CALIFORNIA
REAL ESTATE JOURNAL
PUBLISHED WEEKLY ■ MAY 29, 2007

GUEST COLUMNIST

The Use and Misuse of Motions to Stay the Project in CEQA Litigation

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The mere filing of a lawsuit under the California Environmental Quality Act does not automatically halt an approved project. In fact, the act mandates that responsible agencies "shall assume" compliance with the law and act accordingly unless ordered by a court to halt project activity. Project developers therefore often proceed at their own risk with project construction in the face of a pending challenge based on the act.

Heeding the warning in *Bakersfield Citizens for Local Control v. City of Bakersfield*, in which the court criticized the petitioners for their "disastrous tactical choice" in failing to "diligently and expeditiously seek a preliminary injunction" in the trial court "at the first hint of construction activities," such petitioners increasingly have rushed to the courthouse to seek injunctive relief to halt all project-related activities pending the court's ruling on their challenges.

Courts confronted with such applications must balance competing concerns. On one hand, courts must protect potentially meritorious claims from becoming effectively moot by the completion of the project before the court's ruling. On the other hand, enjoining approved projects in cases in which the petitioners are not likely to succeed on the merits or in which the balance of hardships weighs against petitioners would run afoul of the California Supreme Court's admonition in *Goleta Valley v. Board of Supervisors* that the act not be "subverted into an instrument for the oppression and delay of social, economic or recreational development and advancement."

A petitioner wishing to halt a project may seek either a "preliminary injunction" or a "stay," under Code of Civil Procedure Section 1094.5(g). Motions to stay are the preferred alternative today among such petitioners because of the widely held view that Section 1094.5(g) imposes a lower burden of proof. The statute, which was enacted in 1945, 35 years before the law's enactment, authorizes trial courts to stay the operation of administrative orders or decisions pending the judgment of the court. It states in relevant part, "[T]he court in which proceedings under this section are initiated may stay the operation of the administrative order or decision pending the judgment of the court. ... However, no stay shall be imposed or continued if the court is satisfied that it is against the public interest."

Courts and practitioners have interpreted the statute to authorize a trial judge to issue a stay solely if the judge determines that a stay will not be against the public interest.

Section 1094.5(g) has two distinct parts. The first provides that a trial court "may" issue a stay. The second precludes a trial court from issuing a stay when it would be "against the public interest."

The first sentence of Section 1094.5(g) grants trial courts the discretion to impose a stay. Because this sentence does not articulate the specific factors that trial courts must consider in exercising their discretion, the statute should be interpreted to require courts to apply relevant common-law principles. Moreover, because an administrative stay is the functional equivalent of a preliminary injunction, Section 1094.5(g) should be interpreted to require courts to apply common-law principles applicable to requests for injunctions.

Under well-settled common-law principles, before issuing injunctive relief a court must evaluate the applicant's showings as to the likelihood of success on the merits and whether the balance of hardships weigh heavily in the applicant's favor. Accordingly, the first sentence of Section 1094.5(g), when properly interpreted, requires courts' consideration of each of these factors before issuing a stay.

Unfortunately, however, rather than interpreting Section 1094.5(g)'s first sentence to require consideration of the traditional equitable principles for preliminary injunctions, the "public interest" language in the second sentence is typically understood to be the exclusive standard for issuing a stay. This interpretation reflects a misreading of the statute, and it is inconsistent with long-standing California law imposing heavy burdens on any moving party seeking injunctive relief.

If Section 1094.5(g) continues to be misinterpreted as a "lower" standard for authorizing stays than traditional preliminary injunctions, countless beneficial projects may be stayed needlessly and improperly for months or years, causing substantial injury to the project proponents and to communities throughout the state. To avoid this scenario, courts must be vigilant in denying stay requests when the petitioner has failed to meet its heavy burden of proof under traditional equitable principles, regardless of the type of injunctive relief sought.

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