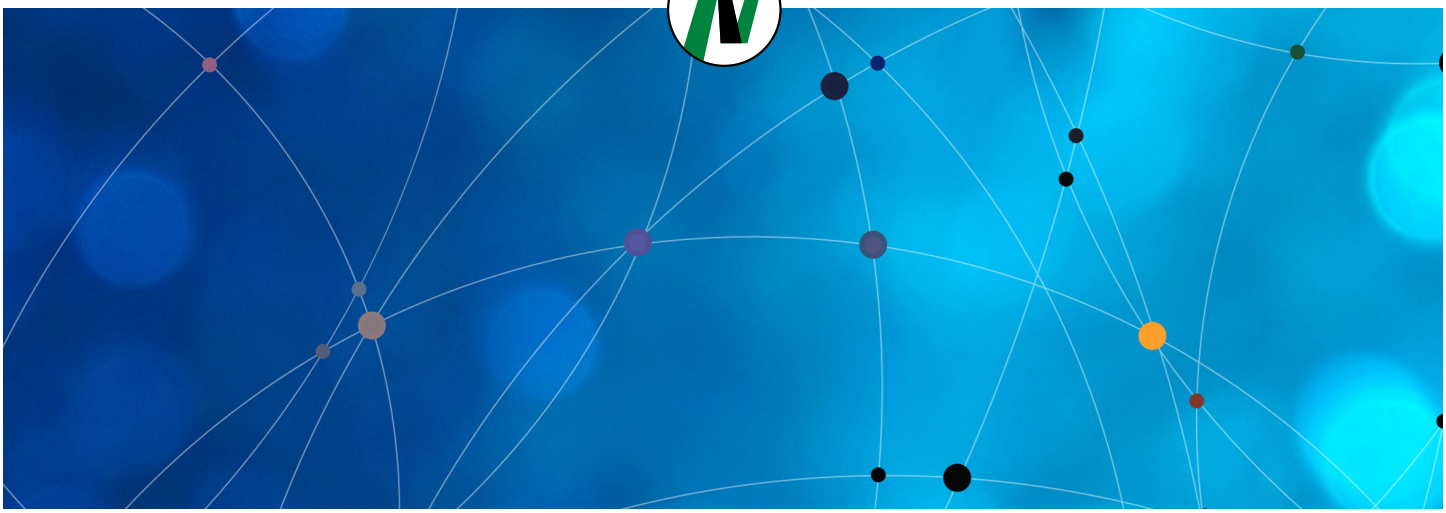

California Supreme Court Holds No CEQA Review Required for a Voter Initiative-Sponsored Ordinance

08.12.2014 | By John J. Flynn III, Liz Klebaner, Benjamin Z. Rubin

In a relatively short decision, the California Supreme Court held in *Tuolumne Jobs & Small Business Alliance v. Superior Court of Tuolumne County (Tuolumne Jobs)* that the California Environmental Quality Act (CEQA) does not apply to a local agency action adopting a voter-sponsored initiative. The Court's decision may prove invaluable for certain types of controversial development projects, allowing such projects to be approved by a local legislative body without CEQA review and with the support of only 15 percent of a city's registered voters.

The California Constitution reserves to the people of California the power of initiative and referendum. (Cal. Const., art. IV, § 1.) The California Elections Code sets forth the procedures for city and county voters to exercise these rights. (Elect. Code, §§ 9200 et seq.) In particular, Elections Code section 9214 provides that when a local legislative body receives an initiative petition signed by at least 15 percent of the city's registered voters, it must adopt the initiative without modification, submit the initiative to a vote at a special election, or order a report to examine to examine the initiative's effect on any matter, including land use. The report must be provided to the legislative body within 30 days after the petition was certified as satisfying the signature requirement and the local agency must, within 10 days after receiving the report, either adopt the initiative or order that an election be held.

In *Tuolumne Jobs*, the City of Sonora prepared an EIR to review a proposal for a Wal-Mart "Supercenter" that would sell groceries and be open 24 hours per day, 365 days per year. One week before the City Council voted on the proposal, the City was served with a notice of intent to circulate an initiative petition. The initiative proposed to adopt a specific plan for the Wal-Mart expansion which would, in effect, approve the Supercenter project without the City certifying the EIR. After the initiative garnered the necessary support

from the voters, and after the City Council held a public hearing and considered a report examining the initiative's consistency with previous planning commission approvals regarding the Wal-Mart expansion, the City Council adopted the specific plan. The Tuolumne Jobs & Small Business Alliance sought a writ of mandate to invalidate the City's action, alleging, among other grounds, that the City failed to comply with CEQA by adopting the ordinance without first conducting a complete environmental review. After the trial court sustained a demurrer without leave to amend, the Court of Appeal for the Fifth Appellate District reversed in part, holding that full CEQA review is required when a land use ordinance is proposed in a voter initiative petition. The California Supreme Court disagreed with the Court of Appeal's analysis and reversed.

In the decision, the Supreme Court examined the intersection between the Elections Code-mandated processes for local legislative body actions on voter-sponsored initiatives and CEQA's clear mandate that a public agency must conduct environmental review prior to approving an action that may "result in an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and that is not otherwise exempt. (Pub. Resources Code, § 21065; see also Cal. Code Regs., tit. 14, § 15060.) The Court found that the plain language of Elections Code section 9214 requires local legislative bodies to act expeditiously when presented with a voter initiative petition and that a local agency could not meet these statutory deadlines and also comply with CEQA's public review and comment requirements for projects that require EIRs. Taking note of the legislative history regarding voter initiatives, and rejecting the argument that the relevant provisions of the Elections Code were repealed by implication when CEQA was adopted, the Supreme Court, applying the maxim of statutory construction that a court should give meaning to every word in a statute and avoid a construction that would render any word or provision surplusage, held that CEQA does not apply to a local legislative body adopting an initiative, pursuant to Elections Code section 9214, because CEQA would render inoperative the timelines specified in section 9214.

The Court also reconciled Elections Code section 9214 and CEQA, observing that CEQA applies only to discretionary agency actions and that a local legislative body lacked the requisite discretion to modify an initiative to reduce or avoid environmental impacts. Section 9214 mandates the legislative body to adopt the initiative as presented or submit the initiative to a special vote.

The Supreme Court in *DeVita v. County of Napa* (1995) 9 Cal.4th 763 established that CEQA does not apply when a legislative body submits a section 9214 voter-sponsored initiative to voters. The Court's decision in *Tuolumne Jobs* is the logical extension of *DeVita v. County of Napa*, holding that CEQA also does not apply to a local legislative body's direct adoption of a voter-sponsored initiative under Elections Code section 9214, thereby foreclosing CEQA's application to voter-sponsored initiatives regardless of how the initiative is approved. As a result of the decision in *Tuolumne Jobs*, developers now have one more arrow in their quiver, one that may prove particularly helpful when a project, although popular, would likely be found to have significant environmental impacts. That said, before project applicants decide to let this arrow fly, they should consider whether their specific project can take advantage of this procedure. For example, does the project require some other approval for which a responsible agency requires a final CEQA document (such as a Clean Water Act 401 certification)? If it does, the project applicant may not be able to use the initiative process to sidestep CEQA, because without an approved or certified environmental document, responsible agencies will likely require some type of CEQA review.

Finally, it should be noted that the *Tuolumne Jobs* decision does not address CEQA's application, if any, to the Elections Code process for local referenda.