

CEQA Compliance Not Required For Council-Adopted Land Use Initiative Measure

Developers, project opponents, agencies and courts often lose the forest for the trees when considering CEQA issues. A prime example is the conflicting appellate authority and public debate on the question whether a city council's adoption of a voter-sponsored initiative measure is subject to CEQA.

In *Tuolumne Jobs & Small Business Alliance v. Superior Court*, S207173 (Supreme Court, July 7, 2014) the California Supreme Court answered "no" to this question, in a decision that brings some welcome common sense to the CEQA world. Rather than getting lost in the minutiae of deciding whether a council decision to adopt an initiative measure is ministerial, as the lower courts had done, the court simply ruled that the language and intent of the Elections Code preclude application of CEQA.

At issue in the case was the "Wal-Mart Initiative," an initiative petition that proposed a specific plan for a Wal-Mart Supercenter. The city council adopted the initiative measure instead of placing it on the ballot. The council did not take any steps to comply with CEQA. Opponents sued, claiming the city should have. The trial court ruled for the city, the court of appeal ruled for the opponents, disagreeing with an earlier appellate decision that had reached the contrary result, and the California Supreme Court then took the case. Focusing on the fundamentals, the court upheld the city's action.

The court first examined the language of the Elections Code, which requires city councils and boards of supervisors to act quickly upon receipt of a qualified voter-signed initiative petition, and allows them to adopt the measure without alteration as an alternative to putting it on the ballot.

The court noted that the delay that would be required for CEQA review meant that CEQA compliance would essentially nullify these Election Code provisions. Further, even if time constraints permitted CEQA review, that review would be pointless, as the Elections Code does not give cities authority to reject a qualified measure or require alterations to lessen its environmental impacts.

The court also explored legislative history. It noted that the Legislature had failed to pass a handful of bills that would have required environmental review of voter-signed initiative measures, while adopting a law that allows preparation of a report to be completed within 30 days. The court found this evidence telling, and concluded that adoption of that law represented a legislative compromise balancing the right of initiative with the goal of informing voters and local officials about potential consequences of an initiative's enactment: "Thus, when faced with competing bills, the Legislature enacted the bill that gave local governments the option of obtaining *abbreviated* review to be completed with the short time frame required for action on initiatives."

The court also addressed policy issues. The opponents argued that developers could use the initiative process to avoid CEQA review. The court responded by noting that the initiative power can also be used to thwart development. It concluded that: "these concerns are appropriately addressed to the Legislature. The process itself is neutral. The possibility that interested parties may attempt to use initiatives to advance their own aims is part of the democratic process."

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