

## Bay Area Air Quality Management District's CEQA Guidelines on Pollution Impacts to Project Occupants and Users Are Invalid

The significance thresholds for exposure of receptors to harmful air pollution in the Bay Area Air Quality Management District's CEQA Guidelines cannot provide the basis for requiring an EIR or mitigation measures, when used to measure the impact of existing air pollution on future occupants or users of a project. As a result, the District's Guidelines are invalid to the extent they indicate that lead agencies should ordinarily apply the receptor thresholds to evaluate the effects of existing environmental conditions on a proposed project's occupants or users. [\*California Building Industry Assn. v. Bay Area Air Quality Management District, No. A135335\*](#) (First Dist. as modified, Sept. 9, 2016). **Background.** The lawsuit was filed by the California Building Industry Association seeking to overturn the District's significance thresholds for exposure of receptors in a new project to existing toxic air contaminants and particulates. CBIA's primary concern was that by increasing the burdens of CEQA compliance, the thresholds would hamper development of infill housing. Arguing that CEQA is limited to a project's impacts on the environment, and does not extend to the environment's impacts on a project, CBIA claimed the District's receptor thresholds were inconsistent with CEQA to the extent they treat the impacts of existing air pollution on occupants or users of a new projects as an environmental impact. In a decision issued in late 2015 ([see our 12/17/2015 post](#)) the supreme court ruled that an analysis of the effects of existing environmental conditions on a project's occupants or users is ordinarily not required under CEQA, but that CEQA does require an analysis of how a project might exacerbate existing environmental hazards. The court sent the case back to the court of appeal, instructing it to consider the validity of the District's significance thresholds in light of these principles. **The court of appeal's opinion.** The opinion issued by the court of appeal after the case was sent back to it contains four important rulings on use of the District's receptor thresholds. *A lead agency may not require an EIR or mitigation measures for the sole reason that future project occupants or users will be exposed to health risks from a nearby source of harmful air pollution.* The District conceded that the purpose of the challenged receptor thresholds is to give public agencies reviewing a project under CEQA a basis for determining whether future occupants or users will be exposed to unacceptable health risks due to emissions from nearby pollution sources. That purpose, the court concluded, cannot be squared with the rule that CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or occupants. *Public agencies may elect to evaluate the effect of existing environmental conditions on future occupants or users of their own projects.* The supreme court had noted in its opinion that CEQA does not bar a public agency from considering the effect of existing conditions on a project it proposes to undertake itself. Accordingly, the court of appeal ruled that an agency may elect to use the District's receptor thresholds as guidance in assessing the effect of emissions on occupants or users of its own projects. *The District's receptor thresholds may be applied to determine whether a proposed project would worsen existing environmental conditions.* CEQA's focus is on the changes a proposed project will make to the physical environment. As a result, when a project might worsen existing environmental conditions, the District's receptor thresholds may appropriately be used to assess the impacts on project occupants or users to the extent the impacts stem from changes the project will make to the environment. *The District's receptor thresholds may be used to analyze impacts on a project's occupants or users where such an analysis is required by statute.* Several provisions of CEQA require an analysis of the health effects of existing environmental conditions on a project's occupants or users in specific situations. These statutes include school siting and construction projects and exemptions from CEQA for various categories of housing development projects. Because these statutes mandate an analysis of the impacts of air pollution on the project's occupants or users, the receptor thresholds may permissibly be used for that purpose. **Conclusion.** The court rejected the District's argument that its Guidelines

were merely advisory, finding that "they suggest a routine analysis of whether new receptors will be exposed to specific amounts of toxic air contaminants" Having ruled that it would be improper for a lead agency to use the District's receptor thresholds to require an EIR, mitigation measures, or other CEQA review when such a use is not authorized, it concluded the Guidelines should be invalidated in part. The court accordingly instructed the trial court to issue an order invalidating those portions of the District Guidelines that suggest lead agencies should apply the receptor thresholds "to routinely assess the effect of existing environmental conditions on future users or occupants of a project."

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