



Reversal of Misfortune: Second District Holds CEQA Action Challenging Los Angeles Housing Development Project Barred By Statute of Limitations, Reverses Trial Court Judgment Rejecting MND and Requiring EIR

By [Arthur F. Coon](#) on January 29, 2024

In a published opinion filed on January 17, 2024, the Second District Court of Appeal (Div. 5) reversed a trial court judgment overturning a mitigated negative declaration (MND) and requiring an EIR for a 42-single family home project; instead, the Court of Appeal held the petitioners' action should have been dismissed as time-barred and that the trial court erred in overruling the demurrers of respondent City of Los Angeles and the real party developers on statute of limitations grounds. *Delia Guerrero et al. v. City of Los Angeles (TTLE Los Angeles – El Sereno LLC et al, Real Parties in Interest)* (2024) ____ Cal.App.5th____.

Factual and Procedural Background

The project is a 42-lot single family residential subdivision on a nearly 5-acre hillside parcel in Northeast Los Angeles; as CEQA compliance, the City prepared a June 2016 MND and, after various project redesigns, an updated March 2017 MND. As revised, the project required a number of discretionary approvals in addition to the subdivision map, including a rezoning and retaining wall approvals. On March 3, 2020, following an earlier public hearing, the City's Planning Department, acting as an advisory agency, conditionally approved a vesting tentative tract map, and adopted the MND and a mitigation monitoring program; on March 25, 2020, the City filed a Notice of Determination (NOD) pursuant to CEQA.

At a later May 13, 2020 hearing, the East Los Angeles Area Planning Commission (Planning Commission), acting in its capacity as a Zoning Administrator and Board of Zoning Adjustment, also adopted the previously prepared MND, approved various zoning determinations and adjustments needed for the project's retaining walls, and recommended the City Council adopt the necessary zone change. It



followed that action with a January 14, 2021 letter of determination and the City filed a second NOD on February 4, 2021.

In the third and final stage of development approvals for the project, on June 8, 2021, the City Council also adopted the previously prepared MND and approved the recommended rezoning, which actions were followed by the filing of a third NOD by the City on June 18, 2021.

Petitioners filed a writ action challenging the project approvals based on CEQA, Planning and Zoning Law (Gov. Code, § 65000 et seq) and Subdivision Map Act (Gov. Code, § 66410 et seq) legal theories on July 16, 2021, within 30 days of the filing of the City's third NOD for the project. The trial court sustained City's and real parties' joint demurrer to the Planning and Zoning Law and Map Act claims, but overruled it as to the CEQA claim, finding the petition was timely filed within 30 days of the June 18, 2021 filing of the NOD filed after the City Council's action. After a merits trial, the trial court again rejected the CEQA statute of limitations argument and found that the MND was inadequate and an EIR was required because the project may have significant unmitigated environmental impacts.

On the City's and developers' timely and later-consolidated appeals, the Court of Appeal reversed the judgment and remanded with directions to the trial court to dismiss the petition as time-barred.

The Court of Appeal's Opinion

In reviewing de novo the issue whether petitioners' action was time-barred, the Court observed that CEQA requires untimely actions to be dismissed (citing CEQA Guidelines, § 15112(b); *Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 499), and that to be timely any CEQA challenge must be filed within 30 days after the filing of a facially valid NOD. (Citing *Coalition for an Equitable Westlake/MacArthur Park v. City of Los Angeles* (2020) 47 Cal.App.5th 368, 378 ("CEWM"), my April 9, 2020 post on which can be found [here](#); *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 50 ("Green Foothills"); Pub. Resources Code, § 21167(b), (c), (e).)

The Court of Appeal held that petitioners' action was untimely by more than a year because the City's first NOD, filed on March 25, 2020, following the City Planning Department's conditional vesting tentative tract map approval, triggered the 30-day CEQA statute of limitations to challenge the adequacy of the MND for the project.

The Court rejected the argument that the action was timely based on the City's third NOD, filed on June 18, 2021, after the Council approved the zoning change, for four basic reasons:

1. CEQA Review Must Occur at the Earliest Meaningful Opportunity

Per the Court, "CEQA requires a public agency to conduct environmental review of a proposed project as early as feasible in the land use planning process." The reason for this rule is "to enable environmental considerations to influence project program and design." (Quoting CEQA Guidelines, § 15004(b).) Agencies are prohibited from taking "action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review." (Citing *Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist.* (2007) 147 Cal.App.4th 643, 654, quoting Guidelines, § 15004(b)(2)(B).) At the same time, however, review must occur late enough to allow meaningful analysis of a project's potential environmental impacts. (*Ibid*; Guidelines, § 15004(b).)

CEQA focuses on the discretionary nature of project approvals, and applies to discretionary approvals including, but not limited to, approvals of tentative subdivision maps. (Pub. Resources Code, § 21080(a).)

Per the Court: “The mere possibility that a project may change as it moves through the planning process does not preclude applying CEQA’s requirements at the early stages of project review.” Rather, CEQA requires that environmental review be conducted before the lead agency commits itself to the project, or any features of it, so as to effectively preclude consideration of alternatives or mitigation measures, including the alternative of not proceeding with the project. Here, the City properly conducted environmental review before issuing any project approvals, and thus incorporated resulting mitigation measures (such as tree removal reductions and replacement requirements) into the conditions of the vesting tentative map approval.

2. For Projects Subject to Multiple Discretionary Approvals, The First Such Approval Triggers the CEQA Statute of Limitations

CEQA’s longest, 180-day statute of limitations runs from the date the public agency approves the project. (Citing *Van de Kamps Coalition v. Board of Trustees of Los Angeles Community College Dist.* (2012) 206 Cal.App.4th 1036, 1045.) CEQA’s unusually short statutes of limitations – including limitations periods of 30 days triggered by NODs and 35 days triggered by notices of exemption (NOEs) – apply to strictly limit the time for challenging project approvals in order to ensure finality and predictability in land use planning decisions. A CEQA “project” refers to the activity being approved, and to the “whole” of the action, and not to each separate approval for an activity that is subject to several discretionary approvals. (CEQA Guidelines, § 15378(c); *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 105-106.) A project “approval” is defined for CEQA-purposes as a public agency’s decision that “commits the agency to a definite course of action” regarding a project, and it occurs upon the agency’s *earliest* such firm commitment, not when subsequent discretionary approvals are made. (Citations omitted.)

Per the Court: “Here, the City made its earliest firm commitment to the Project when it approved the vesting tentative tract map, even though there were conditions attached to the approval” and such approval was thus a project approval under CEQA. The Court also observed that the Subdivision Map Act contemplates that the discretionary approval occurs at the tentative map stage, and the conditions attached as a standard matter to the agency’s tentative map approval must be satisfied before the final map will be approved. Significantly, it also expressly concluded that nothing about the City’s conditioning of the vesting tentative tract map on the Council’s rezoning approval affected the tentative map approval’s status as a CEQA approval. (Citing 7 Miller & Starr, Cal. Real Estate (4th ed., Dec. 2023 update), § 20:13.)

3. The Filing of an NOD Triggers CEQA’s Short 30-Day Statute of Limitations

The Court held the filing and posting of the City’s earliest, March 25, 2020 NOD effectively triggered CEQA’s 30-day statute of limitations to challenge the MND’s validity; it rejected Petitioners’ arguments that that NOD was prematurely filed and ineffective because “there was no project approval until the City Council approved the zone change in June 2021[.]” To the contrary, as explained above, the City was required to conduct its environmental review as early as feasible, and “the [Planning Department’s conditional] vesting tentative tract map approval was a valid project approval under CEQA.”

4. No Material Project Change Triggered Any New CEQA Statute of Limitations

Once an environmental document, such as an EIR, MND or negative declaration, is certified or adopted, the public agency’s role under CEQA is generally at an end; the statute of limitations runs from the initial discretionary approval and is not retriggered by subsequent implementing approvals. (Citing, inter alia, Pub. Resources Code, § 21166; CEQA Guidelines, § 15162(a), (c); *Friends of College of San Mateo*

Gardens v. San Mateo County Community College Dist. (2016) 1 Cal.5th 937, 945; *Citizens for a Green San Mateo v. San Mateo County Community College Dist.* (2014) 226 Cal.App.4th 1572, 1594-1595.)

If a project changes following an agency's adoption of a CEQA document, no subsequent EIR is required unless certain circumstances exist (Pub. Resources Code, § 21166; *College of San Mateo*, 1 Cal.5th at 945-946.) Whether subsequent CEQA review is required, and if so what type, depends on whether major revisions in the document will be required by substantial changes to the project or its circumstances or newly available information. Once the statute of limitations on the initial project approval has expired, any later CEQA challenges are precluded except to the extent they timely challenge an agency's decision about whether to require a subsequent or supplemental EIR, MND or negative declaration; the original, underlying CEQA document may no longer be attacked.

The Court again rejected petitioners' argument that the City's final June 2021 NOD triggered CEQA's statute of limitations, holding that "the limitations period for challenging the MND closed 30 days after the March 3, 2020 NOD was filed, and because there have been no changes to the Project requiring a subsequent or supplemental MND, the later adoptions of the same MND cannot restart or retrigger a new limitations period."

Conclusion and Implications

The Court of Appeal applied well-established CEQA statute of limitations principles in the context of the City of Los Angeles' complex, multi-stage land use development approval process. The key and dispositive take away is that the first in a series of discretionary project approvals for the *same project* will effectively trigger CEQA's statute of limitations. Once that limitations period runs, due to CEQA's strong concerns for certainty and finality, there can be no further challenges to the project's CEQA compliance *unless* an agency's obligation to conduct subsequent or supplemental review is triggered by substantial changes in the project or other relevant circumstances under CEQA's subsequent review rules; since no such project changes or circumstances giving rise to any duty on City's part to conduct subsequent review occurred here, petitioners were simply unable to assert any timely CEQA claim.

While CEQA is without doubt a complex law in many respects – as amply evidenced by the fact that the trial court got fundamental and well-established statute of limitations principles so wrong here – its rules and their correct application by the Court of Appeal here make sense and ultimately achieve a fair result. Lead agencies cannot reasonably be expected to conduct and complete comprehensive CEQA review of a project proposed for approval on the "front end" – i.e., before their first discretionary approval is issued – and yet remain vulnerable for an extended period through the end of a lengthy project permitting and approval process, despite CEQA's short statutes of limitations, to "back end" lawsuits challenging the adequacy of CEQA review that are delayed until after the final discretionary approval is given. That's not how CEQA works, nor how it should work. Thankfully, the Court of Appeal's reversal corrected the trial judge's unfortunate confusion here.



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 and is cited by practicing attorneys and courts throughout the state. The firm has expertise in all real property matters, including full-service litigation and dispute resolution services, transactions, acquisitions, dispositions, leasing, financing, common interest development, construction, management, eminent domain and inverse condemnation, title insurance, environmental law and land use. For more information, visit www.mslegal.com.

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