



Third District Affirms Judgment Rejecting CEQA Challenges To EIR For Cordova Hills Master Planned Community Project

By [Arthur F. Coon](#) on April 9, 2019

On April 2, 2020, the Second Appellate District Court of Appeal (Division 5) filed its published opinion in *Coalition for an Equitable Westlake/MacArthur Park v. City of Los Angeles et al. (Adrian Jayasinha et al., Real Parties in Interest)* (2020) ___ Cal.App.5th ___, which affirmed a judgment dismissing a CEQA action challenging the City’s project approvals and Mitigated Negative Declaration (MND) for a mixed-use development project. The judgment of dismissal was entered after the trial court sustained without leave the City’s and Real Parties’ demurrers on statute of limitations grounds. In affirming, the Court reaffirmed and followed Supreme Court precedent “ma[king] clear that the filing of a facially valid notice [of determination or notice of exemption] starts the running of the statute of limitations, even where the underlying CEQA determinations may be flawed.” (Citing *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 43 [NODs]; *Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 505 [NOEs].)

Relevant Factual and Procedural Background

The Lake on Wilshire Project (the “Project”) consists of a 220-room hotel, 478 residential units in a 41-story tower, and a multi-purpose center including an 850-seat theater on a 1.64-acre site. On March 3, 2017, the City of LA’s Deputy Advisory Agency approved the Project’s Vesting Tentative Map and adopted the MND. Plaintiff failed to appeal these actions to the Planning Commission within the 10-day administrative appeal period, and the City filed a Notice of Determination (NOD) pursuant to CEQA on March 15, 2017, advising the public that the Agency approved the Tract Map and MND, and made mitigation measures conditions of approval, on March 3, 2017. The NOD further stated that its filing started a 30-day CEQA statute of limitations for court challenges. Plaintiff did not file any challenges to the City’s Tract Map approval or CEQA determinations within the 30-day period.

On October 12, 2017, City’s Planning Commission approved conditional use permits and other Project approvals, and found that no subsequent EIR, negative declaration or addendum was required, subsequently mailing a November 1 determination letter showing a November 21, 2017 appeal deadline.

Two tenants of an existing building on the Project site timely administratively appealed the Planning Commission's decision to the City Council, which denied the appeals and also approved general plan amendments for the Project on January 31, 2018.

Plaintiff Coalition filed its CEQA writ petition challenging the MND on March 2, 2018. On August 20, 2018, the trial court sustained the City's and Real Parties' demurrers, without leave to amend, on statute of limitations and failure-to-exhaust grounds. Plaintiff appealed the ensuing judgment of dismissal and the Court of Appeal affirmed.

The Court of Appeal's Opinion

The Court held plaintiff Coalition's action, filed nearly a year after the March 15, 2017 date when the City's facially valid NOD filing triggered a 30-day statute of limitations, was time barred by CEQA's statute of limitations. (Pub. Resources Code, § 21167(b).) This was so notwithstanding plaintiff's argument that the Agency lacked legal authority to make CEQA determinations or to approve the Project. While such arguments of flaws in the approval process (such as the Agency exceeding the scope of its authority) could have been considered in a timely action, they could not be used to "go behind" and undermine a facially valid NOD in order to argue that the statute of limitations never began running.

The Court found its holding was compelled by on-point authority from the California Supreme Court, which it noted "has made clear that the filing of a facially valid notice starts the running of the statute of limitations, even where the underlying CEQA determinations may be flawed." As stated in the Supreme Court's *Green Foothills* decision: "If a valid NOD has been filed (§§ 21108, subd. (a), 21152, subd. (a)), any challenge to that decision under CEQA must be brought within 30 days, regardless of the nature of the alleged violation. The statutory language does not authorize an extension of this 30-day period if the suit alleges that, despite the filing of an NOD, the project was approved without a prior environmental assessment." (*Green Foothills, supra*, 48 Cal.4th at 48.) The Supreme Court's *Stockton* decision made clear that the same rules apply to a facially valid and properly filed Notice of Exemption (NOE), which automatically triggers a 35-day statute of limitations for any challenges to the approval process. (*Stockton, supra*, 48 Cal.4th at 501.) Per the Supreme Court, the contrary position "confuses the *timeliness* of a lawsuit with its *merits*. Such an approach is contrary to the principle ... that a statute of limitations applies regardless of the merits of the underlying lawsuit" and suffers from the "circular premise that a limitations period to challenge the validity of an agency decision is inapplicable if the agency decision is invalid." (*Id.* at 501, fn. 10.)

The Court of Appeal went on to observe that "[p]rior authorities recognize only two situations where an NOD would not trigger the statute of limitations." These are where (1) the NOD is facially invalid because the information it is required by the CEQA Guidelines to contain is missing or incorrect (Citing *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 532 [holding statute ran from filing of second NOD that corrected an information error – wrong project approval date – in first NOD]; *Ventura Foothills Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429, 432, 436 [holding short statute not triggered where NOD's project description omitted material 15-foot increase in building's height of which public had received no formal notice]); and (2) the NOD is filed before decision-making body has approved the project. (Citing *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 962-965 [NOE filed for resolution authorizing agency to negotiate to purchase a water project preceded by 5 months agency's project "approval" through taking actual steps to purchase]; *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 416, 418 [NOE filed 5 days prior to any arguable project approval held ineffective to trigger 35-day statute of limitations].)

Applying the Supreme Court's precedents, the Court of Appeal found in the case before it that "[a]pplication of the statute of limitations bar to the Coalition's petition is straightforward." The Coalition had no credible argument that the NOD failed to include or accurately state all required information – i.e., the NOD was *facially valid*. Nor did the Coalition have a credible argument that the March 15, 2017 NOD was premature since the Agency approved the MND and Tract Map on March 3, 2017, twelve days before it was filed.

Lacking facts fitting into a recognized exception, the Coalition instead attacked the validity of the NOD by challenging the Agency's authority under the municipal code to approve the Project and its CEQA review, and to make CEQA findings, and claiming the Agency's decision was not made properly appealable to an elected body and that it improperly split approval decision and CEQA review authority between City's bodies. These arguments failed, however, because they confused the lawsuit's *timeliness* with its *merits*. They were thus properly rejected under the Supreme Court's *Stockton* decision, which forbids "going behind" the declarations of project approval in a facially valid and properly filed NOD to allege flaws in the approval process that supposedly render the NOE invalid or ineffective. Per the Court of Appeal, *Stockton* limited *Amador's* application "to facts involving preliminary steps toward project approval" and it does not apply where the approval recited in the NOE (or NOD) is alleged to be legally unauthorized or invalid. Again, while such substantive arguments could have been raised in a timely action, plaintiff Coalition could not raise them because the facially valid NOD's filing rendered its action time-barred.

Conclusion and Implications

While the Court of Appeal's opinion correctly follows settled law, it is nonetheless important both as a reminder of the operation of CEQA's "bright line" statute of limitations rules, and to clarify the very limited situations in which an NOD or NOE will be deemed "facially invalid" such that its filing will not trigger CEQA's short statute of limitations periods.

The Court's opinion also provides a good summary of the purposes and importance of CEQA's statutes of limitation:

Statutes of limitations are designed "to prevent stale claims, give stability to transactions, protect settled expectations, promote diligence, encourage the prompt enforcement of substantive law, and reduce the volume of litigation." [Citation] When a plaintiff files suit under CEQA to challenge a project approval, the applicable statutes of limitations are "unusually short." (Guidelines, § 15112, subd. (a).) "In enacting and amending section 21167, the Legislature clearly sought to place strict limits on the time during which projects may be challenged under CEQA." (*Green Foothills, supra*, 48 Cal.4th at p. 50 [reviewing legislative history and policy reasons for promoting prompt resolution of CEQA challenges].) "The shortest of all CEQA statutes of limitations [i.e., 30 or 35 days] applies to cases in which agencies have given valid public notice, under CEQA, of their CEQA-relevant actions or decisions. The filing and posting of such a notice alerts the public that any lawsuit to attack the noticed action or decision on grounds it did not comply with CEQA must be mounted immediately." (*Stockton, supra*, at p. 488.)

Questions? Please contact [Arthur F. Coon](#) of Miller Starr Regalia. Miller Starr Regalia has had a well-established reputation as a leading real estate law firm for more than fifty years. For nearly all that time, the firm also has written *Miller & Starr, California Real Estate 4th*, a 12-volume treatise on California real estate law. "The Book" is the most widely used and judicially recognized real estate treatise in California



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