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U.S.

Builders Pierce California's Environmental Shield With New Weapon: The Ballot

By IAN LOVETT JUNE 7, 2016

MORENO VALLEY, Calif. — Once heralded as a vital check on corporate influence over government, California's ballot initiative system — which allows residents to propose laws and approve them by popular vote — has been used to sharply cut property taxes and to enact the country's first medical marijuana law.

But these days, developers are using the process for another purpose: to sidestep state environmental laws and speed major developments.

Plans for a stadium in Carson, a shopping center north of San Diego and a vast warehouse complex in Moreno Valley were approved last year using the ballot initiative process. Another ballot measure hastened construction of a stadium in Inglewood, where the Los Angeles Rams of the National Football League will play.

The advantage for developers is clear: Projects approved by ballot measures avoid legal challenges under the California Environmental Quality Act.

There is a twist, though: Residents often do not even have a chance to vote.

Once 15 percent of eligible voters have signed a petition, a project qualifies for the ballot, and local elected officials can call a special election or accept the proposal

without negotiating changes. Officials often approve the project to avoid paying for a special election that could further strain tight budgets.

Supporters of the ballot measures say they allow residents to override a broken system in which lawsuits and environmental reviews can delay projects for years.

But environmentalists argue that the arrangement grants special privileges to developers, even if only a relatively small fraction of residents support a project. And land-use experts say the strategy will become more common unless the state government steps in to curtail it.

So far, the issue has failed to attract much attention in Sacramento.

“We’ve ended up with a warping of direct democracy to defeat strong environmental laws,” said Douglas Carstens, a lawyer specializing in land use and the environment. “It’s ramping up. Within a year or two, people will realize what a bad situation this is.”

Developers have complained for decades about the California Environmental Quality Act, which is far more exacting than federal regulations. The state law requires them to identify and mitigate the environmental effects of their projects. No state agency oversees the law; it is enforced only by lawsuits. Written broadly, the law allows almost anyone to sue, claiming environmental harm that can range from destroying animal habitats to blocking a view. The litigation can add years and millions of dollars to a project’s cost.

Walmart has pioneered the use of ballot initiatives to speed construction over the last decade. Since 2009, the company has taken plans for stores to the ballot in at least nine cities across the state; elected officials approved the measures without a vote in eight of those cases.

The company recently gathered enough signatures in Desert Hot Springs for a ballot measure that would clear the way for a new superstore.

A Walmart spokeswoman, Delia Garcia, said the ballot initiative was “a way to move the process forward,” but she would not address whether the company was using the process to avoid potential lawsuits.

“We really wanted to give the public a chance to weigh in,” Ms. Garcia said of the decision to put the Desert Hot Springs store on the ballot. “We knew there was strong community support. In 21 days, we surpassed the required number of signatures.”

The California Supreme Court affirmed Walmart’s strategy in a 2014 decision rejecting a challenge to the company’s expansion of a store in Sonora. An elected board, the court ruled, may approve a ballot measure petition without a special election, and that project can then bypass an environmental review.

After the decision, more developers began following Walmart’s approach.

The court ruling offered “a road map” for how to avoid the environmental review process, said Richard Frank, a former chief deputy attorney general in California who began working on Environmental Quality Act cases shortly after the law was signed in 1970.

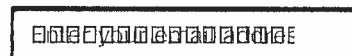
“What is troublesome to me is that some members of the regulated community are using the Supreme Court decision to circumvent the true intent of the law,” he said.

Some city officials, frustrated by lawsuits, see the end run around the state environmental act as a useful way to speed construction.

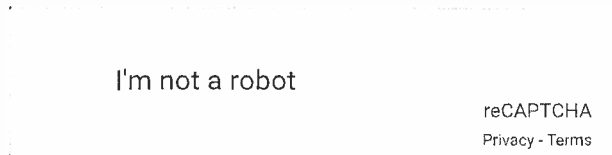
In Carlsbad, the plan to build a shopping complex was certain to prompt a lawsuit until the developer, Caruso Affiliated, circulated a petition to put it on the ballot. The City Council approved the measure outright in a unanimous vote.

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“They would meet our growth standards, and our vote would give them security about litigation,” Mayor Matt Hall said. Noting that a desalination plant in town had faced more than a dozen lawsuits and appeals, he added that the state environmental law had “become more of a weapon than a shield.”

Mr. Frank, the former lawyer in the California attorney general’s office, said that this use of the ballot initiative system “smacks of a collusive process.”

Nowhere have ties between a developer and elected officials come under more scrutiny than in Moreno Valley. After the City Council approved plans to build the largest warehouse complex in the United States, environmental groups sued, contending that the complex would add nearly 70,000 car and truck trips a day to an area that already had some of the most polluted air in the country. The developer, Highland Fairview, had also spent heavily to aid the election of the three Council members who supported the project.

So backers of the project gathered signatures for a ballot initiative, and then the Council approved it outright — shielding the project from environmental lawsuits.

Jeffrey Giba, one of the councilmen who supported the project, called the environmental lawsuits “an extortion racket.”

“I don’t want to spend my city’s money on a special election when we already approved the project once,” he said.

Responding to accusations of collusion with the developer, he said, “Nobody bought me.”

Although environmental activists are leaning on state officials to close the loophole, no new legislation has been proposed this year.

In the meantime, residents have tried to force local public votes. But they say it is difficult to fight developers that can put millions toward the projects.

In Carlsbad, an affluent seaside community, residents gathered enough signatures to force a referendum on the shopping center. Voters narrowly rejected the project in March, overriding the Council's previous approval.

De'Ann Weimer, who helped organize opposition to the shopping center, said that despite her group's victory, it was unrealistic to expect residents to continually fight companies like Caruso Affiliated, which spent more than \$10 million pushing for the shopping center. Her group spent about \$100,000 in the months before the referendum.

"It's an unfair playing field when an organization has this much power and money and resources," she said.

In Moreno Valley, a working-class city where people are clamoring for jobs, opponents of the warehouse complex said the process had effectively allowed the developer, Highland Fairview, to buy the right to build what it wanted.

Opponents later tried to force a referendum, but they failed to gather enough signatures. Highland Fairview spent more than \$1 million since the beginning of 2015 in support of the warehouse complex; the local opposition group raised less than half as much.

"If we'd all had the same amount of money to plead our case, it would have been different," said George Price, a city councilman who opposes the warehouses. He estimated that 90 percent of the residents in his district, where the project will be built, opposed the complex.

Echoing Walmart's argument, the chief executive of Highland Fairview, Iddo Benzeevi, said the 49,000 signatures gathered in favor of the ballot measure proved the public's support.

"Complaints about money spent to educate voters are not surprising," Mr. Benzeevi said in an email. "Opponents simply lost their argument with the community."

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