

CALIFORNIA SUPREME COURT UPHOLDS 30-DAY STATUTE OF LIMITATIONS FOR CEQA LAWSUITS CHALLENGING SUBSEQUENT APPROVAL DECISIONS BY LEAD AGENCIES

In the California Supreme Court's latest California Environmental Quality Act decision, the court upheld CEQA's short 30-day statute of limitation as applied to subsequent approval decisions made by a lead agency. This decision is important because it gives subsequent approval decisions – when a lead agency issues a further approval for a project that has already been through the CEQA process – the same certainty against late lawsuits that applies when a project is approved for the first time. Citing the legislative history of CEQA's statutes of limitations, the court said that a bright line rule that the filing of a notice of determination triggers a 30-day statute of limitations promotes certainty, allowing local governments and developers to proceed with projects without the threat of potential future litigation.

The decision, *Committee for Green Foothills v Santa Clara County Board of Supervisors*, arose out of decisions by Santa Clara County that no further review was required for the approval of certain trails that had earlier been approved following preparation of EIRs for an overall project that included new buildings in the Stanford campus. The County made this determination pursuant to Public Resources Code section 21166 and CEQA Guideline 15162, which generally provides that, once an EIR or negative declaration has been prepared for a project, an agency does not have to prepare a further EIR unless there are project changes, changes in circumstances, or new information showing a new or substantially more severe significant environmental impact. The Committee for Green Foothills argued that, because the County did not perform any further environmental review for the later approval of the specific trail, the 30-day statute of limitations did not apply.

The court noted that lead agencies are not required to post a notice of determination (or "NOD") when they approve subsequent activities after an EIR or negative declaration has already been prepared for a project, and when the agencies determine that no further EIR is required. (CEQA's notice of determination is the notice that is posted after an agency approves a project, and if properly posted, it triggers the 30-day time period within which any CEQA lawsuit must be filed.) The court also noted, however, that such NODs for followup approvals are frequently filed and posted in order to trigger the 30-day statute of limitations. The court held that when a lead agency does file an NOD for the approval of a subsequent activity, and makes a finding that no further CEQA review is required, the 30-day statute of limitation applies to that decision.

Most practitioners have recommended the filing of notices of determination for subsequent lead agency approvals, under the belief that such an NOD triggers the 30-day statute of limitations. That is now confirmed by this ruling. The ruling also generally upholds the sanctity of CEQA's short statute of limitations, one of the relatively few areas of some certainty in CEQA practice.

If you have any questions regarding this alert, please contact:

Michael H. Zischke at 415.262.5109 or mzischke@coxcastle.com

© 2010 Cox, Castle & Nicholson LLP is a full service law firm offering comprehensive legal services to the business community and specialized services for the real estate industry. Reproduction is prohibited without written permission of the publisher. The publisher is not engaged in rendering legal, investment or insurance advice through this publication. No statement is to be construed as legal, business or insurance advice.