



From Baird to Ballona Wetlands: CEQA's Logical Limits

By Arthur F. Coon on December 14th, 2011

It's a common error in logic to suppose that because two things are in spatial or temporal proximity, one must be the cause of the other – a confusion of cause and affect. A line of CEQA cases – beginning with *Baird v. County of Contra Costa* (1st Dist. 1995) 32 Cal.App.4th 1464, and continuing with the recently published decisions in *Ballona Wetlands Land Trust, et al. v. City of Los Angeles* (2d Dist., Nov. 9, 2011) __ Cal.App.4th __ and *South Orange County Wastewater Authority v. City of Dana Point* (4th Dist. 2011) 196 Cal.App.4th 1604 – exposes this basic logical error in the CEQA context, and in doing so, clarifies CEQA's fundamental scope and limits.

The rule can be simply stated: CEQA is concerned with analyzing the impacts of the proposed project on the existing environment and *not* the impacts of the existing environment on the proposed project. In other words, CEQA requires an analysis of (and mitigation for) significant adverse *changes* in the existing environment that will be *caused by the project*, not vice versa. (E.g., *Baird, supra*, 32 Cal.App.4th at 1468 [“Adverse environmental changes are not contemplated here. The purported contaminations are preexisting (or do not exist at all).”].)

In the seminal *Baird* case, an addiction treatment facility was approved with a negative declaration for construction in the vicinity of existing sewage and soil contamination of various kinds. Project opponents argued CEQA required the County to prepare an EIR to study the impacts of the existing pollution on the future project residents. The court rejected the argument because “[t]he purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment”; nothing in the record supported any claim that the project's construction would in any way expose, worsen or spread the existing environmental contamination.

Some CEQA practitioners (including myself) considered *Baird* an interesting, but not terribly significant “outlier” decision at the time it was rendered – now 16 years ago. After all, CEQA's Guidelines stated that CEQA analysis must include situations where projects would bring people into existing hazardous situations (e.g., building atop an earthquake fault) (14 Cal. Code Regs., § 15126.2(a)), and its statutory provisions provide that a project may have a significant environmental effect if “[t]he environmental effects of [the] project will cause substantial adverse effects on human beings, either directly or indirectly.” (Pub. Resources Code, § 21083(b)(3).) For over a decade, it seemed, *Baird* lay dormant, rarely cited or relied upon, and usually relegated in CEQA lawyers' briefs to footnote status as a “fallback” argument.

Still, *Baird's* elegantly simple and ultimately compelling logic has endured, and more recent cases have squarely relied on and reaffirmed its fundamentally sound holding. As CEQA plaintiffs have continued to “push the envelope” in their EIR challenges, courts have increasingly reigned them in by stressing that an EIR's concern is “*not the impact of the environment on the project.*” (*City of Long Beach v. Los Angeles Unified School Dist.* (2nd Dist. 2009) 176 Cal.App.4th 889, 905 [rejecting criticism of cumulative impact analysis in EIR for high school construction for failure to consider air



quality impacts “on staff and student health”]; see also *South Orange County Wastewater Authority v. City of Dana Point*, *supra*, 196 Cal.App.4th at 1614-1617 [following *Baird* in holding EIR was unnecessary to analyze effects of existing sewage plant on residents of proposed neighboring development; criticizing Guidelines section 15126.2 and portions of Appendix G as unauthorized and inconsistent with “entire purpose of CEQA”].)

The most recent addition to *Baird*'s progeny is *Ballona Wetlands*, ordered published December 2, 2011, as a result of concerted building industry efforts. *Ballona Wetlands* also applied *Baird*'s rule in finding Guideline section 15126.2 and parts of Appendix G of the CEQA Guidelines were inconsistent with (and thus invalid under) CEQA; specifically, it held the City of Los Angeles' EIR for a proposed mix-used development project was not required to discuss impacts of future sea level rise (caused by global climate change) on the project.

With the ever increasing number of CEQA cases being brought, and the concomitant proliferation of new arguments challenging public agencies' CEQA compliance, *Baird*'s logic has now become firmly established as a “bright line” demarcation of CEQA's scope, and its limits.