

NEITHER CEQA NOR THE PUBLIC TRUST REQUIRES EXCLUSION OF CURRENT CONDITIONS IN DETERMINING BASELINE FOR PURPOSES OF LEASE RENEWAL ON TIDE AND SUBMERGED LANDS

Citizens for East Shore Parks, et al. v. California State Lands Commission (Chevron U.S.A, et al., real party in interest), No. A129896 (Cal. Ct. App. 1st Dist., December 30, 2011, modified on denial of rehearing No. A129896M, Jan. 27, 2012.)

February 2, 2012 by Michael Gibson

The proper baseline for analyzing potential environmental impacts under the California Environmental Quality Act (CEQA) of a project that requires renewal of an existing lease are the existing, actual conditions at the property including impacts of the operations being carried on pursuant to the lease. In renewing an existing 50-year lease with Chevron U.S.A. (Chevron) for a marine terminal, the California State Lands Commission (the Commission) acted properly when it prepared its final environmental impact report (FEIR) based on the current and longstanding conditions at the property, including the terminal operation. Citizens for East Shore Parks (Citizens) had argued that the baseline must *exclude* current conditions because the Commission could eliminate current conditions by refusing the renewal. The court ruled that the conditions when the project is approved must be the baseline, not possible conditions if the use were different or eliminated. The current conditions at the property might interest enforcement agencies (if the use or user violated existing law); however, when preparing a FEIR, the normal baseline rule applies: the conditions existing when the environmental analysis begins.

In addressing Citizens' public trust doctrine argument, the court again relied on the existing, longstanding public trust use of the navigable waters and partially submerged land in question to reject Citizens' challenge to the renewal of the lease. The public trust doctrine, with its basis in ancient Roman law, centers around three principles: (1) public rights of navigation, fishery and recreation are so intrinsically important that their unfettered availability is critical to a democratic

society, (2) nature's bounty should be preserved for the entire populace, and (3) certain uses are so peculiarly public that adaptation to private use is inappropriate. Citizens asserted that the Commission failed to take the proper procedural steps to conduct an analysis of the public trust doctrine; therefore, the court utilized de novo review when addressing the procedural question before it. In rejecting Citizens' procedural argument, the court relied on the fact that there was no proposed change in the public use at the property as a result of the lease renewal; to the contrary, a longstanding public use would be continued. The court distinguished other cases where non public trust uses or changes in public trust uses were proposed in raising an objection based on the public trust doctrine.

Despite this finding in the Commission's favor, the court went on to discuss that the public trust doctrine did not impose any procedural matrix that would require the Commission to consider alternative public trust uses. In fact, the court said that the CEQA procedural requirements followed by the Commission could not be overridden by invoking the public trust doctrine, in particular, the CEQA procedural requirement that the baseline used to assess environmental impacts be the current property conditions.