



## SCHOOL SITES AND AIR TOXICS DON'T MIX

In 2004, Senate Bill (SB) 352 expanded the requirements for reviewing sources of air toxics within a quarter-mile radius of a school site. It also added the requirement to determine health hazards from exposure to high levels of criteria pollutants at a school site within 500 feet of a freeway or busy traffic corridor (Ed. Code § 17213; PRC § 21151.8<sup>1</sup>). SB 352 became part of the CEQA statute, specifically PRC § 21151.8. This PlaceViews explains the requirements and recommends ways to best implement them.

### CBIA vs BAAQMD

The California Supreme Court recently ruled that CEQA documents are not required to address the impact of existing environmental conditions on a project's future users, only the project's impact on the environment (*California Building Industry Association v. Bay Area Air Quality Management District*). However, the court acknowledged that under PRC § 21151.8 schools are exceptions to this general rule. The court also noted that CEQA does not prohibit an agency from reviewing how existing conditions might impact future students and staff, so school districts may go beyond the strict interpretation of this ruling to ensure that health and safety issues are addressed in their CEQA documents.

### PERMITTED AND NONPERMITTED FACILITIES

Anyone who has processed a school project is familiar with requirements for school sites within a quarter mile of facilities that emit hazardous air emissions or handle acutely hazardous materials, substances, or waste. These facilities are identified through agencies that maintain hazardous materials inventories (such as the fire department or health department) and the air quality district. The air district's database identifies "permitted" facilities—i.e., facilities that have a permit for air emissions—within a quarter mile of school sites. However, permit data does not always reflect actual conditions, and not surprisingly, agency databases do not include facilities for which they have not issued permits. Nevertheless, nonpermitted facilities must also be identified. A field survey of the project vicinity and interviews for all facilities with the quarter-mile radius should be completed to identify nonpermitted facilities and verify permit data. Facilities should be added and subtracted as appropriate (see Figure 1).

Figure 1. Exposure to Toxins (Chronic, Long-Term Exposure)





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**FREEWAYS/TRAFFIC CORRIDORS**

Any school site within 500 feet of the edge of the closest travel lane of a freeway or other busy traffic corridor must be reviewed for potential health risks (see Figure 2). The focus of this analysis is on potential acute, short-term exposure to criteria pollutants, such as carbon monoxide, nitrogen dioxide, and particulate matter (PRC § 21151.8[a][1][D]; Ed. Code § 17213[c][2][C]).

**IMPORTANT DEFINITIONS**

» **Facilities.** Any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board (Ed. Code § 17213[d][8]).

This definition is intentionally broad to capture any “non de minimus” hazardous air pollution sources. The California Air Resources Board website lists source categories, including residential sources,

It is important to understand that the listing of “other pollutant sources” simply provides examples of non-permitted facilities and is not intended to exclude other pollution sources. The definition of “facilities” was intentionally written very broadly to capture any hazardous air pollution source.

but analysis under PRC § 21151.8 is limited to nonresidential sources.<sup>2</sup>

» **Freeways or Other Busy Traffic Corridors.** Roadways with an average daily traffic in excess of 50,000 vehicles in a rural area and 100,000 vehicles in an urban area (Ed. Code § 17213[d][9]; PRC § 21151.8[b][9]).

» **Rural Area.** Any open country or any place, town, village, or city that—by itself and together with other places, towns, villages, or cities that it is part of or associated with—(a) has a population not exceeding 10,000; or (b) has a population not exceeding 20,000 and is contained within a nonmetropolitan area. Also includes any open country, place, town, village, or city in a Standard

Metropolitan Statistical Area if the population of the statistical area does not exceed 20,000; the area is not part of, or associated with, an urban area; and it is rural in character (HSC § 50101).<sup>3</sup>

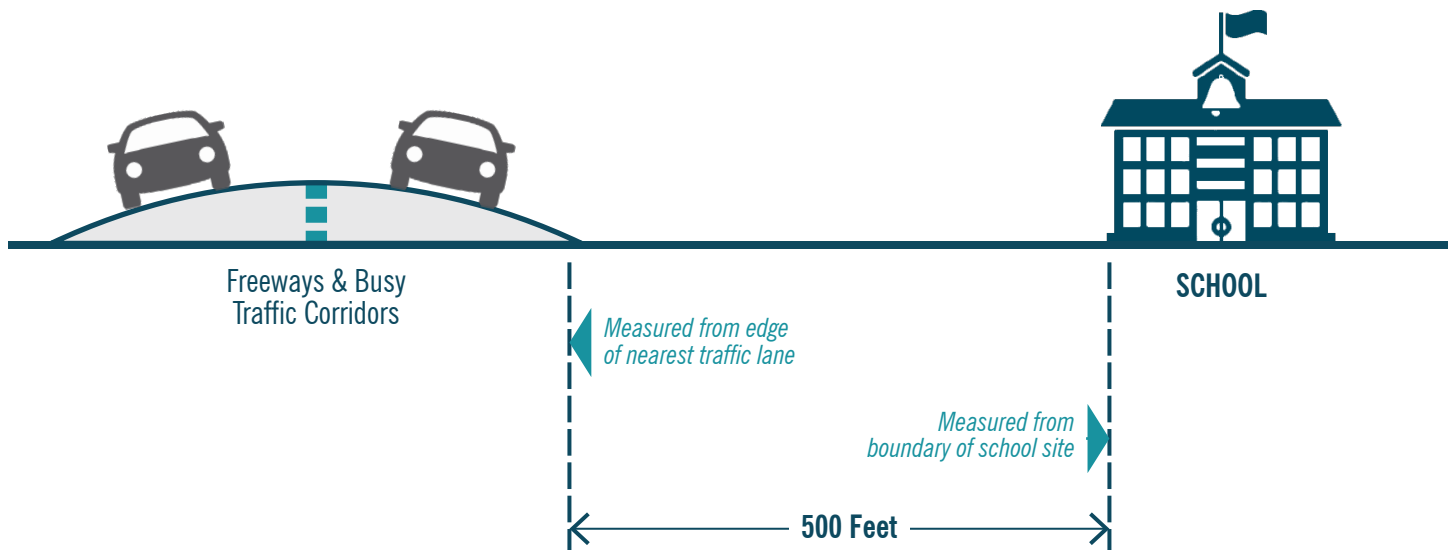
» **Urban Area.** Any portion of a county or the state that is not a rural area (HSC § 50104.7).

**REQUIRED FINDINGS**

School districts must make one of the following findings for permitted and nonpermitted facilities within a quarter mile of a school site:

- (A) No such facilities were found;
- (B) Facilities were found, but one of the following conditions apply:
  - (i) The health risks associated with the facilities do not constitute an actual or potential endangerment of public health to those attending or employed at the school;
  - (ii) Corrective measures would mitigate all chronic or accidental hazardous air emissions to levels that do not constitute a health risk to students or staff. (PRC § 21151.8[a][3])

Figure 2. Exposure to Criteria Pollutants (Acute, Short-Term Exposure)





PRC § 21151.8(a)(2)(A) describes “other pollution sources” as “including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and rail yards.” It is important to understand that this list simply provides examples of nonpermitted facilities and is not intended to exclude other pollution sources.

A third finding under “B” is required by PRC § 21151.8(a)(3) for any school site within 500 feet of a freeway or busy traffic corridor:

- (iii) Neither the short-term nor long-term exposure poses a significant health risk to students.

CEQA § 21151.8(a)(3)(C) also provides an option for school districts to accept a school site that would result in a significant health risk when no alternative site is available:

- (C) If the district is unable to issue finding A or B, above, or to locate a suitable alternative site, the district may accept the site by adopting a “statement of overriding considerations.”<sup>4</sup>

## RECOMMENDATIONS

- » Consider the potential exposure from permitted and nonpermitted facilities in your search for new school sites. Where possible, simply avoid sites near industries, major farming operations, heavily traveled highways, etc.
  - » Work with your technical team to establish parameters and thresholds for school siting. You shouldn’t need to complete full technical studies for every site under consideration. Learn how to screen sites for fatal flaws.
  - » Incorporate PRC § 21151.8 requirements into your CEQA process to ensure that there are no surprises after you have committed to a site.
  - » Revise your environmental checklist questions to ensure that you will have adequate information to support the required findings. The Appendix G questions in the CEQA Guidelines do not include requirements under PRC § 21151.8
- » Be wary of pursuing site approval using finding (C)—i.e., if the chosen site would result in a significant health effect and the district cannot locate a suitable alternative site, the district may adopt a statement of overriding considerations. This strategy can easily backfire. Would your school board approve a site that poses a significant health risk? What are the long-term planning implications of approving such a site? Will you have to revisit this issue any time you plan a change or expansion at the school site? Ultimately, how will parents react to such a decision on the part of the district?
  - » You must prepare an environmental impact report (EIR) to use finding C, because you cannot override a significant impact with a negative declaration or mitigated negative declaration.
  - » If you must override a significant health effect under finding C, use the alternatives section of the EIR to demonstrate that a “severe shortage of sites” prevents you from finding an alternative site that would satisfy Ed. Code § 17213(a).



**PLACEWORKS**

3 MACARTHUR PLACE, SUITE 1100  
SANTA ANA, CA 92707

RETURN SERVICE REQUESTED

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### Endnotes

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1. Ed. Code=Education Code; PRC=Public Resources Code
2. <http://arb.ca.gov/ch/communities/hlthrisk/sourcecategories.htm>.
3. HSC=Health and Safety Code
4. PRC § 21081; PRC § 21151.8(a)(3)(C); CCR § 15186(c)(3)(C); CCR § 15021(d); CCR § 15093.

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Questions related to this PLACEVIEWS may be directed to:  
Dwayne Mears, AICP at 714.966.9220  
[dmears@placeworks.com](mailto:dmears@placeworks.com)

Steve Bush at 510.848.3815  
[sbush@placeworks.com](mailto:sbush@placeworks.com)

Cathy Fitzgerald at 775.853.8503  
[cfitzgerald@placeworks.com](mailto:cfitzgerald@placeworks.com)

Barbara Heyman at 619.299.2700  
[bheyman@placeworks.com](mailto:bheyman@placeworks.com)