

No CEQA Review Required For Adoption of CEQA Thresholds of Significance

A court of appeal today rejected a CEQA challenge to an air pollution control district's published thresholds of significance for air pollution impacts. [*California Building Industry Association v Bay Area Air Quality Management District*](#), No. 135335 (First District, July 13, 2013).

The thresholds, contained in the District's "CEQA Air Quality Guidelines," were first adopted by the District in 1999 to provide guidance to Bay Area public agencies in their analysis of air pollution impacts. In 2009, the District proposed changes to the Guidelines to address new information about the effects of small particulates, toxic air contaminants, and greenhouse gasses. The changes prompted concerns among housing advocacy groups and public agencies that application of the proposed thresholds to housing projects would hamper development of housing in urban infill locations.

The CBIA's suit alleged the District had violated CEQA by failing to review the potential environmental impacts of the revised thresholds before adopting them. The court of appeal disagreed, finding that adoption of the thresholds was not subject to CEQA.

The court first pointed to section 15064.7 of the CEQA Guidelines, which encourages public agencies to adopt generally applicable thresholds of significance. This guideline, the court concluded, established the required procedure for enacting generally applicable thresholds of significance, and prior CEQA review was not part of this procedure. The court found it "clear" that preparation of an EIR or other CEQA document would "largely duplicate the public review process" mandated by section 15064.7.

The court alternatively held that adoption of the thresholds was not a "project" because environmental changes that might result from their adoption were too speculative to be considered "reasonably foreseeable" under CEQA. Although the court acknowledged that the new significance thresholds might lead to residential development projects being displaced from infill locations into outlying areas, the court viewed the chain of causation as too attenuated to warrant CEQA review.

Finally, the court declined to decide whether the thresholds were invalid because they treated impacts of existing air pollution on a proposed project's occupants as an impact on the environment, contrary to established caselaw. The court found it unnecessary to reach this issue, reasoning that there are circumstances in which the thresholds could lawfully be applied, and so CBIA's facial challenge could not be sustained.

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