



Court Upholds Special CEQA Streamlining Legislation for Oakland A's Park Project

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The enactment of special CEQA streamlining legislation for the Sacramento Kings arena nearly a decade ago created a model for a series of mega-project specific bills, all aimed at reducing the development uncertainty and the delay inherent in CEQA litigation. In a recent decision, the First District Court of Appeal had the occasion to interpret and give effect to such legislation enacted for the Oakland A's baseball park and mixed-use development project at the Howard Terminal in Oakland.

The Court in *Pacific Merchant Shipping Association v. Newsom*, First Appellate District (A162001) considered whether Assembly Bill 734 (2017-2018 Reg. Sess.) required the Governor to certify the project's eligibility for a streamlined process of judicial review by January 1, 2020. Unlike parallel special legislation, AB 734 did not include an express certification deadline. However, the bill appeared to incorporate by reference regulations adopted by the California Natural Resources Agency to implement judicial streamlining on other projects, and those regulations included a January 1, 2020 certification deadline.

Although the Governor did not certify the baseball park and mixed-use development for judicial streamlining until after January 1, 2020, the Court validated the use of the streamlined judicial review process after applying various rules of statutory construction.

What is notable about this decision is the Court's tacit approval of judicial streamlining for regionally significant projects. The Court observed, "CEQA's purpose to ensure extremely prompt resolution of lawsuits claiming noncompliance...is evidenced throughout the statute's procedural scheme...These requirements, however, do not always lead to prompt resolution of CEQA court challenges." The Court further acknowledged that despite the statutory requirement that CEQA actions be given preference over all other civil actions and that courts commence hearings on appeal within one year of the date of the filing of the appeal, "CEQA generally contains no deadline for resolving these matters."

The streamlining of CEQA challenges helps to level the playing field for what many developers see as an unfair game. Projects can be held hostage and derailed simply with the filing of a boiler plate CEQA petition. While nowhere near the precision of sabermetrics, which was the subject of Michael Lewis's best-selling book about the A's, *Moneyball: The Art of Winning an Unfair Game*, available research on judicial streamlining and project development outcomes suggests that streamlining can be a key component of a winning development strategy. A 2019 report of the California Senate Office of Research concluded that, compared to a normal litigation timeline for CEQA cases, projects that took advantage of judicial streamlining moved through the litigation process much faster and provided a significant benefit to developers. The same report indicated that the shortened timeline did not adversely affect the prosecution of CEQA litigation.

Proponents of projects that are economically and environmentally vital to the regions in which they are proposed should consider CEQA streamlining as a potential development strategy.