



Worth the Wait? The California Supreme Court Rules that CEQA Does Not Require an Analysis of the Environment's Impacts on a Project, Except When it Does

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On December 17, 2015, the California Supreme Court issued its long-awaited decision in *California Building Industry Association v. Bay Area Air Quality Management District* (No. S213478). The sole question before the Court was: Under what circumstances, if any, does the California Environmental Quality Act (CEQA), Pub. Resources Code, § 21000 et seq., require an analysis of how existing environmental conditions will impact future residents or users of a proposed project? In a decision that should stun few, but will no doubt exasperate many, the Court ruled that CEQA does not generally require agencies to analyze the impact of existing environmental conditions on a project's future occupants, unless an exception applies. Included among the Court's list of exceptions is one that is potentially rule-swallowing: Projects that exacerbate those environmental hazards or conditions that already exist. This exception may very well become the general rule because projects **do** frequently exacerbate existing conditions, requiring under the Court's ruling an analysis of potential impacts on future residents, workers, and shoppers.

The Court identified one such scenario: The effects of an active fault line on future occupants. Holding that CEQA does not require an analysis of the effect of attracting people to an active fault, the Court invalidated a portion of section 151256.2 of the California Natural Resources Agency's CEQA implementing regulations requiring this analysis. However, the Court noted by way of an example that an analysis of impacts on occupants would be required where a project disturbs existing contamination and thereby exacerbates the existing condition. This example raises a host of questions. Would an EIR for a project that emits greenhouse gases and is located in a coastal area require an analysis of the significance of sea level rise on future occupants? Does a housing project that increases traffic congestion in a congested area require an analysis

of smog-related health impacts on future residents? The Court did not answer these questions. These types of questions will surely be the subject of litigation in the lower courts for years to come.

The case arises out of the Bay Area Air Quality Management District's (District) adoption of recommended CEQA significance thresholds for regulated air pollutants. Under the thresholds, a project would result in a potentially significant impact if an existing source within a certain distance of the project site exposed future residents or workers of the project to an increased health risk. CBIA challenged the thresholds on various grounds, including that the thresholds are invalid because CEQA does not require an analysis of the environment's impacts on a project. Because the Court did not state whether attracting project users to existing air pollution is a CEQA concern, the trial court will be required to answer that question.

The practical impact of the decision will be to require that CEQA documents evaluate whether projects exacerbate existing conditions and the impacts of environmental hazards (e.g., existing contamination) on future occupants or workers where the project may exacerbate the impacts of the environmental hazard.