercial Uses it references a total requirement of 9,351 total spaces (6,981 commercial spaces and 2,360 residential spaces).
 - d. Per Downtown West: Mixed-Use Rezoning and Development Plan Draft Local Transportation Analysis Chapter 10 it references a total requirement of 9,351 total spaces (6,981 commercial spaces and 2,360 residential spaces).

Conclusion: Based on the evidence in the record it is not possible to determine the impacts relative to parking as it relates to SAP Center and the surrounding area.

WATRY DESIGN, INC.

Michelle Wendler, AIA Principal



Education

Bachelor of Architecture
California Polytechnic State University,
San Luis Obispo, CA

Registrations

Architect (#25066), CA (5/24/94)
Architect (#305676), CO (7/13/99)
Architect (#10466), HI (2/25/02)
Architect (#35374), AZ (8/18/00)
Architect (#985173), ID (9/22/09)
Architect (#3406), NV (2/96)
Architect (#9173), WA (9/06)
Architect (#16003), TX (1/27/98)
Architect (#2935), MT (7/23/07)
Architect (#5427587-030), UT (3/23/04)
Architect (#004663), NM (8/1/08)
Architect (#11934), NC (12/6/10)
NCARB Certified (#45897), (2/96)

Affiliations

American Institute of Architects
International Parking & Mobility Institute
California Public Parking Association
Southwest Parking Association
Pacific Intermountain Parking & Transp.Assoc.
American Society for Healthcare Engineering
Society for College & University Planning
Community College Facility Coalition
Design Build Institute of America
Women in Parking Board of Directors
Parksmart (formerly the Green Parking Council)
US Green Building Council
American Association of Airport Executives

30+
years in
parking design

Michelle, a Principal with Watry Design, Inc., has worked extensively with parking structure design, construction documents, and construction administration for over 30 years. "Our goal is to make our clients look good," says Michelle. "We take our clients' problems and issues as our own and we team with them to find the best possible solutions." She is responsible for the design of over 300 parking projects and leads parking structure design for the firm.

In addition, she tirelessly strives to ensure that the firm's designs work within the context of their environment and are something of which everyone can be proud. Michelle's extensive parking experience includes an impressive portfolio of work as highlighted below. Michelle serves on the Advisory Council for the International Parking & Mobility Institute and is an active participant in industry associations, a powerful speaker and compelling advocate for parking.

Relevant Projects

San Jose Mineta International Airport Economy Lot PS 1, CA
Pittsburg International Airport Parking Structure, PA
San Diego International Airport Terminal 2 Parking Plaza, CA
VTA Milpitas & Berryessa Station Parking Structures, CA
SolTrans Parking & Transit Hub, Vallejo, CA
Gold Line Foothill Extension Construction Authority
Arcadia, Azusa, Irwindale, Monrovia, Metro Station Parking Structures
Vallejo Station Parking Structure & PARCS, Vallejo, CA
Baldwin Park Transit Center Parking Structure, CA
OCTA Tustin Metrolink Station Parking Structure, CA
Long Beach Airport Parking Structure, Long Beach, CA
City of Livermore Valley Center Parking Structure, CA
City of Oceanside Parking Structure, CA
BART Richmond Transit Village Parking Structure, CA
BART Pleasant Hill Parking Structure, CA
BART Fruitvale Parking Structure, Oakland, CA
BART Millbrae Parking Structure, CA
City of Covina Metrolink Transit Parking Structure, CA
San Mateo County Government Parking Structure, CA
City of Palo Alto Public Safety Building Study & Parking Structure, CA
Covina Downtown Parking Structure, Covina, CA
Napa 5th Street Parking Structure, Napa, CA
Temecula Civic Center Parking Structure, Temecula, CA
City of Palo Alto Lots R & S/L Parking Structures, CA
City of Fresno Convention Center Parking Structure, CA
City of Riverside Parking Structure #6, CA
City of San Rafael Parking Structure, CA
City of South San Francisco Miller Avenue Parking Structure, CA
City of Mountain View Parking Structure, CA
Palm & Nipomo Parking Structure, San Luis Obispo, CA
Vallco Town Center Structured Parking, Cupertino, CA
Ward Village Block F Structured Parking, Honolulu, HI
Ala Moana Center Honolulu Peer Review, HI
Hotel Del Coronado North Parking Structure, CA
City View Plaza Structured Parking, San Jose, CA
South Almaden Offices Structured Parking, San Jose, CA
Apple Park Corporate Campus Northand South PS, Cupertino, CA
Apple Park Corporate Campus Tantau 10 PS, Cupertino, CA
Apple Park Corporate Campus Visitor Center PS, Cupertino, CA
The Exchange on 16th Street Parking Structure, San Francisco, CA

M E M O R A N D U M

TO: Rosalyn Hughey, City of San José
Robert Manford, City of San José

FROM: Audrey M Zagazeta, Circlepoint

SUBJECT: CEQA Findings for the Diridon Station Area Plan Amendment

DATE: October 23, 2020

Circlepoint has completed the environmental analyses for the Diridon Station Area Plan (DSAP) Amendment pursuant to our contracted scope of work. Our approach included the preparation of an expanded initial study, in the form of a California Environmental Quality Act (CEQA) Addendum that evaluates the DSAP Amendment changes in relation to analysis in the Downtown Strategy 2040 Environmental Impact Report (EIR), certified by the San José City Council in December 2018.

The Downtown Strategy 2040 EIR Addendum (Addendum) has been prepared in conformance with the CEQA Guidelines (Title 14, California Code of Regulations §15000 et seq.), and City regulations and policies.

This memorandum provides the overall CEQA findings for the Addendum, and our recommendation of the appropriate CEQA document based on the CEQA Guidelines presented below.

CEQA Guidelines for an Addendum

CEQA Statutes Section 21166 and CEQA Guidelines Sections 15162 and 15164 provide that an Addendum to a previously certified EIR can be prepared for a project if the criteria and conditions summarized below are satisfied:

- **No Substantial Project Changes:** There are no substantial changes proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- **No Substantial Changes in Circumstances:** Substantial changes have not occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- **No Substantial New Information:** There is no new information of substantial importance which was not known or could not have been known at the time of the previous EIR that shows any of the following:
 - (a) The project will have one or more significant effects not discussed in the previous EIR;
 - (b) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (c) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternatives; or
 - (d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative

If the changes would involve new significant environmental impacts or a substantial increase in the severity of previously identified significant impacts, further environmental review (in the form of a Subsequent or Supplemental Environmental Impact Report) would be warranted per CEQA Guidelines Section 15162 and 15163. If the changes do not meet these criteria, then an Addendum, per CEQA Guidelines Section 15164, is prepared to document any resulting changes to environmental impacts or mitigation measures.

DSAP Amendment

The Addendum to the Downtown Strategy 2040 EIR analyzes the proposed increases in density and development capacity that would be added to the DSAP as part of the DSAP Amendment (see **Figure 1**). The Downtown Strategy 2040 EIR is the most recent planning-level EIR to evaluate development within 90 percent of the DSAP area.

The environmental analysis in the Addendum is based on the DSAP Amendment project description derived from the capacity study conducted by Skidmore, Owings & Merrill LLP (SOM) on behalf of the City, dated January 24, 2020. The SOM capacity study evaluated potential increases in development capacity in the DSAP resulting from the lifting of One Engine Inoperative (OEI) height restrictions. For CEQA purposes, the City decided to analyze the maximum office and residential capacities, with the caveat that actual development capacities may be less after the DSAP Amendment if finalized through the public outreach. **Table 1** below shows the proposed maximum buildout compared to the original DSAP assumptions contained in the Downtown Strategy 2040 EIR.

The growth shown in **Table 1** is a summary of planned growth capacity in the 2014 DSAP and planned General Plan development capacity equivalent to approximately 12,619 housing units and 14.1 million square feet of commercial office space. This growth is proposed to be reallocated to Downtown from other planning areas identified in the General Plan to support transit-oriented development, which in turn reduces vehicles mile traveled (vmt) and supports Smart Growth.

Table 1 - Change in Maximum DSAP Development Capacity

	Office (sf)	Retail (sf)	Residential (units)	Hotel (units)
<i>Original DSAP (2014), a subset of capacity in Downtown Strategy (2018)</i>	4,963,400	424,100	2,588	900
<i>Proposed Amendment to DSAP Capacity (DSAP Amendment)</i>	7,838,000	-	7,044	-
<i>Proposed Amendment to DSAP Capacity (Downtown West Project)</i>	6,306,000	469,000	5,575	1,100
Net Increase in DSAP Development Capacity	14,144,000	469,000	12,619	1,100

Source: City of San José 2020

sf = square feet; DSAP = Diridon Station Area Plan

Additionally, the DSAP Amendment would allow up to 24,166 square feet of commercial office space and up to 2,671 residential units located in areas within the DSAP but outside of the Downtown boundary. This portion of the DSAP Amendment-related growth would not represent an increase in development capacity above what was planned for in

the Downtown Strategy 2040 and is consistent with the official growth allocations and forecasts from the City's 2040 Envision San José 2040 General Plan and Association of Bay Area Governments (ABAG). **Table 2** below summarizes the net growth in Downtown Strategy 2040 development capacity from the Downtown West project and the DSAP Amendment.

Table 2 – Change in Maximum Downtown Strategy 2040 Buildout

	Office (sf)	Retail (sf)	Residential (units)	Hotel (units)
<i>Original Downtown Strategy 2040 (2018)</i>	<i>14,200,000</i>	<i>1,400,000</i>	<i>14,360</i>	<i>3,600</i>
<i>Proposed Amendment to DSAP Capacity within Downtown Boundary (DSAP Amendment)</i>	<i>7,813,834</i>	<i>-</i>	<i>4,373</i>	<i>-</i>
<i>Proposed Amendment to DSAP Capacity (Downtown West)</i>	<i>6,306,000</i>	<i>-</i>	<i>5,575</i>	<i>-</i>
New Total Downtown San José Development Capacity	28,319,834	1,400,000	24,308	3,600

Source: City of San José 2020
sf = square feet

Other Planned Development

A list of other planned development projects within the DSAP area is considered in the Addendum, including future reasonably foreseeable transportation projects within the DSAP area. New transportation projects planned under the DSAP Amendment include primarily pedestrian, bicycle, and transit upgrades, as well as several roadway improvements. In addition to these projects, two lots located near the San José Arena would be converted to surface parking as an interim use and potential future parking garages. The Downtown West project is a proposed development undergoing separate, project-level environmental review that would occupy approximately 81 acres of the DSAP area. Downtown West is currently under consideration for approval by the City and is undergoing a separate, project-level environmental review process.

CEQA Findings

The Addendum describes changes that have occurred in the existing environmental conditions within and near the DSAP area and Downtown, as well as environmental impacts associated with DSAP Amendment. The major changes proposed as a part of the DSAP Amendment process would intensify the planned densification of the Downtown Strategy 2040 EIR to allow for mixed uses and public infrastructure, strengthening the City as a regional employment center, entertainment destination, and significant hub for public life. The draft Addendum also includes an analysis of cumulative impacts of the DSAP Amendment in conjunction with other planned development, including the Downtown West project.



The environmental impacts of the Downtown Strategy 2040 were addressed by a Final Program EIR entitled, "Downtown Strategy 2040 General Plan Final Environmental Impact", and findings were adopted by City Council Resolution No. 78944 on December 18, 2018.

The Addendum includes an analysis of aesthetics, air quality, noise, historic resources, greenhouse gas emissions, transportation, and other topical areas consistent with the Appendix G CEQA Guidelines. Several technical studies were prepared to support the analyses in the Addendum including:

- Air Quality
- Greenhouse Gas
- Noise and Vibration
- Transportation

The environmental analysis presented in the Addendum indicates that there are no substantial changes proposed by the DSAP Amendment that would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Therefore, no major revisions of the existing EIR or preparation of an a new subsequent or supplemental EIR would be required. The technical reports and environmental analyses provides the substantial evidence required to support these findings and is presented in the Addendum and administrative record for the DSAP Amendment. Based on the conclusions of the environmental analysis and supporting technical reports, it is Circlepoint's expert opinion that an Addendum is the appropriate CEQA document for this project.

Next Steps

The administrative draft Addendum was submitted to the City for review and comment on October 21, 2020. City Staff will review the document and come to an independent conclusion and CEQA finding based on the information provided in the report. We look forward to receiving the City's comments on the administrative draft Addendum. Please do not hesitate to reach out with any questions or comments in the interim.



Not To Scale



Legend

- Existing Diridon Station Area Plan
- Downtown Strategy 2040



CEQA Portal Topic Paper

Baseline and Environmental Setting

What Are Baseline and Environmental Setting?

Under CEQA, the impacts of a proposed project must be evaluated by comparing expected environmental conditions after project implementation to conditions at a point in time referred to as the baseline. The changes in environmental conditions between those two scenarios represent the environmental impacts of the proposed project. The description of the environmental conditions in the project study area under baseline conditions is referred to as the environmental setting.

Why Is Baseline Important?

Establishing an appropriate baseline is essential, because an inappropriately defined baseline can cause the impacts of the project either to be under-reported or over-reported. A considerable number of CEQA documents have been litigated over the choice of a baseline for a given project, and many CEQA documents have been invalidated for the use of an inappropriate baseline (see *Important Cases* below).

Establishing the Baseline in an EIR

The State CEQA Guidelines Section 15125 provides the following guidance for establishing the baseline:

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.

As the Guidelines section makes clear, ordinarily the appropriate baseline will be the actual environmental conditions existing at the time of CEQA analysis (typically when the Notice of Preparation [NOP] is published). In many cases, establishing this “existing conditions” baseline is a straightforward task. However, there are circumstances that may make this task more complex and challenging. A few are discussed here. Others, which are even more complex, or about which court cases do not provide clear guidance, are discussed below under *Areas of Controversy*.

Resources That Fluctuate over Time

Some environmental resources evaluated in a CEQA document are constant over the time frames typically evaluated (e.g., geological conditions; types of soil underlying the project site; cultural resources present on the site). Other resources fluctuate over long periods of time (e.g., types of public services and utilities provided, population, housing units, number of existing buildings, tree populations). However, there are a number of environmental resources that are subject to substantial fluctuations over the course of days, months, or seasons. It may be difficult or misleading to describe the specific condition of these resources as of a specific date. As an example, flows in rivers and streams are never constant, varying by hour, day, season, and from year to year. Describing the exact flows in a stream as of the baseline date (even if you specified the time) would not necessarily provide a complete or useful description of this resource. Therefore, for such resources, the environmental setting may be described in terms of the historical range of flows, perhaps by month, over the period that records have been kept.

Similarly, traffic volumes also vary by hour of day, day of the week, and from year to year. While the counts are not often taken on the baseline date, they should be taken as close to the date as possible, particularly if traffic volumes are changing substantially over time. Further, if substantial daily variation is expected, traffic counts should be taken on more than one day, to try to capture these variations.

Some biological resources, such as wildlife species, may be present on the project site only during specific seasons, so even if the baseline date is established as a specific date, surveys for biological species should be scheduled during the period when the species are anticipated to be present on the site. Similarly, some rare plant species can be definitively identified only during their flowering period, so, if possible, botanical surveys should be undertaken during those times.

Thus, some flexibility is required in establishing the appropriate date for collecting information on baseline conditions for individual resources. As long as the reasoning for deviating from the normal approach is described and supported by substantial evidence, such deviations are typically acceptable.

When Conditions as of the Date of the NOP Are Not Appropriate to Accurately Describe Impacts

The ultimate goal of the analysis in the EIR is to disclose the impacts of the proposed project to the public and decision makers. There may be times when a deviation from the use of the NOP date to establish the baseline is most appropriate in order to present a fair and accurate description of a project's expected environmental impacts.

An example of a circumstance that may warrant such a deviation would be the case of a project where the NOP was published, but the initiation of work on the CEQA document was delayed until many years later, when environmental conditions had markedly changed. Under such a circumstance, one should make an effort to obtain and report any information about the resources on the site as of the NOP publication date from old reports, historical aerial

photographs, old photographs, and other sources. However, given the practical difficulties associated with describing the biological resources on the project site as of the NOP date, it may be more appropriate to describe conditions existing when the CEQA analysis actually begins. The reasons for the selection of the baseline date should be described in the environmental document and supported by substantial evidence in the record.

Although the baseline should normally be the same for all resource topics, there are circumstances when this would not make sense or would provide distorted results. For instance, if new sensitive receptors have been constructed adjacent to a project since the NOP was published, and that project would generate noise, large amounts of air pollutants, or noxious odors, these receptors must be included in the description of environmental setting, and impacts on these receptors must be analyzed. Also, under these same circumstances, the biological analysis should use a current list of special-status species, rather than only the species that were listed at the time of the NOP, and the most current lists of species occurrences from state and federal databases should be used.

Appellate cases have determined the propriety of deviating from a baseline of existing conditions on the NOP publication date in a variety of circumstances, including the following:

- Rejecting use of pollutant emission levels allowed under prior permits, but not reflective of actual existing emissions, as a baseline (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310.)
- Upholding use of a traffic baseline that assumed full occupancy of a department store that was vacant on the NOP publication date based on historical occupancy information. (*North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94.)
- Upholding use of 5-year average of annual mining volumes instead of the mining volumes from the year the NOP was published as the baseline for determining environmental impacts. (*San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242 Cal.App.4th 202.)

As a practice pointer, any deviation from the use of conditions existing on the “NOP date” as a baseline should be done only where it presents a better, more accurate presentation of the project’s expected impacts, and should never mask or distort project impacts. Further, it is very important that the reasons for any such deviation be fully explained in the EIR and that the decision to utilize a different baseline be supported by substantial evidence.

Use of Future Baselines

For projects that may be implemented over a period of years, or even decades, simply comparing the effects of such a project to a baseline representing existing conditions may not provide a full and accurate picture of the project’s impacts. As an example, if a large development project is intended to be constructed over a 20-year time frame, comparing the traffic generated by the project at full buildout to existing traffic conditions could be misleading, particularly if background traffic levels are projected to grow over time or fully-funded infrastructure improvements are scheduled to be constructed in the interim.

In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013), 57 Cal.4th 439, the California Supreme Court provided some guidance on the use of a future baseline. In *Neighbors for Smart Rail*, a transportation agency approved a project to construct a light rail line between Culver City and Santa Monica. The line was anticipated to be completed in 2015. When preparing the EIR for that project, the agency used, as a baseline, projected traffic and air quality conditions in the project area in the year 2030, reflecting the Southern California Association of Governments' (SCAG's) 2030 regional demographic projections and its list of transit service and road improvements expected to be in place by 2030. An environmental group sued, arguing that the exclusive use of this "future" baseline was inappropriate because the agency failed to disclose the impacts the project would have on existing environmental conditions in the project area. In siding with the agency, the Supreme Court held that the use of only a future baseline for traffic analyses (and presumably other topic analyses) may be permissible under certain circumstances where an agency can show that an analysis based on existing conditions would tend to be "misleading or without informational value." In recognition of the Court's conclusion that the exclusive use of a future baseline is a "departure from the norm stated in Guidelines section 15125(a)," and should apply only to situations where "justified by unusual aspects of the project or the surrounding conditions," parties should proceed with caution before completely omitting a discussion of existing conditions. The authors offer the following guidance¹ on the steps to be followed when employing a future baseline:

Show Your Work. This is always good advice, but this case highlights the need for an EIR to contain a clear explanation of any deviation from normal assumptions or methods. In this case, explain why a future baseline is reasonable and/or necessary.

Be Specific. The Supreme Court has set out the circumstances under which a future baseline can be justified. The EIR² should include a discussion of how the baseline was established, including the specific unusual aspects of the project or surrounding conditions that justify using a future baseline. In addition, explain how using a future baseline is necessary in order to prevent misinforming or misleading the public and decision makers, and why the particular future baseline date was selected and appropriate. The description/explanation must be supported by substantial evidence in the record.

Be Reasonable. Don't rely exclusively on a future baseline that's many years beyond the date at which the project would begin operations. The more distant the baseline year, the more difficult it will be to justify. Explain why the projections that the future baseline relies on are indeed reliable and consider using multiple baselines as well to ensure that all impacts are accurately described.

Evaluate a Mid-Point as Well (Multiple Baselines). When a future baseline is well beyond the beginning of operations for a project, the EIR must examine the impacts, if any, that would occur

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between the commencement of construction and the beginning of operations, and ultimately, buildout. If the project is divided into phases, these provide convenient dates for mid-point analyses. As is true for the analysis at the baseline date, the EIR should disclose whether the impacts at this mid-point are significant and should include appropriate mitigation measures. This can be very useful in determining the timing of needed improvements for projects that may take many years or even decades to reach full implementation.

Use of Future Baseline Is Unusual. Using an existing conditions baseline is still warranted in most cases. The Supreme Court, in creating this “unusual aspects of the project/misleading information” rule, is establishing an approach that is applicable only under narrow circumstances. Don’t get carried away and attempt to apply this approach to every impact analysis.

Establishing a Baseline when Unpermitted or Illegal Activities Occurred before the Baseline Date

Although rare, occasionally a question arises regarding how to characterize the baseline where the existing conditions (either on-site physical conditions or operations) are the result of illegal activity, including activity inconsistent with existing permits. This issue was addressed in *Fat v. County of Sacramento* (2002), 97 Cal.App.4th 1270, where the court (citing *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428) noted that the preparation of a CEQA document is not a forum for determining the nature and consequences of the prior conduct of a project applicant and upheld the County’s selection of the NOP issuance date as the baseline date for the IS/MND, despite the fact that the Conditional Use Permit for the airport in question had expired many years earlier. Lead agencies must evaluate impacts against actual conditions existing at the time of CEQA review and are not required to “turn back the clock” and evaluate impacts compared to a baseline condition that predates the illegal activity.

What Information Should Be Included in the Environmental Setting?

A description of the environmental setting should be provided for every resource discussed in an Initial Study or EIR. The description of the environmental setting is intended to provide context for the reader to understand the impacts discussed, and for the significance conclusions that are provided. Thus, the preparer should be thoughtful about how much information is included in the environmental setting. Too little information may deprive the reader (and perhaps a judge) of the information needed to understand what circumstances led the writer to conclude that an impact was either significant or less than significant, and why the proposed mitigation would sufficiently address the identified significant impacts. On the other hand, providing too much information may make it unnecessarily difficult for the reader to find the information they need to understand the context (as described earlier). To strike this balance, it is advisable for the writer to view the text from the perspective of a relatively uninformed reader, and to select that setting information which is required to provide the reader with context to understand the

project's impacts on the resource topic and the circumstances that led to the author's impact conclusions.

As a simple example, it is not necessary or advisable to provide a great deal of setting information for species you will ultimately determine could not exist in the study area. Similarly, if the proposed project would not have any effect on public services, it is necessary to provide only a brief summary of the public services available in the study area and the entities providing those services.

As another example, it is often necessary to provide an extensive discussion of the history and prehistory of the study area in cultural resources technical reports, as this information is required for reports submitted to the State Historic Preservation Office. However, only that information directly relevant to the impacts of the proposed project on cultural resources need be included in the environmental setting of the Initial Study or EIR.

Similarly, biological resource technical reports typically provide a list of all of the species identified during field surveys conducted at the project site, including both common species and special-status species. Discussions of common species in an Initial Study or EIR is not necessary, as these species are generally not protected, and impacts on them are not considered significant and do not require mitigation. Thus, the discussion of existing conditions in the IS or EIR should focus on special-status species.

The environmental setting should not be confused with the No-Project Alternative, which also provides a baseline of sorts against which the proposed project and other alternatives may be compared. In circumstances where the physical environment in the study area is not projected to change over time, the environment may be the same under the environmental setting and the No-Project Alternative. However, this is often not the case, so the No-Project Alternative should not be used to measure the impacts of the proposed project, establish the significance of impacts, or to establish mitigation measures (State CEQA Guidelines Section 15126.6(e)(1)).

How Are Baseline and Environmental Setting Addressed in an IS/ND or MND?

Although not explicitly stated, the guidance provided in Section 15125 of the State CEQA Guidelines applies to both Initial Studies and EIRs. Because the issuance of an NOP is not required when an Initial Study is prepared, the date that the environmental analysis is begun is typically used as the baseline date. This interpretation is supported by the court's decision in *Fat v. County of Sacramento*, which supported the use of the date when environmental analysis began as the baseline for the preparation of an IS/MND.

The guidance used for describing the environmental setting in an EIR as described above under *Establishing the Baseline in an EIR* applies equally to an Initial Study.

Baseline and Environmental Setting under NEPA

NEPA (40 CFR 1502.14(d)) requires federal agencies to include an analysis of “the alternative of no action” in the analysis of alternatives in Environmental Assessments and Environmental Impact Statements. Commonly referred to as the “No-Action Alternative,” this alternative represents conditions that would result if the agency continued existing policy or did not implement the proposed federal action, and, unlike under CEQA, serves as a baseline against which the effects of implementing the proposed action and other alternatives are measured.

The President’s Council on Environmental Quality (CEQ) Memorandum: Questions and Answers about the NEPA Regulations (“40 Questions”), provides further clarifications regarding the No-Action Alternative. It states:

There are two distinct interpretations of “no action” that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases “no action” is “no change” from current management direction or level of management intensity... Therefore, the “no action” alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of “no action” is illustrated in instances involving federal decisions on proposals for projects. “No action” in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

The federal agency has wide discretion to determine the time frame of the No-Action Alternative, which need not represent “existing conditions.” In fact, it is not uncommon for the No-Action Alternative to reflect future conditions, if the proposed action would not be implemented immediately, or would take many years to implement.

Baseline and Environmental Setting in a Joint CEQA/NEPA Document

There may be circumstances where the NEPA No-Action Alternative and CEQA baseline are not the same. The CEQA and NEPA Lead Agencies should meet to discuss the structure and content of the joint document early in the environmental review process, and this discussion should include a determination whether the NEPA No-Action Alternative and the CEQA baseline will be the same or different. For simplicity, it is best if they are the same, but this cannot always

be accommodated, and under such circumstances, it may be necessary to have two impact analyses, one using the CEQA baseline, and the other using the NEPA No-Action Alternative. It should be recognized that, under these circumstances, the CEQA impacts and mitigation measures might be quite different from the NEPA effects analysis and mitigation.

Areas of Controversy Regarding Baseline and Environmental Setting

In upholding the use of a future baseline, *Neighbors for Smart Rail* left unanswered a variety of questions, including the circumstances in which existing conditions would be “uninformative” or “misleading” such that use of an exclusive future baseline is appropriate; how far in the future an EIR may set the baseline when relying on conditions predicted to exist at project opening; and the appropriate point for use of a mid-term baseline. These involve fact-specific questions that are likely to be fleshed out in future published decisions. Until more direction is provided, and because case law cannot address every conceivable situation a Lead Agency might encounter, environmental professionals should be mindful of the importance of clearly explaining the rationale and evidence supporting the decision to use a baseline other than physical conditions existing at the time of the NOP. The adequacy of a document’s baseline is a factual issue to be determined based on whether there is substantial evidence in the record supporting the agency’s determination, and thus a reasonable decision supported by substantial evidence and adequate analysis in the EIR itself should be upheld.

Important Cases

The following published cases involve issues related to baseline and environmental setting:

- *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th439:

A lead agency may rely on a future baseline only if using existing conditions would be uninformative or misleading. The adequacy of that baseline, as well as any decision to use additional future baselines (e.g., a midpoint) will be upheld if supported by substantial evidence. This EIR did not adequately justify its reliance on a baseline representing conditions 15 years after commencement of the project; the EIR neglected any consideration of impacts that might occur during construction or the first 15 years of operation.

- *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296:

The court upheld a city’s decision not to update the baseline for an EIR’s urban decay analysis despite a substantial delay (7 years) between issuance of the NOP and release of the Draft EIR, where the decision was supported by substantial evidence in the form of a consultant’s report.

- *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310:

For modifications to an existing facility, the baseline should represent existing physical conditions, not the maximum operations authorized under the facility's permit. The court invalidated the agency's use of permitted emission levels that had never been reached as the baseline for analysis of a proposed expansion. The court recognized that for resources that fluctuate over time, effects might be compared to a point other than the precise time of commencement of CEQA review, if reasonable and supported by substantial evidence.

- *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316:

For a proposal to develop a former farm, the EIR's use of the landowner's adjudicated groundwater right of 1,484 acre feet per year (afy) as baseline was upheld despite fact that actual water use at time of NOP was much lower (50 afy) because the adjudicated amount approximated historical water use when the farm was operating and the adjudicated amount was therefore not a "hypothetical" baseline.

- *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645:

An EIR must plainly identify the specific assumptions included in its baseline.

- *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270:

The baseline includes existing activities at the project site, even if unlawful (here, airport operations unauthorized by the facility's conditional use permit)

- *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99:

The Court invalidated the EIR's baseline for water use, where the EIR presented an array of potential baselines. Decision makers ultimately relied on information provided after commencement of CEQA review, which showed that substantially higher water use had occurred. That information was provided at the end of the environmental review period, not in the EIR itself and therefore not subject to public review. Moreover, no evidence was provided in the record to indicate that the higher use accurately represented historical conditions on the property or those existing at the start of CEQA review.

- *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931:

The Court found the EIR's reliance on information concerning only one element of historical water project operations (lake levels and associated related regulatory requirements) as the baseline for evaluation of impacts associated with changes to the water project, was inadequate because it did not contain sufficient information or analysis about historical water releases to adequately assess effects on fish and recreation from proposed changes to project operations.

- *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428:

Prior illegal activity by an applicant that affects physical conditions to the project site (in this case, illegal dredging) is not relevant to determining the CEQA existing conditions baseline.

The lead agency is not required to turn back the clock and analyze impacts compared to the conditions that existed prior to any unlawful activity.

- *Black Property Owners Ass'n v. City of Berkeley* (1994) 222 Cal.App.4th 974:

In amending a plan, CEQA review extends only to environmental impacts associated with the amendments. The re-adoption of previously adopted policies without change does not require environmental review.

- *Fairview Neighbors v. County of Ventura* (1990) 70 Cal.App.4th 236:

For changes to an existing operation, the baseline may reasonably include the facility's established levels of permitted use. In an EIR for a mining project, the Court allowed traffic numbers occurring when the mine operated at peak capacity pursuant to a prior use permit as the "baseline," since mine operations varied widely depending on market factors and the peak capacity was actually achieved in prior years.

- *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350:

The baseline for analysis of impacts of development under a new General Plan is the existing physical development in the General Plan area, not the level of development that could occur under the existing General Plan, even where the proposed changes would reduce the authorized level of development compared to the existing plan.

Baseline and Environmental Setting in the State CEQA Guidelines

- **Section 15125(a)**—Requires EIRs to contain a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the NOP is published, or if no NOP is published, at the time environmental analysis is commenced, from both a local and regional perspective.
- **Section 15125(b)**—Indicates that establishing baseline for military base reuse EIRs should consider the principle contained in Section 15229.
- **Section 15125(c)**—Indicates that emphasis should be placed on rare or unique environmental resources when describing the environmental setting.
- **Section 15125(e)**—Provides guidance for establishing baseline when the proposed project is compared to an adopted plan.
- **Section 15126.6(e)(1)**—Clarifies that the No-Project Alternative should not be used as the baseline for the purposes of analyzing the impacts of the proposed project.
- **Section 15229**—Provides guidance for establishing baseline for military base reuse EIRs.

Related CEQA Portal Topics

- Alternatives (in process)

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CEQA Portal Topic Paper

Baseline and Environmental Setting

What Are Baseline and Environmental Setting?

Under CEQA, the impacts of a proposed project must be evaluated by comparing expected environmental conditions after project implementation to conditions at a point in time referred to as the baseline. The changes in environmental conditions between those two scenarios represent the environmental impacts of the proposed project. The description of the environmental conditions in the project study area under baseline conditions is referred to as the environmental setting.

Why Is Baseline Important?

Establishing an appropriate baseline is essential, because an inappropriately defined baseline can cause the impacts of the project either to be under-reported or over-reported. A considerable number of CEQA documents have been litigated over the choice of a baseline for a given project, and many CEQA documents have been invalidated for the use of an inappropriate baseline (see *Important Cases* below).

Establishing the Baseline in an EIR

The State CEQA Guidelines Section 15125 provides the following guidance for establishing the baseline:

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.

As the Guidelines section makes clear, ordinarily the appropriate baseline will be the actual environmental conditions existing at the time of CEQA analysis (typically when the Notice of Preparation [NOP] is published). In many cases, establishing this “existing conditions” baseline is a straightforward task. However, there are circumstances that may make this task more complex and challenging. A few are discussed here. Others, which are even more complex, or about which court cases do not provide clear guidance, are discussed below under *Areas of Controversy*.

Resources That Fluctuate over Time

Some environmental resources evaluated in a CEQA document are constant over the time frames typically evaluated (e.g., geological conditions; types of soil underlying the project site; cultural resources present on the site). Other resources fluctuate over long periods of time (e.g., types of public services and utilities provided, population, housing units, number of existing buildings, tree populations). However, there are a number of environmental resources that are subject to substantial fluctuations over the course of days, months, or seasons. It may be difficult or misleading to describe the specific condition of these resources as of a specific date. As an example, flows in rivers and streams are never constant, varying by hour, day, season, and from year to year. Describing the exact flows in a stream as of the baseline date (even if you specified the time) would not necessarily provide a complete or useful description of this resource. Therefore, for such resources, the environmental setting may be described in terms of the historical range of flows, perhaps by month, over the period that records have been kept.

Similarly, traffic volumes also vary by hour of day, day of the week, and from year to year. While the counts are not often taken on the baseline date, they should be taken as close to the date as possible, particularly if traffic volumes are changing substantially over time. Further, if substantial daily variation is expected, traffic counts should be taken on more than one day, to try to capture these variations.

Some biological resources, such as wildlife species, may be present on the project site only during specific seasons, so even if the baseline date is established as a specific date, surveys for biological species should be scheduled during the period when the species are anticipated to be present on the site. Similarly, some rare plant species can be definitively identified only during their flowering period, so, if possible, botanical surveys should be undertaken during those times.

Thus, some flexibility is required in establishing the appropriate date for collecting information on baseline conditions for individual resources. As long as the reasoning for deviating from the normal approach is described and supported by substantial evidence, such deviations are typically acceptable.

When Conditions as of the Date of the NOP Are Not Appropriate to Accurately Describe Impacts

The ultimate goal of the analysis in the EIR is to disclose the impacts of the proposed project to the public and decision makers. There may be times when a deviation from the use of the NOP date to establish the baseline is most appropriate in order to present a fair and accurate description of a project's expected environmental impacts.

An example of a circumstance that may warrant such a deviation would be the case of a project where the NOP was published, but the initiation of work on the CEQA document was delayed until many years later, when environmental conditions had markedly changed. Under such a circumstance, one should make an effort to obtain and report any information about the resources on the site as of the NOP publication date from old reports, historical aerial

photographs, old photographs, and other sources. However, given the practical difficulties associated with describing the biological resources on the project site as of the NOP date, it may be more appropriate to describe conditions existing when the CEQA analysis actually begins. The reasons for the selection of the baseline date should be described in the environmental document and supported by substantial evidence in the record.

Although the baseline should normally be the same for all resource topics, there are circumstances when this would not make sense or would provide distorted results. For instance, if new sensitive receptors have been constructed adjacent to a project since the NOP was published, and that project would generate noise, large amounts of air pollutants, or noxious odors, these receptors must be included in the description of environmental setting, and impacts on these receptors must be analyzed. Also, under these same circumstances, the biological analysis should use a current list of special-status species, rather than only the species that were listed at the time of the NOP, and the most current lists of species occurrences from state and federal databases should be used.

Appellate cases have determined the propriety of deviating from a baseline of existing conditions on the NOP publication date in a variety of circumstances, including the following:

- Rejecting use of pollutant emission levels allowed under prior permits, but not reflective of actual existing emissions, as a baseline (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310.)
- Upholding use of a traffic baseline that assumed full occupancy of a department store that was vacant on the NOP publication date based on historical occupancy information. (*North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94.)
- Upholding use of 5-year average of annual mining volumes instead of the mining volumes from the year the NOP was published as the baseline for determining environmental impacts. (*San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242 Cal.App.4th 202.)

As a practice pointer, any deviation from the use of conditions existing on the “NOP date” as a baseline should be done only where it presents a better, more accurate presentation of the project’s expected impacts, and should never mask or distort project impacts. Further, it is very important that the reasons for any such deviation be fully explained in the EIR and that the decision to utilize a different baseline be supported by substantial evidence.

Use of Future Baselines

For projects that may be implemented over a period of years, or even decades, simply comparing the effects of such a project to a baseline representing existing conditions may not provide a full and accurate picture of the project’s impacts. As an example, if a large development project is intended to be constructed over a 20-year time frame, comparing the traffic generated by the project at full buildout to existing traffic conditions could be misleading, particularly if background traffic levels are projected to grow over time or fully-funded infrastructure improvements are scheduled to be constructed in the interim.

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Show Your Work. This is always good advice, but this case highlights the need for an EIR to contain a clear explanation of any deviation from normal assumptions or methods. In this case, explain why a future baseline is reasonable and/or necessary.

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Use of Future Baseline Is Unusual. Using an existing conditions baseline is still warranted in most cases. The Supreme Court, in creating this “unusual aspects of the project/misleading information” rule, is establishing an approach that is applicable only under narrow circumstances. Don’t get carried away and attempt to apply this approach to every impact analysis.

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Baseline and Environmental Setting under NEPA

NEPA (40 CFR 1502.14(d)) requires federal agencies to include an analysis of “the alternative of no action” in the analysis of alternatives in Environmental Assessments and Environmental Impact Statements. Commonly referred to as the “No-Action Alternative,” this alternative represents conditions that would result if the agency continued existing policy or did not implement the proposed federal action, and, unlike under CEQA, serves as a baseline against which the effects of implementing the proposed action and other alternatives are measured.

The President’s Council on Environmental Quality (CEQ) Memorandum: Questions and Answers about the NEPA Regulations (“40 Questions”), provides further clarifications regarding the No-Action Alternative. It states:

There are two distinct interpretations of “no action” that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases “no action” is “no change” from current management direction or level of management intensity... Therefore, the “no action” alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of “no action” is illustrated in instances involving federal decisions on proposals for projects. “No action” in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

The federal agency has wide discretion to determine the time frame of the No-Action Alternative, which need not represent “existing conditions.” In fact, it is not uncommon for the No-Action Alternative to reflect future conditions, if the proposed action would not be implemented immediately, or would take many years to implement.

Baseline and Environmental Setting in a Joint CEQA/NEPA Document

There may be circumstances where the NEPA No-Action Alternative and CEQA baseline are not the same. The CEQA and NEPA Lead Agencies should meet to discuss the structure and content of the joint document early in the environmental review process, and this discussion should include a determination whether the NEPA No-Action Alternative and the CEQA baseline will be the same or different. For simplicity, it is best if they are the same, but this cannot always

be accommodated, and under such circumstances, it may be necessary to have two impact analyses, one using the CEQA baseline, and the other using the NEPA No-Action Alternative. It should be recognized that, under these circumstances, the CEQA impacts and mitigation measures might be quite different from the NEPA effects analysis and mitigation.

Areas of Controversy Regarding Baseline and Environmental Setting

In upholding the use of a future baseline, *Neighbors for Smart Rail* left unanswered a variety of questions, including the circumstances in which existing conditions would be “uninformative” or “misleading” such that use of an exclusive future baseline is appropriate; how far in the future an EIR may set the baseline when relying on conditions predicted to exist at project opening; and the appropriate point for use of a mid-term baseline. These involve fact-specific questions that are likely to be fleshed out in future published decisions. Until more direction is provided, and because case law cannot address every conceivable situation a Lead Agency might encounter, environmental professionals should be mindful of the importance of clearly explaining the rationale and evidence supporting the decision to use a baseline other than physical conditions existing at the time of the NOP. The adequacy of a document’s baseline is a factual issue to be determined based on whether there is substantial evidence in the record supporting the agency’s determination, and thus a reasonable decision supported by substantial evidence and adequate analysis in the EIR itself should be upheld.

Important Cases

The following published cases involve issues related to baseline and environmental setting:

- *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th439:

A lead agency may rely on a future baseline only if using existing conditions would be uninformative or misleading. The adequacy of that baseline, as well as any decision to use additional future baselines (e.g., a midpoint) will be upheld if supported by substantial evidence. This EIR did not adequately justify its reliance on a baseline representing conditions 15 years after commencement of the project; the EIR neglected any consideration of impacts that might occur during construction or the first 15 years of operation.

- *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296:

The court upheld a city’s decision not to update the baseline for an EIR’s urban decay analysis despite a substantial delay (7 years) between issuance of the NOP and release of the Draft EIR, where the decision was supported by substantial evidence in the form of a consultant’s report.

- *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310:

For modifications to an existing facility, the baseline should represent existing physical conditions, not the maximum operations authorized under the facility's permit. The court invalidated the agency's use of permitted emission levels that had never been reached as the baseline for analysis of a proposed expansion. The court recognized that for resources that fluctuate over time, effects might be compared to a point other than the precise time of commencement of CEQA review, if reasonable and supported by substantial evidence.

- *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316:

For a proposal to develop a former farm, the EIR's use of the landowner's adjudicated groundwater right of 1,484 acre feet per year (afy) as baseline was upheld despite fact that actual water use at time of NOP was much lower (50 afy) because the adjudicated amount approximated historical water use when the farm was operating and the adjudicated amount was therefore not a "hypothetical" baseline.

- *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645:

An EIR must plainly identify the specific assumptions included in its baseline.

- *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270:

The baseline includes existing activities at the project site, even if unlawful (here, airport operations unauthorized by the facility's conditional use permit)

- *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99:

The Court invalidated the EIR's baseline for water use, where the EIR presented an array of potential baselines. Decision makers ultimately relied on information provided after commencement of CEQA review, which showed that substantially higher water use had occurred. That information was provided at the end of the environmental review period, not in the EIR itself and therefore not subject to public review. Moreover, no evidence was provided in the record to indicate that the higher use accurately represented historical conditions on the property or those existing at the start of CEQA review.

- *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931:

The Court found the EIR's reliance on information concerning only one element of historical water project operations (lake levels and associated related regulatory requirements) as the baseline for evaluation of impacts associated with changes to the water project, was inadequate because it did not contain sufficient information or analysis about historical water releases to adequately assess effects on fish and recreation from proposed changes to project operations.

- *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428:

Prior illegal activity by an applicant that affects physical conditions to the project site (in this case, illegal dredging) is not relevant to determining the CEQA existing conditions baseline.

The lead agency is not required to turn back the clock and analyze impacts compared to the conditions that existed prior to any unlawful activity.

- *Black Property Owners Ass'n v. City of Berkeley* (1994) 222 Cal.App.4th 974:

In amending a plan, CEQA review extends only to environmental impacts associated with the amendments. The re-adoption of previously adopted policies without change does not require environmental review.

- *Fairview Neighbors v. County of Ventura* (1990) 70 Cal.App.4th 236:

For changes to an existing operation, the baseline may reasonably include the facility's established levels of permitted use. In an EIR for a mining project, the Court allowed traffic numbers occurring when the mine operated at peak capacity pursuant to a prior use permit as the "baseline," since mine operations varied widely depending on market factors and the peak capacity was actually achieved in prior years.

- *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350:

The baseline for analysis of impacts of development under a new General Plan is the existing physical development in the General Plan area, not the level of development that could occur under the existing General Plan, even where the proposed changes would reduce the authorized level of development compared to the existing plan.

Baseline and Environmental Setting in the State CEQA Guidelines

- **Section 15125(a)**—Requires EIRs to contain a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the NOP is published, or if no NOP is published, at the time environmental analysis is commenced, from both a local and regional perspective.
- **Section 15125(b)**—Indicates that establishing baseline for military base reuse EIRs should consider the principle contained in Section 15229.
- **Section 15125(c)**—Indicates that emphasis should be placed on rare or unique environmental resources when describing the environmental setting.
- **Section 15125(e)**—Provides guidance for establishing baseline when the proposed project is compared to an adopted plan.
- **Section 15126.6(e)(1)**—Clarifies that the No-Project Alternative should not be used as the baseline for the purposes of analyzing the impacts of the proposed project.
- **Section 15229**—Provides guidance for establishing baseline for military base reuse EIRs.

Related CEQA Portal Topics

- Alternatives (in process)

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CEQA Portal Topic Paper

Project Description

What is a Project?

Definition of Project Under CEQA

Within the context of CEQA, the term *project* has a specific meaning. The distinction between the normal and the specific CEQA meaning is very important, as it can determine whether an action is subject to CEQA compliance or not. As described in the *Preliminary Review* Topic Paper, CEQA compliance is only required if a lead agency is considering approval of a proposed “project.”

Section 15378 of the CEQA Guidelines provides the following definition of a project:

(a) “Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvement to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants subsidies, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

The term “project” refers to the whole of an action and to the underlying physical activity being approved, not to each government approval (CEQA Guidelines Section 15378(c)). Thus, even if the Lead Agency needs to grant more than one approval for a project, only one CEQA document should be prepared. Similarly, if more than one government agency must grant an approval, only one CEQA document should be prepared. This approach ensures that responsible agencies granting later approvals can rely on the lead agency’s CEQA document (see also *Lead Agency, Responsible Agencies, and Trustee Agencies* Topic Paper).

Piecemealing or Segmenting

The CEQA Guidelines define a project under CEQA as “the whole of the action” that may result either directly or indirectly in physical changes to the environment. This broad definition is intended to provide the maximum protection of the environment.

Piecemealing or segmenting means dividing a project into two or more pieces and evaluating each piece in a separate environmental document, rather than evaluating the whole of the project in one environmental document. This is explicitly forbidden by CEQA, because dividing a project into a number of pieces would allow a Lead Agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less-than-significant impact on the environment, but which together may result in a significant impact. Segmenting a project may also hinder developing comprehensive mitigation strategies.

In general, if an activity or facility is necessary for the operation of a project, or necessary to achieve the project objectives, or a reasonably foreseeable consequence of approving the project, then it should be considered an integral project component that should be analyzed within the environmental analysis. The project description should include all project components, including those that will have to be approved by responsible agencies. When future phases of a project are possible, but too speculative to be evaluated, the EIR should still mention that future phases may occur, provide as much information as is available about these future phases, and indicate that they would be subject to future CEQA review.

CEQA case law has established the following general principles on project segmentation for different project types:

- For a phased development project, even if details about future phases are not known, future phases must be included in the project description if they are a reasonably foreseeable consequence of the initial phase and will significantly change the initial project or its impacts. *Laurel Heights Improvement Association v Regents of University of California* (1988) 47 Cal. 3d 376.
- For a linear project with multiple segments such as a highway, individual segments may be evaluated in separate CEQA documents if they have logical termini and independent utility. *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal. App. 4th 712.
- For a planning approval such as general plan amendment, the project description must include reasonably anticipated physical development that could occur in view of the approval. *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398.
- For a project requiring construction of offsite infrastructure (e.g., water and sewer lines), the offsite infrastructure must be included in the project description. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App. 4th 713.
- For modification of a permit for an existing facility, the scope of the project description can be limited to the scope of the permit modification and does not cover the entire facility. *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549.

Why Is the Project Description Important?

Within an environmental document, the project description typically consists of text, tables, and graphics that provide the reader with an understanding of the actions being proposed by the project sponsor. The project description should contain enough information so that the impact analysis contains a meaningful assessment of the project's impacts. This will allow the document preparer to analyze the impacts of the proposed project, and thus allow the reader to understand the types and intensities of the project's environmental effects. For example, if a new roadway is proposed, without knowing the proposed alignment and width, a detailed analysis of the effects on biological and cultural resources cannot be completed. Or, if an expansion of a wastewater treatment plant is proposed, without knowing what treatment processes are proposed and the proposed capacity of the plant, an assessment of whether the operation of the plant would meet water quality standards for the waterway where discharges would be made cannot be assessed.

The project description is the foundation upon which an environmental analysis is constructed. An impact analysis should "tell a story"¹ about how the actions comprising the proposed project will or will not lead to impacts, and why those impacts are either significant or less than significant. The project description should include the project objectives,² and demonstrate how the proposed project meets the project objectives.

The impact analysis then flows from the detailed description of project features contained in the project description, combined with other sources of information and scientific analysis. If sufficient information is not provided in the project description about the actions and activities that would occur under the proposed project, the first part of the impact analysis story may be misleading or incomplete, and the reader (and perhaps a judge) will not be able understand the chain of logic and facts that links the project description to the impact conclusions. Further, without a complete and stable project description (see *Why is a Stable Project Description Important?* below), the team preparing the impact analyses within the environmental document may not have the information necessary to determine what impacts the proposed project may have, or the intensity of those impacts.

It should go without saying, but the same stable project description must be used for all impact analyses. EIRs with conflicting assumptions about the project description in different impact analyses have been held inadequate.

What Information Should be Included in the Project Description?

Section 15124 of the CEQA Guidelines defines the types of information that should be included in an EIR project description:

¹ The term "tell a story" is not literal, but is a short-hand for the string of logical and consistent arguments supported by substantial evidence that mark a successful impact analysis.

² An EIR is required to include a statement of the objectives sought by the proposed project. CEQA does not require an Initial Study, Negative Declaration, or Mitigated Negative Declaration to include a statement of project objectives.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

- (a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.
- (b) A statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project and may describe project benefits.
- (c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.
- (d) A statement briefly describing the intended uses of the EIR.³
 - (1) This statement shall include, to the extent that the information is known to the Lead Agency,
 - (A) A list of the agencies that are expected to use the EIR in their decision making, and
 - (B) A list of permits and other approvals required to implement the project.
 - (C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.
 - (2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

Like many aspects of CEQA compliance, the project description should reflect the specifics of the proposed project, the project site, and its surroundings. Project descriptions should not provide extensive detail beyond that needed for evaluating environmental impacts (CEQA Guidelines Section 15124). The amount of detail in a project description will usually reflect the size and scope of the project and, of course, the types and severity of impacts that are expected. Thus, a small project with few impacts does not require an extremely detailed project description. But a large project expected to result in numerous severe impacts should contain greater detail.

In general, the project description should provide the following types of information, to the extent that this information is available at the time the CEQA document is prepared:

- The project sponsor or applicant.
- Where the proposed project is located (including regional and site-specific graphics).
- When construction of the proposed project is expected to be initiated, how long will it take to complete construction, and when project operations, occupancy, or use would begin.
- Project objectives.

³ This information is often presented in the EIR Introduction. The EIR will be adequate as long as it appears somewhere in the document.

- The types of uses the proposed project will include.
- A quantitative measure of the intensity of each use (e.g., square footage of commercial space, number of residential units, width and linear feet of new roadway, number and size of windmills, amount of water to be diverted, etc.).
- Graphics showing what the proposed project will look like (plan view and elevations, if appropriate).
- Who the proposed project is intended to serve (if appropriate).
- Improvements to public infrastructure and services required for the proposed project.
- How the proposed project would be constructed.
- Limits and quantities of grading, including the quantities of materials to be imported or exported.
- How the proposed project would be operated.
- Reasonably foreseeable future project phases or related projects.
- What kinds of measures are being adopted to avoid or minimize environmental impacts (sometimes called environmental commitments).⁴
- What additional environmental clearances, consultations or permits will be required for the project.
- Which agencies will use the environmental document for their CEQA compliance (including permitting agencies).
- Type and scale/intensity of uses to be demolished/removed, if any.

For larger projects, additional detail such as the following may also be needed:

- If construction and/or operation is to occur in phases, provide an expected schedule of the phases and detail as to what portions of the project will happen in each phase. Describe any temporary or permanent relocations required, if applicable.
- More detailed information about construction may be needed for certain technical analyses, such as:
 - What kinds of equipment will be involved in constructing the proposed project?
 - What is the maximum number of construction workers expected to be on site at the height of construction, and how long will that last?
 - How many people will be expected to work at the project site at full implementation?
 - If cut and fill are not able to be balanced on site, what is the amount of material needing to be hauled on- or off site, and the location of the source or destination of these materials?
 - What Best Management Practices will be used to minimize pollutant flows during stormwater events?
 - Where will construction waste be hauled to?
 - Where will equipment and materials storage (staging) areas be located?
- How stormwater flows will be handled on site (for hydrology and water quality analysis).
- How stream crossings will be created or altered (for biology and hydrology).
- Details about internal traffic flow (for traffic).
- Number of parking spaces provided (for traffic).
- Activities associated with the decommissioning or demolition of the proposed project, if it is anticipated to have a limited lifespan (e.g., a reclamation plan for a proposed mining operation).

⁴ See *Areas of Controversy* for more detail on this subject.

- Green building practices being implemented.

To the extent that some of this information is not available, the CEQA document should contain any assumptions made regarding details of the project construction and operation needed to complete the analyses.

This is not meant to be an exhaustive list of the types of information that should be provided. The specifics of the location and the proposed project, and the types and severity of impacts expected should guide you to the types of information and detail that are appropriate. Remember, you are striving for a balance between too little and too much information, providing the reader the right information needed to aid in evaluating the project, but not so much that they have to search through unnecessary detail to find relevant information.

Project descriptions must also be prepared for general plans and other high-level programs. The degree of specificity in an EIR project description will correspond to the degree of specificity available for the underlying activity being evaluated (see CEQA Guidelines Section 15146.) Thus, project-specific detail is not required for descriptions of general plans and other high-level programs as details about specific subsequent projects typically are not known and will be addressed in future project-specific CEQA documents. When a Lead Agency is using the tiering process for a large-scale planning approval such as for a general plan, the development of detailed site-specific information about specific projects may not be feasible and can be deferred to future project-specific CEQA documents (CEQA Guidelines Section 15152(c)).

Why is a Stable Project Description Important?

As described above under *Why is the Project Description Important?*, the lack of a stable project description can have very important implications for both the schedule and cost of an environmental document. The impacts of a project, and often the types of analyses that need to be conducted, are often tied to details regarding how the project is to be constructed and operated. Thus, changes to these details can require that analyses be redone, or that new analyses be completed. While some changes to a project description are almost inevitable, especially for large or complex projects or when project design occurs concurrently with the CEQA review process, efforts to minimize these changes may be rewarded by lower costs and faster results.

Typically, the larger the change in the project description, the more likely that some reanalysis will be required. As an example, changing the location of a project may change the species and habitats potentially affected, the cultural resources affected, the streets and highways affected by project traffic, whether sensitive noise and air quality receptors are potentially affected by the project, whether the project is consistent with general plan and zoning designations, whether the project would be visible from a scenic highway, whether important farmland or lands under a Williamson Act contract would be affected, as well as many other analyses. However, even small changes to a project such as its orientation may affect analyses such as aesthetic effects and noise effects. While changes to the project description may be unavoidable in some cases, the implications of these changes and the tradeoff of benefits and costs should be understood.

Some tactics that may be useful in reducing changes to the project description over time include:

- Encouraging early participation of the CEQA document preparer in the project development process, so that they can point out likely environmental impacts or regulatory obstacles associated with a location or design, so that the project can be designed to avoid them, instead of having to be modified later in the process;
- Starting preparation of the CEQA document at a point in project development when the project description is likely to remain stable.

Is a Project Description Different for an Initial Study/Mitigated Negative Declaration and an EIR?

CEQA Guidelines Section 15124 establishes rules for EIR project descriptions. It is good practice, though not required, to also apply these rules to project descriptions in Negative Declarations and Mitigated Negative Declarations. Typically, project descriptions in EIRs are more extensive and detailed than those in Initial Studies, because the projects tend to be larger or more intense, and to have a larger number of or more intense environmental impacts. At a minimum, the project description in an Initial Study should be sufficiently detailed to allow fact-based explanations of answers to the Initial Study checklist questions.

Project Description/Proposed Action in a Joint CEQA/NEPA Document

CEQA requires that “the whole of the action” be analyzed. Similarly, NEPA has an antisegmentation policy, requiring that the proposed action under NEPA include federal *connected actions* (Code of Federal Regulations, Title 40, Section 1508.25(a)). Under many circumstances, the federal involvement applies to the entirety of a project. However, there are circumstances under which the project for the purposes of NEPA may be more confined than the project for the purposes of CEQA in a joint CEQA/NEPA document. This occurs as a result of a concept called *small federal handle*. Under certain circumstances, federal involvement in a project is limited. The scope of the proposed action and NEPA impact analysis may be limited to the portions of a project under “federal control and jurisdiction”.

Examples of such a limitation may include:

- Federal funding is limited to only a portion of the project, or a specific phase of the project.
- Federal lands underlie only a portion of the project (which may occur most frequently in a long, linear infrastructure project).
- Federal permits or approvals only apply to a portion of the project.

Under these circumstances, the proposed action will not be equivalent to the proposed project, and separate sections should be prepared to define the CEQA project description and NEPA description of the proposed action.

Areas of Controversy Regarding Project Description

Good environmental planning supports the idea of including measures in the project description to avoid or minimize environmental impacts. In an appellate court case (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645), the court rejected an EIR prepared by the California Department of Transportation (Caltrans) on the grounds that the EIR included “environmental commitments” as part of the project description without fully analyzing the impacts of the project prior to inclusion of these measures. The court ruled that Caltrans short-circuited the analysis of impacts in the EIR by including these measures and then jumping to the conclusion that impacts were less-than-significant, without providing a threshold of significance or evaluating the significance of the impacts.

In general, physical features included in a project to reduce or eliminate environmental impacts are probably acceptable, as long as they are clearly modifications of features that would otherwise be part of the project. However, features not depicted or described in the project plan or design, but which are added to the project to offset environmental impacts should probably be considered mitigation measures, and the impacts of the project absent those features should be analyzed (Ascent Environmental 2014).

Another area of controversy is whether the CEQA document is required to demonstrate that the project will actually achieve its objectives, i.e., that the project will work as described. Commenters on CEQA documents sometimes raise doubts about whether the project can feasibly achieve its objectives, and ask for the CEQA document to provide evidence that it will do so. For example, comments on a commercial rezoning EIR may argue that a planned shopping center will not be built or occupied, and ask for the EIR to provide further proof. Although these comments may raise valid public policy concerns for some projects, CEQA case law has established that CEQA documents are generally not required to demonstrate that a proposed project will achieve its objectives. Lead agencies are generally entitled to assume that proposed projects will work as described. Lead agencies can make reasonable assumptions about how the project will work in the future without guaranteeing these assumptions will remain true. If after project approval it turns out that the project is not achieving its objectives and must be changed, a different project would result and supplemental CEQA review may be required. (*Village Laguna of Laguna Beach Inc. v. Board of Supervisors* (1982) 134 Cal App. 3d 1022; *Environmental Council of Sacramento v. City of Sacramento* (2008) 142 Cal. App. 4th 1018.)

Important Cases

The following published cases involve issues related to the project description:

- *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263: Project description for an annexation must also include underlying physical development allowed by the annexation.
- *County of Inyo v. City of Los Angeles* (1977) 32 Cal. App. 3d 795: EIR was rejected because the project description was inaccurate and was described differently in different parts of the document.
- *Village Laguna of Laguna Beach Inc. v. Board of Supervisors* (1982) 134 Cal App. 3d 1022: Challenge to correctness of an EIR’s project description assumptions was rejected. If assumptions that are integral parts of the project description fail to become reality, then

this information is relevant to determining whether a Subsequent or Supplemental EIR should be prepared.

- *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal. App. 3d 223: EIR project description for exploratory drilling need not include pipeline routes for commercial production because they were speculative.
- *Laurel Heights Improvement Association v Regents of University of California* (1988) 47 Cal. 3d 376: EIR for lease of the first story of a building for biomedical research rejected because it should have considered later, reasonably foreseeable use of second story for the same purpose.
- *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal. App. 4th 712: EIR project description on roadway segment could exclude related roadway when the segments had independent utility and selection of the first segment did not foreclose alternatives for the other roadway.
- *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal. App. 4th 20: Project description for surface mining project was adequate where it included conceptual descriptions of stream diversion structures; descriptions of final designs were not required.
- *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398: Project description for general plan amendment consisting of policy language was inadequate because it did not include reasonably foreseeable future development allowed by the amendment.
- *Environmental Council of Sacramento v, City of Sacramento* (2008) 142 Cal. App. 4th 1018: Lead agency may make reasonable baseline assumptions about how a project will operate in the future without guaranteeing that those assumptions will remain true.
- *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252: Project description for County approval of mine reclamation plan also had to include entire mining project, even though on federal land.
- *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645: EIR rejected because the inclusion of environmental commitments as part of the project description, without fully analyzing the impacts of the project prior to inclusion of these measures, was improper.
- *Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036: EIR for a 20-year long-range development plan was upheld where the project description included both fixed elements (such as street layouts) and conceptual elements (such as the shape of buildings or specific landscape designs). The EIR provided for flexibility needed to respond to changing conditions and unforeseen events (including those related to contamination) that could possibly impact the project's final design.
- *North Coast Rivers Alliance v. Department of Food and Agriculture* (2016) 243 Cal.App. 4th 647: EIR rejected because statement of project objectives was too narrow and did not include underlying purpose for project. This led to a range of alternatives that was overly narrow.
- *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 286-287: EIR was invalidated because the Draft EIR did not identify a preferred or actual project, but rather described and evaluated five alternatives in equal detail. The court found the Draft EIR to be lacking an "accurate, stable, and finite" project description, stating, "The presentation of five very different alternative projects in the DEIR without the designation of a stable project was an obstacle to informed public participation..."
- *High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102: The description of the buildout of a general plan and the corresponding impact analysis in an EIR can be based on reasonably foreseeable levels of population growth and development, as

opposed to the maximum buildout scenario that could be theoretically possible under proposed general plan land use designations.

- *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321: Court upheld EIR and dismissed plaintiff's claim that the Draft EIR presented "multiple possible Projects rather than a finite description of a single project," where the EIR project description included two options. The court stated, "the project description clearly identified a mixed-use development project at a specific, defined location with two options for allocations of office and residential use." The court further stated, the EIR "carefully articulated two possible variations and fully disclosed the maximum possible scope of the project. The project description here enhanced, rather than obscured, the information available to the public."
- *Stopthemillenniumhollywood.com, et al. v. City of Los Angeles, et al.* (2019) ____ Cal.App.5th ____: EIR violated CEQA's requirement for a stable and finite project description, where the EIR's project description provided only illustrative conceptual development scenarios with "flexible development parameters" and "impact envelopes" that developers could follow. The EIR did not describe the siting, size, mass, or appearance of any building proposed to be built at the project site. Analyzing a "set of environmental impact limits," instead of analyzing the environmental impacts for a defined project, was not consistent with CEQA.

Project Description in the CEQA Guidelines

The project description is addressed in the following sections of the CEQA Guidelines:

- **Section 15378** – Defines the term "project" as used within CEQA, and the types of actions that either do or don't constitute a project for the purposes of CEQA.
- **Section 15124** – Discusses the types of information about a proposed project that should be included in the Project Description

Related CEQA Portal Topics

- Environmental Setting and Baseline

Sources

Ascent Environmental. 2014. *It Looks Like Mitigation. It Sounds Like Mitigation. But Can It Be Part of the Project?* Lotus v. Department of Transportation - A Practitioner's View. May 2014. Available:

http://ascentenvironmental.com/files/3714/0002/4046/Ascent_Paper_Lotus_v__Caltrans_05-13-14_.pdf.

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