



News & Publications

Court Clarifies CEQA Cumulative Water Supply Impact Analysis Requirements

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As California endures its eighth year of drought in the last decade and urban water suppliers across the state feel the pinch of supply shortages, a recent court opinion provides clarity for developers and public agencies grappling with the question of whether a proposed development would significantly contribute to preexisting dry year water supply deficiencies. In *Ocean Street Extension Neighborhood Association v. City of Santa Cruz* (“*Ocean Street*”), the California court of appeal (“*Court*”) upheld the City of Santa Cruz’s (“*City*”) California Environmental Quality Act (“*CEQA*”) analysis of cumulative water supply impacts for a multifamily residential project (“*Project*”). (*Ocean Street Extension Neighborhood Assn. v. City of Santa Cruz* (2021) 73 Cal.App.5th 985.)

Ocean Street addresses a number of important CEQA issues (mitigation for biological resources, the adequacy of project objectives, and cumulative traffic impacts), including the adequacy of *City*’s cumulative water supply impact analysis. CEQA requires an environmental impact report (EIR) to consider whether a project would make a “cumulatively considerable” contribution to significant cumulative environmental impacts, such as water supply deficiencies. As with many urban water suppliers, Santa Cruz’s 2015 Urban Water Management Plan (“*UWMP*”) forecast dry year water supply shortages. In *Ocean Street*, the *Court* considered whether the *City*’s EIR adequately analyzed the *Project*’s potential to make a considerable contribution to those anticipated supply shortages.


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The EIR estimated the Project would result in less than 1/100 of 1% of the City's total estimated future water demand, explained that the Project would be subject to the City's curtailment and conservation measures during droughts, and concluded the Project's impacts resulting from increasing the City's water demand would be less than significant "as there are sufficient supplies from existing sources to serve the project."

The EIR's cumulative impact analysis concluded the Project would not "substantially exacerbate water supply reliability" concerns because it would not increase curtailment measures otherwise required during dry years. The analysis also explained that the Project's mitigation measures (installing water saving fixtures and landscaping) and payment of the City's System Development Charge would reduce the project's impacts so that its incremental contribution to water supply impacts would not be cumulatively considerable.

Following the City's approval of the Project in 2018, neighborhood group Ocean Street Extension Neighborhood Association ("OSENA") filed a lawsuit alleging the City failed to comply with CEQA and City municipal code requirements. Among other things, OSENA attacked the EIR's cumulative water supply impact analysis, arguing the EIR inappropriately downplayed the project's contribution to the City's dry year supply shortages. The Court rejected OSENA's argument and upheld the EIR, concluding:

"...the project's contribution is not cumulatively considerable because its contribution is already accounted for in the UWMP estimates. Further, the project is required to mitigate water use by installing water conserving fixtures and landscaping, as well as curtailing use based on the severity of the drought, and it is required to contribute to a "System Development Charge" to pay for system improvements and conservation programs designed to help alleviate future water supply issues. Because the project implements and funds its share of measures to reduce water supply demand, the EIR concludes the project's contribution is not cumulatively considerable..."

Although this water issue constitutes only a small slice of the court's overall decision, it provides practical direction for how practitioners should approach cumulative water supply impact analyses. For projects that would be served by a water supplier vulnerable to dry year supply shortages, *Ocean Street* provides a road map for preparation of defensible cumulative water supply impact analysis. In particular, the decision confirms that an EIR may properly conclude a project's contribution to dry year water supply shortages is not significant if the project: (1) was accounted for in the water supplier's most recent urban water management plan; (2) would be subject to the same drought-related curtailments as the supplier's other customers, (3) would not cause the supplier to increase curtailments, (4) would be required to mitigate its water supply impacts through actions such as installing water efficient fixtures and landscaping, and (5) would be required to contribute to the supplier's efforts to alleviate future supply shortages.

Cumulative water supply impact analysis and other related CEQA issues can raise complex questions for development projects. If you would like to know more about *Ocean Street*, water supply planning, CEQA, or other laws affecting development, please reach out to the authors of this alert or any other member of Cox Castle's land use team.