

*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344

Keep Jets Over the Bay (KJOB) challenged the Port of Oakland's EIR for its Airport Development Plan (ADP), alleging inadequacies in noise impact analysis and air quality analysis (other issues' dispositions were not included in the published portion of the decision). The court ordered the Port to prepare, circulate, and certify a new EIR prior to approving the ADP.

KJOB argued that the Port was engaged in piecemealing because the project description didn't include runways and a high speed taxiway once considered by the Port, but never included in a completed or adopted plan, and which the Port claimed it had decided not to proceed with and did not include in the ADP. The court held that the runways and taxiway were not "reasonably foreseeable" consequences of the project (there was no apparent need for them under the ADP or traffic projections) and therefore were distinguishable from the holding in *Laurel Heights I* (where UC was acquiring an existing office building, had stated some future uses, but failed to assess use of the entire building). The project description was adequate.

The court held that including the runways and taxiway in the cumulative impact analysis and under the "no project" alternative as reasonably foreseeable actions did not make them reasonably foreseeable for purposes of the project description. Without providing additional clarification, the Court found that the no project and project description requirements "operate independent of one another and impose requirements using different threshold tests."

KJOB also argued that the EIR failed to utilize the best available data to analyze toxic air contaminants that would result from expanded airport operations, analyze the health risks that would occur, and discuss the ADP's inconsistency with the State Implementation Plan. The Port had apparently used a CARB 1991 contaminants speciation profile (#508) where a more accurate 1994 profile (#586) was available. Although profile #586 was not formally adopted, it contained information from three EPA profiles and was described by CARB staff as "the best profile available" and "more accurate and comprehensive" than profile #508. The court agreed that the air contaminants analysis was inadequate.

On the health risk assessment, the Port was presented with voluminous information during review of the draft EIR indicating that accepted risk assessment protocols existed and had been used on other airports, but the Port ignored this information in the Final EIR. The Port's approach of finding the impact significant without analyzing the impacts on employees and nearby residents "has the process exactly backward" and is inadequate to meet CEQA's requirements. The FEIR failed to acknowledge and respond to the opinions of responsible agencies and experts who cast doubt on the adequacy of the EIR's analyses.

KJOB argued that the EIR failed to include information about the ADP's nighttime noise impacts. The court agreed. The EIR concluded that noise impacts would be significant if average noise levels increased by more than 1.5 dBA CNEL where noise levels already

exceeded 65 dBA CNEL or if noise levels would be caused to exceed 65dBA CNEL. Commenters presented evidence that single event noise levels exceeded the 65 dBA limit at least 20% of the time at night (as an average, CNEL would not capture single events). CEQA requires a higher standard of significance (Appendix G's: "increase substantially the ambient noise levels for adjoining areas") than NEPA. "The fact that residential uses are considered compatible with a noise level of 65 dBA for land use planning is not determinative in setting a threshold of significance under CEQA." The court concluded that the potential noise impact of increased night flights mandates further study and a new threshold based on changes from ambient noise levels and potential sleep disturbance.