

## **CEQA Statute of Limitations Applies Regardless of the Merits of the Underlying Lawsuit.**

On April 2, 2020, the Court of Appeal affirmed that CEQA's accelerated statute of limitations on court challenges apply, regardless of whether the agency lacked authority to approve the project or make the CEQA determination in the first instance. (*Coalition for an Equitable Westlake/Macarthur Park v. City of Los Angeles* (2020) 47 Cal. App. 5th 368.)

On March 3, 2017, the Deputy Advisory Agency for the City of Los Angeles approved a vesting tentative tract map and adopted a mitigated negative declaration ("MND") for a mixed-use development project ("Project"). No appeal was filed to the City Planning Commission. On March 15, 2017, the City filed and posted a notice of determination ("NOD"), which started a 30-day statute of limitations on court challenges to the approval. On October 12, 2017, the Planning Commission, having found the Project was properly assessed in the March 3, 2017 MND, approved conditional use permits other approvals in furtherance of the Project.

On March 2, 2018, nearly a year after the City filed the NOD alerting the public of the City's CEQA determination and Project approval, petitioner filed a lawsuit challenging the Project approvals, arguing the City had "failed to disclose, analyze, and mitigate the Project's significant adverse environmental impacts" (*Ibid.* at 375) and that an EIR was required under CEQA. On August 20, 2018, the superior court rejected petitioner's claims stating that they were time-barred under CEQA for "failure to seek writ relief within 30 days after the NOD was filed on March 15, 2017, and that [petitioner] had failed to exhaust administrative remedies" (*Ibid.* at 376). Petitioner appealed.

On appeal, petitioner argued that the statute of limitations did not apply because "(1) the Planning Commission (and not the Agency) had responsibility under the municipal code for initial project approval and the associated CEQA review; (2) even if the Agency had authority to approve the Tract Map, it had no express authority from the municipal code to make CEQA findings; (3) the Agency's CEQA decisions were not properly appealable to an elected body, as required by CEQA; and (4) authority to approve the Project, if vested with the Agency, was improperly separated from authority for CEQA approval, which was vested with the City Council" (*Ibid.* at 381).

The court rejected petitioner's arguments, noting that there are only two situations in which an NOD does not trigger the statute of limitations: (1) if the NOD is invalid on its face because the information required by the CEQA Guidelines is missing or incorrect; and (2) if the NOD is filed before a decision making body has approved the project. Petitioner's arguments, the court said, constituted substantive challenges to the validity of the project approval, similar to those rejected by the California Supreme Court in a similar context, and confused "the timeliness of a lawsuit with its merits." (*Ibid.* at 381). Because the suit was not timely filed, petitioner's substantive challenges, no matter how meritorious, could not be considered by the court.

*Tiffany Michou is an Associate at  
Harrison, Temblador, Hungerford & Johnson LLP in Sacramento, California*