

GR-3 Piecemealing

A number of comments stated that the Draft Environmental Impact Review (EIR) includes “piecemeal” environmental review because the impacts of the Torrey Wind project were not analyzed in the Draft EIR. These comments stated that the Torrey Wind project would not be constructed if not for the Campo Wind Project with Boulder Brush Facilities (Project) being constructed.

In response, the Torrey Wind project is a separate project that proposes an approximately 126 megawatt wind energy facility consisting of up to 30 wind turbines, a collector substation, and a high-voltage substation and switchyard on private lands totaling approximately 2,000 acres. If both the Torrey Wind project and the Campo Wind Project with Boulder Brush Facilities were approved and proceeded, the projects would use the same high-voltage substation and switchyard. However, the proposed Torrey Wind project is structurally, legally, and financially independent from the Campo Wind Project with Boulder Brush Facilities. Further, the Campo Wind Project with Boulder Brush Facilities is not needed in order for the Torrey Wind project to proceed. Thus, the Draft EIR does not include piecemeal environmental review as explained in detail in this Global Response.

The California Environmental Quality Act (CEQA) defines a “project” broadly to encompass “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” (14 CCR § 15378[a], [c]). Impermissible piecemeal review occurs when a large project is chopped into many little ones—each with a minimal potential impact on the environment or requiring only a ministerial permit—which cumulatively may have significant consequences (*Planning & Conservation League v. Castaic Lake Water Agency* [2009] 180 Cal.App.4th 210, 235). “A narrow view of a project could result in the fallacy of division . . . , that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole” (*McQueen v. Bd. of Directors* [1988] 202 Cal.App.3d 1136, 1144; *City of Sacramento v. State Water Resources Control Bd.* [1992] 2 Cal.App.4th 960; *Lexington Hills Ass’n v. State* [1988] 200 Cal.App.3d 415; *City of Carmel-by-the-Sea v. Board of Supervisors* [1986] 183 Cal.App.3d 229).

CEQA works to prevent such an evasion of environmental review by defining “project” broadly, and thereby requiring that environmental considerations not be concealed by separately focusing on isolated parts and overlooking the cumulative effect of the whole of an action. (See, e.g., *Arviv Enterprises v. South Valley Area Planning Com.* [2002] 101 Cal.App.4th 1333, 1345–1351, concluding the city erred in allowing a 21-home development to be broken into four groupings, where no EIR was prepared for any grouping; *Nelson v. County of Kern* [2010] 190 Cal.App.4th 252, 268–270, concluding that the county erred in considering only impacts of mining reclamation in consideration of mining reclamation plan, where no CEQA review of mining itself had occurred.) A lead agency may not split a single large project into small pieces so as to avoid environmental review of the entire project (*Orinda Ass’n v. Board of Supervisors* [1986] 182 Cal.App.3d 1145, 1171).

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However, environmental review is not piecemealed if the project has independent utility and a related proposal is not necessary for the project to proceed (*Communities for a Better Env't v. City of Richmond* [2010] 184 Cal.App.4th 70, 108; *Planning & Conservation League, supra*, 237). For example, in *Del Mar Terrace Conservancy, Inc. v. City Council* [1992] 10 Cal.App.4th 712, 732–733, the court relied on National Environmental Policy Act case law to consider whether separate CEQA review of two highway projects would constitute impermissible piecemeal review. The court derived the requirement of “independent utility” from *Daly v. Volpe* [3rd Cir. 1975] 514 F.2d 1106, 1109–1110, to find that the highway segment at issue had independent utility in and of itself because it would serve local and state needs by reducing traffic congestion and accommodating predicted future increased traffic volume (*Del Mar Terrace Conservancy, Inc., supra*, 10 Cal.App.4th 732–733). The court concluded that no impermissible piecemeal review had occurred because the project would be viable even without other highway projects, and the project was in no way contingent upon completion of any other project (*Del Mar Terrace Conservancy, Inc., supra*, 10 Cal.App.4th 733).

Although an EIR must examine the impacts of infrastructure to be constructed to serve the project, it need not examine the impacts of facilities that are planned independently of the project. In *Anderson First Coalition v. City of Anderson* [2005] 130 Cal.App.4th 1173, the court rejected arguments that an EIR for a commercial project improperly piecemealed its environmental review because it did not evaluate interchange improvements required to mitigate cumulative traffic impacts as part of the project. Similarly, in *Towards Responsibility in Planning v. City Council* [1988] 200 Cal.App.3d 671, project opponents argued that an EIR should have evaluated impacts of the expansion of a wastewater treatment plant designed to serve the project. Noting that the size and nature of the plant expansion was within the control of a separate agency, the court concluded that it would be unreasonable to expect the EIR to include detailed information about the environmental impacts of a future regional facility whose scope is uncertain and that will be subject to its own environmental review.

As applied to renewable energy projects, piecemeal review could occur if a developer sought to avoid the environmental review process by breaking a relatively large wind energy project (that would normally require an EIR) into many smaller projects, relying on a negative declaration to satisfy CEQA for each small project. By contrast, when a project undergoes a complete EIR, including evaluation of cumulative impacts of related projects, and the related project also prepares an EIR, including evaluation of cumulative impacts, then there is no evasion of CEQA review and piecemealing has not occurred.

Piecemeal review does not occur when a project is structurally, legally, and financially independent from other projects. Two wind energy projects may be developed by the same company and may use the same interconnection facilities to reduce impacts and inefficiencies and remain separate projects under CEQA, so long as each project has independent utility and does not

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require the other to proceed. (See *Planning & Conservation League v. Castaic Lake Water Agency*, *supra*, 180 Cal.App.4th 237, holding that even though a water agreement facilitated a water transfer, the transfer still had independent utility because it could have occurred absent the agreement.) Independent utility may also be demonstrated when a project, in and of itself, fulfills important state and local goals, such as generating renewable energy and helping to offset the consequences of climate change.

While CEQA requires that a project include reasonably foreseeable expansions and future phases of that project, environmental review of an earlier project need not, and often cannot, provide a full discussion of the potential effects of an anticipated future project, which is still contingent upon the happening of events that are currently outside the powers of the decision makers to cause (*Del Mar Terrace Conservancy, Inc. v. City Council*, *supra*, 10 Cal.App.4th 736–737). Under such circumstances, a court must acknowledge that it would be impossible to specify the precise development that will eventually occur and the impacts that would result therefrom (*City of Antioch v. City Council* [1986] 187 Cal. App. 3d 1325, 1336). Just like a major homebuilder may be in various stages of planning and construction of separate communities in a region, a wind energy project developer may be planning, permitting, and constructing several projects over a period of time in areas where wind resources are plentiful. Each project may have its own financing, power purchase agreements, off-takers, and interconnection agreements. Each project may have its own arrangement with the property owner, whether it is an option to purchase or a long-term lease. Whether each project proceeds to construction and operation is dependent on different factors. Even if infrastructure is shared between projects to reduce impacts and increase delivery efficiencies, later projects (including those owned by the same parent company) often reimburse earlier projects that constructed those facilities. Later-planned projects need not be included in the EIRs for earlier-planned projects when the later project is still contingent upon events outside the lead agency's control, such as the developer securing land, financing, and a design for the project. It would be an unreasonable and unproductive exercise to attempt to evaluate the environmental impacts of an unformed project.

Finally, CEQA is not concerned with the identity of the parent company of any group of projects, so long as complete environmental review for each project occurs; the existence of a common parent company does not prove piecemeal review. No environmental impact results from the fact that a single parent company holds two or more projects. (See *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, concluding that the identity of a prospective retail tenant is not relevant to CEQA review.) It is common practice for large renewable energy developers to develop multiple projects in the same general area, just as other developers may have multiple projects in various stages in one jurisdiction. However, the mere proximity of two or more projects and common identity of a parent company does not demand that those projects be evaluated as one project in a single EIR, when those projects are separated by time, space, and other factors.

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It is not necessary to review the Torrey Wind project as part of the EIR for the Project because the Project in no way compels or presumes completion of the Torrey Wind project. The Torrey Wind project does not require the Project to proceed, and the Project is similarly not dependent on the Torrey Wind project to proceed. Neither project is a “first step” toward the approval of the other. The two projects would not share the Project’s gen-tie line. However, they do propose to share a high-voltage substation and switchyard on private lands that would be used to interconnect both projects to the existing Sunrise Powerlink transmission line. By sharing these facilities, the overall amount of transmission infrastructure would be reduced, thereby reducing the overall environmental impact of the two projects if both were to proceed. The high-voltage substation and switchyard are described and analyzed as part of the Project. The sharing of infrastructure does not compel treatment of otherwise independent projects as a single project under CEQA. If the Torrey Wind project were not to move forward, the Project, including the high-voltage substation and switchyard, could still be constructed. If the Project were not to be constructed, the Torrey Wind project, including the high-voltage substation and switchyard, could proceed independently. Thus, the two projects are not dependent upon each other to proceed, and each has independent utility. The Torrey Wind project was instead appropriately analyzed as a cumulative action as part of the Draft EIR cumulative analysis, which was prepared in accordance with CEQA.