Blogs
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California Land Use & Development Law Report

CEQA YEAR IN REVIEW 2015

A Summary of Published Appellate Opinions Under the California Environmental Quality Act

In 2015, the California appellate courts continued to chart new ground as they grappled with some of CEQA's most difficult and controversial questions. The Supreme Court of California led the way, issuing four opinions on hotly contested issues. For the first time, the court addressed the problematic question of what thresholds of significance should be used to measure the significance of greenhouse gas emissions. In a decision that likely pleased few, the court blessed consistency with AB 32's emissions reduction goal as an appropriate standard, but provided little guidance on how agencies might show consistency for specific projects. On the other hand, the court issued two decisions that place reasonable, common-sense limits on CEQA's reach. In one decision, the court set constraints on the ability of project opponents to contest categorical exemption determinations by asserting that significant impacts will occur due to unusual circumstances. In the other, the court put an end to the counter-intuitive but persistent argument that CEQA extends beyond a project's effects on the environment to require review of the environment's effects on the project. In its final decision, the court held that a state university cannot use the legislature's failure to appropriate earmarked funds as an excuse to avoid adopting mitigation measures for off-site impacts, but did not decide when a public agency can reject a proposed mitigation measure as infeasible due to budgetary constraints. The year was also notable for the number of opinions dealing with CEQA exemptions. Two cases upheld categorical exemptions, applying the standards set by the supreme court in its decision on the unusual circumstances exception. In three others, the courts overturned the agency's exemption determination, ruling in one case that the agency had interpreted the exemption too broadly, and in the others that the agency had failed to point to evidence in the record of its proceedings sufficient to show the exemption applied. Seven court of appeal decisions addressed EIR adequacy, and upheld the EIR in every case. The proper baseline for analyzing impacts was an important theme, with the courts making it clear that a lead agency has broad discretion to set a baseline that reflects historical conditions occurring well before CEQA review starts. In another precedent-setting decision, a court held that an increased demand for emergency services due to a project is not an environmental impact that triggers CEQA's mitigation requirements. The use and benefits of program EIRs also received significant attention in opinions recognizing that agencies may use program EIRs to defer evaluation of project-specific impacts and mitigation strategies to a later stage of approval when the information necessary for a detailed analysis becomes available. Finally, in what may prove to be one of the year's most influential decisions, a court disapproved the practice of besieging the lead agency with burdensome comments on a draft EIR in order to stymie the EIR process, emphasizing that the purpose of comments should be to improve the EIR, and that the opportunity to comment should not be used as a means to wear out the lead agency. **READ THE FULL REPORT**

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California Land Use & Development Law Report

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