

## CEQA YEAR IN REVIEW 2019

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The year

2019 saw several trailblazing opinions, indicating that courts continue to grapple with some of CEQA's core policies. The California Supreme Court weighed in on the threshold question of what constitutes a "project" subject to CEQA. In *Union of Medical Marijuana Patients v. City of San Diego*, the court recognized that a decision to enact a zoning ordinance is not necessarily a project if the ordinance cannot foreseeably result in changes to the physical environment. It also ruled, however, that where such an ordinance is capable, at least in theory, of resulting in environmental changes, it is a "project" as defined by CEQA, and therefore must be analyzed further to determine whether it is exempt or necessitates preparation of a negative declaration or EIR. A court of appeal also addressed the same threshold issue, holding that agency inaction is not a project subject to CEQA -- even where the agency's failure to act would result in significant adverse environmental impacts. On a related note, another court confirmed that CEQA is not triggered when an agency's discretionary authority over a project is limited to design review and does not extend to other aspects of the project that might adversely affect the physical environment. Two courts of appeal addressed another concept that is central to CEQA's application: the level of specificity needed in a project description. One found that an EIR's project description could identify and analyze alternative uses for a proposed project's buildings, an office use and a residential use. Another court ruled, however, that an EIR which described an "outer envelope" for development, while leaving flexibility as to building configurations and uses within that envelope, violated CEQA's fundamental rule that a project description must be accurate, stable and finite. The baseline for an EIR's impact analysis once again surfaced as an issue in a case that featured conversion of a vacant apartment building to a hotel. There, the court ruled that the agency did not need to consider housing displacement impacts because the units were unoccupied under the conditions existing at the beginning of environmental review. Finally, in a blockbuster opinion, a court of appeal held that courts can no longer consider challenges to the adequacy of level-of-service-based traffic analyses. SB 743 dictates that, as of the date of the new CEQA guidelines requiring use of a vehicle miles traveled standard (December 2018), traffic congestion and delay can no longer be considered a significant environmental impact. Because courts apply the law in effect at the time of their decision, the court held that a challenge to the adequacy of the EIR's level of service-based analysis was moot, even though the agency completed the EIR and issued the project approvals long before SB 743 was adopted. [READ THE FULL REPORT -- 2019 CEQA Year in Review](#)

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