

Specific Limitations Period In Government Code Prevails Over Statute of Limitations In CEQA

A 30-day limitations period for a challenge to a project that is exempted from CEQA by Government Code section 65457 applies rather than the 35-day limitations period that ordinarily applies after a notice of exemption is filed, according to the court in [May v. City of Milpitas](#), No. H038338 (Sixth District, July 16, 2013). The statutes of limitation in CEQA state that a CEQA challenge is time-barred unless it is filed within 30 days after the agency files a notice of determination or within 35 days after the agency files a notice of exemption. If the agency files neither notice, a 180-day statute of limitations applies. In *May*, the city approved amendments to a tentative map and permits for a condominium development within a specific plan after concluding the project was consistent with the specific plan EIR. It subsequently filed a notice of exemption, citing the provisions of the CEQA Guideline on program EIRs and the Guideline containing the "common sense" exemption from CEQA. Petitioners filed their lawsuit 34 days after the notice of exemption was filed. The city and developer successfully argued in the trial court that the case was time-barred under the specific statute of limitations in Government Code section 65457. Under that statute, residential projects consistent with a specific plan for which an EIR was certified are exempt from CEQA unless a supplemental EIR is required. The same statute provides that an action challenging an agency determination applying the exemption must be filed within 30 days after the agency's *decision to approve* the project. The court of appeal agreed with the trial court. It first rejected the argument that section 65457 was inapplicable because neither the city's approvals nor the notice of exemption specifically referred to the statute. It found the exemption in section 65457 was triggered because the city council's approval resolution included a finding that the project was consistent with the EIR certified for the specific plan. The court also concluded that under the plain language of the statute, the 30-day limitations period in section 65457 is not contingent upon the filing of a notice of exemption; it instead begins to run when the agency renders its decision to approve the project. Finally, the court found no basis for concluding that the city's filing of a notice of exemption meant the statute of limitations in CEQA applied, rather than the statute of limitations in section 65457. As a specific statute of limitations, section 65457 applied, not the more general statute of limitations in CEQA, and the applicability of section 65457 was not made contingent upon the filing of a notice of exemption.

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