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California Land Use & Development Law Report



A court of appeal held a CEQA challenge time-barred because it was not commenced within 30 days after a Notice of Determination (NOD) was filed for approval of a subdivision map based upon a Mitigated Negative Declaration (MND).

The fact that the map and its vested rights were conditioned upon a later rezoning did not change that conclusion. Similarly, the fact that the city re-adopted the MND for each project approval was not dispositive. "It is the first approval that triggers the running of the statute of limitations, and later approvals do not restart the statute of limitations clock." [Guerrero v. City of Los Angeles](#), Nos. B326033 and B327032 (2nd Dist., Jan. 17,

2024).

Developers proposed 42 homes on a parcel in Los Angeles. The project included a vesting subdivision map and a rezoning ordinance. In March of 2020, the city adopted an MND for the project, approved the vesting tentative map, and filed an NOD. In May of 2020, the city again adopted the MND, approved some retaining walls, and filed a second NOD. More than a year later, in June of 2021, the city again adopted the MND, rezoned the site, and filed a third NOD.

Project opponents filed suit on July 16, 2021, alleging CEQA claims. They argued their petition was timely because it was filed within 30 days of the third NOD. The appellate court disagreed, ruling that the suit was barred because it was not commenced within 30 days of the first NOD.

The court focused on CEQA's directive that an agency must conduct environmental review at the earliest feasible opportunity, which occurs when an agency commits to a project. It found that the city made its earliest firm commitment to the project when it approved the tentative map. Neither the conditions attached to the map nor the fact that rights would not vest until the rezoning was complete were relevant. Delaying vested rights impacts only the developer's protection against subsequent changes in local regulations; it does not affect the conclusion that approval of the tentative map constituted a project approval under CEQA. The court also rejected arguments based upon the city's re-adoption of the MND, reasoning that "because there [had] been no changes to the project requiring a subsequent or supplemental MND, the later adoptions of the same MND [could not] restart or retrigger a new limitations period."

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California Land Use & Development Law Report

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