

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: March 2, 2018
TO: Honorable Mayor and Councilmembers
FROM: City Attorney
SUBJECT: Pacific Village Project: Consideration of Social and Economic Impacts Under the California Environmental Quality Act

INTRODUCTION

The Pacific Village project (Project) is scheduled to be considered by the San Diego City Council on March 5, 2018. The proposed Project includes the demolition of an existing 332-unit residential complex, and the subdivision of the 41.45-acre lot into four lots for the construction of a 600-unit residential development. The development would be comprised of 324 for-sale residential condominiums within three building types, and 276 for-rent dwelling units.

At the Planning Commission hearing on the Project, several public speakers alleged that social and economic impacts, such as impacts on housing demand and the potential eviction and displacement of residents, should be considered and an Environmental Impact Report (EIR) should be prepared.¹ This memorandum discusses the extent to which social or economic impacts and adverse impacts on human beings are considered under the California Environmental Quality Act (CEQA) and when they trigger the need for an EIR.²

QUESTIONS PRESENTED

1. Can social and economic impacts resulting from a project, such as impacts on housing demand, be considered “significant” impacts triggering an EIR under CEQA?
2. To what extent does a project’s adverse effects on humans, such as potential eviction and displacement of residents, constitute a “significant” impact triggering an EIR under CEQA?

SHORT ANSWER

1. Social or economic impacts, such as impacts on housing demand, are not significant impacts by themselves. However, they may be considered in significance

¹ The Project is currently analyzed under a Mitigated Negative Declaration.

² To the extent previous written advice from this Office may conflict, this memorandum supersedes such advice.

determinations of physical impacts if there is substantial evidence that the social or economic impacts contribute to, or are caused by, physical impacts on the environment.

2. An EIR may be required if a project's physical impact on the environment causes substantial adverse effects on human beings in general. Case law has held that the eviction and displacement of residents affects only a particular group of people, rather than human beings in general, and therefore would likely not constitute a significant impact under CEQA.

ANALYSIS

I. CEQA REQUIRES ANALYSIS OF SOCIAL OR ECONOMIC IMPACTS THAT CONTRIBUTE TO, OR ARE CAUSED BY, PHYSICAL IMPACTS ON THE ENVIRONMENT RESULTING FROM THE PROJECT

Under CEQA, an EIR is required for projects that "may have a significant effect on the environment." Cal. Pub. Res. Code §§ 21100, 21151. Environment is defined as the "physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, noise, [and] objects of historic or aesthetic significance." Cal. Pub. Res. Code § 21060.5; *see also* CEQA Guidelines³ § 15360. As such, effects that are subject to review under CEQA must be related to a change to the *physical* environment. CEQA Guidelines § 15358(b) (emphasis added).

Social or economic impacts alone cannot be considered a significant effect on the environment. CEQA Guidelines § 15064(e); *San Franciscans for Reasonable Growth v. City & Cty. of San Francisco*, 209 Cal. App. 3d 1502, 1516 (1989) (economic and social changes are not treated as significant environmental effects and need not be mitigated or avoided under CEQA). However, social or economic impacts may be used to decide that an impact to the *physical* environment is significant. CEQA Guidelines § 15064(e). Put another way, social or economic impacts may only be factored into a significance determination of physical impacts when there is substantial evidence that the social or economic impacts contribute to, or are caused by, physical impacts on the environment. CEQA Guidelines § 15064(f)(6); *see also* CEQA Guidelines § 15064(e).

In *San Franciscans for Reasonable Growth*, the court determined that impacts on housing demand are social and economic impacts not having an effect on the physical environment, and therefore outside the purview of CEQA. 209 Cal. App. 3d at 1521, n.13. The courts have also determined that the following social or economic impacts do not have a significant impact on the environment: the need for additional fire protection services that a project would generate; the inconvenience of a parking deficit; school overcrowding created by a project; and the impact of dogs using a beach on the enjoyment of visitors to the beach. *City of Hayward v. Board of Trustees of Cal. State Univ.*, 242 Cal. App. 4th 833, 843 (2015); *San Franciscans Upholding the Downtown Plan v. City & Cty. of San Francisco*, 102 Cal. App. 4th 656, 697 (2002); *Goleta Union Sch. Dist. v. Regents of Univ. of Cal.*, 37 Cal. App. 4th 1025 (1995); *Lighthouse Field Beach Rescue v. City of Santa Cruz*, 131 Cal. App. 4th 1170, 1206 (2005).

³ Cal. Code Regs., title 14, §§ 15000 - 15387 (CEQA Guidelines).

In contrast, courts have recognized social or economic impacts as contributing to, or being caused by, a physical impact on the environment when they involved the physical deterioration of an area. For example, in *Citizens Ass'n for Sensible Development v. County of Inyo*, 172 Cal. App. 3d 151 (1985), the court held that an EIR should have been required when development of a new shopping center and the loss of patronage for existing businesses might result in physical deterioration of the downtown area. *See also Citizens for Quality Growth v. City of Mt. Shasta*, 198 Cal. App. 3d 433 (1988) (the EIR should consider whether potential economic problems caused by project could result in business closures and physical deterioration of downtown area).

In this Project, additional analysis and an EIR would be required if a fair argument is made, based upon substantial evidence,⁴ that the Project may have a significant effect on the environment. Evidence of an impact on housing demand alone is not enough. An EIR would only be required if there is substantial evidence that the impact on housing demand contributed to, or was caused by, a physical impact on the environment, such as impacts to air quality or greenhouse gas emissions. However, if there is no substantial evidence that an impact on housing demand adds to, or is caused by, a physical impact on the environment, then the impact on housing should not be considered under CEQA and would not trigger an EIR.

II. AN ADVERSE EFFECT ON HUMANS THAT ONLY AFFECTS A PARTICULAR GROUP IS NOT CONSIDERED A SIGNIFICANT IMPACT UNDER CEQA

A lead agency must find that environmental effects are significant, triggering an EIR, if a project's impacts may cause substantial adverse effects on human beings. Cal. Pub. Res. Code § 21083(b)(3); CEQA Guidelines § 15065(a)(4). The adverse effects on human beings must still be related to a physical change to the environment. "In other words, while '[e]ffects analyzed under CEQA must be related to a physical change', such a change may be deemed *significant* based solely on its impact on people." *Parker Shattuck Neighbors v. Berkeley City Council*, 222 Cal. App. 4th 768, 779 (2013) (citing CEQA Guidelines § 15358(b)).

In addition to being linked to a physical impact on the environment, the impact on humans must adversely affect human beings generally, not just specific individuals. "Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons." *Mira Mar Mobile Cmty. v. City of Oceanside*, 119 Cal. App. 4th 477, 492 (2004). An environmental impact affecting only a few people is not significant. *Friends of Davis v. City of Davis*, 83 CA 4th 1004, 1021-1022 (2000). In *Porterville Citizens for Responsible Hillside Dev. v. City of Porterville*, 157 Cal. App. 4th 885, 902 (2007), the court determined that height and view impacts of a large subdivision were not significant because only a few neighbors were affected. In contrast, the court decided in *Ocean View Estates Homeowners Ass'n v. Montecito Water District* that an adverse effect on scenic views enjoyed by the public in general would be a significant adverse aesthetic impact. 116 Cal. App. 4th 396, 403 (2004).

⁴ Substantial evidence is "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Cal. Pub. Res. Code § 21080(e)(1); *see also* CEQA Guidelines § 15384(b).

Also, in *Topanga Beach Renters Ass'n v. Department of General Services*, 58 Cal. App. 3d 188 (1976), the California Department of General Services acquired several beachfront parcels and proposed to demolish the existing homes where tenants rented under month-to-month leases. The tenants challenged the demolition project under CEQA arguing, in part, that the State failed to consider the project's adverse impacts on human beings resulting from their eviction from the premises. *Id.* at 194. The court rejected the tenants' argument noting that "all government activity has some direct or indirect adverse effect on some persons" and that the eviction and impact to a particular group of people will not trigger CEQA. *Id.* at 195.

In sum, under CEQA, the Project's environmental impacts would be determined to be significant if substantial evidence is presented that they may cause substantial adverse effects on human beings in general, not on a particular group of individuals. Similar to *Topanga Beach Renter Ass'n v. Department of General Services*, the potential eviction and displacement of residents alleged here affects only a particular group of people; therefore, a court is unlikely to conclude it is a significant environmental impact requiring an EIR under CEQA. *Id.*

CONCLUSION

An EIR would be required for the Project if a fair argument can be made, based upon substantial evidence, that it may have a significant effect on the environment. While social or economic impacts, such as impacts on housing demand, are not by themselves a significant effect on the environment, they can be considered when determining whether a physical impact on the environment is significant. If there is no substantial evidence that the housing demand impact adds to, or is caused by, the physical impacts on the environment, then the housing demand impact should not be considered and would not trigger an EIR.

In addition, the City, as lead agency, must find that environmental effects are significant, triggering an EIR if the Project's physical impacts may cause substantial adverse effects on human beings in general. Because the potential eviction and displacement of residents affects only a particular group of people, it likely does not constitute a significant impact under CEQA.

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