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| |  | | --- | | Judge Orders BAAQMD to Shelve New Regs on Developers | | **Paul Campos, General Counsel BIA Bay Area**  OAKLAND -- A judge has ordered Bay Area regional air quality regulators to withdraw new regulations that were widely seen as increasing the cost of smart-growth development throughout the region until they subject the requirements to full environmental review under the California Environmental Quality Act.   The order, issued last week by Alameda County Superior Court Judge Frank Roesch, follows his finding last month that BAAQMD jumped the gun in issuing the new regulations and it means the agency must first study the effect the new requirements may have on future development in the region.  At issue are policies adopted by BAAQMD in June 2010 governing project analysis and mitigation requirements under the California Environmental Quality Act related to, among other things, toxic air contaminants and greenhouse gas emissions, for projects of all types throughout the region.  The new rules marked a quantum leap in the regulatory burden for projects located near freeways, regional thoroughfares, BART stations, backup power generators, or any other area likely to contain background levels of emissions.  Imposition of the new regulations was strenuously opposed by the building industry, affordable housing advocates and economic development groups on the grounds they would render well-located higher density and transit-oriented projects in every Bay Area city and county much more difficult economically and politically—and in some cases altogether infeasible.   In his order issued February 14, Judge Roesch said the concerns raised by the lawsuit need to be explored under CEQA, holding there is “a fair argument that the implementation of the Thresholds may cause a reasonably foreseeable indirect change in the environment” by impeding infill and high-density projects.  The order rejected BAAQMD’s request to leave the regulations in place pending compliance with CEQA, instead requiring the District to vacate the rules and, equally significantly, enjoining the District from disseminating the Thresholds as if they were valid and in effect.  In court filings, BAAQMD argued rescinding the rules would create hardship and uncertainty for local governments and developers, and that there is no evidence the rules have increased the regulatory burden on projects while they have been in effect.   While BAAQMD provided no factual support for these assertions, the building industry submitted extensive documentation to the Court refuting BAAQMD’s claims, including sworn declarations by affordable housing advocates and developers outlining the devastating effects the rules have had on projects, as well as statements by BAAQMD staff confirming the intent of the rules was to block certain projects altogether—statements directly at odds with the District’s representations to the Court during the litigation.  The order gives BAAQMD 90 days to return to the Court demonstrating compliance with its provisions.  It also awards the industry its litigation costs and indicates the Court will consider awarding attorney’s fees upon a formal post-judgment motion.  [Click here](http://pull.t2mr3.com/p/2132-9DD0/92693923/link1.html) for trial court decision. | | |  | | --- | |  | | In Brief... | |  | | Bay Area air regulators ordered to rescind new air quality rules until environmental effects get careful study. | | Contact Us **Building Industry Association of the Bay Area** 101 Ygnacio Valley Rd, Suite 210 Walnut Creek, CA 94596-5160  Tel (925) 951.6840 Fax (925) 951.6847  [http://www.biabayarea.org](http://pull.t2mr3.com/p/2132-5ED1/92693927/link2.html) | | Subscribe to RRB Not currently receiving each issue of **Regional Regulatory Bulletin**? [Join our mailing list](http://pull.t2mr3.com/p/2132-7B60/92694232/link3.html) to receive future issues. | | Read Past Issues | | [View Full Archives »](http://pull.t2mr3.com/p/2132-B861/92694236/link4.html)  [RRB Glossary and Acronyms »](http://pull.t2mr3.com/p/2132-3495/92729745/link5.html) | |
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