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Certification of Howard Terminal Project for Streamlined CEQA Review Under AB 734 Was Not Subject to AB 900 Deadlines



Howard
Environmental
Group,

AB 900,

which was enacted in 2011, established fast-track administrative and judicial review procedures for "environmental leadership development projects," i.e., projects that, among other criteria, would create high-wage, high-skilled jobs and achieve net-neutral greenhouse gas emissions. AB 900 provided that certain CEQA court challenges "be resolved, to the extent feasible, within 270 days." It required the Governor to certify a leadership project by January 1, 2020 and the lead agency to approve the project by the sunset date of January 1, 2021. The Governor's Office of Planning and Research promulgated AB 900 Guidelines, which described substantive requirements for projects to be certified under AB 900 and incorporated the AB 900 deadlines. AB 734 was special legislation signed into law in 2018 that mirrored AB 900's statutory scheme by creating a streamlined environmental review procedure solely for the Howard Terminal Project (the "Project") in Oakland. The Project proposed to construct a new baseball stadium for the Oakland Athletics together with mixed-used development. AB 734 incorporated many of the environmental mandates under AB 900. Among other criteria, the Project was required to achieve greenhouse gas neutrality as determined by the California Air Resources Board. Unlike AB 900, AB 734 contained no express deadlines for certification by the Governor or project approval by a lead agency. In 2019, the Governor updated the AB 900 Guidelines to state that they applied to projects certified under AB 734 "to the extent the Guidelines are applicable and do not conflict with the language

contained within those statutes." The Project was submitted to the Governor for certification under AB 734 in March 2019, but the Air Resources Board did not issue a determination that the Project would achieve greenhouse gas neutrality, in accordance with the AB 734 environmental mandate, until August 2020. The Governor then certified the Project for streamlined environmental review under AB 734 on February 11, 2021. Petitioners filed suit in March 2020, seeking to bar the Governor from certifying the project under AB 734 on the grounds that the Governor's authority to certify the project had expired on January 1, 2020. Petitioners claimed that, because the AB 900 Guidelines applied to projects certified under AB 734, the Governor's authority to certify the project had expired on January 1, 2020. The key issue on appeal was whether the timelines under the AB 900 Guidelines were applicable to projects certified under AB 734. The court first determined that a plain-language analysis of the statutory text did not resolve this question. However, based on the legislative history of AB 734, the court concluded that Legislature's decision to proceed with a single-project legislation meant that AB 734 was not bound by the statutory deadlines specific to AB 900. It found that in light of the significant environmental, economic, and cultural benefits of the Project, the application of the AB 900 timelines would undermine, rather than promote, the general purpose of the statute. The Governor had therefore properly exercised his authority to certify the Project as a leadership project under AB 734.

Authors