

Can a Premature Notice of Exemption Trigger CEQA's Short Limitations Period?

CEQA provides an extraordinarily brief period for bringing suit if a public agency files the proper notice with the county clerk – 30 days for project approvals based on a negative declaration or an EIR, and 35 days for projects that are exempt. If the agency fails to file a notice, a challenger has 180 days from project approval to sue. While these rules appear to be straightforward, a vexing question has spawned two recent decisions by the California Supreme Court and now, a new court of appeal decision: whether the courts may look behind the notice the agency files and find it invalid if it does not accurately reflect the agency's action. In the first of these cases, *Committee for Green Foothills*, the opponents filed a CEQA suit almost six months after Santa Clara County filed notice of its determination to approve a project proposed by Stanford University. The opponents contended the notice was invalid, and the 30-day time bar didn't apply, alleging the county had not actually determined whether the project would result in significant impacts on the environment, even though the notice included such a finding. The Supreme Court rejected the argument, and announced a bright line rule: that CEQA's short statute of limitations does not depend upon the merits of the petitioners claims, but rather on whether a complete notice has been filed. If an adequate notice of determination is filed, the 30-day period to file a challenge is triggered for all CEQA decisions referred to in the notice. Several months later the Supreme Court reiterated this rule in the *Stockton Citizens* case. There, the city filed notice that it had approved a Wal-Mart supercenter and found the approval exempt from CEQA. The project opponents tried to skirt the 35-day limitations period by alleging that a letter from city staff did not amount to a valid or effective approval of the project, and therefore the city's notice was itself invalid. Again, the court refused to look behind the notice the agency had filed, and held the CEQA challenge was time-barred. The issue decided by the court of appeal in the latest case, *Coalition for Clean Air v City of Visalia* also involved a claim the agency's notice for an exempt project was deficient, but for a different reason: that the city had not approved the project until several days after it filed its notice. Although the city's notice of exemption contained all of the information required by CEQA and was adequate on its face, the court ruled it would be void at the outset if it were not "properly filed." CEQA specifies that an agency may file a notice of exemption *after* the public agency has approved the project, not before then. This, according to the court, makes project approval a necessary prerequisite to the validity of the notice, and as a result, a notice filed before the project is approved is not "properly filed." Can this ruling be squared with what the Supreme Court has said on the subject? Maybe. The court has made it clear that to be effective, the notice must be both facially valid and properly filed. But then, maybe not. The Supreme Court has also ruled that the statute of limitations is triggered when an adequate notice is filed, even though it is claimed the agency had not actually approved the project, which could be argued to mean that project approval is not a prerequisite to the notice's validity. [Coalition for Clean Air v City of Visalia F062983M \(Fifth Dist. Sept. 14, 2012\)](#) See *Committee for Green Foothills v. Santa Clara County Board of Supervisors*, 48 Cal. 4th 32 (2010); *Stockton Citizens for Sensible Planning v. City of Stockton*, 48Cal. 4th 481 (2010).

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