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## ***Digest: Committee for Green Foothills v. Santa Clara County Board of Supervisors***

*Stephanie Brou*

Opinion by Corrigan, J., with George, C.J., Kennard, Baxter, Werdegar, Chin, and Moreno, JJ.

### Issue

Does the filing of notice of determination (NOD) without environmental review trigger a 30-day statute of limitations under the California Environmental Quality Act?

### Facts

In 2000, the Leland Stanford Junior University acquired a permit to add buildings to its campus.<sup>1</sup> Prior to the approval of the permit, an Environmental Impact Report (EIR) prepared for the project identified possible environmental impacts and proposed mitigation measures.<sup>2</sup> Because the EIR found that the development would substantially impact public access to recreation facilities, a mitigation measure directed Stanford to coordinate with the County parks department and to dedicate trail easements.<sup>3</sup> The agreement included trails labeled S1 and C1.<sup>4</sup> While the trails were approved in the “Trails Master Plan,”<sup>5</sup> and a supplemental EIR was published regarding the S1 trails, a dispute delayed the C1 trails.<sup>6</sup> After continued negotiations the County authorized the “Trails Agreement” in 2005, which illustrated the construction, maintenance, and details of the S1 and C1 easements.<sup>7</sup> The County Board of Supervisors determined that the Trails Agreement did not require further environmental review regarding the C1 trails because it did not constitute a new project subject to independent California

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<sup>1</sup> Comm. for Green Foothills v. Santa Clara Cnty. Bd. of Supervisors, 48 Cal. 4th 32, 39 (2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 39 n.2.

<sup>6</sup> *Id.* at 40.

<sup>7</sup> *Id.*

Environmental Quality Act (CEQA) review, but rather was subsequent activity within the scope of the Trails Master Plan.<sup>8</sup>

On December 20, 2005, the County filed a revised NOD with the county clerk reporting that the County approved an agreement for the C1 and C2 trails.<sup>9</sup> The NOD also stated that an EIR had been prepared and that findings had been made pursuant to CEQA.<sup>10</sup> On June 9, 2006 (171 days after the revised NOD was filed), the Committee for Green Foothills (Committee) challenged the County's approval of the Trails Agreement.<sup>11</sup> The trial court sustained the County's demurrer on the grounds that the NOD triggered a 30-day statute of limitations, and thus the Committee's challenge was time-barred.<sup>12</sup> The Court of Appeal reversed, concluding there was "a reasonable possibility" that a longer 180-day statute of limitations applied.<sup>13</sup>

#### Analysis

California Environmental Quality Act section 21152(a) requires a local agency that approves or embarks on a project that is subject to CEQA to file an NOD with the county clerk.<sup>14</sup> Also, if an agency approves a project it believes is exempt from CEQA, it must file a notice of exemption with the county clerk.<sup>15</sup> These filings are intended to preserve the public's right to be informed and aware of environmental decisions.<sup>16</sup> Section 21167 establishes an unusually short 30-day statute of limitations for CEQA challenges to be brought, running from the date of NOD or notice of exemption.<sup>17</sup> If no NOD or notice of exemption was filed, the statute of limitations is increased to 180 days from the approval of the project; if a project is begun without a decision regarding the environmental impacts, the statute of limitations is 180 days from commencement of the project.<sup>18</sup> The Committee contended that the Trails Agreement constituted a project separate from the Trails Master Plan, and that the County approved the Trails Agreement without consideration of the

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<sup>8</sup> *Id.* at 41.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 41–42.

<sup>12</sup> *Id.* at 42.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 42–43 (citing California Environmental Quality Act, CAL. PUB. RES. CODE § 21152(a) (2010)).

<sup>15</sup> *Id.* at 43 (citing California Environmental Quality Act § 21152(b)).

<sup>16</sup> *Id.* at 43.

<sup>17</sup> *Id.* at 44 n.8 (citing California Environmental Quality Act § 21167).

<sup>18</sup> *Id.* at 44 n.8.

environmental effects, thus the 180-day statute of limitations applied.<sup>19</sup>

The court found that the statutory language of section 21167 “strongly suggests that the Legislature intended the filing of an NOD to trigger a 30-day statute of limitations.”<sup>20</sup> The plain language of section 21167 requires a 30-day statute of limitations for all claims related to a project when a notice is filed.<sup>21</sup> Only when notice is not given does the 180-day statute of limitations apply.<sup>22</sup> Logically, when an agency alerts the public about a decision, the public can be expected to act quickly in challenging that decision.<sup>23</sup> However, when an agency does not give notice, the public is not alerted until constructive notice is given by the start of the project, thus necessitating an extended statute of limitations.<sup>24</sup> Statutory language does not support the Committee’s claim that the 180-day statute of limitations should apply despite the filing of an NOD.<sup>25</sup>

The Regulatory Guidelines implementing CEQA further support the contention that a 30-day statute of limitations applies.<sup>26</sup> The Guidelines offer additional rules and statutes of limitations for CEQA challenges.<sup>27</sup> Each limitation is either 30 or 35 days when notice is given.<sup>28</sup> Similar to section 21167, a 180-day statute of limitations applies *only* when there is not public notice.<sup>29</sup>

The court found further support for a shorter statute of limitations in two similar bill reports concerning the Department of Water Resources and the Governor’s Office of Planning and Research.<sup>30</sup> Both bill reports require claims to be filed within 30 days of notice.<sup>31</sup> The court relied on the fact that the Guidelines and the two similar bills have identical statutes of limitations in its conclusion that the Legislature clearly intended to impose strict limits on the timeframe of challenging a project.<sup>32</sup> The Committee provided no evidence to suggest that the Legislature

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<sup>19</sup> *Id.* at 45.

<sup>20</sup> *Id.* at 46.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 47.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 47–48.

<sup>26</sup> *Id.* at 48–49.

<sup>27</sup> *Id.* at 48.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 49–50.

<sup>31</sup> *Id.* at 49.

<sup>32</sup> *Id.* at 49–50 n.15.

intended to increase the statute of limitations six-fold, despite notice being provided.<sup>33</sup>

Legislative intent for a short statute of limitations is consistent with policy considerations for prompt filing of challenges.<sup>34</sup> CEQA challenges impose financial prejudice and disruption to development and must not be permitted to delay projects.<sup>35</sup> Additionally, a clear and short statute of limitations provides certainty.<sup>36</sup> Public policy does not support delay or uncertainty that encourages builders to wait 180 days before commencing on approved projects to avoid litigation.<sup>37</sup> In fact, unnecessary delay is precisely what the Legislature intended to avoid by imposing a short statute of limitations.<sup>38</sup>

The Committee argued that the longer statute of limitations should apply because the County did not conduct an environmental review before approving the agreement.<sup>39</sup> The court rejected this argument, citing *California Manufacturers Ass'n. v. Industrial Welfare Commission*.<sup>40</sup> Like the Committee in the instant case, in *California Manufacturers*, an association argued that the 30-day statute of limitations applies only if the agency has conducted an environmental investigation.<sup>41</sup> There, the Court of Appeal determined that the trigger of the 30-day statute of limitations was the notice, not the substance of the agency's decision.<sup>42</sup> Here, the court agreed and further stated that, where an NOD has been filed, the agency has attempted compliance with CEQA.<sup>43</sup> Accordingly, the Legislature intended for the 30-day statute of limitations to apply regardless of environmental review.<sup>44</sup>

Next, the Committee argued that the NOD was invalid and therefore did not trigger the 30-day statute of limitations.<sup>45</sup> The court noted that several cases have made exceptions to the strict statute of limitations when notice was materially defective.<sup>46</sup> In

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<sup>33</sup> *Id.* at 50.

<sup>34</sup> *Id.* (citing *Oceanside Marina Towers Ass'n. v. Oceanside Cmty. Dev. Comm'n*, 187 Cal. App. 3d 735, 741 (1986)).

<sup>35</sup> *Id.* (citing *Bd. of Supervisors v. Superior Court*, 23 Cal. App. 4th 830, 837 (1994)).

<sup>36</sup> *Id.* at 50.

<sup>37</sup> *Id.* at 50–51.

<sup>38</sup> *Id.* at 51.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* (citing *Cal. Mfrs. Ass'n. v. Indus. Welfare Comm'n*, 109 Cal. App. 3d 95, 124–25 (1980)).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* (citing *Cal. Mfrs.*, 109 Cal. App. 3d at 125).

<sup>43</sup> *Id.* at 51.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 52.

<sup>46</sup> *Id.*

*ILWU v. Board of Directors*, the court did not enforce a 35-day statute of limitations because the notice was not in substantial compliance of the notice requirements.<sup>47</sup> Similarly, in *Citizens of Lake Murray Area Ass'n. v. City Council*, the court refused to hold plaintiffs to a 30-day statute of limitations because the county clerk failed to post the notice pursuant to the statute.<sup>48</sup> While the Committee relied on the foregoing cases, the court distinguished them from the instant case, finding instead that the County's notice contained every provision required by the CEQA guidelines and thus was not materially defective.<sup>49</sup>

The Committee contended that the NOD for the Trails Agreement should be separate and distinct from the NOD for the Trails Master Plan.<sup>50</sup> Additionally, the Committee alleged that the County issued the NOD to include the C1 and C2 trails with a bad faith intention to conceal these additional trails.<sup>51</sup> While the court agreed that the County could have issued two separate NODs, they declined to impose that additional requirement when nothing in CEQA precludes disclosure of two approvals in a single notice.<sup>52</sup> Additionally, there was no evidence that the County acted with bad intention.<sup>53</sup> In fact, the Board's resolution was passed at a meeting where the Committee's representative was present.<sup>54</sup> The Legislature intended for NODs to trigger the 30-day statute of limitations.<sup>55</sup> Thus, it was the responsibility of the Committee to review these notices carefully.<sup>56</sup>

The Committee's final argument was that the revised NOD was invalid because the County failed to make an environmental determination and prepare a corresponding negative declaration or EIR.<sup>57</sup> The court found this claim unpersuasive, instead determining that no new CEQA document was required.<sup>58</sup> CEQA does not require a new EIR for every subsequent step in the same project.<sup>59</sup> After a proper EIR is prepared, a supplemental EIR is only required if substantial changes arise or new information

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<sup>47</sup> *Id.* at 52–53. (citing *ILWU v Bd. of Dirs.*, 116 Cal. App. 3d 265, 273 (1981)).

<sup>48</sup> *Id.* at 53 (citing *Citizens of Lake Murray Area Ass'n. v. City Council*, 129 Cal. App. 3d 436, 438 (1982)).

<sup>49</sup> *Id.* at 53.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 53–54.

<sup>52</sup> *Id.* at 54.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* (citing California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21108, 21152 (2010)).

<sup>59</sup> *Id.* at 54.

becomes known that was not available at the time of the original EIR.<sup>60</sup> The Committee was correct in asserting that if subsequent activity could have environmental effects not considered in the existing EIR, the agency must conduct an initial study resulting in either a negative declaration or an EIR.<sup>61</sup> However, if the agency finds that no new environmental effects could occur, the subsequent activity can be considered within the scope of the project covered by the existing EIR and no new determination is required.<sup>62</sup>

The Trails Agreement qualified as a subsequent activity subject to potential further environmental review, and thus the County was required to evaluate the potential environmental impact—which it did.<sup>63</sup> The County issued a resolution finding the Trails Agreement required no additional CEQA review prior to commencing the Trails Agreement.<sup>64</sup> The court deemed it unnecessary to examine whether the County's determination was proper.<sup>65</sup> The fact that the County evaluated the Trails Agreement as subsequent activity to a program EIR and that it had found the Trails Agreement to be within the scope of the EIR was sufficient.<sup>66</sup> An NOD triggers the 30-day statute of limitations even if environmental review is inadequate.<sup>67</sup>

#### Holding

The court reversed the Court of Appeal.<sup>68</sup> The court held the County's filing of the NOD triggered the 30-day statute of limitations.<sup>69</sup> Because the Committee filed its petition more than 30 days after the NOD, the suit was time-barred.<sup>70</sup>

#### Legal Significance

The court's decision strictly applies a shorter statute of limitations when notice is given. Because lack of environmental review and potential errors in the notice do not necessarily extend the statute of limitations, potential litigators challenging CEQA must carefully review NODs and file a petition within the 30-day statute of limitations.

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 55.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 55–56.

<sup>67</sup> *Id.* at 56–57.

<sup>68</sup> *Id.* at 57.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*