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California Supreme Court Clarifies What Is a “Project” Subject to CEQA

The California Supreme Court clarified what activities are subject to CEQA in its recent decision in *Union of Medical Marijuana Patients, Inc. v. City of San Diego*, No. S238563, 2019 WL 3884465 (Aug. 19, 2019). First, the court held that enactment of a zoning ordinance is not necessarily a project in all circumstances. Second, the court held that when determining whether an activity is a project, a lead agency must consider whether the activity is theoretically capable of causing environmental impacts, not whether it will actually cause environmental impacts. In 2014, the City of San Diego enacted an ordinance that regulated the establishment of medical marijuana dispensaries in the city. The city determined that the ordinance was not a project subject to CEQA. Union of Medical Marijuana Patients challenged the city's adoption of the ordinance, arguing that it was a project subject to CEQA and that the city should have analyzed its environmental impacts. As we [previously reported](#), the court of appeal rejected UMMP's claims. The California Supreme Court granted UMMP's request that it review that decision. The first question before the Supreme Court was whether all zoning ordinances are necessarily projects subject to CEQA under section 21080 of the statute. Section 21080 states that CEQA applies to "discretionary projects" carried out or approved by a public agency, and lists examples of discretionary actions that CEQA can apply to, including enactment and amendment of zoning ordinances. UMMP argued that inclusion of zoning ordinances on this list means all zoning ordinances are necessarily "projects" that are subject to CEQA. The court disagreed, based on section 21065 of the statute, which defines a "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." A zoning ordinance is not a project subject to CEQA unless it meets this test. The court concluded, however, that San Diego's medical marijuana dispensary ordinance qualified as a project because it was capable, at least in theory, of causing a reasonably foreseeable indirect physical change in the environment. The court explained that when making an initial determination as to whether an activity is a project, the lead agency's analysis should be limited to the effects that the activity is capable of causing, not the impacts that it actually will cause. Applying this standard, the court determined that the city's ordinance—which would allow a sizable number of new retail businesses of a type not previously permitted in the city—could foreseeably result in new retail construction to accommodate the businesses, and could cause a citywide change in vehicle traffic patterns among the businesses' customers, employees, and suppliers. The court's decision will likely result in agencies having to undertake an analysis of a broader range of activities under CEQA based on their potential to cause environmental impacts. As the court explained, the decision whether an activity will actually result in environmental impacts should be made in connection with either a categorical exemption determination or in an initial study, not at the outset of the process, when the lead agency determines whether the activity is subject to CEQA in the first place.