

EXACERBATION OF EXISTING ENVIRONMENTAL HAZARDS REQUIRED FOR CEQA REPORTS

Wed Jan 25th, 2017 | Categories: [Environmental Law](#) | By [Bick Law LLP](#)

In *East Sacramento Partnership for a Livable City v. City of Sacramento*, the Third District Court of Appeal interpreted and applied the California Supreme Court's ruling in *California Building Industry Association v. Bay Area Air Quality Management District*, and in doing so, rejected a claim that the environmental impact report (EIR) for the residential project at-issue failed to consider the exacerbation of existing environmental hazards.

Ultimately, the ruling of the Third District Court of Appeal will affect how agencies and courts assess the sufficiency of "exacerbation" in EIRs going forward.

The California Supreme Court Ruling

In *Bay Area Air Quality Management District*, the California Supreme Court determined that – while the California Environmental Quality Act (CEQA) does not demand the consideration of existing environmental conditions on a project and its relevant users – lead agency and project developer stakeholders must properly consider how a project and its users will be affected by the exacerbation of existing environmental conditions.

Though the Supreme Court applied its creation of an exacerbation standard to several examples, it did not provide precise guidance determining whether an EIR sufficiently assesses exacerbation of existing environmental conditions (given the project circumstances). Prior to the ruling of the Third District Court of Appeal, it was unclear when, exactly, project developers were expected to consider exacerbation of existing environmental conditions in their EIRs. Even some California CEQA attorneys were uncertain as to the factors leading to the proper consideration of exacerbation in an EIR.

The Third District Court of Appeal Ruling

In *City of Sacramento*, the Third District Court of Appeal examined the holding of the Supreme Court of California and applied them to a project development case involving a large residential development complex.

The Third District Court of Appeal particularly referenced the California Supreme Court's opinion: "Agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents. But when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the **project's impact on the environment**—and **not the environment's impact on the project**—that compels an evaluation of how future residents or users could be affected by exacerbated conditions."

In *City of Sacramento*, the case involved the assertion that the EIR did not adequately consider the impact of nearby railroad, landfill, and freeway hazards on exacerbating existing environmental conditions at the project site – specifically, on airborne pollutant contamination.

The court did not accept this assertion, however, on grounds that: 1) there was not sufficient evidence to support the claim, and 2) as per the holding of the California Supreme Court in *Bay Area Air Quality Management District*, an assessment of potential exacerbation is required only when the project might impact the environment itself. The challenge to the project instead improperly focused on the impact of existing environmental conditions (i.e., airborne pollutants emitted by the railway, landfill, and freeway hazards) on the project and its users.

Fundamentally, the court found that the existence of one or multiple existing environmental hazards did not give rise to EIR consideration of exacerbation. The court found that there must be evidence that the project itself will exacerbate environmental conditions (whether at the project, or at nearby hazards) to give rise to the EIR exacerbation requirement.