News Release

For immediate release DATE 1-20-2010

For: local news, assignment editors



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Air District clears final hurdle in development lawsuit

State Supreme Court refuses builders' review petition

The California Supreme Court has refused to grant the state building association's petition to review a case won by the Air District over a landmark regulation controlling development-related emissions.

The court ruled this week that it will not review the case, won by the Air District in 2008 and upheld on appeal in 2009. The suit, brought by the California Building Industry Association, claimed the Air District had no authority to regulate development and impose fees through its enactment of Rule 9510 (Indirect Source Review). The rule, adopted in 2005, imposes fees for new development in the Valley in order to mitigate related emissions.

The latest ruling is the last possible avenue of appeal for the state BIA.

"The residents of the Valley are the winners in this matter. Every penny paid by the developers goes toward paying for projects in the Valley that reduce emissions and improve air quality," said Seyed Sadredin, the Air District's executive director and air pollution control officer.

Rule 9510 holds developers accountable for air-quality impacts that result from building activity and also for air-quality impacts that result from the development's use. Developers have options for offsetting pollution through a variety of mitigation measures – for example, including bike paths, increasing energy efficiency or building new housing developments close to transit stops.

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Fees are assessed for pollution that exceeds thresholds established by the Air District. The Air District uses these fees to achieve off-site emission reductions on behalf of the developer by funding clean-air projects such as retiring polluting vehicles and paving unpaved roads.

The Air District was the first in the state to put such a rule into place.

In a related matter, the National Association of Home Builders is challenging the rule in federal courts. The claim in that case is that the rule imposes an engine standard on construction equipment that is pre-empted by the Clean Air Act. That case is pending in the Ninth Circuit Court of Appeals. The NAHB lost at the trial court level.

"We hope that the national association will now join the Valley developers who have embraced this rule and become partners in our work for clean air," said Sadredin.

For more information about the Valley Air District, call a regional office: in Fresno, 559-230-6000; in Bakersfield, 661-392-5500; and in Modesto, 209-557-6400.

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