

“Reverse CEQA” Reversed

California Supreme Court Rejects CEQA Analysis of Impacts of the Environment on the Project

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In California Building Industry Association v. Bay Area Air Quality Management District (December 17, 2015) (Case No. S213478) (CBIA v. BAAQMD)¹, the California Supreme Court rejected a requirement for so-called “reverse CEQA” analysis, concluding that “CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project’s future users or residents.” Despite this general rule, the Court cautioned that agencies must consider whether, by bringing project residents to a location where environmental hazards already exist, the project may exacerbate such conditions. The Court also noted that certain provisions in CEQA expressly require reverse CEQA analysis for specific types of projects.

The California Environmental Quality Act (CEQA) requires an agency considering a project to evaluate and, if feasible, mitigate the project’s significant adverse environmental impacts. Some agencies and advocates have argued that CEQA also requires the reverse: that impacts of the environment on the project and its new users and residents must also be evaluated and mitigated. The issue had been raised in several previous Court of Appeal decisions, each of which rejected requirements for reverse CEQA analysis.² However, the Court of Appeal decision in *CBIA v. BAAQMD* upheld CEQA guidelines adopted by the Bay Area Air Quality Management District (BAAQMD) that required such analysis. The California Supreme Court reversed on the reverse CEQA issue, consistent with the prior cases. This decision reassures agencies conducting CEQA review of proposed projects (referred to as “lead agencies”) that,



¹ The opinion is available at <http://www.courts.ca.gov/opinions/documents/S213478.PDF>.

² *Baird v. County of Contra Costa* (1995) 32 Cal. App. 4th 1464; *City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal. App. 4th 889; *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal. App. 4th 1604; *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal. App. 4th 455.

except in limited circumstances, they may properly focus on the project's impacts on the environment and need not consider the reverse.

The BAAQMD Receptor Thresholds

In order to determine whether a project's potential environmental impacts are significant and must be mitigated, if feasible, lead agencies compare those impacts to quantitative or qualitative standards, referred to as "significance thresholds." Many lead agencies rely on significance thresholds adopted by expert regulatory agencies such as BAAQMD. BAAQMD has adopted guidelines for CEQA air quality analysis containing a number of widely utilized numeric thresholds for assessing the significance of air pollutant emissions from proposed projects.

In 2010, BAAQMD updated its guidelines³, adding (among other changes) new and controversial "receptor" thresholds for assessing impacts of toxic air contaminant and fine particulate matter emissions from existing sources—*not* emissions from a proposed project—on future residents or users of the project (the "receptors"). In effect, the receptor thresholds required "reverse CEQA" analysis of impacts of the existing environment on the project. Projects were subject to the receptor thresholds if sensitive individuals such as children, the elderly, and those with health problems affected by air quality were likely to spend significant time at the project site, e.g., residences, schools, parks and playgrounds, daycare centers, nursing homes, and medical facilities.

The California Building Industry Association ("CBIA") challenged the updated BAAQMD guidelines, asserting that a requirement for reverse CEQA analysis was contrary to CEQA's statutory mandate and that the receptor thresholds themselves would have adverse environmental impacts, discouraging infill development and diverting growth-related impacts to greenfield areas.⁴

The Supreme Court Decision

Relying on CEQA (Pub. Res. Code) § 21083 and other relevant provisions—in particular, CEQA's definition of "environment"—the Court held that "CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents." The Court reasoned that the key phrase "significant effect on the environment" is explicitly defined by statute in a manner that does not include the environment's effect on the project (see CEQA § 21068: "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment"). Stretching the definition to encompass analysis of how environmental conditions could affect a project's future residents would redefine "environmental effects of a project" to encompass nearly any effect a project has on a resident or user. Recognizing the costs of conducting CEQA analysis, the Court concluded that "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."

Nevertheless, the Court cautioned, lead agencies still must evaluate existing environmental conditions in order to assess whether a project could exacerbate hazards that are already present. The Court drew a fine distinction between reverse CEQA analysis and the issue of worsening existing hazards by bringing people and development to the vicinity. Thus, the Court struck down two sentences in CEQA Guidelines

³ BAAQMD, [California Environmental Quality Act Air Quality Guidelines](#) (2010)

⁴ CBIA argued that BAAQMD should have conducted CEQA review of the thresholds themselves, before adopting them, in order to assess their adverse environmental side effects. The court of appeal held that the CEQA review of CEQA significance thresholds was not necessary, and review of this issue was not granted by the Supreme Court.

§ 15126.2(a): “For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.” This focus on exposure of new residents *of the project* to existing hazards constituted improper reverse CEQA analysis. At the same time, the Court upheld the rest of § 15126.2(a): “The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.... Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas”). These portions of § 15126.2(a), the Court concluded, are valid to the extent they call for evaluating impacts *that change the environment*, if introducing the project and its residents may exacerbate existing environmental hazards. The Court offered an example of an agency considering development next to an abandoned gas station with existing contamination. Bringing in the new project might disturb and mobilize the neighboring contaminants, thus exacerbating existing conditions, but this would be an effect of the project on the environment, not of the environment on the project. According to the Court, considering how a project might worsen existing conditions—including effects of such worsened conditions on a project’s future users or residents—is consistent with this focus and with CEQA as a whole.

The Court also noted that reverse CEQA analysis is required by certain statutory provisions that apply to CEQA analysis of specific classes of projects such as airports, schools, and certain housing projects.⁵ Those provisions, the Court found, “reflect an express legislative directive to consider whether existing environmental conditions might harm those who intend to occupy or use a project site.” However, these provisions constitute specific exceptions to CEQA’s general rule requiring consideration only of a project’s effect on the environment, not the environment’s effect on project occupants. The Court refused to extrapolate from these exceptions to an overarching, general requirement for reverse CEQA analysis.

Implications of the Court’s Decision

Having rejected reverse CEQA analysis in principle, the Court did not apply that holding to reach a conclusion on the validity of BAAQMD’s receptor thresholds. Instead, the Court remanded the case to the Court of Appeal to decide this question in light of the Court’s opinion. BAAQMD may seek to justify the thresholds as a means of identifying existing air pollution risks in the area of a project which would be worsened by bringing new projects and people to that location. However, the Court’s example of neighboring site contamination suggests that it will not be easy to fit the receptor thresholds into the “exacerbation” paradigm.

More generally, the Court’s discussion of the “exacerbation” paradigm is not entirely clear. It appears that the focus must always be on the project’s effects that *change the environment outside the project*, not on effects of an unchanged environment on project residents and other project receptors. Another example might be impacts of a rising sea level on a coastal project. If the impacts of sea level rise on the project in turn cause the project to change the environment outside the project, such as by increasing erosion and damaging coastal habitat, those would constitute legitimate CEQA impacts. However, if siting the project on the coast exposes only the project itself to risk, it seems that the risk need not be considered. To many, that result would be counterintuitive, and the Court’s decision is likely to spawn further litigation working out its implications.



⁵ See, e.g., Pub. Res. Code §§ 21096, 21151.8, 21159.21(f), 21159.21(g).

Finally, in a footnote the Court suggested that, while assessing impacts of the environment on the project is not required by CEQA, this approach is not prohibited when an agency proposes to undertake its own project. Thus, an agency considering a public infrastructure project would have discretion to voluntarily evaluate impacts of the existing environment on the project. However, other agencies would not be required to use BAAQMD's receptor thresholds for CEQA review of either their own public infrastructure projects or of private development projects.

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