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Agency Inaction Is Not a CEQA Project

An agency's failure to maintain a historic building—"demolition by neglect"—is not a "project" subject to CEQA. *Lake Norconian Club Foundation v. California Department of Corrections and Rehabilitation*, No. A154917 (First District Court of Appeal, Sept. 13, 2019). The Lake Norconian Club is a former hotel that is listed on the National Register of Historic Places. The hotel building has been owned by the State of California since 1962. The building, which is next to a state prison, had been used by the Department of Corrections and Rehabilitation for administrative offices until 2002 but has been left vacant since then due to its unsafe seismic condition. The Lake Norconian Club Foundation sued, claiming the Department's ongoing failure to maintain the hotel building and protect it from further damage was tantamount to a decision to demolish it. The court of appeal held that the Department's failure to act was not a "project" subject to CEQA, even if environmental consequences might result from that inaction. The court explained that CEQA defines a "project" as an "activity" that (1) may cause direct or indirect physical change in the environment and (2) is "directly undertaken," authorized, or supported by a public agency. Agency inaction, inherently, cannot be an "activity directly undertaken by an agency." Treating inaction as a project would also make it difficult to apply a statute of limitations, as no particular date could be assigned to an agency's failure to act. Recognizing that no case has previously addressed this issue, the court also looked to NEPA—CEQA's federal counterpart—for guidance. The court noted that federal courts have repeatedly held that an agency's inaction is not an "action" subject to NEPA. The court recognized that a federal regulation applies NEPA to an agency's failure to act when the agency had a mandatory duty to do so, but even if such a rule applied in the CEQA context, the Department had no mandatory duty to maintain the hotel building.