

New Significance Standard for Greenhouse Gas Emissions Is Not New Information Triggering Supplemental CEQA Review

The court of appeal opinion issued today in *Concerned Dublin Citizens* clearly answers three CEQA questions which haven't been directly addressed in other published opinions: the proper interpretation of the statutory exemption for housing projects that are consistent with a specific plan; how the CEQA guideline on further review following a program EIR should be applied; and whether new air district guidelines setting significance thresholds for greenhouse gas emissions amount to "significant new information" triggering supplemental review. The court's unambiguous answers to these questions provides helpful guidance to public agencies and project sponsors on a handful of important recurring issues. [Concerned Dublin Citizens v City of Dublin, 1st District No. A135790](#), Ordered for Publication, March 28, 2013. **Residential Projects Consistent with an EIR-Based Specific Plan are Exempt from CEQA.** Government Code section 65457 exempts residential projects that are consistent with a specific plan from CEQA if an EIR was certified for the specific plan, and none of the events in CEQA section 21166 have occurred to trigger the requirement for a supplemental EIR. In the first published opinion to interpret section 65457, the court explained that a development comprising residences together with "the usual incidents of residential units, such as yards, parks, or other uses authorized as permitted uses within a residential zoning district" qualifies as a residential project under the statute. The opinion also makes clear that a residential development is not disqualified from the exemption simply because the applicable zoning designation might allow nonresidential uses, as long as the approved project is entirely residential. **A Tiered EIR Need Not Follow a Program EIR.** As is often the case, the EIR for the specific plan was prepared as a program EIR under CEQA Guideline 15168. The EIR indicated further CEQA review would occur as projects to carry out the plan are considered. The plaintiffs claimed that because the city was relying on a program EIR, a tiered EIR "must necessarily follow." In rejecting this claim, the court explained that "nothing in section 15168 or any other provision mandates a particular level of environmental review in evaluating later projects within the scope of a certified program EIR." The opinion thus confirms the basic principle that the level of environmental review required for a project within the scope of a program EIR will vary from case to case. Further review can include no new environmental document, a finding the project is exempt, adoption of a negative declaration, or preparation of an EIR, depending on the situation. **New Significance Thresholds Are Not New Information.** When a project is considered for approval based on a previously certified EIR, project opponents invariably claim that "significant new information" has come to light since the EIR was certified and that a supplemental EIR is required by CEQA section 21166. Here, the plaintiffs pointed to the BAAQMD's newly-adopted significance thresholds for greenhouse gas emissions in claiming that the project's greenhouse gas emissions are a new significant impact requiring a supplemental EIR. But the opinion makes clear that a change in significance thresholds does not qualify as "significant new information," as it does not show that the physical impact the project will have on the environment has changed. The court's ruling on this issue should provide helpful guidance in a variety of situations where it is claimed that new information about the classification of an impact, rather than new information about the nature or extent of the impact, triggers the need for supplemental CEQA review.

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