

## ***CEQA News: Amended Statutes of Limitations and Rules for Subsequent CEQA Review for Post-Approval Decisions***

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### **Amended Emergency Rule on Statutes of Limitations**

The Judicial Council adopted Emergency Rule 9 on April 6, 2020. At that time, the Judicial Council tolled statutes of limitation on all civil cases until 90 days after Governor Newsom lifts the state of emergency related to the COVID-19 pandemic. On May 29, the Judicial Council amended Emergency Rule 9 so that it is no longer tied to the end of the state of emergency declaration – an unknown date.

The revisions now specify a definite end date to the tolling period. Under the revisions, claims that ordinarily have a statute of limitations period of 180 days or less, such as claims under the California Environmental Quality Act and the State Planning and Zoning Law, will be tolled from April 6, 2020 until August 3, 2020. Claims with a statute of limitations period of more than 180 days will be tolled from April 6, 2020 until October 1, 2020.

These changes bring clarity and certainty to causes of action that accrue during the state of emergency. With a defined ending of the tolling period, plaintiffs and defendants will be able to calculate the specific deadline when claims must be filed and know with certainty when the time for filing a claim has passed. By resolving those questions, the amended Emergency Rule is helpful to developers and public agencies to analyze timeframe of litigation risk when looking to move forward with new projects as the current public health crisis abates.

### **Rules for Subsequent CEQA Review for Post-Approval Decisions**

In a published opinion filed May 18, 2020, the Sixth District Court of Appeal shed light on the circumstances in which subsequent environmental review is required for an approved project under the California Environmental Quality Act. In *Willow Glen Trestle Conservancy et al. vs. City of San Jose et al.*, the court confirmed that CEQA does not require the lead agency to conduct supplemental environmental review when it



applies to a responsible agency for an approval after it has already approved a CEQA document for the project. These applications are not considered “discretionary approvals” under CEQA.

In *Willow Glen Trestle Conservancy*, the City of San Jose, as lead agency, approved a mitigated negative declaration (MND) for its approval of a project to remove and replace a bridge crossing a creek. After that approval, the City applied for a Streambed Alteration Agreement (SAA) from the California Department of Fish and Wildlife (CDFW), a responsible agency under CEQA. Petitioners argued that the City violated CEQA by failing to conduct supplemental environmental review before submitting the SAA application to CDFW. Based on the measures specified in the MND and the final SAA, the City determined that the project would not have any significant impacts on fish or wildlife.

The court rejected the Conservancy’s claims that the City’s act of seeking and accepting the SAA was a “discretionary approval of the project.” Since there was no discretionary action by the City, CEQA was not triggered. The court further explained that the Conservancy’s claim “attempts to equate any action in connection with a project” to be an approval for the relevant project. Such a ruling would, as the court stated, endlessly reopen the City’s consideration of the Project’s environmental impacts. Since the Conservancy did not challenge CDFW’s issuance of the SAA, the proper CEQA review of that ac-

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tion for a responsible agency was not an issue before the Court. However, CDFW relied on the MND approved by the City for the Project.

The Court reiterated well-established principles regarding the narrow standards under which CEQA supplemental review is required. Specifically, an agency may only perform supplemental environmental review if there is both “new information” resulting in new significant environmental impacts of the project and the agency is making a subsequent discretionary decision regarding the project. Because the City of San Jose was not making

a subsequent discretionary decision, the standards for supplemental environmental review were unmet.

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