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M David Kroot

Lynn Hutchins

Karen M. Tiedemann

Thomas H. Webber

Dianne Jackson McLean

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Jennifer K. Bell

Robert C. Mills

Isabel L. Brown

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Erica Williams Orcharton

Luis A. Rodriguez

Xochitl Carrion

Rafael Yaquian

Celia W. Lee

Vincent L. Brown

Hana A. Hardy

Caroline Nasella

Eric S. Phillips

Elizabeth Klueck

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

LAW ALERT

CEQA EXEMPTION APPLIES TO THE DIRECT ADOPTION OF VOTER-SPONSORED INITIATIVES

On August 7, 2014, in *Tuolumne Jobs & Small Business Alliance v. Superior Court* ("*Tuolumne*"), the California Supreme Court unanimously agreed that the California Environmental Quality Act ("CEQA") does not apply to voter-sponsored initiatives that a local governing body chooses to directly adopt. *Tuolumne* resolves the first of seven CEQA cases currently before the Court and confirms that a CEQA exemption applies equally to (1) voter-sponsored initiatives submitted to the voters; and (2) voter-sponsored initiatives adopted by the governing body.

Background

In *Tuolumne*, the City of Sonora prepared an Environmental Impact Report ("EIR") to evaluate the environmental effects of the proposed expansion of an existing Wal-Mart. Before the EIR was certified, project proponents obtained enough signatures from Sonora voters to place an initiative approving the proposed expansion on the ballot. The city council ordered an abbreviated report of the initiative's effects, as provided by Elections Code Section 9212.

After preparing the report, the city council adopted the initiative exactly as written and did not certify the EIR that had been prepared. Opponents of the Wal-Mart expansion claimed that the city council's adoption of the initiative without first certifying the EIR violated CEQA. After the trial court found in Wal-Mart's favor, the Court of Appeal held that

when a city council chooses to adopt a voter-sponsored initiative, full CEQA review is required.

Ruling

Lower courts were divided as to whether or not the adoption of a voter-sponsored initiative without an election is a project subject to CEQA. In resolving the dispute, the Court reasoned that the Elections Code provides the exclusive procedures for voter initiatives and that CEQA is inapplicable. When a local governing body receives a voter-sponsored initiative, Section 9214 of the Elections Code gives it three options. It may: (1) adopt the initiative without alteration within 10 days, (2) submit it to an election, or (3) order an abbreviated report of the initiative's impacts to be prepared within 30 days before choosing either option (1) or (2).

The Court reasoned that the short time frames specified in the Elections Code preclude usually lengthy CEQA processes from applying to the adoption of initiatives. The Court further explained that because the Elections Code does not permit local governing bodies to adopt mitigations or otherwise modify a voter-sponsored initiative before adoption, CEQA review would be meaningless. In addition, the Court observed that repeated attempts to amend the Elections Code to subject voter-sponsored initiatives to CEQA had been rejected by the legislature. Finally, the Court stated that its decision is consistent with the public policy of permitting

voters to express their preferences and advance their goals through the initiative process.

Effects

Prior to *Tuolumne*, it was well established that CEQA does not apply to voter-sponsored initiatives placed on the ballot. (See, e.g., *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 794-95.) It was also settled law that local agencies must comply with CEQA before placing an agency-sponsored initiative on the ballot. (See, e.g., *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165.) It is now clear that CEQA review is not required before a local governing body adopts a voter-sponsored initiative.

The decision may encourage some project proponents to attempt to circumvent CEQA and other procedural steps by submitting the signatures of 15 percent of the registered voters on an initiative petition and obtaining the approval of a majority of the local

governing body. However, the Court noted that project opponents may subject the adopted initiative to a referendum by obtaining the signatures of 10 percent of registered voters. The fact that ballot initiatives are limited to legislative matters (such as plan amendments and rezonings), as opposed to administrative approvals (such as use permits), may also prevent the fast-tracking of some land use projects. It is worth noting, however, that a legislative initiative could be crafted to eliminate the need for most administrative approvals, with the exception of subdivision maps. Regardless, going forward it is clear that local governing bodies can adopt voter-sponsored ballot initiatives without worrying that such actions violate CEQA.

If you have any questions, please contact Barbara Kautz, Eric Phillips, or any other attorney at Goldfarb & Lipman.

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