

Agreements Tolling CEQA Statute of Limitations Upheld

Agreements to toll the statute of limitations for filing suit are generally favored under the law because they enable parties to negotiate and resolve issues without the distraction of litigation. But in land use and CEQA cases, there are countervailing public policy reasons favoring prompt filing and disposition of such matters. The tension between those policies was at issue in *Salmon Protection and Watershed Network v. County of Marin*, a case that drew amicus briefs from such diverse interests as the Sierra Club and the Building Industry Association, both urging that such agreements be upheld. After balancing the competing interests, the court came out squarely in favor of tolling agreements. The case involved a challenge to Marin County's EIR for its countywide general plan update. The county entered into a series of tolling agreements with the petitioners, and after settlement discussions proved unsuccessful, the petitioners filed suit seeking to overturn the EIR. Property owners intervened in the case, claiming tolling agreements were ineffective and the lawsuit was untimely. The court disagreed, finding: (1) *The public policy favoring tolling agreements is not outweighed by the public policy of prompt resolution of CEQA cases.* The court acknowledged the public policy favoring the prompt filing disposition of CEQA challenges, but found an "equally strong" public policy encouraging the settlement of controversies in preference to litigation. The court noted the multiple benefits of tolling agreements: increasing chances of successful settlement, conserving judicial and local agency resources, avoiding the costs and time of litigation, and minimizing the inevitable delay while project approval is litigated. The court also pointed out that CEQA itself encourages settlement and automatically tolls the statute of limitations for pre-litigation mediations. (2) *The consent of intervenors – property owners affected by the decision, but not real parties in interest – was not required for the tolling agreement.* In a "prototypical" CEQA controversy where there is a project proponent, the court said, a valid tolling agreement must have the assent of the project proponent, the public agency, and the petitioner. In this case, where there was no project proponent, only the assent of the public agency and the petitioner was necessary. Although intervenors might be affected by the General Plan Update, they were not real parties in interest, and their assent was therefore unnecessary for the tolling agreement. (3) *The primary beneficiary of section 21167 time limits is the project proponent, not the general public, and the general public cannot prevent parties from waiving the 21167 tolling period.* The limitations period in section 21167 serves public purposes, the court acknowledged, but its primary purpose was to protect project proponents from extended delay, uncertainty and disruption of projects. Intervenors' "indirect concerns" about deferral of litigation were not sufficient to prevent those directly affected from waiving or agreeing to extend the limitations period. (4) *The 90-day statute of limitations under Government Code section 65009 can also be tolled.* The court found no reason not to balance the policy interests the same way for the 90-day limitations period for general plan challenges. As with the CEQA statute, the general public was only an incidental beneficiary of this statute. Having adopted the plan and being confronted with objections that it considers potentially meritorious or capable of resolution through negotiations, the public agency is free to extend the limitation period while engaging in negotiations that may avoid the expense and other disadvantages of litigation. The court's decision resolves an issue that has been of lingering concern to many practitioners. The broad reasoning in the decision appears applicable to other land use statutes of limitation, such as the 90-day period for actions concerning a subdivision map (Gov't Code § 66499.37) and the 180-day period for challenges to fees and exactions (Gov't Code § 66020).

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