

## CALIFORNIA SUPREME COURT REJECTS ATTEMPTS TO UNDERMINE CEQA'S STATUTE OF LIMITATIONS

In the California Supreme Court's latest California Environmental Quality Act decision, the court upheld CEQA's statute of limitations, and confirmed that project opponents cannot avoid the time limits set forth in those statutes by arguing that the underlying project approvals were invalid. This decision is important because it upholds one of the relatively few areas of certainty in CEQA practice – namely, the requirement that lawsuits must be brought within a short time following the lead agency's posting of either a notice of determination or a notice of exemption, depending on the type of CEQA decision that was made.

The court's decision, *Stockton Citizens for Sensible Planning v. City of Stockton*, arose out of a staff level approval for a Wal-Mart store. Staff determined that the Wal-Mart was consistent with prior approvals that had been evaluated under CEQA, and also determined that the City was required to approve the Wal-Mart project on the basis of its consistency with the prior approvals. For this reason, the City determined that the approval was ministerial and thus exempt from CEQA, and posted a notice of exemption to that effect. The notice of exemption triggered a 35-day time period for bringing a lawsuit.

Project opponents filed suit some months after the 35-day period expired, and argued that the statute of limitations was not triggered because the staff level approval was not valid. Both the trial court and the Court of Appeal accepted these arguments and ruled in favor of the project opponents.

The Supreme Court overturned the Court of Appeal's decision, holding that the project opponents could challenge the validity of the City's approvals, but only within the 35-day statute of limitations period. The Court held that claims about the validity of the underlying project approval could not be used to evade the statutory time limit for challenging that approval. The Court noted that the purpose of the statute of limitations is to provide certainty, and that the statute of limitations necessarily operates across the board, barring both well-founded and ill-founded claims if they are not brought in time.

The project opponents also argued that the notice of exemption itself was inadequate, and thus did not trigger the 35-day time period. The Court rejected this argument, noting that CEQA only requires a "brief" description of the approved project. The Court concluded that the notice could have been clearer, but because it minimally complied with CEQA, it was effective to trigger the 35-day limitations period.

This is the second decision in recent months confirming the certainty that is provided by CEQA's statutes of limitations. In February, the court upheld CEQA's 30-day statute of limitations as it applies to notices of determination following subsequent approval decisions by a lead agency. *Committee for Green Foothills v. Santa*

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*Clara County Board of Supervisors.* The *Stockton Citizens* decision also concludes a relatively rare run of several CEQA cases decided by the Supreme Court over recent months. With the issuance of this decision, there currently are no other CEQA cases pending before the California Supreme Court.

Michael Zischke and Scott Birkey of Cox, Castle & Nicholson represented the California Building Industry Association in filing a “friend of the court” brief in this case.

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