In a closely-watched case, the California Supreme Court today issued a unanimous decision on the scope of the California Environmental Quality Act (CEQA), California's most important and heavily-litigated environmental statute. That decision is unlikely to fully satisfy either side in the litigation, though over the long-term it would seem to favor local regulators and their environmental allies over development interests.

The decision in *California Building Industry Association v. Bay Area Air Quality District* raises the fundamental question of how broadly, or narrowly, CEQA should be interpreted by the courts. The specific question as framed and addressed by the justices is whether CEQA, in addition to requiring an analysis of how a proposed project will affect the environment, mandates "an analysis of how existing environmental conditions will impact future users of a proposed project."

The answer, according to the Supreme Court's unanimous decision, is: generally no, but sometimes yes.

A bit of background is needed to understand the Court's Solomonic ruling. For a number of years, environmental interests and some government agencies have argued that environmental review under CEQA properly encompasses an assessment of whether and how environmental conditions affect a proposed project. Climate change-related impacts, like the effect of rising sea level on a proposed development project, are a prominently-cited example. This interpretation has drawn some support from the CEQA Guidelines (the implementing quasi-regulations adopted by California state officials); the Guidelines have

specifically cited the existence of a known earthquake fault in proximity to a proposed development as an environmental hazard that must be factored into the CEQA analysis.

Development interests, in contrast, have consistently argued that such an approach represents "reverse CEQA," and an unauthorized expansion of the statute. Instead, they assert, CEQA analysis is properly limited to the projected impacts of a proposed project on the physical environment, and doesn't require an analysis of potential impacts of the existing environment on the project. Until the *CBIA* case, most (but not all) lower California courts had agreed with the developers' interpretation.

In *CBIA*, the Supreme Court hewed a middle course and, indeed, largely rejected the manner in which both parties had framed the issue. While criticizing developers' "reverse CEQA" stance as "misleading and inapt," the justices ruled that CEQA "generally [does not require agencies] to analyze the impact of existing environmental conditions on a project's future users or residents." But that general rule, said the Court, is subject to a major exception: when a proposed project "risks exacerbating those environmental hazards that already exist, an agency must analyze the potential impact of such hazards on future residents or users." Specifically, the justices expressly approved a CEQA Guideline provision requiring CEQA review to encompass "any significant environmental effects the project might cause by bringing development and people into the area affected"–including an evaluation of significant "impacts of locating development in…areas susceptible to hazardous conditions (e.g., floodplains, coastlines and wildfire risk areas)…"

Additionally, the Court held that "special CEQA requirements apply to certain airport, school and housing construction projects." For those projects, opined the justices, CEQA review must properly include an examination of "how existing environmental risks such as noise, hazardous waste, or wildland fire hazard will impact future residents or users of a project."

Here are some initial reactions to what is perhaps the California Supreme Court's most important CEQA ruling of 2015:

- The *CBIA* decision brings a distinctly anthropogenic perspective to CEQA: while traditional CEQA analysis has centered primarily on the projected adverse effects of proposed projects on the physical environment, today's opinion focuses on–and seems to give special priority to–projected impacts of projects on human health and safety.
- The Bay Area Air Quality Management District and its environmental supporters are undoubtedly breathing a sigh of relief today. That's because their attorney's oral argument in the case earlier this fall was not particularly well received by the justices,

several of whom seemed unpersuaded and skeptical of the District's position. But today's decision vindicates the District's CEQA stance to a considerable degree, and explicitly rejects the "bright line," absolutist and narrower CEQA construction advanced by CBIA.

- The *CBIA* decision is one of those judicial pronouncements that seems to raise nearly as many questions as it answers. One can safely predict that a considerable amount of lower court litigation will be required to discern the precise parameters of the Court's opinion. In particular, I would expect a great deal of future litigation over which proposed projects "might exacerbate existing environmental hazards," and which do not.
- Finally, had the Supreme Court adopted the developers' more atomistic CEQA interpretation, environmental groups would undoubtedly have lobbied the California Legislature in its 2016 session to amend CEQA to codify their broader, proposed interpretation. Given today's "split decision," however, the focus now shifts to the agencies responsible for the CEQA Guidelines: the Governor's Office of Planning & Research and the California Natural Resources Agency. Since the *CBIA* decision invalidates certain provisions of the existing Guidelines (while upholding others), those agencies will at a minimum have to amend the Guidelines to eliminate the offending provisions. But the state agencies may–and probably should–also use that opportunity to provide further guidance to California's various CEQA constituencies as to how *CBIA* can and should be applied prospectively.

The California Supreme Court's *California Building Industry Association v. Bay Area Air Quality Management District* decision caps a very busy "environmental law year" for the justices: four major CEQA rulings and several other important environmental decisions as well. I'll offer a broader retrospective on the justices' 2015 environmental jurisprudence in a future post.