

# THE PERMIT STREAMLINING ACT AND OTHER DEVELOPMENT TIME LIMITS

By John Eastman  
Richmond City Attorney

For years, the time limits within which government agencies were required to approve or deny development projects were set forth in a confusing patchwork of statutory schemes that were seemingly irreconcilable. Beginning in the 1990s, however, the Legislature began enacting a series of measures to coordinate the time limits imposed by the Permit Streamlining Act (Government Code § 65920 *et seq.*), the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 *et seq.*), and the Subdivision Map Act (Government Code § 66410 *et seq.*). These Acts will be discussed in turn.

## I. The Permit Streamlining Act

The Permit Streamlining Act was enacted in 1977 in order to expedite the processing of permits for development projects. Government Code § 65921.

The Permit Streamlining Act achieves this goal by (1) setting forth various time limits within which state and local government agencies must either approve or disapprove permits and (2) providing that these time limits may be extended once (and only once) by agreement between the parties.

Although hardly a paper tiger, the Permit Streamlining Act is less efficacious than it appears at first blush. As explained immediately below, a permit may not be deemed approved until the agency is provided with notice of the applicant's intent to invoke the Act, and an opportunity to hold a public hearing to decide whether to approve or deny the project. Further, a permit may not be deemed approved until the agency has complied with CEQA. Finally, the Permit Streamlining Act does not apply to legislative land use decisions or to ministerial permits.

### A. Deemed Approval

If a local agency fails to approve or disapprove the permit within the time limits specified below, the permit is subject to being "deemed approved." Government Code § 65956(b). A deemed-approved permit confers the same privileges and entitlements as a regularly issued permit. *Ciani v. San Diego Trust & Savings Commission*, 233 Cal. App. 3d 1604, 1613, 285 Cal. Rptr. 699, 705 (1991).

If a local legislative body votes to deny a project within the time limits of the Permit Streamlining Act, but directs staff to return with a resolution on a date that falls outside of the Permit Streamlining Act's time limits, the application is timely denied and does not result in a deemed-approved project. The Permit Streamlining Act does not require that a denial be absolutely final in order to be timely. *El Dorado Palm Springs v. City of Palm Springs*, 96 Cal. App. 4th 1153, 118 Cal. Rptr. 2d 15 (2002).

## **B. Starting the Permit Streamlining Act's Clock**

The Permit Streamlining Act clock does not start ticking until the applicant submits a completed permit application. The agency has 30 days after an application is submitted in which to inform the applicant of whether the application is complete. Government Code § 65943; 14 California Code of Regulations §§ 15060(a), 15101. If the agency does not so inform the applicant within that 30-day period, the application will be "deemed complete" if the application included the statement that it is an application for a development project (Government Code § 65943) even if the application is deficient. *Orsi v. City of Salinas*, 219 Cal. App. 3d 1576, 268 Cal. Rptr. 912 (1990).

A new 30-day period begins with each re-submission of an application. Government Code § 65943.

At one time, some agencies had required that applicants waive, or agree to extend, these time limits. That practice is now prohibited. Government Code § 65940.5; Public Resources Code §§ 21100.2, 21151.5.

Agencies are required to make lists available to the public that specify in detail the information required for an application. Government Code § 65940. Although these lists may be revised, such revisions generally apply prospectively only and not to pending applications. Government Code § 65942. Agencies may not require applicants to submit at the initial application stage all of the information required by the agency to take final action on the project. Government Code § 65944.

## **C. The Permit Streamlining Act Does Not Apply to All Permit Applications**

The Permit Streamlining Act applies only to "development projects" as that term is defined in Government Code § 65928.<sup>1</sup>

The Permit Streamlining Act does not apply to the following:

- ❑ Legislative land use decisions, such as amendments to the zoning ordinance or general plan. *Land Waste Management v. Contra Costa County*, 222 Cal. App. 3d 950, 271 Cal. Rptr. 909 (1990); *Landi v. Monterey County*, 139 Cal. App. 3d 934, 189 Cal. Rptr. 55 (1983).

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<sup>1</sup> Government Code § 65928 provides:

"Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate. "Development project" does not include any ministerial projects proposed to be carried out or approved by public agencies.

- ❑ The approval or disapproval of final subdivision maps. Government Code § 65927.
- ❑ Permits for ministerial projects (Government Code § 65928), i.e., projects which do not involve the exercise of governmental discretion.
- ❑ Administrative appeals. Government Code § 65922(b).

#### **D. Limits on Time Extensions**

As noted above, a number of the Permit Streamlining Act's time limits may be extended once for a period of up to 90 days upon the mutual consent of the agency and the applicant. Government Code § 65957. In *Bickel v. City of Piedmont*, 16 Cal. 4th 1040, 68 Cal. Rptr. 2d 758 (1997), the California Supreme Court held that applicants may further waive the Permit Streamlining Act's time limits if the waiver is knowing, intelligent, and voluntary.

Section 65957 was amended effective January 1, 1999, to abrogate *Bickel*. Accordingly, no extension, continuance or waiver of the Permit Streamlining Act's time limits is allowed beyond § 65957's one-time, 90-day extension.

#### **E. Time Limits for Responsible Agencies**

The time limits discussed above assume that the agency is the "lead agency" – i.e., the agency principally responsible for carrying out or approving the project. Public Resources Code § 21067; Government Code § 65929.

Different rules apply if the agency is a "responsible agency." A responsible agency is any agency other than the lead agency which is responsible for carrying out or approving the project. Public Resources Code § 21069; Government Code § 65933.

Responsible agencies are required to approve or disapprove a development project that has been approved by the lead agency within 180 days from the later of (1) the date on which the lead agency approved the project or (2) the date on which the application for the project is accepted as complete by the responsible agency. Government Code § 65952.

#### **F. Invoking the Permit Streamlining Act**

Most persons affected by the Permit Streamlining Act – real estate professionals, government officials, community activists – assume that the Permit Streamlining Act is self-executing. It is not. It is true that the Permit Streamlining Act decrees that if the agency fails to approve or disapprove a project within the Act's time limits, the permit "shall" be deemed approved. The Permit Streamlining Act is careful to add, however, that such deemed-approved status may be conferred only if the "public notice required by law has occurred." Government Code § 65956(b). The purpose of this notice

requirement is to provide the agency with a final opportunity to hold a public hearing and make a decision on the project, thereby avoiding the harshness of a deemed-approved permit.

The applicant may provide the public notice required by law by giving seven days' advance notice to the agency of its intent to provide public notice. The public notice may not be provided earlier than 60 days from the expiration of the time limits set forth in Government Code § 65950 (or for responsible agencies, the time limits set forth in Government Code § 65952). If the applicant provides such notice, the time limits are extended to 60 days after such notice is provided. Government Code § 65956(b).

Alternatively, the applicant can seek the issuance of a writ of ordinary (traditional) mandamus (Code of Civil Procedure § 1085), directing the agency to provide the public notice required by law or provide the public hearing, or both. The mandamus action must be filed at least 60 days prior to the expiration of the time limits set forth in Government Code § 65950 (or for actions against responsible agencies, the time limits set forth in Government Code § 65952). Government Code § 65956(a).

There is no requirement that the public notice required by law be included in the normal public notices provided by the agency for project approvals. *Mahon v. San Mateo County*, 139 Cal. App. 4th 812, 43 Cal. Rptr. 3d 235 (2006).

#### **G. Staying Within the Permit Streamlining Act's Time Frames May Defeat Unreasonable Delay Arguments**

An unintended consequence of the Permit Streamlining Act is that it tends to act as a safe harbor for agencies that stay within its time frames. In *Toigo v. Town of Ross*, 70 Cal. App. 4th 309, 82 Cal. Rptr. 2d 649 (1999), the argument that the Town unreasonably delayed taking action on an application failed in part because the Town took action to deny the project within the Permit Streamlining Act's time frames.

#### **H. Coastal Development Permits**

A local agency's approval or denial of a coastal development permit may be appealed to the Coastal Commission. Appeals must be filed within 10 working days from the Commission's receipt of the notice of the local agency's decision. Public Resources Code § 30603(c).

If a permit is deemed approved by virtue of the Permit Streamlining Act, the appeal period will not commence to run as of the date of the deemed approval unless the applicant provides notice to the Coastal Commission. *Ciani v. San Diego Trust & Savings Commission*, 233 Cal. App. 3d 1604, 285 Cal. Rptr. 699 (1991).

## **II. CEQA**

### **A. Initial Study**

Thirty days after an application for a private project is accepted as complete or deemed complete, the lead agency must complete its initial environmental study, which determines whether to require the preparation of an Environmental Impact Report (EIR) or Negative Declaration. Public Resources Code § 21080.2; 14 California Code of Regulations ("CEQA Guidelines") § 15102.

A lead agency's failure to make this determination within 30 days after an application is complete or deemed complete does not nullify the agency's determination to require further environmental review, as CEQA's time limits are directory, not mandatory; there is no sanction for an agency's failure to comply with the time limitations for preparing an initial environmental study. *Eller Media v. Community Redevelopment Agency*, 108 Cal. App. 4th 25, 133 Cal. Rptr. 2d 324 (2003).

The 30-day time limit for completing the initial environmental study may be extended by 15 days if the applicant consents. Public Resources Code § 21080.2; CEQA Guidelines § 15102.

### **B. Time Limits for Adopting Negative Declarations<sup>2</sup>**

Negative Declarations must be adopted 180 days after the application is accepted as complete. Public Resources Code § 21151.5; CEQA Guidelines § 15107. Additional time to complete the Negative Declaration may be allowed by ordinance or resolution if justified by compelling circumstances and the applicant consents thereto. Public Resources Code § 21151.5. The Negative Declaration may be approved, denied or conditionally approved at the time that the development project is approved, denied or conditionally approved. CEQA Guidelines § 15107.

Sixty days after adoption of the Negative Declaration (or a determination that the project is exempt from CEQA), the lead agency must approve, disapprove or conditionally approve the project. Government Code § 65950. This period may be extended for up to 90 days with the applicant's consent. Government Code § 65957; CEQA Guidelines § 15111(c).

An unreasonable delay by the applicant in meeting requests necessary for the preparation of the Negative Declaration may serve to delay the approval period, or even result in project disapproval. CEQA Guidelines § 15109.

### **C. Time Limits for Certifying EIRs**

Immediately after determining that an EIR is required, the lead agency must notify other government agencies with approval authority over the project by sending them a "Notice of Preparation." CEQA Guidelines §§ 15082, 15375. If the EIR will be prepared under

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<sup>2</sup> The same rules governing Negative Declarations for timeline purposes apply to Mitigated Negative Declarations. Public Resources Code § 21064.5; CEQA Guidelines § 15070(b).

contract (CEQA Guidelines § 15084(a)), the agency is required to execute that contract within 45 days after the Notice of Preparation is issued. Applicants may agree to an extension. Public Resources Code § 21151.5.

An EIR for a private (i.e., non-government) project must be certified within one year from the date the application is accepted as complete. Public Resources Code § 21151.5; CEQA Guidelines 15108. An additional 90 days to certify the EIR may be allowed by ordinance or resolution if justified by compelling circumstances and the applicant consents. Public Resources Code § 21151.5; CEQA Guidelines § 15108.

Development projects must be approved, denied or conditionally approved within 180 days from date of EIR certification. Government Code § 65950. This period may be extended once upon consent of the applicant for up to 90 days. Government Code § 65957; CEQA Guidelines § 15111(c).

If, however, the decision to certify the EIR is not made within the one year after the application is accepted as complete, but is extended pursuant to Public Resources Code § 21151.5, the agency must decide whether to approve or disapprove the project within 90 days after EIR certification. Government Code § 65950.1. This period may be extended one time only for up to 90 days with the applicant's consent. Government Code § 65957.

#### **D. Failing to Comply with CEQA's Time Limits: Deemed Approval?**

What if a lead agency fails to adopt a Negative Declaration or certify an EIR, as applicable, within the time limits mandated by Public Resources Code § 21151.5? Can a project be deemed approved in the absence of these environmental approvals?

The answer is no. The Permit Streamlining Act's time limits may not be used to compel an agency to make a CEQA determination. CEQA's time limits are directory, not mandatory. *Eller Media v. Community Redevelopment Agency*, 108 Cal. App. 4th 25, 133 Cal. Rptr. 2d 324 (2003); see also *Riverwatch v. San Diego County (Palomar Aggregates)*, 76 Cal. App. 4th 1428, 91 Cal. Rptr. 2d 322 (1999).

A lead agency's failure to complete an initial environmental study within 30 days after an application is complete does not nullify the agency's determination to require further environmental review. *Eller Media v. Community Redevelopment Agency*, 108 Cal. App. 4th 25, 133 Cal. Rptr. 2d 324 (2003).

In *Sunset Drive Corp. v. City of Redlands*, 73 Cal. App. 4th 215, 86 Cal. Rptr. 2d 209 (1999), however the Court stated that the duty to prepare an EIR within one year is not directory, but a ministerial duty, enforceable by ordinary mandamus. A lead agency has no discretion to refuse to complete an EIR once it determines that an EIR is required. The Court refused to relieve the agency of the one-year requirement, notwithstanding that the applicant's consultant prepared the draft EIR, the consultant's work product was substandard, and the applicant refused to revise the draft EIR to the agency's

standards.

*Sunset Drive* explained that designating a procedural requirement as "directory" or "mandatory" does not refer to whether the requirement is permissive or obligatory, but merely denotes whether the failure to comply with that procedural step will invalidate the government action. If the action will be invalidated, the requirement is "mandatory." If not, it is "directory," according to the Court. See also *Plastic Pipe and Fittings Association v. California Building Standards Commission*, 124 Cal. App. 4th 1390, 22 Cal. Rptr. 3d 393 (2004); *Orsi v. City of Salinas*, 219 Cal. App. 3d 1576, 268 Cal. Rptr. 912 (1990).

### **III. Subdivision Map Act**

#### **A. Tentative Maps**

A tentative map may not be deemed approved under the Permit Streamlining Act under any circumstances unless the map satisfies all applicable subdivision regulations. Government Code § 66452.4; *Pongputmong v. City of Santa Monica*, 15 Cal. App. 4th 99, 18 Cal. Rptr. 2d 550 (1993).

A tentative map may not be deemed approved under the Permit Streamlining Act unless due process requirements, such as notice and a hearing, are satisfied. *Horn v. Ventura County*, 24 Cal. 3d 605, 156 Cal. Rptr. 718 (1979); 81 *Ops. Cal. Atty. Gen.* 166 (No. 97-1209).

#### **B. Subdivision Map Approvals for Which a Negative Declaration Is Required**

If a development project which requires a Negative Declaration involves a tentative subdivision map, special rules apply.

Most cities and counties have a planning commission (or body with a similar title) to which the city council or board of supervisors delegates certain land use authority. Fifty days after adoption of the Negative Declaration, or a determination that the project is exempt from CEQA, one of two actions must be taken by the planning commission. If the planning commission has been delegated the authority to approve tentative subdivision maps (as is usually the case), the planning commission must approve, disapprove or conditionally approve the map within the 50-day period. Government Code §§ 65952.1, 66452.1(b).

But if the planning commission has been delegated the authority only to make recommendations regarding tentative subdivision maps, the planning commission must make its recommendation within 50 days after adoption of the Negative Declaration, or a determination that the project is exempt from CEQA. Government Code §§ 65952.1, 66452.1(a). Then, at its next regular meeting following receipt of the planning commission's recommendation, the City Council or Board of Supervisors, as applicable,

must fix a date in which to approve, disapprove or conditionally approve the map. That date must be within 30 days of the receipt of the planning commission's report. Government Code § 66452.2(a).

It is not clear whether the time limits governing tentative subdivision map approvals for which a Negative Declaration is required (or which are exempt from CEQA) may be extended for 90 days upon consent of the applicant. Compare Government Code § 65952.1(a) with § 65957.

An unreasonable delay by the applicant in meeting requests necessary for the preparation of the Negative Declaration may delay the approval period or result in project disapproval. CEQA Guidelines § 15109; *Riverwatch v. San Diego County (Palomar Aggregates)*, 76 Cal. App. 4th 1428, 91 Cal. Rptr. 2d 322 (1999).

### **C. Subdivision Map Approvals for Which an EIR Is Required**

The time limits for tentative subdivision map approvals when an EIR is required are the same, mutatis mutandis, as when a Negative Declaration is required. Accordingly, 50 days after certification of the EIR, the planning commission must approve, disapprove or conditionally approve the map if it has such authority. Government Code §§ 65952.1, 66452.1(b). If the planning commission has the authority only to make subdivision map recommendations, the planning commission must make its recommendation within 50 days following EIR certification. Government Code §§ 65952.1, 66452.1(a). At the next regular meeting following the planning commission's recommendation, the City Council or Board of Supervisors, as applicable, must fix a date in which to approve, disapprove or conditionally approve the subdivision map. That date must be within 30 days of receipt of the planning commission's report. Government Code § 66452.2(a).

As with tentative subdivision map approvals for which a Negative Declaration is required, it is not clear whether the time limits governing tentative subdivision map approvals for which an EIR is required may be extended for 90 days upon consent of the applicant. Compare Government Code § 65952.1(a) with § 65957.