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CEQA Statute of Limitations Not Triggered by Planning Commission NOD While Appeal to Board of Supervisors Was Pending



A Court of Appeal held that the CEQA statute of limitations period does not begin to run after the filing of an initial notice of determination if the project is appealed. *Central for Biological Diversity v. County of San Benito*, Nos. H051322, H051323 (6th Dist., July 24, 2024).

In October 2022, the San Benito County Planning Commission voted to certify an EIR and approve a conditional use permit for a proposed commercial roadside attraction known as the Betabel Project. The Planning Commission issued a notice of determination shortly after. Petitioners appealed the decision to approve the project, but the Planning Commission denied the appeal. The Planning Commission issued a second notice of determination following the denial.

Petitioners challenged the project on the ground that the Planning Commission approved the project in violation of CEQA. Project proponents demurred, asserting that the CEQA action was time barred because it was filed more than 30 days after the County published the initial notice of determination.

The Court of Appeal held that the challenge was timely because Petitioners filed their writ petition within 30 days of the County's publication of the second notice of determination. The court reasoned that the EIR and conditional use permit were not final at the publication of the first notice of determination because the County Code specified that conditional use permits are not final until either the expiration of the deadline for public appeal or the Board of Supervisors' decision on an appeal. The court also explained that judicial review of the Planning Commission's nonfinal decision would constitute interference in the intermediate stages of a CEQA proceeding in violation of the doctrine of exhaustion of administrative remedies.

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