

March 5, 2010 | Posted By

CALIFORNIA'S HIGH COURT CLARIFIES CEQA'S 30-DAY STATUTE OF LIMITATIONS

Committee for Green Foothills v. Santa Clara County Board of Supervisors, ___ Cal.4th ___ (February 2, 2010, No. S163680) ("Green Foothills")

By [Robyn Christo](#)

On February 11, 2010, the California Supreme Court unanimously decided that a lead agency's filing of a Notice of Determination ("NOD") sets off the 30-day statute of limitations (found in Public Resources Code section 21167, subdivisions (b), (c) and (e)) for all California Environmental Quality Act ("CEQA") lawsuits brought to challenge the decision announced in the NOD.

The court further clarified that CEQA's 180-day statute of limitations (found in section 21167(a)) only applies to actions alleging that a public agency is carrying out or has approved a project without considering its environmental effects. According to the court, no amount of "artful" pleading will extend the statutory limitations period for an action that does not challenge a project within the meaning of CEQA.

In *Green Foothills*, the court also briefly discussed the 35-day limitations period found in section 21167(e), which pertains to actions alleging that the agency has improperly determined that a project is exempt from CEQA. The court's full opinion addressing the applicability of section 21167(e) is not expected until sometime in April when the court issues its opinion in *Stockton Citizens for Sensible Planning v. City of Stockton* (S159690), the companion case to *Green Foothills*, which was argued before the Supreme Court by Sheppard Mullin Partner Bob Stumpf on January 27, 2010.

In *Green Foothills*, an environmental impact report ("EIR") considered an application by Leland Stanford Junior University ("Stanford") to add buildings to its campus (the "Project") and determined that the Project would significantly impact public access to recreational facilities. To mitigate this impact, the EIR identified measures that required Stanford to dedicate two public access easements to the County of Santa Clara ("County") and to develop and maintain these easements. Stanford and the County subsequently agreed on alignment for one of the two required routes and the County prepared a supplemental EIR to analyze the environmental consequences of first route's alignment. Stanford and the County could not agree on the exact alignment of the second route.

In 2005, the parties entered into an agreement outlining the specifics for the first route and setting forth

funding obligations for both routes ("Agreement"). The Agreement contemplated that additional environmental review may be required when the detailed design and construction plans for the second route were under review. On December 20, 2005, the County filed an NOD explaining that it had approved the funding aspects of the Agreement but did not approve specific trail improvements for the second route.

171 days later, the Committee for Green Foothills ("Committee") challenged the County's approval of the Agreement under CEQA. The County demurred, arguing that the Committee's action was barred by the 30-day statute of limitations found in section 21167, subdivisions (b), (c) and (e), and the trial court agreed. The Committee appealed, arguing that the Agreement constituted a "project" under CEQA and that the County approved the "project" without considering its environmental effects; thus, a 180-day statute of limitations applied. The court of appeal agreed with the Committee and reversed the trial court's finding. The County appealed and the Supreme Court reversed, finding that the action being challenged - the County's approval of the Agreement - was not a "project" under CEQA and that, therefore, the 180-day statute of limitations did not apply.

The court found that the action being challenged—the County's approval of the Agreement—was within the scope of the Project EIR and therefore subject to a 30-day statute of limitations which was triggered by the County's timely filing of its NOD. The County's approval of the Agreement, the court found, was not an independent project within the meaning of CEQA. Because the Agreement was required under the Project EIR, the County's approval of the Agreement must be considered a "subsequent activity encompassed within the original [P]roject." Accordingly, section 21167(a)'s 180-day period could not apply.

In making its decision, the court reasoned that the shorter limitations period should be reserved for situations when an agency files an NOD under CEQA because the public, by definition, will have notice of the agency's decision and can thus be expected to act promptly. If, on the other hand, an agency does not file notice of its decision and simply approves or initiates a project, the public only has constructive notice and thus, the longer limitations period should apply.

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