

CEQA Year in Review 2012 -- A Summary of Published Appellate Opinions Relating to CEQA

Introduction While CEQA reform became a hot topic for a few days near the end of the 2012 legislative session -- but then foundered -- the appellate courts continued to issue CEQA decisions at a rapid clip. As is common in a challenging economy, the courts were generally less receptive to CEQA claims than they are in boom times. Eleven decisions on environmental impact reports were issued during the year. The opinions in most of these cases showed little patience with arguments that would require the court to second-guess the adequacy of an EIR's technical analysis, and no willingness to entertain challenges to an EIR based on minor flaws. Among other topics, the EIR cases addressed issues relating to the accuracy of the project description, impacts of greenhouse gas emissions, mitigation for biological impacts, conversion of agricultural land, availability of water supplies, the range of alternatives considered, and the scope of the cumulative impacts analysis. The challenges were rejected unless the court found an obvious gap in the analysis or a major inconsistency in the data and further concluded that the EIR did not adequately explain why its discussion of the issue should be relied on despite the apparent defect. Taken together, the appellate cases published in 2012 reflect an increasing appreciation of the principle that what is required is not perfection, but rather a reasonable effort to provide environmental information that will actually be useful to agency decision-makers. The California Supreme Court also continues to weigh in. In 2012 the court issued an important decision holding that a petitioner must exhaust administrative remedies before filing a CEQA suit whenever the agency gives the public an opportunity to voice objections to the agency's determinations under CEQA. The court also accepted four cases for review during the year: a case in which the court of appeal overturned a categorical exemption for a single-family residence and required that an EIR be prepared; a challenge to the EIR for expansion of the Los Angeles metro system in which the key issue is whether an agency may use a future baseline to determine the impacts of a project that will not start operating for a number of years; and two other cases involving the scope of a public agency's duty to fund mitigation for impacts of its own projects on facilities and services provided by another agency. All four cases have stirred a great deal of controversy and are being closely watched by public agencies and others who are interested in seeing the CEQA process simplified and the ever-increasing volume of CEQA litigation reduced. **Topics covered in the 2012 edition of [CEQA Year in Review: Projects Subject to CEQA Exemptions from CEQA Environmental Impact Reports Supplemental CEQA Review Certified Regulatory Programs CEQA Litigation](#)**

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