



News Alert

Filing a Notice of Determination Shortens the Period to Challenge CEQA Decisions Not to Conduct Further Environmental Review of Previously Approved Projects

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In *Committee for Green Foothills v. Board of Supervisors*, the California Supreme Court established a bright-line rule that provides increased certainty for public agency CEQA determinations. In 2000, Stanford University applied for a building permit from the County of Santa Clara. The County prepared a programmatic EIR (PEIR) requiring Stanford to mitigate impacts to recreational facilities by dedicating two trail easements. In 2005, the County prepared a supplemental EIR and approved the first trail's route but did not pick a route for the second trail. Instead, the County entered into a "Trails Agreement" with Stanford which addressed funding for the second trail (and a third trail) but stated that further environmental review would be needed for these trails. The County filed a Notice of Determination (NOD) announcing its approval of the first trail route and of the Trails Agreement. The NOD also noted that the County had yet to approve any specific improvements for the second and third trails.

On June 9, 2006, 171 days after the NOD was filed and posted, the Committee for Green Foothills filed a petition challenging the approval of the Trails Agreement. The statute of limitations for CEQA challenges ranges from 30 to 180 days as set forth in Public Resources Code section 21167, subsections (a) through (e). The County and Stanford argued that subsections (b) or (e) controlled and therefore a 30-day challenge period barred the lawsuit. The Committee responded that the 180-day period set forth in subsection (a) applied because the Trails Agreement constituted a "project" requiring the County to determine its environmental effects before approving it.

The Court sided with the County and Stanford and applied the 30-day statute of limitations. First, the Court ruled that subsection (a)'s 180-day challenge window applies only to actions alleging that an agency has approved or undertaken a "project" without making a determination of whether the project may have a significant effect on the environment. The Court held the 180-day period did not apply because the Trails Agreement was not a new project but rather a subsequent activity encompassed within the PEIR. Noting the County's previous "in-depth environmental review," the Court held it was sufficient for the County to approve the Trails Agreement upon finding no additional environmental review was required and disclosing that finding in an NOD.

The Court then determined subsection (e)'s 30-day statute of limitations applies in these circumstances. First, subdivision (b) did not apply because it "typically governs challenges to the initial approval of a project," and the Trails Agreement was not a new project. Instead, the Court applied subdivision (e), a "catch-all" statute of limitations for challenges not covered by Sections 21167(a)-(d). The Court held that where an agency determines a subsequent activity is within the scope of a previous EIR and not subject to further review, and the agency files an NOD providing public notice of those determinations, all CEQA challenges must be brought within 30 days of the NOD, as required by subsection (e).

For more information, contact [Eddy Beltran](#) or your MKB attorney at 714-755-3100.

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