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REPORT TO THE PLANNING COMMISSION

CUMULATIVE IMPACT ANALYSIS UNDER CALIFORNIA ENVIRONMENTAL
QUALITY ACT [CEQA]

INTRODUCTION

A number of questions have been raised by the Planning Commission and community members regarding cumulative impact analysis under the California Environmental Quality Act [CEQA]. This report provides an overview of case law and application of cumulative impact analysis to discretionary project approval.

DISCUSSION

A review of public agency authority under CEQA and recommendations for comprehensive cumulative impact analysis follows.

**I. CUMULATIVE IMPACTS: MANDATE, DEFINITION, PRACTICAL
CONSIDERATIONS, AND CASE SUMMARIES**

A. Mandate

In order to ensure the long-term protection of the environment, the California Environmental Quality Act [CEQA] mandates environmental review of discretionary projects prior to project approval in order to inform the public and the decision makers about the environmental consequences of project approval and to require an assessment of how those consequences might be mitigated. Cal. Pub. Res. Code §§ 21000-21001. The Legislature intends that CEQA be interpreted to give the fullest possible protection to the environment within the reasonable scope of the statutory language. Cal. Pub. Res. Code § 21000(g); *Napa Citizens for Honest Government v. Napa County Board of Supervisors*, 91 Cal. App. 4th 342, 356 (2001).

A lead agency must determine “whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.” Cal. Pub. Res. Code § 21082.2 (a). A project may have a significant impact on the environment from effects related to the project itself or because “the possible effects of a project are individually limited but cumulatively considerable” which means that the “incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” Cal. Pub. Res. Code § 21083(b); Cal. Code Regs. tit. 14 [Guidelines], § 15065(a)(3).

B. Definition

The CEQA Guidelines, at section 15355, further provide:

“Cumulative impacts” refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

- (a) The individual effects may be changes resulting from a single project or a number of separate projects.
- (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

If the incremental effect of the project is not “cumulatively considerable,” the lead agency must provide an analysis of that incremental effect and the basis for concluding that the effect is not cumulatively considerable. Guidelines § 15130.

If there is substantial evidence, either individually or cumulatively, that a project may cause a significant adverse environmental effect, the lead agency must employ an environmental impact report to document those environmental effects. Guidelines § 15063. The purpose of an environmental impact report is to identify the significant adverse environmental effects of a project, to identify project alternatives, and to identify ways to mitigate those impacts. Cal. Pub. Res. Code § 21061.

The cumulative impact analysis is integral to the environmental review process. The following summary is often cited in regard to the importance of cumulative impact analysis and the confusion regarding compliance with the cumulative impact analysis requirement:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397 (1979). One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact. *Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019 (1997). Although the assessment of cumulative effects plays an important part in the CEQA review process, this requirement has proven to be a source of considerable confusion.

Communities for a Better Environment v. Ca. Resources Agency, 103 Cal. App. 4th 98, 115 (2002).

C. Application of Cumulative Impact Analysis

1. The environmental setting must be broad enough to address the cumulative impacts. *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1216 (2004).

In *Bakersfield*, the environmental impacts of two retail shopping centers, located 3.6 miles apart, should have been evaluated together for purposes of cumulative impact analysis because each shopping center had a super-center, they would compete for business, they shared arterial roads, and each would contribute to traffic and air quality impacts. Guidelines § 15130(b)(3) directs lead agencies to “define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.” Further, the environmental setting for an environmental impact report must include a description of the physical environmental conditions in the *vicinity* of the project. Guidelines § 15125(a). The area may not be narrowly defined such that a portion of the affected environmental setting is eliminated. *Bakersfield*, 124 Cal. App. 4th, at 1216.

2. A project may not be improperly segmented, particularly to avoid a complete assessment of the project cumulative environmental impacts. *Sacramento Old City Assn. v. City Council*, 229 Cal. App. 3d 1011, 1024-25 (1991).

The issue of improper segmentation is important because the charge is that where a project is improperly segmented the cumulative impacts of the overall project are missed or understated. *Sacramento*, 229 Cal. App. 3d, at 1024-25. Two separate activities must be evaluated as components of a larger project when one activity is a foreseeable consequence of the other, where one activity commits the lead agency to a larger project, and where both are integral parts of the same project. Guidelines § 15165; *Sierra Club v. West Side Irrigation Dist.*, 128 Cal. App. 4th 690, 698 (2005).

3. Where a project is one of several similar projects, the lead agency may prepare one EIR for all the projects or an EIR for each separate project, as long as the separate EIRs include analysis of the cumulative impacts for all the projects combined. Guidelines § 15165; *Sierra Club v. West Side Irrigation Dist.*, 128 Cal. App. 4th 690, 699 (2005).

Where two projects are not contingent on each other, each may be evaluated separately. Guidelines § 15165. This requirement is wholly separate from the cumulative impact assessment. The fact that the projects are separately analyzed does not alleviate the agency from the obligation to assess the cumulative impacts of the combined projects.

4. There must be a project impact before there can be a cumulative impact of that project. *Sierra Club v. West Side Irrigation Dist.*, 128 Cal. App. 4th 690, 701 (2005).

The fact that there are related projects in the area, or excessive environmental impacts of other related or unrelated projects in the area, does not itself predicate additional cumulative impact analysis for a project that itself does not contribute at all to the adverse environmental impacts. *Id.* A project's "de minimis" contribution to an environmental impact may be considered significant in light of existing adverse environmental conditions. *Communities for a Better Environment v. Cal. Resources Agency*, 103 Cal. App. 4th 98, 122 (2002). However, no substantial evidence of any additional effect necessitates a conclusion of no cumulative project effect. *Sierra Club*, 128 Cal. App. 4th at 702.

5. When assessing whether a cumulative impact requires an EIR, the lead agency must consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. Guidelines § 15064.

The lead agency must look at the impacts from the project itself and the impacts from other related projects to assess whether or not the impacts are significant. Guidelines § 15064. An EIR should be used if the project's incremental effect though individually limited is cumulatively considerable. *Sierra Club*, 128 Cal. App. 4th at 231. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. *Communities for a Better Environment*, 103 Cal. App. 4th at 114. This does not mean that any additional effect necessarily creates a significant cumulative impact. *Id.* at 120. It also does not mean that because the cumulative impact is already great that a small additional impact from the project is inconsequential. *Id.* at 118.

6. The greater the existing environmental impacts are, the lower the threshold should be for treating a project's contribution to the cumulative impacts as significant.

The lead agency should not use a ratio analysis of the project contribution to the impact. *Communities for a Better Environment*, 103 Cal. App. 4th at 119; *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 721 (1990). The relevant issue is not the relative amount of impact resulting from the project when compared to existing conditions but whether any additional contribution to that condition should be considered significant given the nature of the existing conditions. *Communities for a Better Environment*, 103 Cal. App. 4th at 120; *Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1025 (1997).

7. To determine whether the incremental effects of the individual project are cumulatively considerable, the lead agency must view those effects in connection with:
 - a. the effects of past projects,
 - b. the effects of other current projects, and
 - c. the probable effects of future projects. Guidelines § 15355(b).

Projects outside the control of the lead agency must be included in the cumulative impacts analysis. Guidelines § 15130(b)(1)(A).

A lead agency may employ adopted planning documents to determine the scope of probable future projects. Guidelines § 15130 (b)(1)(B). The analysis should include the most probable development patterns. *City of Antioch v. City Council*, 187 Cal. App. 3d 1325, 1338 (1986). Other probable future projects include those associated with the project as a foreseeable consequence of the project. *Laurel Heights Improvement Ass’n. v. Regents of the University of Ca.*, 47 Cal. 3d 376 (1988). Projects under review are “reasonably foreseeable probable future projects” that must be included in the cumulative impact analysis. *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 151 Cal. App. 3d 61, 75 (1984). The fact that projects under review may never be built is not a reasonable basis to exclude them from the cumulative impact analysis. *Id.*

8. The elements necessary for an adequate discussion of cumulative environmental impacts are:
 - a. A list of past projects, other current projects, and probable future projects producing related or cumulative impacts, or a summary of expected environmental impacts based on projections in an adopted planning document or other certified environmental document,
 - b. A summary of environmental effects expected to be produced by the projects, and
 - c. a reasonable analysis of the combined or cumulative impacts of all the relevant projects and option for mitigating and avoiding each significant cumulative impact.

Guidelines § 15130; *San Franciscans*, 151 Cal. App. 3d at 74; *Citizens to Preserve the Ojai v. County of Ventura*, 176 Cal. App. 3d 421, 428-29 (1985); *Whitman v. Board of Supervisors of Ventura County*, 88 Cal. App. 3d 397, 409 (1979).

9. A project cannot be assessed in isolation, but, must be considered with the development it may induce. *City of Antioch v. City Council*, 187 Cal. App. 3d 1325, 1336 (1986).

Where there is a fair argument that a project will induce future development, that future development and its impacts must be assessed as part of the environmental review for the project. *City of Antioch*, 187 Cal. App. 3d at 1335. The fact that future development may be subject to further environmental review does not alleviate the decision maker from the responsibility to consider that future development as part of the project cumulative impacts. *Stanislaus Audubon Society, Inc. v. County of Stanislaus*, 33 Cal. App. 4th 144 (1995). Where there is no ability to determine with precision where additional development will occur as a consequence of project approval, the lead agency may rely on a reasoned assessment of probable development patterns. *City of Antioch*, 187 Cal. App. 3d at 1337.

10. Compliance with CEQA is not optional.

The courts recognize the cost, time, paperwork, delay, and limited efficacy associated with comprehensive environmental review under CEQA, particularly where the decision maker ultimately adopts overriding considerations findings to support projects with significant adverse environmental consequences:

We are aware of certain planning commission members' opinions, expressed in the record, that preparation of an EIR "costs a hell of a lot of money," and is an exercise in futility because "it always ends up,everything's mitigated... It just made everybody feel better and in the long run, the projects still went." However, despite their collective opinion that preparation of an EIR is just "another big added expense," without commensurate benefits, compliance with CEQA is not optional.

Stanislaus Audubon Society, 33 Cal. App. 4th at 159 n.7.

Recognizing that decisions will not always be made to favor environmental considerations, the Court of Appeals noted in *Friends of the Eel River v. Sonoma County Water Agency*, 108 Cal. App. 4th 859, 868 (2003), "We may not, in sum, substitute our judgment for that of the people and their local representatives. We can and must, however, scrupulously enforce all legislatively mandated CEQA requirements." (quoting *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 564 (1990).

D. Case Summaries:

The following is a summary of cases that address cumulative impact analysis requirements under CEQA. Most CEQA cases address cumulative impacts, at least to some degree. These case summaries provide a general overview of the law in regard to cumulative impact analysis, and do not discuss other legal issues addressed by the courts.

1. *Sierra Club v. West Side Irrigation Dist.*, 128 Cal. App. 4th 690 (2005).

Two projects for the assignment of water rights to the City did not violate CEQA due to improper segmentation of the projects or failure to discuss cumulative impacts because the individual projects were found to not add any additional environmental effect to the cumulative impacts in the area. The fact that other projects in the area may cause a significant cumulative impact is not evidence that these projects will have impacts or that their impacts are cumulatively considerable.

2. *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184 (2004).

The City's EIRs for two shopping centers were inadequate because each failed to address the individual and cumulative impacts of the shopping centers to indirectly cause urban decay, and traffic, air quality, noise, and growth inducing impacts. Although the shopping centers were 3.6 miles apart, the projects were closely related for purposes of environmental review because each contained a supercenter, would complete with each other, and shared arterial roadways.

3. *Communities for a Better Environment v. Cal. Resources Agency*, 103 Cal. App. 4th 98 (2002).

Three environmental groups challenged the 1998 revisions to the CEQA Guidelines. The court invalidated a number of CEQA Guideline provisions. The appropriate comparison for purposes of cumulative impact analysis is not how the project effect compared to the preexisting cumulative effect, but whether any additional amount of effect should be considered significant because of the existing cumulative effect. The greater the existing environmental impact, the lower the threshold should be for treating a project contribution to the cumulative impacts as significant.

4. *Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019 (1997).

The EIR for a development plan was inadequate because it failed to consider the cumulative impacts of existing and project traffic noise at two schools. The fact that the existing noise level was beyond maximum levels allowed under Department of Health guidelines did not negate the impact of the new development. The relevant issue is not the relative amount of traffic noise from the project when compared to the existing traffic noise but whether any additional amount of traffic noise should be considered significant in light of the serious existing traffic problem.

5. *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692 (1990).

The cumulative impact analysis of a proposed power plant was inadequate because the scope was limited to the mid-valley area, where the property was to be located, and failed to include the entire air basin, particularly where information on similar projects was available from air pollution control districts and from the EPA. The EIR mistakenly used a ratio comparison between the project's impacts and the overall

environmental problem which minimized the impact of the project. The lead agency failed to address cumulative impacts for water resources and air quality.

6. *City of Antioch v. City Council*, 187 Cal. App. 3d 1325 (1986).

Environmental review for a road and sewer construction project was inadequate because there was no assessment of the development that might occur in response to the additional infrastructure. Environmental review of probable new development was required even though the development might take several forms or might not occur at all. Further, the fact that future development would be subject to its own environmental review was not sufficient basis to exclude the analysis as part of this project's environmental impacts.

7. *Citizens to Preserve the Ojai v. County of Ventura*, 176 Cal. App. 3d 421 (1985).

EIR for oil refinery expansion was deficient because the cumulative impact analysis did not include offshore emissions in the air quality assessment. The City did not want the applicant to bear the cost of a regional multi-county air quality assessment. The City relied on an existing air quality analysis that did not include an assessment of offshore emissions because such technology was not available at the time of that study. The EIR should explain if analysis is infeasible and speculative. Further, the cumulative impacts analysis understated the severity and significance of environmental impacts. A cumulative impact analysis must include impacts from past, present, and anticipated future projects, including those outside the lead agency's control.

8. *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 151 Cal. App. 3d 61 (1984).

Four EIRs for high-rise office buildings in downtown San Francisco did not include adequate analysis of the projects cumulative impacts because the City failed to include projects under review in the analysis, relying only on environmental impacts related to approved projects. Projects under review are "reasonably foreseeable probable future projects" for purposes of CEQA review. The fact that the projects under review may never be built is not relevant.

9. *Whitman v. Board of Supervisors of Ventura County*, 88 Cal. App. 3d 397 (1979).

The Board of Supervisors granted a conditional use permit for an exploratory oil and gas well. The Court of Appeals held the EIR failed to adequately discuss cumulative impacts. The Court required a list of projects producing related or cumulative impacts, a summary of the impacts for each project, and an analysis of the cumulative impacts of the projects. The County was required to examine related projects whether or not those projects required a county permit. Further, an analysis of two other planned projects that did require county permits was insufficient because it included conclusory statements without supporting facts and detail.

II. PUBLIC AGENCY AUTHORITY UNDER CEQA AND RECOMMENDATIONS

A. Public Agency Authority under CEQA

Public agencies are required to adopt “by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations” pursuant to CEQA. Cal. Pub. Res. Code § 21082. The objectives, criteria, and procedures must be consistent with the statute and the guidelines. Cal. Pub. Res. Code § 21082. Guidelines section 15022 provides minimum requirements for those implementing procedures. A public agency may elect to adopt the State CEQA Guidelines through incorporation by reference and then adopt specific procedures to tailor the provisions to the operations of that agency. Guidelines § 15022(d). Alternatively, the agency may adopt their own complete set of procedures. Guidelines § 15022(d).

CEQA is intended to be used in conjunction with the discretionary powers granted to public agencies by other laws. Guidelines § 15040(a). CEQA, itself, does not grant any new powers to an agency. Guidelines § 15040(b). Existing laws may be used in conjunction with CEQA to mitigate or avoid a significant environmental impacts caused by the project. Cal. Pub. Res. Code § 21004; *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 209 Cal. App. 3d 1502, 1525 (1989). Additionally, the CEQA Guidelines state:

Where another law grants an agency discretionary powers, CEQA supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid significant effects on the environment when it is feasible to do so with respect to projects subject to the powers of the agency. Prior to January 1, 1983, CEQA provided implied authority for an agency to use its discretionary powers to mitigate or avoid significant effects on the environment. Effective January 1, 1983, CEQA provides express authority to do so.

Guidelines § 15040(c).

The lead agency must determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record. Guidelines § 21082.2(a). If there is substantial evidence that a project will have a significant environmental effect, the agency must prepare an environmental impact report. Guidelines § 21082.2(d).

Public agencies are encouraged to develop thresholds of significance that are employed to determine whether an environmental effect is significant. Guidelines § 15064.7(a). If the thresholds of significance are for general use as part of the agency’s environmental review process, the agency must adopt the thresholds of significance by ordinance, resolution, rule, or regulation, developed through a public review process, and supported by substantial evidence. Guidelines § 15064.7(b). Thresholds are not mandatory but are consistent with the requirement that findings of significance are based on scientific and factual data. Guidelines § 15064(b). Also, the threshold may not be used to preclude additional information that indicates the impact may be significant. *Communities for a Better Environment v. Cal. Resources Agency*, 103 Cal. App. 4th 98, 114 (2002). The lead agency must consider every fair argument that the impact is significant, even if the impact meets the threshold requirement. *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1109 (2004).

A lead agency may adopt specific plans and mitigation program plans with requirements to avoid or lessen cumulative environmental impacts in a specific geographic area. Guidelines section 15064(h)(3) provides:

A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g., water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

Consistent with the authority for a public agency to adopt plans and mitigation programs, the authority to adopt thresholds of significance, and the requirement that public agency develop procedures to implement CEQA, a public agency could establish standards for when cumulative impact analysis will be required that exceed the requirements already set forth in the statute and guidelines. In other words, it is already established that CEQA requires a cumulative impact analysis. Guidelines § 15130. A public agency could further adopt criteria or thresholds for determining whether a project incremental contribution is significant. Guidelines § 15064.7(a). A public agency could make the determination that the environmental conditions for a specific geographic area are of such consequence and so adverse, so as to require or environmental impact report for every project in that area, or for every project of a certain size in that area, without first examining the significance of that project's environmental effects.

B. Recommendations

1. Encourage Council to adopt the proposed CEQA Significance Thresholds. In recognition of an existing adverse cumulative traffic condition in many areas of the City, staff is proposing to reduce the traffic threshold by fifty percent, beyond which a project may be considered to result in a significant impact.
2. The City should use one environmental impact report when the City as the lead agency is faced with the option of employing one environmental impact report or several environmental projects for a series of related, but independent projects, in order to ensure comprehensive cumulative impact analysis, particularly in redevelopment areas and in pilot villages.
3. Maintain a database of cumulative impacts for each community planning area and the

entire City to better account for and monitor the cumulative effects of projects.

4. Limit the number of times per year community plan amendments may be introduced and adopted.
5. Update the community plans.
6. Establish substantial conformance policy.
7. Make sure that general plan updates and community plan updates adequately assess cumulative impacts.
8. Adopt comprehensive plans with specific requirements to reduce known environmental cumulative impacts, including a water quality control plan, stormwater quality control plan, and integrated waste management plan.

CONCLUSION

This report provides a general review of relevant legal principles and requirements for cumulative impact analysis compliance under the California Environmental Quality Act [CEQA] and suggested recommendations that can be implemented to assist in maintaining compliance.

Respectfully submitted,

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