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Misrepresentations Can Bar Agency's Reliance on CEQA Statute of Limitations

An agency could be equitably estopped from relying on the 35-day statute of limitations applicable to a CEQA Notice of Exemption where the agency had misled the public into expecting the agency would instead circulate a Final EIR for public comment and file a Notice of Determination following project approval. *Citizens for a Responsible Caltrans Decision v. California Department of Transportation*, 46 Cal. App. 5th 1103 (2020).



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Final EIR for the I-5/SR-56 interchange contained conflicting language regarding the CEQA process: while it stated that the project was exempt from CEQA, it also stated that Caltrans would decide whether to approve the project after circulating the Final EIR and would file a Notice of Determination if it approved the project. A few weeks after publishing the Final EIR, and *before* the start of the public comment period on the Final EIR, Caltrans approved the interchange project and filed a Notice of Exemption with the State Clearinghouse. The Notice of Exemption had a different State Clearinghouse Number than the Final EIR. Caltrans then initiated the 30-day review period on the Final EIR and subsequently responded to the comments that it received on the Final EIR. The petitioner contended that Caltrans was estopped from relying on the statute of limitations because it had misled the public into believing that it planned to prepare and certify an EIR and file a Notice of Determination for the project. The court held that the petitioner had alleged sufficient facts that, if true, estopped Caltrans from relying on the 35-day statute of limitations triggered by the filing of the Notice of Exemption. The court explained that the petitioner's equitable estoppel argument required four elements: (1) Caltrans knew that it would not circulate the Final EIR before approving the project and that it would file a Notice of Exemption; (2) Caltrans made misleading statements to the contrary, which the petitioner had a right to believe were intended to

be acted on; (3) the petitioner was ignorant of the true state of facts; and (4) the petitioner relied upon Caltrans's conduct to its injury. The court determined that these elements were satisfied. The court noted that Caltrans had made multiple statements indicating that it would approve the project only after circulation of the Final EIR and that it would file a Notice of Determination following approval. These included the following:

- The Draft EIR stated multiple times that Caltrans would decide to approve the project after circulating the Final EIR, and that Caltrans would file a Notice of Determination if it approved the project.
- The Final EIR for a different component of the NCC Project (which involved widening a portion of Interstate 5) stated that Section 103 was not intended to eliminate project-specific CEQA reviews and that the widening project and the interchange project would be independently evaluated under CEQA.
- A public works plan for the NCC Project stated that compliance with CEQA would be addressed for each specific project.
- The Final EIR repeated statements from the Draft EIR that Caltrans would decide to approve the project after circulating the Final EIR, and that Caltrans would file a Notice of Determination if it approved the project. The Final EIR also stated that CEQA no longer applied to the project due to Section 103, but that Caltrans was nevertheless retaining the CEQA-specific language in the document (which was also a joint EIS prepared to satisfy NEPA) because the CEQA analysis was well-developed and provided important information to the public.

The court held that these statements supported a reasonable inference that Caltrans made representations that misled the public.