

AB 890 (Medina)

Local Land Use Initiatives: Environmental Review

(Updated – March 29th, 2017)

Background

The California Environmental Quality Act (CEQA) is California's signature environmental protection statute that helps identify and feasibly mitigate significant environmental impacts of land use developments. Unfortunately, the CEQA review process has been increasingly undermined by California's initiative process, a once highly regarded vital check on corporate influences over our government.

When a city council receives a voter initiative petition meeting the Elections Code requirements, it must do one of three things: (1) adopt the initiative without alteration; (2) submit it to a special election; or (3) order an abbreviated report on the initiative. Upon receipt of the report, it must then either adopt the initiative or hold a special election (Elec.Code se, 9214). No matter which option is chosen, the city council does not have the ability to request a full environmental review of the petition, reject the petition, select an alternative to the petition, or modify the petition with mitigation. Some land developers are using this process to bypass CEQA review. This allows for quick building of development land use structures without any regard for the significant environmental impacts.

Several cases have held that CEQA provisions do not apply to land use initiatives proposed by voters due to the mismatch in timelines. The initiative process was meant to be quick, 10 to 40 days from the submission of a qualifying petition to the decision to adopt or hold an election. In contrast, the CEQA process can take more time because of the detailed reports and extensive studies to mitigate the environmental and air quality impact for both residents and the environment.

In a Toulumne County Supreme Court of California opinion (5th Appellate District, Tuolumne County, F063849) the court recognized the conflict between election procedures and the CEQA review process as an issue to be resolved by the legislature.

Problem

Some developers are avoiding CEQA and other public review for proposed projects by qualifying a local measure for approval. Without a proper environmental review or mitigation plan, this results in significant, lasting negative impacts on communities.

In a typical city-wide initiative, once 15% of eligible voters have signed a petition, the proposal qualifies for the ballot and local elected officials can either call a special election or accept the proposal without negotiating changes. Officials will often approve the initiative because a special election could strain an already tight budget. Thus, developers are increasingly using the ballot initiative process to force the quick approval of land use development projects.

If we wish to reconcile the intent of CEQA regulation with that of the ballot initiatives, we must find a reasonable solution that strengthens and reaffirms California's commitment to both environmental protection and the spirit of the initiative process.

Solution

AB 890 will add language and amend Elections Code sections relating to the initiative process. This will provide a pathway for a proposed initiative to have an environmental review.

Specifically this bill:

- Requires a proponent of a proposed initiative ordinance to request an environmental review prior to the collection of signatures.
- Requires an elected official to notify the proponent of the results of the environmental review.
- If the environmental review finds that the proposed initiative will not have a significant impact on the environment, the proposed initiative would go through the traditional initiative process and could be adopted by the public.
- If the environmental review finds that the proposed initiative could result in a significant impact to the environment, an environmental impact report or mitigated negative declaration will be prepared.
- Requires the governing body to hold a public hearing, once the environmental impact report or mitigated negative declaration is complete, and either approve or deny the proposed initiative.

Support

State Building & Construction Trades Council
of California (Sponsor)
Center for Community Action & Environmental
Justice (Co-Sponsor)

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