

The California Supreme Court Clarifies CEQA Baseline

Court cases in 2010 and 2011 threw normally calm environmental planners into a quandary about how to establish the “baseline” for CEQA documents. Cases from the California Supreme Court and Fifth and Sixth District Courts of Appeal gave mixed messages. In some instances, the baseline was defined exclusively as the current existing conditions; in others, some flexibility was allowed for a future conditions analysis.¹

Baseline is normally the existing environmental condition at the time the notice of preparation (NOP) is released or when the environmental analysis begins (if there is no NOP) (CGL § 15125[a]). How the baseline physical conditions are defined is critical, because the significance of an environmental impact is determined by comparing project conditions against these baseline conditions. The greater the difference, the greater the impact.

On August 5, 2013, the California Supreme Court took the narrow view and held that CEQA requires a lead agency to assess a project’s impacts against an existing conditions

The lead agency must clearly support the determination with substantial evidence in the record.

DATE OF IMPLEMENTATION

Although the court affirmed the need for an existing conditions baseline, it also provided some flexibility with a new concept called “date of implementation” baseline. The court stated “that in appropriate circumstances an existing conditions analysis may take account of environmental conditions that will exist when the project begins operations; the agency is not strictly limited to those prevailing during the period of EIR preparation.” A lead agency may exercise its “discretion on how best to define such a baseline under the circumstance of rapidly changing environmental conditions.”

“The question we would have an agency ask in choosing a baseline is not, ‘Would an existing conditions analysis add information to a future conditions analysis?’ It is, ‘Do we have a reason to omit the existing conditions analysis and substitute one based on future conditions?’”

—California Supreme Court
Neighbors for Smart Rail

HOW TO PROCEED?

Our recommendation from 2011 remains the same; that is, to be conservative and start with an existing conditions analysis. Consider deviating from this position only under truly “nonnormal” conditions—such as in the case of surrounding development that has been approved but not built. Except for cases like this, it is better to include additional impact scenarios than to skimp and risk legal inadequacy. Include future hypothetical conditions timed for project opening and other horizons, as appropriate, but certainly compare back to existing conditions and be conservative. Lead agencies now have more clearly defined guidance as to exactly when alternate baselines might be justified.

Following the lead of the “date of implementation” concept, lead agencies may decide to include in the existing conditions



baseline and may not solely employ a future conditions baseline except under unusual circumstances (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, et al.* [August 5, 2013, S202828] 57 Cal.4th 439). To substitute a future conditions analysis for one based on existing conditions, the lead agency must make two findings: 1) that it is justified by “unusual aspects of the project or surrounding conditions,” and 2) analysis based on existing conditions “would be uninformative or misleading to decision makers and the public” (*Neighbors for Smart Rail*).

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baseline other projects and infrastructure that have been approved and are expected to be on the ground or under construction at the opening of the project. Remember to include substantial evidence demonstrating approvals and funding.

EXISTING CAPACITY V. EXISTING OPERATIONS

Do “existing conditions” include only current operations or do they include approved capacities? Is the existing baseline literally the existing level of operations or does it include any existing but unused capacity? *CBE v. SCAQMD* (2007) 158 Cal. App. 4th 1336 (*CBE App.*) dealt with the unused capacity of a refinery, but most facilities and uses have some level of vacancy or unused capacity. The *CBE* appellate court found that “a project’s baseline is normally comprised of the existing environmental setting—not what is hypothetically allowed pursuant to existing zoning or permitted plans.” However, “[W]here prior environmental review has occurred, ... the existing environmental setting may include what has been approved following CEQA review.” A lead agency “enjoys discretion to decide ... exactly how the existing physical conditions without the project can most realistically be measured, subject to review for support by substantial evidence.”

In *Neighbors for Smart Rail*, the court clarified its ruling in *CBE*, explaining that it had not addressed the current issue of a projected future conditions baseline. The ruling in *CBE* was limited to the issue of how you define existing conditions when the conditions are in flux.

How does this apply to projects on existing school campuses? What is the proper baseline for such a project? Is it the existing enrollment or “permitted” current capacity? Generalizing from *CBE v. SCAQMD*, we might conclude that school projects must be compared against existing enrollment without credit for existing but unused capacity. The difference between conditions with and without the project will be greater with this lower baseline, so impacts—especially when measured quantitatively—will also be greater. This may lead to more impacts being determined significant and greater mitigation costs. However, the “...courts have accepted a baseline environmental setting premised on permitted levels where the permits were the result of prior environmental review” (*CBE App.*). If you find that your existing capacity has already undergone CEQA review, the baseline can be set at existing capacity, regardless of lower current enrollment.

If you don’t have previous environmental clearance and the school isn’t operating at full capacity, you must carefully



justify—backed by substantial evidence—any baseline that exceeds existing conditions. School enrollment figures and class size vary from year to year, especially as districts make adjustments based on changing growth, demographics, and temporary housing needs. As the lead agency, a school district “enjoys discretion to decide ... exactly how the existing physical conditions without the project can most realistically



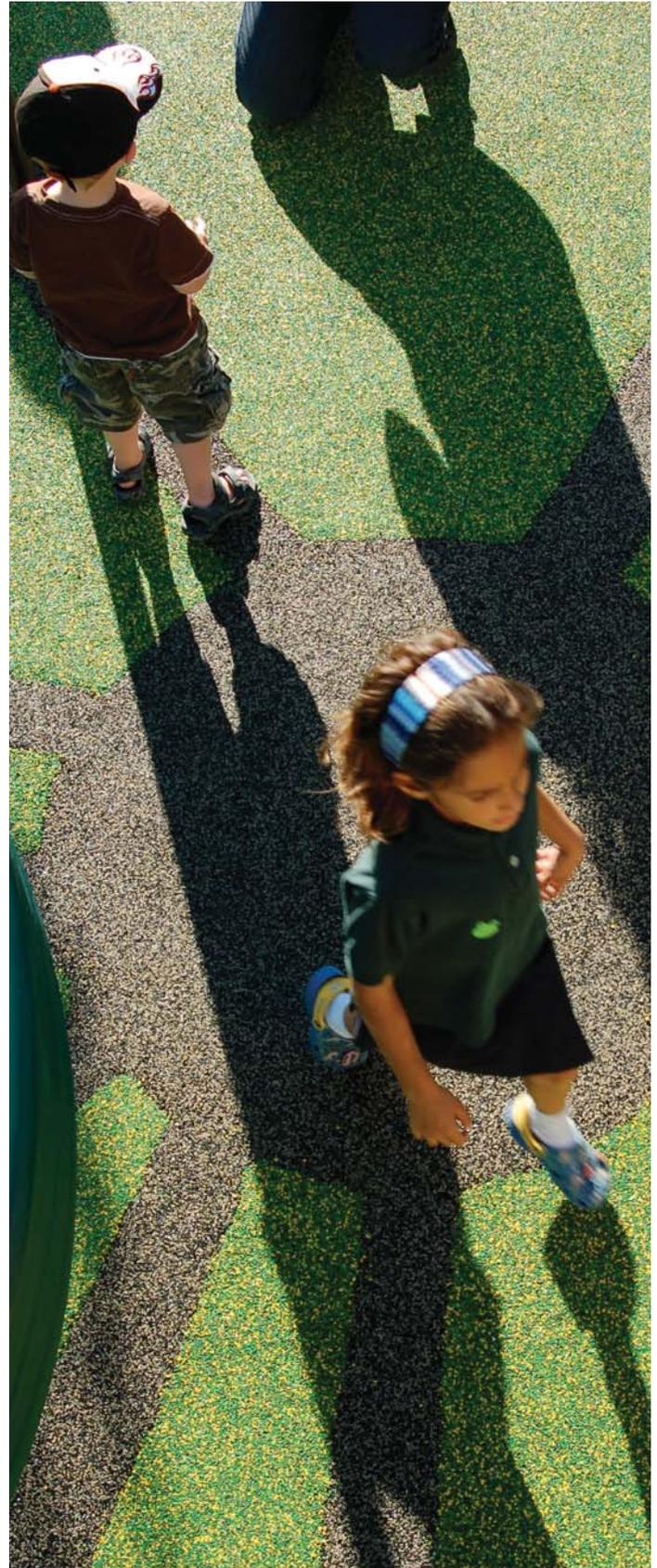
be measured” (*CBE App.*). A district might calculate the baseline using the average enrollment over time to even out the dips or spikes, or it might base it on an earlier year when the school’s enrollment was considered more typical of what is expected in the future.

Use of an existing conditions baseline “promotes public participation and more informed decision making by providing a more accurate picture of a proposed project’s likely impacts.”

In summary, the baseline must be the existing physical conditions (i.e., the number of classrooms in operation and/or the number of students currently enrolled) or conditions already approved and subjected to previous environmental review. Our recommendation is that you use existing enrollment figures (possibly adjusted for fluctuations per the discussion above) or current capacity if previously covered in earlier environmental review.

ENDNOTES

1. We addressed this topic in a November 2011 *CenterVIEWS*, “Recent Court Cases Reject Standard Practices in CEQA Review: What School Districts Need to Know.” This current *CenterVIEWS* replaces and supersedes that November 2011 edition.





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DECEMBER 2013 / ISSUE NO.2:
**THE CALIFORNIA SUPREME COURT CLARIFIES
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This CENTERVIEWS provides a summary of recent case law concerning the proper definition of baseline conditions for environmental documents under the California Environmental Quality Act. Thanks to Gina Froelich, senior editor, for assistance in writing this CENTERVIEWS.

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