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PERSPECTIVE

CEQA dodging tactics may catch on

By Amrit Kulkarni and Tim Cremin

Ever since the Dodgers left Brooklyn for Los Angeles, cities have competed to keep or attract professional sports teams. The recent skirmishes in the cities of Sacramento, Inglewood and Carson prove that a new state-of-the-art stadium is the most influential factor in convincing a team to stay or luring a team to move.

The cities' playbooks also reveal that an unexpected prominent player is the California Environmental Quality Act. CEQA compliance and litigation can be used to undermine the planning, financing and construction of new stadiums. Therefore, the elimination or streamlining of the CEQA process has become an important method for demonstrating a city's ability to deliver a new stadium.

The efforts by Inglewood and Carson to attract professional football teams and Sacramento's retention of its professional basketball team demonstrate two main strategies to address CEQA impediments — the initiative process and special legislation. Successful use of these strategies for sports stadiums provides a model for other major development projects to adopt similar offensive approaches for winning the CEQA battle.

Initiative Process

Voter-sponsored initiatives placed on the ballot have always been exempt from CEQA (14 Cal Code Regs Section 15378(b)(3)). However, last year, a unanimous state Supreme Court ruled that qualified voter initiatives adopted by a city council, rather than placed on the ballot, are also exempt from CEQA (*Tuolumne Jobs & Small Bus. Alliance v. Superior Court*, 59 Cal. 4th 1029 (2014)). This ruling settled an outstanding issue on the application of CEQA to council actions on initiatives.

The court previously ruled that council-sponsored initiatives were subject to CEQA before being placed on the ballot (*Friends of Sierra Madre v. City of Sierra Madre*, 25 Cal. 4th 165 (2001)). In *Tuolumne Jobs*, the court created a different rule for initiatives that have qualified for the ballot through the voter signature process. When voter-sponsored initiatives are presented to the council, they can adopt the initiative and exempt the project from CEQA review.

Tuolumne Jobs provides a new strategy for stadium proponents to use the voter-sponsor initiative process to avoid CEQA through council adoption rather than a vote of the people. This process has two benefits. It reduces costs, delays and risk by (1) eliminating the stadium project from CEQA review and (2) avoiding an election on the initiative. This strategy is being used in the battle for a new football stadium by the cities of Inglewood and Carson.

On Feb. 24, the Inglewood City Council adopted a voter-qualified initiative authorizing the construction of a stadium as part of the Hollywood Park redevelopment plan. Since the council's adoption of the initiative is not subject to CEQA under *Tuolumne Jobs*, the construction process is expedited and the risk of delay due to CEQA processing and litigation is eliminated.

The city of Carson will be presented with the same process for the proposed stadium for both the Oakland Raiders and the San Diego Chargers. Proponents of the joint stadium are preparing an initiative to circulate for voter signatures to qualify for the ballot. Once the initiative qualifies, it will be presented to the Carson City Council to either adopt or place on the ballot.

The Carson project proponents hope that, similar to the Inglewood process, the stadium initiative will

be adopted by the city council to avoid CEQA review and the election process. The resulting expediting of the project will strengthen Carson's proposal. In the competition between suitors for professional teams, the sooner stadium construction can commence, the better.

Special Legislation

Another strategy to avoid or reduce CEQA requirements for stadium projects is special state legislation. A special CEQA exemption for stadium projects is rare (see, *City of Industry stadium exemption* (AB 81 X3, October 2009)).

However, special legislation to streamline and expedite CEQA review is becoming more prevalent. A special statute for the construction of a specific NFL stadium in Los Angeles shortened the CEQA administrative process and judicial review in exchange for carbon-neutral development and specified measures to reduce traffic and air quality impacts (Public Resources Code Section 21168.6.5).

In 2013, legislation streamlined the CEQA review process for the new NBA arena in downtown Sacramento (Public Resources Code section 21168.6.6). The statute allowed certain stadium activities to move forward while CEQA review was being completed and narrowed the grounds and available remedies in CEQA lawsuits. The Sacramento City Council approved the project based on an environmental impact report prepared in accordance with the special statute.

Two Court of Appeal decisions upheld the legislation and city approval process. The first decision rejected a claim that the statute was unconstitutional based on the separation of powers doctrine due the limitations on timing and grounds for judicial review (*Saltonstall v. City of Sacramento*, 231 Cal. App. 4th 837 (2014)). The second decision reject-

ed claims regarding the adequacy of the analysis in the environmental impact report and the city's "pre-commitment" to the project before the CEQA environmental review was complete (*Saltonstall v. City of Sacramento*, 2015 DJDAR 1897 (2015)). The success of the special legislation in Sacramento, including the favorable court decisions, may open the door for similar attempts by other jurisdictions.

A Template for All Projects

Over the past several years, there has been ongoing discussion of the need to reform CEQA to eliminate the delays, costs and often misuse of the process to achieve non-environmental goals. Some attempts to introduce broad-ranging CEQA reform have been introduced but failed to gain traction. However, narrow legislation to specifically address sports stadium development has been successful. In addition, the recent case law establishing a CEQA exemption for city council adoption of voter-sponsored initiatives has been embraced by stadium developers. This strategy is available to all types of development and it will be interesting to see how broadly it will be applied to other major projects. The recent sports stadium wars in Northern and Southern California have provided a template for other cities and developers to follow.

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