

HOPE - Helping Our Peninsula's Environment

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Death of a Single Individual of a Listed Species is a Significant CEQA Impact

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- The loss or death of a single individual of a protected species must have a Finding of Significant Impact as required by CEQA Section 15065(a).

"15065. Mandatory Findings of Significance"¹

"A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:"

"(a) The project has the potential to ... reduce the number (or restrict the range) of an endangered, rare or threatened species, ..."'

"Reduce the number" cannot mean anything other than the loss of a single individual (e.g. from 500 to 499).

- The loss of as little as a quarter of an acre of habitat a single individual of a listed species must have a Finding of Significant Impact under CEQA Section 15065.

"Since a finding of significance under the Environmental Quality Act is required if [the] range of a single rare or endangered plant is restricted by a proposed development, information regarding existence of additional, previously unidentified, rare plant species merely affected magnitude of the impact of the proposed development, and a subsequent or supplemental environmental impact report would have to examine affected plant populations as part of its evaluation of the environmental impact. West's Ann.Cal.Pub.Res.Code § 21152, §21166"
- Mira Monte Homeowners v. San Buenaventura Cty. Etc. 165 Cal.App.3d 357; 212 Cal.Rptr. 127 (Cal.App.2 Dist. 1985)

Developers, extractors and polluters sometimes suggest that these are low thresholds. They are not. California's Legislature & Governor agreed and declared that **protecting species faced with extinction is of the utmost importance** with CEQA Section 21001 (c) --

"Prevent the elimination of fish or wildlife species due to man's activities, **insure that fish and wildlife populations do not drop below self-perpetuating levels**, and preserve for future

¹ CEQA Guidelines 15065. Mandatory Findings of Significance (as of Apr 3, 2003)

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish and wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

generations representations of all plant and animal communities and examples of the major periods of California history."

CEQA does not say "Mitigate and allow the elimination of fish or wildlife species due to man's activities" or "assume that fish and wildlife populations do not drop below self-perpetuating levels,

It boldly declares "Prevent the elimination of fish or wildlife species due to man's activities" and "insure that fish and wildlife populations do not drop below self-perpetuating levels."

When an animal or plant has reached the precarious, fragile circumstance of facing a threat of extinction, it is easy and reasonable to show compassion for how any harm to them at all must be considered a significant impact.

Federal Law Violations Trigger CEQA Significance Finding²

Is hard to imagine how the violation of a federal law which harms highly valued animals and plants and has criminal penalties could not be considered a significant environmental impact. Well it is.

Each violation of the Federal Endangered Species Act relevant for CEQA purposes is a "Take"

- **It is a violation of federal law to harass, or cause a change in the behavior of an imperiled animal. This violation of federal law is called "take" under the Federal Endangered Species Act (FESA) and should be considered a significant impact under CEQA. FESA considers any form of take (e.g. killing or merely wounding) with the same gravity.**

- **When existing conditions are violating law, any increase in environmental impact is significant under CEQA.**

For example, there are at least two **serious, ongoing and widespread violations of federal law** caused by existing levels of water overpumping of the Carmel River. It is known that two listed species are being killed (take) every year due to be overpumping - the **West Coast Steelhead** (*Oncorhynchus mykiss*) and the **California Red-Legged Frog** (*Rana aurora draytonii*).

Any, even a minuscule, activity which would potentially allow worsening of these ongoing violations of federal law - is a significant environmental impact.

² Section 9 (16 U.S.C. 1538) identifies prohibited acts related to endangered species, and prohibits all persons, including all federal, state and local governments, from taking listed species of fish and wildlife, except as specified under the provisions for exemptions (16 U.S.C. 1539). The term "take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(18)). Provisions for civil penalties, criminal violations, enforcement, and citizen suits are found at 16 U.S.C. 1540.