

Conditional Approval is Project Approval: Appellate Court Confirms CEQA Statute of Limitations Triggered by Tentative Map Approval Conditioned on Subsequent Rezoning

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Following California Supreme Court and its own case law precedent, the Second District, Division Five, has ruled in [*Guerrero et al. v. City of Los Angeles*](#) (Jan. 17, 2024) (Guerrero), certified for publication, that a CEQA challenge to approval of a vesting tentative subdivision map conditioned on subsequent discretionary rezoning was untimely when not filed until after the rezoning was finally approved.

The project in question, a 42-unit single-family small lot subdivision, was slated for a residentially-zoned lot that contained a hillside and locally-protected trees. When “Objectors” (as the Court designates them) complained about its impacts to the hillside and trees, the project was specifically redesigned to consolidate its footprint on one side of the site, reducing the number of trees to be removed and the impacts to the hill. Due to the redesign, the project needed rezoning to a different residential zoning designation that would allow for the small lot design.

The City prepared a mitigated negative declaration for the project and its Deputy Advisory Agency approved the vesting tentative map for the subdivision, under its authority pursuant to the State Subdivision Map Act and City regulations, in March 2020. Under the express authority of the Map Act, the approval was conditioned on subsequent rezoning to allow the small lots as approved in the map. The City filed a Notice of Determination, triggering a 30-day statute of limitations period under CEQA.

As the Court detailed in its opinion, the City then undertook two more discretionary approvals for the project, issuing NODs for each, including the rezoning which was ultimately approved by the City Council in June 2021. Objectors filed their CEQA action within 30 days of the June 2021 NOD filed on approval of the rezoning, contending that the March 2020 NOD filed on approval of the vesting tentative map was ineffective to commence the statute of limitations period because approval conditioned on subsequent rezoning was not “final” project approval. Having previously rejected the City’s and Real Parties’ demurrers to Objectors’ CEQA claims based on the statute of limitations, the trial court agreed with Objectors that their suit was timely and proceeded to consideration of their substantive challenges to the MND.

Reviewing the issue *de novo* and taking great pains to quote a wide variety of precedential case law,

the Second District reversed, holding that Objectors' CEQA challenge was untimely on four different grounds. First, the Court emphasized that CEQA requires a public agency to conduct environmental review as early as feasible in the land use planning process. This requirement is triggered by the discretionary nature of such an approval and is not limited to an unconditional agreement to "irrevocably vest" development rights. Thus, the Court held the City correctly conducted environmental review of the project before any project approvals, starting with the vesting tentative map, and the conditions- including rezoning- incorporated into the first approval did not diminish its status as a project approval under CEQA.

Second, the Court found Objectors' argument did not take into account that, for projects subject to CEQA that require multiple discretionary approvals, it is the first approval that starts the statute of limitations; later approvals do not restart the clock. Third, the Court held that Objectors' argument ignored the role of the NOD (in this case, the March 2020 NOD on the vesting tentative map) in triggering the statute of limitations under CEQA. Finally, the Court found that Objectors failed to identify any material changes to the project after the filing of the NOD on approval of the vesting tentative map that arguably could have triggered a new statute of limitations relating to the City's obligation to undertake subsequent or supplemental environmental review. Accordingly, the Court held there is no basis in law to support the trial court's determination that Objectors' CEQA challenge was timely.

The *Guerrero* opinion provides a thorough overview and application of the extant case law relating to the timing of CEQA review- and legal challenges under CEQA- for complex land use projects requiring multiple discretionary approvals. It behooves counsel for lead agencies and project applicants to review this case, the body of precedent it discusses and local rules and regulations governing the agency's approvals process to understand when CEQA review must be undertaken and when Notices of Determination are appropriately filed. Most importantly, *Guerrero* reflects the purposes of CEQA to ensure environmental review of the project as a whole is completed as early as feasible and that the lead agency and applicants are entitled to rely on that analysis once the agency makes the earliest firm commitment to the project.

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