

## **CEQA Requires An Analysis Of The Project's Impacts On The Environment, Not The Environment's Impacts On The Project; California Supreme Court Sets Clear Limits On CEQA's Reach**

CEQA generally does not require that public agencies analyze the impact existing environmental conditions might have on a project's future users or residents, according to the California Supreme Court's decision in [California Building Industry Association v Bay Area Air Quality Management District \(S213478, December 17, 2015\)](#). An agency must analyze how environmental conditions might adversely affect a project's residents or users only where the project itself might worsen existing environmental hazards in a way that will adversely affect them, or if one of the provisions of CEQA which require such an analysis for certain airport, school, and housing projects applies. **Background.** The California Building Industry Association, along with other organizations interested in the development of infill housing, objected to certain CEQA thresholds of significance proposed for adoption by the Bay Area Air Quality Management District. Their key concern was that the thresholds would impede development of infill housing by making an EIR necessary virtually any time future residents might be adversely affected by existing air pollution. CBIA filed a legal challenge after the thresholds were adopted, arguing that CEQA does not require an analysis of the impacts that existing environmental conditions might have on a new project's occupants. **An analysis of the environment's impact on a project's users or residents is generally not required.** A central issue before the supreme court was the validity of a provision of the CEQA Guidelines that indicates that CEQA requires an evaluation of existing environmental conditions at the site of a proposed project that might cause significant adverse impacts to future residents or users of the project. The District contended that CEQA's references to a project's effects on people imply that such analysis was required. The supreme court disagreed, concluding that in light of CEQA's text, structure and purpose, a general requirement for an analysis of how existing environmental conditions will affect a project's future users or residents would improperly expand the scope of the statute and add significantly to the burdens of compliance. As the court put it: "Given the sometimes costly nature of the analysis required under CEQA when an EIR is required, such an expansion would tend to complicate a variety of residential, commercial, and other projects beyond what a fair reading of the statute would support." **An analysis of whether a project may exacerbate existing environmental hazards is required.** While there is no general requirement in CEQA that the environment's effects on a project be evaluated, CEQA does mandate that an analysis of a project's impacts consider whether the project might cause existing environmental hazards to get worse. The court accordingly upheld language in the Guidelines which require an analysis of any significant effects on the environment a project might cause by bringing development and people into an area or by locating development in areas susceptible to hazardous conditions. "Because this type of inquiry still focuses on the project's impacts on the environment — how a project might worsen existing conditions — directing an agency to evaluate how such worsened conditions could affect a project's future users or residents is entirely consistent with this focus and with CEQA as a whole." **Several statutory exceptions to the general rule require an analysis of impacts to project users or residents in specific situations.** The court also discussed several provisions of CEQA that require an analysis of the adverse effects of existing environmental conditions on persons who will occupy or use a project site. These statutes address certain airport and school construction projects, and the applicability of certain CEQA exemptions to specified types of housing development projects. The court emphasized, however, that "these statutes constitute specific exceptions to CEQA's general rule requiring consideration only of a project's effect on the environment, not the environment's effects on project users" Perkins Coie attorneys Geoff Robinson and Steve Kostka represented a coalition of organizations

interested in the development of infill housing together with various industry groups who participated in the case as Amici Curiae.

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