

Exhibit M

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE & TIME: April 13, 2001
JUDGE : Ronald B. Robie
RECORDER : B. Broughton

DEPT. NO: 41
CLERK : M. Franco
BAILIFF : L. O'Connor

00CS00300 CMNTYS FOR A BETTER ENVIRONMENT, ET AL VS CA RESOURCES AGY

MOTION FILED BY: PETITIONER

ATTORNEYS PRESENT:

HENNING, JOHN A JR.
BELENKY, LISA T.
MOE, MARIAN E.
FOLK, ELLISON
DRURY, RICHARD

ATTORNEY FOR REAL PARTY
ATTORNEY FOR PETITIONER
ATTORNEY FOR RESPONDENT
ATTORNEY FOR PETITIONER
ATTORNEY

NATURE OF PROCEEDING: Hearing on Writ of Mandate

TENTATIVE RULING

Appearance Required.

COURT RULING

This matter argued by counsel and submitted.

This matter taken under submission.

RULING ON SUBMITTED MATTER

The court having taken this writ under submission, now rules as follows:

Petitioners challenge various revisions made by respondent in 1998 to its guidelines for implementation of the California Environmental Quality Act (CEQA). These CEQA Guidelines were issued by respondent pursuant to Public Resources Code section 21083 and are published in title 14 of the California Code of Regulations.

Preliminarily, the court finds that this case is ripe for determination. The case presents a clear legal dispute over whether the challenged CEQA Guidelines facially violate governing CEQA statutes and case law. Unlike the legal dispute over the validity of public access guidelines adopted by the California Coastal Commission in *Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 172-174, this legal dispute is not an abstract difference of opinion regarding the validity of the challenged Guidelines. Rather the Guidelines provide

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specific uniform rules that are directly and immediately followed by all California public agencies that must comply with CEQA in the course of making decisions about projects that the agencies are undertaking. The court need not speculate about whether or how the agencies will apply the specific directions and procedures in the Guidelines. Thus, a precise factual context involving application of the Guidelines is not necessary to make the legal dispute sufficiently concrete for judicial resolution.

In determining whether the each of the Guidelines challenged by petitioners violate CEQA statutes and case law -- a purely legal inquiry -- the court exercises its independent judgment and gives respectful nondeference to respondent's interpretations of CEQA statutes and case law. (Pulaski v. Occupational Safety & Health Standards Bd. (1999) 75 Cal.App.4th 1315, 1332; citing Henning v. Division of Occupational Saf. & Health (1990) 219 Cal.App.3d 747, 757.)

CHALLENGED GUIDELINES RELATED TO STANDARDS OF SIGNIFICANCE

Guideline 15064.7 encourages public agencies to develop and publish thresholds of significance for the agencies' general use in determining the significance of the environmental effects of projects in their CEQA review processes. These thresholds of significance must be developed through a public review process, adopted by ordinance or regulation, and supported by substantial evidence.

Guideline section 15064(h) directs a lead agency to determine that a change in the environment caused by a project is not a significant environmental effect if the change complies with a standard for that effect within the jurisdiction where the project is located and the standard was adopted in a public review process for the purpose of environmental protection. If a lead agency determines on the basis of substantial evidence that such a standard is inappropriate to determine the significance of an environmental effect, the agency must make its significance determination on the basis of other Guideline requirements.

Petitioners contend that section 15064(h) contravenes CEQA statutes and case law by permitting a lead agency to determine the significance of the environmental impacts by reference to standards that are based on environmental as well as social, economic and other nonenvironmental

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considerations. Petitioners further contend that sections 15064(h) and 15064.7 contravene CEQA statutes and case law by improperly shifting the standard of review for agency determinations of significance from the fair argument standard to a substantial evidence standard and by transferring the responsibility of lead agencies for determining the significance of project impacts to other agencies.

In evaluating petitioners' contentions regarding sections 15064(h) and 15064.7, the court observes that a lead agency's use of existing environmental standards in determining the significance of a project's environmental impacts is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation. Accordingly, the lead agency should be encouraged to develop and use existing environmental standards that meet the criteria set forth in sections 15064(h)(3) and 15064.7 in the course of determining the significance of project impacts on the environment.

However, the broad direction of section 15064(h)(1)(A), requiring the lead agency to determine that a change in the environment caused by a project is not significant if the change complies with a standard meeting the criteria in subsection (h)(3), undermines the "fair argument" approach established in CEQA statutory and case law to implement the environmentally protective policies of CEQA in significance determinations. That approach requires a determination of significance whenever substantial evidence in the record supports a fair argument that a project may have a significant environmental effect. (Pub. Resources Code sections 21080(d), 21083; Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 998, 1000-1003.) The approach focuses the attention of a lead agency in a significance determination on all available evidence and establishes a low evidentiary threshold for a determination of significance that favors environmental review even when there is also substantial evidence before the agency supporting a determination of insignificance.

In contrast, section 15064(h)(1)(A) narrows the focus of a lead agency making a significance determination on an environmental standard that meets the criteria specified in subsection (h)(3). If a proposed project has an environmental effect that complies with the standard, the lead agency is directed to determine that the effect is not significant,

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regardless of whether other substantial evidence would support a fair argument that the project effect was environmentally significant. Section 15064(h)(1)(A) essentially relieves the agency of responsibility to look at evidence beyond the environmental standard that may substantially support a determination of significance, a responsibility it would have under the fair argument approach:

It is true that section 15064(h)(1)(C) instructs a lead agency that it may not base a significance determination on an environmental standard meeting the criteria in subsection (h)(3) when the agency determines that the environmental standard is "inappropriate to determine the significance of an effect for a particular project." However, the Guideline does not provide any indication of the circumstances warranting a determination that an environmental standard is inappropriate and makes no mention whatsoever of the fair argument approach. Only in the event that the agency does make a finding that the environmental standard is inappropriate does section 15064(h)(1)(C) refer the agency to other Guidelines directing it to use the fair argument approach.

The court finds that section 15064(h) invalidly subverts the fair argument approach to significance determinations mandated by CEQA statutes and case law and must be set aside. The court finds that the encouragement of lead agencies under section 15064.7 to develop and use thresholds of significance in the course of making significance determinations does not subvert the fair argument approach, does not otherwise contravene CEQA statutes and case law, and thus is valid.

CHALLENGED GUIDELINES RELATED TO CUMULATIVE IMPACTS

Guideline section 15130(b)(1)(B)(2) limits the "probable future projects" that a lead agency must consider in a cumulative impacts analysis to specified categories of projects. Petitioners contend that, in violation of Public Resources Code section 21083(b) and related case law, section 15130(b)(1)(B)(2) improperly limits probable future project to those "requiring an agency approval for an application which has been received at the time the notice of preparation is released." Petitioners indicate that this limitation will cause a lead agency to ignore projects of which they are aware but for which applications have not been submitted prior to the notice of preparation.

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Section 15130(b)(1)(B)(2), read in its entirety, includes at least four categories of probable future projects in addition to the category upon which petitioners' contention focuses. In all likelihood, probable future projects whose applications were received after the notice of preparation would be included in one or more of the other four categories and thus would be included in the agency's cumulative impacts analysis consistent with CEQA case law. (See, e.g., *San Franciscans for Reasonable Growth v. City of San Francisco* (1984) 151 Cal.App.3d 61, 74-77.) However, to the extent that the categories of probable future projects in section 15130(b)(1)(B)(2) are disjunctively listed and a lead agency may use one of the categories exclusively in analyzing cumulative impacts, the section contravenes CEQA statutes and case law precluding such a limited list of probable future projects. To the extent that the Guideline may be applied disjunctively, it is invalid and must be set aside.

Guideline section 15130(a)(4) authorizes a lead agency to determine that a project's contribution to a significant cumulative impact is de minimus and insignificant if environmental conditions would be essentially the same whether or not the project were implemented. Similarly, Guideline section 15064(i)(4) authorizes a lead agency to determine that the incremental impacts of a project are not cumulatively considerable when the impacts are so small that they make only a de minimus contribution to a significant cumulative impact of other projects; i.e., cumulative environmental conditions would be essentially the same whether or not the project were implemented. A lead agency preparing a later EIR pursuant to Guideline section 15152(f)(2) is directed to follow section 15064(i) in assessing whether the later project's impacts are cumulatively considerable.

Petitioners correctly contend that the de minimus approach used in Guideline sections 15130(a)(4), 15064(i)(4), and 15152(f)(2) is contrary to CEQA case law to the extent that it focuses, not on the combined impacts of the proposed project under environmental review and other projects in the area, but on the proposed project's impacts relative to the other projects or relative to the overall size of the environmental problem in the area. The de minimus approach is contrary to established case law holding that a contribution by a proposed project to an existing cumulative impact may be cumulatively considerable even if it

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is relatively minor and could be characterized as insignificant. (See Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1025; Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 718-720.) Accordingly, sections 15130(a)(4) and 15064(i)(4) are invalid and must set aside. To the extent that section 15152(f)(2) incorporates section 15064(i)(4), it also is invalid and must be set aside

Guideline section 15064(i)(3) authorizes a lead agency to determine that a project's incremental contribution is not cumulatively considerable if the project complies with the requirements of a previously approved plan or mitigation program avoiding or substantially lessening the cumulative problem in the geographic area of the project. Guideline 15152(f)(2) directs a lead agency preparing a later EIR for a project to follow section 15064(i) in assessing whether the project impacts are cumulatively considerable.

As petitioner contends, section 15064(i)(3) contravenes CEQA case law holding that a project can have significant cumulative impacts even though the project complies with thresholds of significance in an approved plan or mitigation program. (See City of Antioch v. City of Pittsburgh (1986) 187 Cal.App.3d 1325, 1333-1338. See also Kings County Farm Bureau v. City of Hanford, supra, 221 Cal.App.3d at 716-717.) Section 15064(i)(3) is invalid and must be set aside. To the extent that section 15152(f)(2) incorporates section 15064(i)(3), it is also invalid and must be set aside.

CHALLENGED GUIDELINES RELATED TO MITIGATION

Guideline section 15041(a) provides that a lead agency has authority to require feasible changes in a project to mitigate its significant environmental effects consistent with applicable constitutional requirements, including the nexus and rough proportionality requirements established by Nollan v. California Coastal Commission (1987) 483 U.S. 825, Dolan v. City of Tigard (1994) 512 U.S., 374; Ehrlich v. City of Culver City (1996) 12 Cal.4th 854. Petitioners contend that this Guideline improperly extends the application of the constitutional requirements of Nollan, Dolan and Ehrlich to all mitigation measures, not just the public dedications and fee exactions at issue in those cases, and contravenes CEQA provisions requiring the adoption of all

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feasible mitigation measures the substantially reduce or avoid adverse project impacts.

The court rejects petitioners' contention regarding section 15401(a). That Guideline simply provides notice of existing law to public agencies formulating mitigation measures for proposed projects. Nothing in the language of the Guideline expands the application of Nollan, Dolan and Ehrlich beyond public dedications and fee exactions. The Guideline is valid.

Guideline section 15152(f)(3)(C) authorizes a lead agency analyzing a later project in a tiered EIR to rely on a previous analysis when the agency finds that the significant environmental effects of the later project were adequately addressed in the previous analysis, i.e., the impact cannot be avoided even if all feasible mitigation measures are imposed and the only purpose of including the analysis in the later EIR would be to allow the agency to adopt a statement of overriding considerations. Petitioner contends that this Guideline improperly dispenses with the requirements in CEQA statutes and case law that lead agencies prepare a later EIR for a later project that may have a significant environmental effect (Pub. Resources Code section 21094; Sierra Club v. County of Sonoma (1992) 6 Cal.App.4th 1307, 1319) and that lead agencies issue a statement of overriding considerations in approving a project whose environmental effects cannot be mitigated. (Pub. Resources Code section 21081.)

The court finds merit in petitioners' contention regarding section 15152(f)(3)(C). Public Resources Code section 21094 expressly exempts from analysis in a later EIR the significant environmental effects of a later project that were examined in a previous EIR and either mitigated pursuant to Public Resources Code 21081(a)(1) or examined at a sufficient level of detail to permit mitigation of the effects. Nothing in section 21094 suggests a similar exemption for the significant environmental effects of a later project that a previous EIR found could not be mitigated. Similarly, nothing in section 21094 suggests that the requirement of a statement of overriding considerations be eliminated with respect to approval of such a later project

Rather the terms of section 21094 appear to specifically restrict the legislative policy underlying the tiering of EIRs expressed in Public

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Resources Code section 21093 - of avoiding repetitive and duplicative analyses of environmental effects of later projects that were examined in previous EIRs - to situations where the effects of a later project were mitigated or set up for mitigation by a prior EIR. The tiering policy of section 21093 does not appear to extend to situations where a previous EIR has determined that significant environmental effects of a later project cannot be mitigated. In those situations, a lead agency would be required, consistent with CEQA's environmentally protective goals, to revisit the issues of whether the later project's impacts can be mitigated and whether a statement of overriding considerations remains appropriate. Because Guideline 15152(f)(3)(C) permits a lead agency to forego such analysis and consideration, it is invalid and must be set aside.

CHALLENGED GUIDELINES RELATED TO CATEGORICAL EXEMPTIONS

Petitioners challenge respondent's Guideline sections 15330 and 15332 that categorically exempt minor cleanup projects and in-fill development projects respectively from the provisions of CEQA. Petitioner contends that these classes of projects may have significant environmental effects and thus were adopted by respondent pursuant to Public Resources Code section 21084 on the basis of invalid findings that the classes of projects would not have significant environmental effects.

Guideline section 15330 categorically exempts from the provisions of CEQA minor actions to cleanup hazardous wastes or substances. The exemption is limited to small or medium removal actions costing \$1 million dollars or less that satisfy a variety of requirements designed to prevent significant environmental effects, including permitting requirements and approval by regulatory bodies having jurisdiction over the cleanup sites. Application of the exemption is also limited by the exceptions in Guidelines section 15300.2 that are generally applicable to categorical exemptions, including the exception for actions where there is reasonable possibility significant environmental effect due to unusual circumstances and the exception for actions where the cumulative impacts of successive actions of the same type and in the same place over time is significant.

The court rejects petitioners' contention regarding section 15330. This exemption is designed to speed the cleanup of ultrahazardous waste and

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substances, and it applies only to small, closely regulated cleanup actions whose environmental effects can be and are being avoided. Any deviation from the stringent requirements of the exemption or any unusual circumstances related to the cleanup action would prevent application of the exemption to the action pursuant to Guideline section 15300.2. The exemption is valid.

Guideline section 15332 exempts from CEQA environmental review requirements those in-fill development projects that are consistent with applicable plan and zoning designations and policies, that are located within city limits on sites of no more than five acres surrounded by urban uses, that have no value as habitat for endangered or threatened species, that will not result in any significant effects relating to traffic, noise, air quality or water quality, and that are adequately served by public utilities and services. Given these comprehensive environmentally protective conditions for application of the exemption, it is highly improbable that an in-fill development qualifying for the exemption could have significant environmental impacts. Any physical changes resulting from such a development would not add significantly to the existing and designated land uses. In the event of unusual circumstances related to the in-fill development, the exemption would not apply pursuant to Guideline section 15300.2. Thus, Guideline 15332 is valid.

CHALLENGED GUIDELINE EXCLUDING POLITICAL REORGANIZATIONS

Guideline section 15378(b)(5) excludes from the definition of projects subject to CEQA review those organizational activities of public agencies which are political. Petitioners contend that this exclusion contravenes CEQA statutes and case law indicating that political organizational activities may cause physical changes in the environment and thus qualify as projects for purposes of CEQA.

Petitioners' contention has merit. A project for purposes of CEQA includes an action by a public agency that may cause a direct or reasonably foreseeable indirect physical environmental change. (Pub. Resources Code section 21065.) Various political boundary changes and organizational activities have been found to cause such direct or indirect physical changes. (See, e.g., Fullerton Joint Union High School Dist. v. State Bd. of Education (1982) 32 Cal.3d 779, 794-795;

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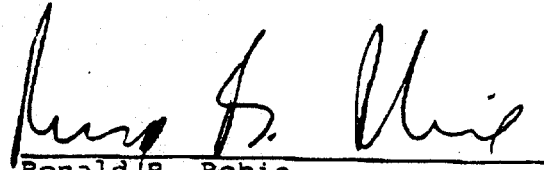
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Bozung v LAFCO (1975) 13 Cal.3d 263, 282; People ex rel. Younger v. LAFCO (1978) 81 Cal.App.3d 464, 481-481.) Thus, the blanket exclusion of political organizational activities from the definition of project in section 15378(b)(5) is contrary to the statutory definition of project and its application in case law. Whether a particular organizational activity is purely political or will potentially cause a physical environmental change must be determined on a case-by-case basis. Guideline section 15378(b)(5) is invalid and must be set aside.

The petition is granted in part and denied in part. Counsel for petitioner is directed to prepare a proposed judgment and writ of mandate consistent with this ruling, submit it to counsel for respondent and intervenor for approval as to form, and then present it to the court.

DATED: April 25, 2001


Ronald B. Robie

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BY: M. Franco DEPUTY

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(3))

I, the Clerk of the Sacramento Superior and Municipal Court District, County of Sacramento, State of California, certify that I am not a party to this cause, and on the date shown below I served the foregoing by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

CHRISTIAN M KEINER
ANNE M SHERLOCK
GIRARD & VINSON
1006 4TH ST 8TH FL
SACRAMENTO CA 95814-3326

STEVEN W WESTON
JOHN A HENNING
WESTON BENSHOOF ROCHEFORT
RUBALCAVA & MACCUISH LLP
444 S FLOWER ST 43RD FL
LOS ANGELES CA 90071-2901

TAMARA S GALANTER
ELLISON FOLK
SHUTE MIHALY & WEINBERGER LLP
396 HAYES ST
SAN FRANCISCO CA 94102

ANNE E SIMON
COMMUNITY FOR A BETTER
ENVIRONMENT
1611 TELEGRAPH AVE STE 450
OAKLAND CA 94612

SHARON E DUGGAN
SUSAN O'NEILL
LAW OFFICES OF SHARON E DUGGAN
2070 ALLSTON WAY STE 300
BERKELEY CA 94704

MARIAN E MOE
DEPUTY ATTORNEY GENERAL
1300 I ST STE 125
SACRAMENTO CA 95814

M REED HOPPER
ROBIN L RIVETT
PACIFIC LEGAL FOUNDATION
10360 OLD PLACERVILLE RD
STE 100
SACRAMENTO CA 95827

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: APRIL 25, 2001

Sacramento Superior Court

By: M. FRANCO
Deputy Clerk