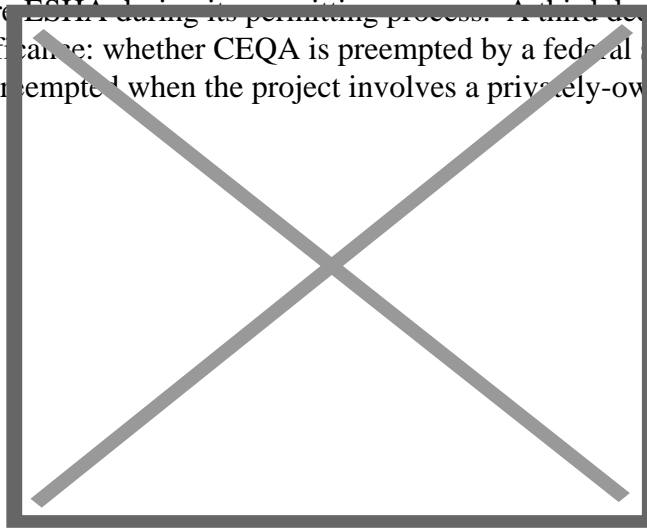


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January 05, 2018

CEQA YEAR IN REVIEW 2017

***A Summary of Published Appellate Opinions Under the California Environmental Quality Act*** In 2017, the California Supreme Court issued two decisions involving highly controversial questions of first impression. In the closely-watched *Cleveland National Forest Foundation* case, the court reversed the court of appeal's ruling that the EIR for SANDAG's regional transportation plan was fatally flawed because it had not sufficiently considered the 2050 greenhouse gas emissions reduction goal in the Governor's executive order. The court held that SANDAG was not required by CEQA to use the executive order's goal as a standard for gauging the significance of projected emissions. In a second, noteworthy decision, the court found an EIR certified by the City of Newport Beach deficient because it did not specifically identify which areas on the project site might qualify as Environmentally Sensitive Habitat Areas under the Coastal Act, even though the Coastal Commission has exclusive authority to decide what areas are ESHA during its permitting process. A third decision by the court addressed an issue of more limited significance: whether CEQA is preempted by a federal statute that regulates railroads. The court held CEQA is preempted when the project involves a privately-owned line, but



not when the line is owned by a state agency.

The courts of

appeal also issued several opinions involving controversial topics. In a case involving an EIR on expansion of operations at an oil refinery, the court extended prior case law by endorsing use of operating data from 2007, the last year of full operations at the refinery, as a component of the EIR's environmental baseline, even though the EIR's notice of preparation was not issued until 2013. Addressing a second question not previously considered in a published decision, the same court upheld the EIR's determination that the project's GHG emissions would be less-than-significant because the project would comply with CARB's GHG cap-and-trade program. Another significant EIR case involved the often-litigated question whether the project might lead to urban decay, with the court finding the evidence in the record sufficient to support the EIR's conclusion urban decay impacts were unlikely. Two other EIR cases addressed issues relating to project alternatives; one upheld the EIR and the other did not. The two opinions make significant contributions to the continually developing body of law on this subject. [READ THE FULL REPORT](#)

## Topics

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