



CEQA Baselines: New Sunnyvale Case Sanctions EIR's Use of Multiple Traffic Baselines

By Arthur F. Coon on December 9th, 2011

Last February, I co-authored a California Land Use Law & Policy Reporter lead article analyzing three significant 2010 decisions addressing the rules for setting the CEQA “baseline,” i.e., the starting point from which environmental impacts are measured. ([“Back to Basics: Setting the Environmental Baseline Under the California Environmental Quality Act” by Arthur F. Coon and Sean R. Marciniak, Feb. 2011 issue of CLULPR.](#)) One of those cases – – *Sunnyvale West Neighborhood Assoc. v. City of Sunnyvale City Council* (6th Dist. 2010) 190 Cal.App.4th 1351 (“*Sunnyvale West*”) – – held that sole reliance on a *future*, post-project approval environmental baseline in an EIR’s traffic analysis exceeded the lead agency’s lawful discretion under CEQA. At a minimum, CEQA requires a comparison of project impacts to existing conditions not later than the date of project approval. Our article noted that the *Sunnyvale West* decision invalidated a widespread industry practice, prevalent among traffic consultants, in holding CEQA documents must always include an “existing conditions” baseline analysis, even when the project will not be built and become operational until many years after project approval.

A newly published decision, also arising from a City of Sunnyvale approval, follows and refines this CEQA baseline jurisprudence, providing a clearer “roadmap” for EIR consultants aiming to prepare a legally defensible traffic impacts analysis. In *Pfeiffer v. City of Sunnyvale City Council* (6th Dist. 2011) _____ Cal.App.4th _____, ordered published on November 22, 2011, the Court of Appeal upheld the City’s approval of a medical campus expansion and its certification of the related EIR, and rejected (among others) a challenge to the legal adequacy of the EIR’s traffic baseline. The challenged EIR evaluated four different traffic baselines, including: (1) existing conditions (i.e., 2007 peak one hour commute conditions); (2) background conditions (i.e., existing peak hour conditions multiplied by a growth factor based on a forecasting model to account for approved but not yet constructed area developments); (3) project conditions (i.e., background conditions plus project); and (4) cumulative conditions (i.e., existing conditions multiplied by a growth factor to account for approved and pending developments and general plan traffic projections).

Key takeaways from *Pfeiffer* on the baseline issue include:

- “[A]ppellants’ contention that a traffic base line is limited to existing conditions lacks merit...the California Supreme Court has instructed that predicted conditions may serve as an adequate baseline when environmental conditions vary.” In other words, “the date for establishing baseline [is not] rigid.”
- The EIR’s traffic analysis was sufficient because it included (as part of its multiple baselines) “existing conditions, based on actual traffic counts[.]”
- Appellant’s conclusory attack on the alleged “hypothetical” traffic baselines failed to “lay out the evidence” supporting the EIR’s conclusions and show why it was lacking.



- *Sunnyvale West*, which rejected analysis based *solely* on a future traffic baseline over a decade after EIR certification/project approval, was distinguishable.
- *Sunnyvale West* emphasized that even though an EIR must normally limit its impact analysis to existing physical conditions, the CEQA Guidelines also require it to analyze direct and indirect significant impacts, with due consideration of short and long term effects, as well as to examine future conditions discussed in a relevant adopted plan.

Pfeiffer teaches that a local agency retains significant flexibility and discretion to set the “existing conditions” baseline at a point between the commencement of environmental review and the date of EIR certification, so long as it is supported by substantial evidence. Multiple other baselines may also be needed to adequately analyze impacts (such as traffic) that have varied, or will vary, significantly over time. However, as a CEQA-mandated minimum, an EIR analyzing multiple baseline scenarios must *always* include analysis of project impacts measured against an “existing condition” baseline set not later than EIR certification, in addition to its analysis of the projected future conditions.