

A CEQA PRIMER

By Keith Sugar

PURPOSE AND FUNCTION

Under the California Environmental Quality Act (Cal. Public Resources Code Section 21050, et seq.) governmental agencies must give "major consideration to preventing environmental damage when regulating activities affecting the quality of the environment." Citizens for Quality Growth v. City of Mount Shasta (1988) 198 CA3d 433, 437. One of the primary aims of CEQA is to provide the public agency with all the information necessary to allow it to make informed decisions concerning the propriety of projects in the light of the policies enumerated in Public Resources Code Section 21002.

In order to achieve these goals, CEQA requires the preparation of an EIR whenever a project will have a significant effect on the environment. Public Resources Code Section 21002.1 and 21151.

"The Legislature has made clear that the purpose of an EIR is "an informational document and that the purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized, and to indicate the alternatives to such a project." Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 C3d 376, 390; Public Resources Code Section 21061.

"The EIR is also intended to demonstrate to an apprehensive public that the agency has, in fact analyzed and considered the ecological implications of its action [in approving a project]." No Oil Inc. v. City of Los Angeles (1974) 13 C3d 68,86.

"The foremost principal under CEQA is that the legislature intended the Act to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory

language.” Laurel Heights Improvement Assn v. Regents of the University of California (1988) 47 C3d 376, 390.

Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or Negative Declaration for the project. This agency shall be called the **Lead Agency**. 14 CCR 15050(a)

PURPOSE AND FUNCTION OF EIR

In order to achieve these goals, CEQA requires the preparation of an environmental impact report (EIR). Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 C3d 376, 390; Public Resources Code Section 21061.

“Because the EIR must either be certified or rejected by public officials, it is a document of accountability.” Laurel Heights at 392.

CEQA places the burden on the approving agency to affirmatively show that it has considered the identified means of lessening or avoiding the project's significant effects. Resource Defense Fund v. Local Formation Agency (1987) 191 CA3d 886, 898.

If the reviewing court determines that the agency has failed to comply with CEQA in certifying the EIR or approving the project, the court must order one of the following:

1. A mandate that the determination, finding or decision be voided by the public agency in whole or in part...
3. A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division. Public Resources Code Section 21168.9

Where an agency has failed to comply with CEQA, its actions may be set aside, even though the agency's breach or omission would not have changed the outcome of the agency's decision. Resource Defense Fund v. Local Formation Agency 191 CA3d 886, 898 (1987)

"[E]vidence outside the EIR itself is beside the point. It is the adequacy of the EIR with which we are concerned, not the propriety of the board of supervisor's decision to approve the project. Whatever is required to be in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report." (Emphasis theirs.) San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, (1994) 27 CA4th 713, 734.

Generally speaking, an EIR must identify and analyze of the following:

- (a) Significant Environmental Effects of the Proposed Project.
- (b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.
- (c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.
- (d) Growth-Inducing Impact of the Proposed Project.
- (e) The Mitigation Measures Proposed to Minimize the Significant Effects.
- (f) Alternatives to the Proposed Project.

CEQA Guideline 15126(a), provides, in pertinent part:

“An EIR shall identify and focus on the significant environmental effects of a proposed project. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to short term and long term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of land, ...and other aspects of the resource base such as water, scenic quality, and public services.”

WHAT IS A ‘PROJECT’?

"Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. 14 CCR 15378

THRESHOLD DETERMINATION AND THE FAIR ARGUMENT STANDARD

The determination by the lead agency that a project will or will not entail significant adverse effects on the environment dictate whether an EIR will be required, or merely its step-sister, the negative declaration (neg. dec). This determination is commonly referred to as the “threshold determination”.

A determination that a project will not entail a significant environmental impact can be made only if there is no substantial evidence in light of the whole record before the agency that such an impact may occur. Public Resources Code Section 21080(c)(1).

Whenever a "fair argument" exists that a project *may* entail significant environmental effects, an EIR must be prepared, even if there is other substantial evidence in the record that there will not be such an impact. No Oil, inc. v. City of Los Angeles, (1974) 13 C3d 68, Friends of B Street v. City of Hayward, (1980) 106 CA 988, 1000. The "fair argument" standard recognizes that an EIR should be required to resolve uncertainty created by conflicting assertions. Id at 35. The fair argument standard was developed to set a low threshold to trigger a requirement for an EIR. Citizens Action to Serve All Students v. Thornley (1990) 222 CA3d 748, 754.

"Application of the [fair argument] standard is a question of law and deference to the agency's determination is not appropriate. Rather, [courts] independently review the record and determine whether there is substantial evidence in support of a fair argument [that a project] may have a significant environmental impact..." Stanislaus Audubon Society, inc v. County of Stanislaus (1995) 33 CA4th 144.

14 CCR 15065 (CEQA Guidelines) states that a lead agency shall find that a project may have a significant effect on the environment, requiring the preparation of an EIR where the project has the potential to substantially degrade the quality of the environment, or reduce the habitat available for wildlife.

"With certain limited exceptions, a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project will have a significant effect on the environment. Significant effect on the environment means a substantial, or potentially substantial adverse change in the environment. Laurel Heights Improvement Association v. Regents of the University of California (1993) 6 C4th 1112, 1123-1126." Emphasis added.

The fair argument standard, derived from Public Resources Code Section 21151 mandates preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that a project will have a significant effect on the environment. Sierra Club v. County of Sonoma (1992) 6 CA4th 1307 1316.

"Section 21151 creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." Oro Fino Gold Mining Corp. v. County of El Dorado (1990) 225 CA3d 872,881.

PUBLIC PARTICIPATION AND AGENCY RESPONSE

Public participation is an essential part of the CEQA process. (14 California Code of Regulations [hereafter CEQA Guidelines] §15201;*Emmington v. Solano County Redevelopment Agency* 195 Cal.App.3d 491, at 503.) Compliance with the EIR provisions of CEQA serves the important function of enabling the public to make its own "independent, reasoned judgment" about a proposed project. (*Ibid.* at

503, Public Resources Code [hereafter PRC] §15201). Information relevant to the significant effects of a project and the mitigation measures shall be made available to the public as soon as possible by a lead agency (PRC §21003.1) so that the public may formulate and submit its comments in a timely manner. The public's comments are an integral part of the [final] EIR. (*Sutter Sensible Planning, Inc. v. Board of Supervisors* (3d Dist. 1981) 122 Cal. App.3d 813, 820).

Comments from the public on the environmental effects of a project may be used by the lead agency to identify potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects of the project. (PRC §, 21003.1(a)).

In the final EIR, the lead agency must evaluate and respond to all the environmental comments on the DEIR it receives within the public review period. (PRC §21091(d)(2)(A)). The good faith, reasoned analysis in response to public comments is an essential part of the CEQA process. (CEQA Guidelines §15088(b), Discussion following CEQA Guidelines §15088; see also *Environmental Protection Information Center v. Johnson ("EPIC")* (1st Dist. 1985) 170 Cal.App.3d 604, 627) The agency may, but need not, respond to comments received after that period ends. (CEQA Guidelines §15088 (a)).

IMPACTS

An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant

environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. 14 CCR 15126.2

In *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* 29 Cal.App.4th 1597, 30 Cal.App.4th 935C (shepardize) the court addressed the issue of whether an impact upon view is a significant impact under CEQA. The court found that "the CEQA Guidelines essentially establish a rebuttable presumption that any substantial, negative aesthetic effect is to considered a significant environmental impact for CEQA purposes." (*Ibid* at xxxxxx). The court further concluded "it is inherent in the meaning of the word 'aesthetic' that any substantial, negative effect of a project on view and other features of beauty could constitute a 'significant' environmental impact under CEQA."

A draft EIR must identify and focus on the possible significant environmental impacts of a proposed project. (PRC §21100(a)(1), CEQA Guidelines §15126(a). The analysis should clearly identify both direct and indirect impacts, both for the short-term and the long-term. An EIR should also discuss the environmental specifics of the affected area; anticipated physical changes; anticipated alterations to ecological systems; and other aspects of the resource base such as scenic quality. (CEQA Guidelines §15126(a)). "While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines §15144). CEQA Guidelines require the EIR to "discuss any inconsistencies between the proposed project and applicable ...regional land use plans for the protection of the Coastal Zone." CEQA Guideline 15125(b).

PRC 21100(b)(5). Requires that an EIR include a detailed statement setting forth the growth inducing impacts of a project. See also Guideline 15126(g). It requires a discussion of the ways in which the project would foster population growth, either directly or indirectly.

Once identified, PRC Section 21002 and Guideline 15126(c) require the EIR to include mitigation measures to minimize, reduce and avoid such impacts.

The CEQA Guidelines define “feasible” as “capable of being accomplished...taking into account economic, environmental, *legal*, social, and technological factors. Guidelines, Section 15364

However, the impacts of the Project must be evaluated based on the situation on the ground, not on the General Plan. City of Carmel-By-The-Sea v. Board of Supervisors of Monterey County (1986) 183 CA3d 229.

PRESENTATION OF INFORMATION

Certification of an EIR may be set aside where the agency fails to comply with the information disclosure requirements of CEQA, even though the agency's decision would not have been affected by the non compliance. Ultramar, Inc. v. South Coast Air Quality Management District (1993) 17 CA4th 689,703.

In *Environmental Planning and Information Council v. County of El Dorado* , (3d Dist. 1982) 131 Cal. App. 3d. 350, 357, the court found an EIR deficient because information “[had to] be painstakingly ferreted out” of the EIR or the administrative record to determine the impacts. In that case, information concerning impacts was so convoluted and dispersed that the EIR actually “mislead the public as to the reality of the impacts and subvert[ed] full consideration of the actual environmental impacts which would result” Id. at 358.

“A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.” *Kings County Farm Bureau et al v. City of Hanford*, (5th Dist. 1990) 221 Cal.App.3d 692, 712.

Courts need not "uncritically rely on every study or analysis put forward by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference." *Laurel Heights Improvement Assn. v. Regents of the University of California (Laurel Heights I)* (1988) 47 Cal.3d 376, 409, fn. 12.

EIR's often incorporate large amounts of information by reference. Environmental analysis is often based on complex studies and lengthy scientific or

technical reports. The Guidelines recognize that inclusion of such “source documents in the EIR is infeasible.

The Guidelines provide three ways of addressing source documents that are not physically included in the EIR. Source documents can be (1) summarized in the body of the EIR with technical analysis relegated to appendices (CEQA Guidelines §15147); (2) cited but not included in the EIR (CEQA Guidelines §15148); or (3) incorporated by reference (CEQA Guidelines §15150). In order to rely on material not attached to the EIR, the lead agency must notify the public of its intent to rely on such material, and the specific information in the material that the lead agency is using to support its decision. When relying on documents which have been incorporated by reference, the lead agency must certify that it has actually reviewed and considered the referenced documents. *Citizens of Goleta Valley v. Santa Barbara* (1988) 197 Cal.App.3d 1197 (*Goleta I*).

MITIGATION MEASURES

PRC §21102 requires agencies to adopt feasible mitigation measures (or feasible environmentally superior alternatives) in order to substantially lessen or avoid otherwise significant adverse environmental impacts. (PRC §21102, 21081(a), CEQA Guidelines §15002(a)(3), 15021(a)(2), 15091(a)(1)). To effectuate this requirement, EIRs must set forth adequate mitigation measures that decision makers can adopt at the final stage of the process. (PRC §21100(a)(5), CEQA Guidelines §15126(c)).

"Mitigation measures should be capable of: (a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; or (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action." (CEQA Guidelines §15370).

CEQA provides that an agency may approve a project notwithstanding the inability to feasibly mitigate all significant environmental effects. In order to do so the agency must adopt a statement of overriding conditions. Public Resources Code Section 21081, 14 CCR 15093.

Statements of **overriding consideration** must be supported by substantial evidence in the record. Sierra Club v. Contra Costa County(1990) 10 CA4th 1212, 1222-1224.

14 CCR Section 15093 provides:

- (a) CEQA requires the decision maker to balance the benefits of a proposed project against the unavoidable environmental risks in determining whether to approve the project. If the benefits of the proposed project outweigh the unavoidable adverse effects, the adverse effects may be considered "acceptable.
- (b) Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR but not at least substantially mitigated, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement may also be necessary if the agency also makes a finding under Section 15091(a)(2) or (a)(3).

Public Resources Code Section 21081 provides in pertinent part:
"Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
 - (3) Specific economic, legal social, technological, or other considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal social, technological, or other benefits of the project outweigh the significant effects on the environment.

ALTERNATIVES

(See class hand-out)

PROJECT DESCRIPTION

"An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, both from a local and regional perspective. The description shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives." 14 CCR 15125.

"Because the concept of a significant effect on the environment focuses on changes in the environment, this section requires an EIR to describe the environmental setting of the project so that the changes can be seen in context. Discussion following 14 CCR 15125, Office of Planning and Research.

An accurate description of the existing environmental setting is indispensable to assessing the impacts that the project will have on the existing environment. 14 CCR 15125(a). It is axiomatic to observe that on-site natural resources must be discussed in order for the public and the decision makers to know how the project will impact these resources.

A corollary of the requirement to provide an accurate description of the existing environmental setting is the requirement to provide an accurate and stable project description.

"An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 CA3d 185, 193. Additionally, the entire project being proposed must be described in the EIR, and the project description must not minimize project impacts. *City of Santee v. County of San Diego* (1989) 214 CA3d 1438, 1450.

Without an accurate description of the project or its environmental setting, an EIR cannot achieve the foremost objective of CEQA, that is, the disclosure and analysis of project related impacts on the environment.

A project description must include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. (*Laurel Heights Improvement Assn. v. Regents of the University of California (Laurel Heights I)* (1988) 47 Cal.3d 376. Responsibility for a project cannot be avoided by limiting the title or description of the project. *Rural Land Owners Association v. Lodi City Council* (3d Dist. 1983) 143 Cal.App.3d 1013, 1025.

The project description must be accurate and consistent throughout an EIR.

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los*

Angeles (3d Dist. 1977) 71 Cal.App.3d 185, 193, Discussion following CEQA Guidelines §15124). The primary harm caused by shifts among different project descriptions is that the inconsistency confuses the public and the commenting agencies, thus vitiating the usefulness of the process "as a vehicle for intelligent public participation." (*Inyo v. City of L. A.* 71 Cal.App.3d at 197-198)

In preparing an EIR, a lead agency is required to thoroughly investigate the existing environmental setting. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, (1994) 27 CA4th 713, 726. "While forecasting the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." 14 CCR 15144.

SEGMENTATION

“Segmentation” occurs when the project description does not encompass the *entire* project. For instance in *San Joaquin Raptor Society v. County of Stanislaus*, the County certified an EIR for a large subdivision. The administrative record established, and the developer conceded, that a waste water treatment facility was to be built on an adjoining parcel to serve the new subdivision. However, the EIR contained no information about the waste water treatment facility. The court determined that, in fact, the waste water treatment facility was part and parcel of the subdivision project. The court took note of the fact that the project could not go forward without the facility. The EIR, had artificially “segmented” the project into two projects, a subdivision and a waste water treatment facility. Because the facility was a reasonably foreseeable additional component of the subdivision project, it, and its impacts, had to be analyzed in the subdivision EIR. The danger of segmentation is that it chops projects into smaller bits, which standing alone, may not present the full range and intensity of adverse impacts resulting from the entire project.

In *Laurel Heights I*, the court set forth the standards for determining whether reasonably foreseeable future activities must be included in an EIR project description and for determining whether the impacts of those activities must be analyzed in the EIR:

“We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable

consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” *Ibid.* at 396.

In *Laurel Heights*, the University of California planned to transfer medical laboratories to an office building in a residential neighborhood. Initially, the laboratories were to occupy 100,000 square feet of a 354,000 square-foot building. The University claimed it had not formally decided to occupy the entire building, but the court noted that statements in the final EIR and public releases in University newsletters indicated the University's intent to occupy the entire building when another agency's lease expired in several years. Accordingly, there was "credible and substantial evidence" that the University's occupancy of the entire building was reasonably foreseeable, and so had to be considered in the challenged EIR. *Ibid.* at 398.

EIR project descriptions have often been rejected as inadequate because the court perceived that the EIR attempted to narrow the scope of environmental review by narrowing the project description. Kostka, Practice Under the California Environmental Quality Act, CEB Section 12.18, p. 475, *citing* Santiago County Water District v. County of Orange (1981) 118 CA3d 818. The effect of piecemeal environmental review was stated clearly in Santiago County Water Dist. v. County of Orange at 828-830. The court observed that omission of a key part of the project resulted in important ramifications of the project remaining hidden from view as the project was being discussed and approved, frustrating one of the core goals of CEQA. *Id.* at 830.

For road construction projects, California has adopted the approach delineated by the federal courts pursuant to CEQA's federal counterpart, the National Environmental Policy Act (NEPA). *See* Daly v. Volpe (3d Cir. 1975) 514 F.2d 1106, 1109-1110. The Volpe test was described and adopted in Del Mar Terrace Conservancy, Inc. v. City Council 10 CA4th 712, 732-733, as follows:

“In Daly v. Volpe..., decided under NEPA, the Court of Appeals set forth ... criteria for evaluating sufficiency of an environmental review document which covers a portion of a larger roadway. First, recognizing that “[p]iecemealing proposed highway improvements in separate environmental statements should be avoided,”..., the court relied on federal regulations which stated that a highway section which would be entitled to separate

environmental review is one which is (a) of substantial length and (b) between logical terminal points (termini) (defined as major crossroads, population centers, major traffic generators, or similar major highway control elements).... As a second criterion, the court stated that case law has required a separately reviewable highway section to have 'independent utility.'

"An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, both from a local and regional perspective. The description shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives." 14 CCR 15125.

"Because the concept of a significant effect on the environment focuses on changes in the environment, this section requires an EIR to describe the environmental setting of the project so that the changes can be seen in context. Discussion following 14 CCR 15125, Office of Planning and Research.

CUMULATIVE IMPACTS

A fundamental requirement of CEQA is that an analysis of the cumulative impacts of a proposed activity together with other past and reasonably foreseeable activities be included in an environmental assessment. Citizens to Preserve the Ojai v. County of Ventura (1985) 176 CA3d 421, 428; PRC Section 21083(b); 15 CCR 15130. Section 21083(b) requires the agency to find that a project may have a significant effect on the environment if the possible effects of a project are individually limited but cumulatively considerable. CEQA defines cumulative impacts as...

"...two or more individual effects which, when considered together are considerable or 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 impacts 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. (CEQA Guidelines, 14 CCR Section 15355").

‘It is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide the public agencies and the general public with adequate and relevant detailed information about them. [Citations} A cumulative impacts analysis which understates information concerning the severity and significance of cumulative impacts and impedes meaningful public discussion and skews the decision makers perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval. [Citations] An inadequate cumulative impacts analysis does not demonstrate to an apprehensive citizenry that the governmental decision maker has in fact fully analyzed and considered the environmental consequences of its actions.’ Ojai at 431.

"One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. these sources appear insignificant, assuming threatening dimensions only when considered in light of other sources with which they interact .Kings County Farm Bureau v. City of Hanford (1990) 221 CA3d 692, 720.

“This judicial concern [regarding cumulative impacts analysis] often is reinforced by the results of cumulative environmental analysis; the outcome may appear startling once the nature of the cumulative impact problem has been grasped.” Id at 721, citing Selimi, The Judicial Development of the California Environmental Quality Act (1994) 18U.C. Davis L.Rev. 197, 244.

A draft EIR must discuss "cumulative impacts" when they are significant. (CEQA Guidelines §15130). Even if they are not deemed significant, the document should explain the basis for that conclusion. (*Citizens to Preserve the Ojai v. County of Ventura* (2d Dist. 1985) 176 Cal.App.3d 421, 432.

A legally adequate "cumulative impacts analysis" is an analysis of a particular project viewed over time and in conjunction with other related past,

present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. Such an analysis "assesses cumulative damage as a whole greater than the sum of its parts."

Environmental Protection Information Center v. Johnson ("EPIC") (1st Dist. 1985) 170 Cal.App.3d 604, 625) Such an analysis is necessary because "the full environmental impact of a proposed action cannot be gauged in a vacuum." *Whitman v. Board of Supervisors* (2d Dist.) 88 Cal.App.3d 397, 408.

In *Citizens to Preserve the Ojai*, the court explained:

To be adequate, the cumulative impact analysis must include the following three elements: (1) Either

(a) a list of past, present, and reasonably anticipated future projects, including those outside the agency's control, that have produced, or are likely to produce, related or cumulative impacts, or

(b) a summary of projections contained in an adopted general plan or related planning document that is designed to evaluate regional or areawide conditions, provided that such documents are referenced and made available for public inspection at a specified location; and

(2) a summary of such individual projects' expected environmental effects, with specific reference to additional information stating where such information is available; and

(3) a reasonable analysis of all of the relevant projects' cumulative impacts, with an examination of reasonable options for mitigating or avoiding such effects. (CEQA Guidelines §15130(b)).

Some projects may be "reasonably foreseeable" even though they may never be built. What matters is whether they appear foreseeable at the time of EIR preparation. (*City of Antioch v. City Council* (1st Dist. 1986), 187 Cal.App.3d 1325, 1337.

PROGRAM AND "TIERED" EIRs

A Program EIR is a species of "tiered" EIR. *Al Larson Boat Shop v. Board of Harbor Commissioners*, (1993) 18 CA4th 729, 740. The use of a tiered EIR is required where tiering will help streamline the CEQA process and avoid repetitive discussion of the same impacts in successive EIRs. Public Resources Code

Sections 21093(a) and 21094. The EIR for the later project need not examine those effects which were 1) mitigated or avoided as a result of the prior EIR, or 2) examined at a sufficient level of detail in the prior EIR to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project. 14 CCR Section 15152. Clearly, the purpose and effect of tiering is not to obviate the need for thorough environmental review of later projects, but rather to avoid redundancy in the environmental review process. As stated in the comments of the Resources Agency following 14 CCR 15152:

"Tiering is an effort to focus environmental review on the environmental issues which are relevant to the approval being considered."

Tiering may only be employed where the later project is consistent with all applicable local land use plans and zoning of the City or County, or City *and* County in which the project is located. Public Resources Code Section 21094 (c); 14 CCR 15152(c). A further prerequisite to tiering is that a lead agency must prepare an Initial Study in connection with the later project for the purpose of determining whether, and to what extent the prior EIR is sufficient for the later project. Public Resources Code Section 21094(c) and 14 CCR 15152(d).

A program EIR is an EIR...:

"...which may be prepared on a series of actions that can be characterized as one large project and are related either:

- (1) Geographically,
- (2) as logical parts in a chain of contemplated actions,
- (3) In connection with issuance of rules regulations, plans or other general criteria to govern the conduct of a continuing program, or
- (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. 14 CCR 15168

Guideline Section 15168(c) deals with the use of a program EIR with later activities. 15168(c) states:

"Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no environmental document would be required.

In Al Larson Boat Shop, Inc v. Board of Harbor Commissioners , 18 CA4th 729, 740-741, supra, the Court of Appeals determined that EIR's which are prepared for general plan amendments cannot be Program EIRs within the meaning of Guideline 15168 because a general plan amendment is a "project" for which preparation of an EIR is mandatory (Public Resources Code Section 21151). By contrast, preparation of a Program EIR is an optional procedure to review in one large document a series of actions which are not be characterized as one large project. Id. at 741. The court concluded that an EIR for a general plan amendment was simply a "tiered" EIR. Id.

EXEMPT ACTIVITIES

(See class hand-out)