

## DEVELOPING NEWS



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## **How to avoid CEQA environmental review by ballot initiative**

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The World Logistics Center is a massive project – 41 million square feet of logistics facilities located on 2,300 acres in Moreno Valley, California. The project has undergone environmental review for years, culminating in an Environmental Impact Report (“EIR”) that was approved by the Moreno Valley City Council on August 19, 2015. Eight separate lawsuits were filed against the City and the project’s developer under the California Environmental Quality Act (“CEQA”) by 13 different organizations, claiming that the EIR was inadequate and that the City failed to comply with CEQA in various respects. The 13 petitioners included local, statewide, and national environmental and activist groups, a labor union, and even other government agencies such as the County of Riverside and the South Coast Air Quality Management District.

At that point a group called the Moreno Valley Jobs Coalition (with funding from the developer) circulated a petition to approve the project by voter initiative. A year earlier, the California Supreme Court held, in a different case, that land use approvals adopted through the state’s voter initiative process are not subject to CEQA. *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4<sup>th</sup> 1029.

Here’s how it works.

### **The local ballot initiative process**

In 1911, Californians amended the state Constitution to provide that the legislative power of the state is vested in the California Legislature, “but the people reserve to themselves the powers of initiative and referendum.” Cal. Const., art. IV, §1. The state Constitution further

authorizes the Legislature to establish procedures for city and county initiatives, which are now codified in the California Elections Code.

A voter wishing to put an initiative on the local ballot must first file a notice of intention to do so with the municipal elections official – usually the city or county clerk. Elec. Code, §§9103(a), 9202. The voter must also file with the elections official a copy of the proposed measure with a request that a ballot title and summary be prepared. Elec. Code, §§9103(a), 9203. Once the elections official has prepared the ballot title and summary, the proponent of the measure has 180 days in which to collect enough signatures to qualify the measure for the ballot. Elec. Code, §§9110, 9208.

If the initiative petition is signed by 15% or more of the registered voters of a city (or, in the case of a county, 20% of the votes cast within the county in the last gubernatorial election) the city council (or county board of supervisors) must do one of the following: (1) Adopt the ordinance, without alteration, within 10 days; or (2) Immediately order a special election at which the ordinance, without alteration, is submitted to a vote; or (3) Order a report of the ordinance's effects on the city/county, to be completed within 30 days (a "30-day report"), and then either adopt the ordinance without alteration or order a special election on the ordinance. Elec. Code, §§9116, 9214.

***Tuolumne Jobs & Small Business Alliance v. Superior Court (2014) 59 Cal.4th 1029.***

In *Tuolumne Jobs & Small Business Alliance v. Superior Court*, Wal-Mart applied to the City of Sonora to expand an existing store into a supercenter. A petition for ballot initiative was circulated to adopt a specific plan for Wal-Mart's expansion. The petition received signatures from more than 15% of the city's registered voters. The petition was then presented to the city council, which ordered preparation of the 30-day report, and then adopted the specific plan.

The petitioner sued the city under CEQA, contending that the city violated CEQA by approving the specific plan without conducting a complete environmental review. The California Supreme Court ruled in favor of the city. The Court found that the two laws – the voter initiative law, and CEQA – are incompatible. The statutory language and

legislative intent in the voter initiative law clearly contemplates a speedy process. And CEQA is not speedy. As the Court put it: "In contrast to these [voter initiative] condensed deadlines, CEQA review typically takes months." Yes, they said "months." Because the two laws are incompatible, the constitutional right of the people to initiative must prevail because the courts of this state have a duty to "jealously guard this right of the people."

### **World Logistics Center**

The Moreno Valley Jobs Coalition took a cue from Wal-Mart in the *Tuolumne Jobs* case. In September, 2015, shortly after all the lawsuits had been filed challenging the World Logistics Center, they circulated a petition to approve the World Logistics Center entitlements. They needed 7,609 signatures. They got over 48,000 signatures. On November 24, 2015, they presented the petition to the city council, and the city council re-approved the project.

The litigation is not over. As of the publication of this article, at least four lawsuits have been filed by six petitioners, including the South Coast Air Quality Management District, Riverside County Transportation Commission, and local and national environmental groups. More to come on those.

### **Conclusion**

The voter initiative process is probably not the right solution for every project. But for high profile projects that enjoy popular support within the community, it is worth consideration.

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