



## **2015 Update for the CEQA Deskbook, 3<sup>rd</sup> edition**

By Antero Rivasplata, AICP

ICF International

The 2015 update of the CEQA Deskbook contains a summary of Assembly Bill 52's new requirements for consultation with California Native American tribes, new decisions by the California Supreme Court on the adoption of voter-initiated ordinances and the baseline for CEQA analysis, and an advisory about a San Diego court decisions that may muddy the waters with regard to how greenhouse gas emissions reductions are analyzed.

Changes and/or additions affect the following pages in the book:

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By Ronald E. Bass, Kenneth M. Bogdan and Antero A. Rivasplata

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### Revise the fifth bullet under “Nonprojects” on page 35 as follows:

- A city council action placing a voter initiative on the ballot. This applies only to initiatives that are qualified for the ballot by voter petition. This includes an initiative that is adopted by the city council as a result of a qualified voter initiative petition. In *Tuolumne Jobs and Small Business Alliance v. Superior Court of Tuolumne County* (2014) 59 Cal.4<sup>th</sup> 1029 the California Supreme Court held that an initiative that is qualified for the ballot may be directly adopted by the city council without preparing a CEQA document. It does not include an initiative that the city council itself places on the ballot, absent a voter petition. In *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4<sup>th</sup> 165, the state Supreme Court held that a city council-sponsored ballot initiative was subject to CEQA.

### Add the following at the beginning of page 69:

#### AB 52 - Native American Consultation

Although Native American tribes are sometimes involved in the implementation of California Environmental Quality Act (CEQA) by state and local lead agencies, until now tribes have not had a formal and consistent role in the environmental review process. Consequently, tribal cultural resources, sacred places, and Native American traditions have often been overlooked or marginalized under CEQA.

To remedy these problems, Assembly Bill (AB) 52 (Chapter 532, Statutes of 2014) establishes a formal consultation process for California tribes as part of the CEQA and equates significant impacts on “tribal cultural resources” with significant environmental impacts (new Public Resources Code (PRC) Section 21084.2). Although AB 52 takes becomes law on January 1, 2015, it only applies to projects that have a notice of preparation or notice of negative declaration/mitigated negative declaration filed on or after July 1, 2015. For all intents, the latter is the date on which it takes effect.

AB 52’s statement of legislative intent states that tribes may have expertise in tribal history and “tribal knowledge about land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.” The legislative intent also makes clear that CEQA analyses must consider tribal cultural resources, including “the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.”

AB 52 creates the following new definitions and new requirements for lead agencies.

**Definition of Tribe.** New PRC **Section 21074** defines a “California Native American Tribe” to mean a Native American tribe located in California that is on the contact list maintained by the Native American

Heritage Commission. This definition is broader than the concept of a “federally recognized tribe” that is typically used in implementing with various federal laws, including the National Environmental Policy Act (NEPA).

**Definition of a Tribal Cultural Resources.** New PRC **Section 21074**, defines a “tribal cultural resource” as any of the following under its subsections (a) through (c):

(a) (1) Sites, features, places, and objects with cultural value to descendant communities or cultural landscapes that are any of the following:

(A) Included in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.

(C) Deemed to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1.

(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to the criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

**Duties of the Native American Heritage Commission.** AB 52 amends PRC **Section 5097.94** to expand the duties of the Native American Heritage Commission (NAHC) by requiring it “To provide each California Native American tribe on or before July 1, 2016, with the following:

- A list of all public agencies that may be a lead agency pursuant to [CEQA] within the geographic area with which the tribe is traditionally and culturally affiliated,
- The contact information of those public agencies, and
- Information on how the tribe may request the public agency to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation pursuant to Section 21080.3.1.”

**Formal Tribal Consultation Requirements.** New PRC **Section 21080.3.1** states that “...Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources that may inform the lead agency in its identification and determination of the

significance of tribal cultural resources” and, therefore establishes the following requirements for consultation.

Prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project, the lead agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if:

- (1) The California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and
- (2) The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation.

To expedite the requirements of this section, the NAHC shall assist the lead agency in identifying the California Native American tribes that are traditionally and culturally affiliated with the project area.

Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the lead agency shall provide formal notification to the designated contact of, or a tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, which shall be accomplished by means of at least one written notification that includes a brief description of the proposed project and its location, lead agency contact information, and a notification that the California Native American tribe has 30 days to request consultation pursuant to this section.

The lead agency shall begin the consultation process within 30 days of receiving a California Native American tribe’s request for consultation.

**Treatment of Mitigation Measures and Alternatives.** New PRC **Section 21080.3.2** provides that as part of the consultation process, parties could propose mitigation measures. If the California Native American tribe requests consultation to include project alternatives, mitigation measures, or significant effects, the consultation would be required to cover those topics. The consultation will be considered concluded when either of the following happens:

- (1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.
- (2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures to be taken that would mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

New **Section 21082.3** provides that any mitigation measures agreed upon during this consultation “shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring program” if determined to avoid or lessen a significant impact on a tribal cultural resource. If a project

“may have a significant impact on a tribal cultural resource,” the environmental document would be required to discuss both of the following:

- (1) Whether the proposed project has a significant impact on an identified tribal cultural resource.
- (2) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to [during consultation], avoid or substantially lessen the impact on the identified tribal cultural resource.

This section provides that information submitted by a California Native American tribe during consultation is to be kept confidential and not included in the public review draft of the CEQA document without consent of the tribe. It goes on to specify that it does not prohibit the confidential sharing of information among the lead agency, a California Native American tribe, and the applicant.

**Limitations on Certification of Environmental Impact Report (EIR) or Adoption of Negative Declaration.** Subsection **21082.3(d)** will limit the ability of the lead agency to “certify an environmental impact report or adopt a mitigated negative declaration for a project with a significant impact on an identified tribal cultural resource” to those situations where one of the following occurs:

- (1) The consultation process between the California Native American tribe and the lead agency has occurred as provided in Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.
- (2) The California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the lead agency, or otherwise failed to engage, in the consultation process.
- (3) The lead agency has complied with subdivision (c) of Section 21080.3.1 and the California Native American tribe has failed to request consultation within 30 days.

Further, if the mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of the consultation or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency “shall consider” feasible mitigation pursuant to Section 21084.3.

**Examples of Mitigation for Impacts to Tribal Cultural Resources.** New **Section 21084.3** lists examples of mitigation measures that may be considered, when feasible, to mitigate impacts on tribal cultural resources:

- (1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

(2) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

(A) Protecting the cultural character and integrity of the resource.

(B) Protecting the traditional use of the resource.

(C) Protecting the confidentiality of the resource.

(3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

(4) Protecting the resource.

AB 52 does not limit the ability of a California Native American tribe to participate as an interested tribe, person, citizen, or member of the public on CEQA reviews. Also, it specifically does not expand the applicability of CEQA to projects located on Native American tribal reservations or rancherias.

**CEQA Guidelines to Be Amended.** New PRC Section 21083.09 requires the Office of Planning and Research and the Natural Resources Agency to amend Appendix G of the CEQA Guidelines by January 1, 2016 to separate the consideration of paleontological resources from tribal cultural resources and to add consideration of tribal cultural resources to the sample questions.

### **Integrating AB 52 into CEQA Practice**

#### **Process**

California Native American tribes with an affiliation to resources within the lead agency's jurisdiction will provide the agency with a request to be involved in any projects subject to CEQA. When a project is received or initiated by the lead agency, the agency is obligated to send a notice offering the opportunity to initiate consultation to those tribes. An agency may choose to contact NAHC at the beginning of the CEQA process to identify the California Native American tribes and the tribal contact person(s) if it wishes to proactively initiate consultation with tribes.

Contact the tribal representatives as soon as the project is accepted as complete or the public project is initiated. This may occur concurrently with beginning work on the project's Initial Study. The 14-day period identified in PRC Section 21080.3.1 is not intended to be separate from the time during which an Initial Study is begun.

Where there is more than one tribe involved, the lead agency will be undertaking concurrent consultations. Tribal consultations and any negotiations over the contents of the CEQA document should be conducted individually if more than one tribe is involved. The lead agency is not obligated under AB 52 to attempt to reconcile differences if tribes differ over their preferred mitigation for any shared Tribal Cultural Resources (TCR). That may become a problem that will need to be handled diplomatically.

Provide time in the schedule for the 30-day period for tribe(s) to respond to the lead agency's solicitation and the time expected to be taken for consultation. A proposed Mitigated Negative Declaration (MND) or a Draft EIR cannot be released for public review before the tribe(s) has had the opportunity to consult and consultation has ended.

Provide time in the project schedule for consultation between the tribe(s) and lead agency. If the tribe(s) does not request consultation, then this time will not be needed. It's easier to remove time from the schedule than to try to add it in once the CEQA process is underway.

If the tribe(s) requests consultation, do not release an MND for public review until consultation between the tribe(s) and lead agency is completed and there are mitigation measures acceptable to the tribe(s) incorporated into the MND and the related Mitigation Monitoring or Reporting Program (MMRP).

If the tribe(s) requests consultation, do not release a Draft EIR for public review until either:

- The consultation is completed without mutual agreement over mitigation measures, the Draft EIR analyzes impacts on TCRs, and the Draft EIR includes mitigation measures from the list in Section 21084.3.
- The consultation is completed and the Draft EIR includes the mutually agreed upon mitigation measures or alternatives.

### **Determinations and Mitigation**

NAHC's Sacred Lands File will take on greater significance as an authoritative source of identified TCRs.

If a tribe asserts that the project may have a significant effect on a TCR that assertion raises a "fair argument" requiring preparation of an EIR. Avoiding an EIR would require the lead agency to successfully negotiate mitigation that the tribe accepts as reducing the effect on the TCR to a less than significant level.

The lead agency is required to include agreed upon mitigation measures in the MND or Draft EIR, along with the related MMRP.

The lead agency could decide not to implement the mitigation measures in a Final EIR, but must still include feasible mitigation pursuant to PRC Section 21084.3. Those would be reflected in the MMRP.

### **Add the following after the discussion of County Projects Affecting Oak Woodlands on page 78.**

#### **Appendix F: Energy Conservation**

Appendix F of the CEQA Guidelines lays out recommendations for the analysis of whether a project may result in the "inefficient, wasteful, or unnecessary" use of energy, including fuels. Enacted in the 1970s prior to California's comprehensive energy conservation regulations, this appendix has often been ignored in CEQA analyses. The decision in *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4<sup>th</sup> 173 has given new emphasis to these provisions. In that decision, the Court of Appeal held that an EIR for a proposed regional shopping mall did not adequately consider the project's energy

use, including vehicle fuel, and whether mitigation would be necessary in order to avoid the inefficient, wasteful, or unnecessary use of energy. When reviewing projects, the pertinent aspects of Appendix F should be taken into consideration.

### **Add the following discussion after the third full paragraph on page 166.**

#### **GHG Reduction Threshold Target**

The CEQA Guidelines do not specify the target date for the analysis of GHG reductions. AB 32, the California Global Warming Solutions Act of 2006, sets a statewide goal of reducing GHG emissions to 1990 levels by the year 2020. Many GHG impact analyses have used the AB 32 target as the horizon year for their discussion of project impacts and the reduction of GHG emissions to 1990 levels as the threshold of significance. A 2014 Court of Appeal decision has now raised doubts about that approach.

In *Cleveland National Forest Foundation v. San Diego Association of Governments* (Nov. 24, 2014) \_\_ Cal.App.4<sup>th</sup> \_\_, the Fourth District Court of Appeal invalidated on a 2-1 decision SANDAG's Regional Transportation Plan/Sustainable Communities Strategy EIR for failure to consider the GHG emissions reduction target of Executive Order (EO) S-3-05. EO S-3-05, issued by Governor Schwarzenegger in 2005, identifies two goals for statewide GHG emissions reductions: (1) 1990 emissions levels by 2020; and (2) 80% of 1990 emissions by 2050. The first of these goals is reflected in the 2006 California Global Warming Solutions Act (AB 32), but the Legislature has never codified the second goal.

A Governor's Executive Order does not carry the force of legislation, nor is it binding on any agencies other than the line agencies of the State. Nonetheless, the Court held that "[t]he Executive Order underpins all of the state's current efforts to reduce greenhouse gas emissions" and on that basis found that SANDAG's AB 32-based analysis was insufficient.

SANDAG argued unsuccessfully that it could not analyze the RTP/SCSs consistency with EO S-3-05 because there is no statute or regulation creating scientifically-based emissions reduction targets for the year 2050. The Court dismissed the argument as follows:

... we do not agree the lack of such targets precludes the EIR from performing a meaningful consistency analysis in this instance. "Drafting an EIR ... necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (Guidelines, § 15144.) Although SANDAG may not know precisely what future emissions reduction targets the transportation plan will be required to meet, it knows from the information in its own Climate Action Strategy the theoretical emissions reduction targets necessary for the region to meet its share of the Executive Order's goals. It also knows state climate policy, as reflected in the Executive Order and AB 32, requires a continual *decrease* in the state's greenhouse gas emissions and the transportation plan after 2020 produces a continual *increase* in greenhouse gas emissions. With this knowledge, SANDAG could have reasonably analyzed whether the transportation plan was consistent with, or whether it would impair or impede, state climate policy.

The Court included the following, somewhat contradictory, footnote to this statement:

We do not intend to suggest the transportation plan must achieve the Executive Order's 2050 goal or any other specific numerical goal. Our concern is with the EIR's failure to recognize, much less analyze and attempt to mitigate, the conflict between the transportation plan's long-term greenhouse gas emissions increase and the state climate policy goal, reflected in the Executive Order, of long-term emissions reductions. In fact, the EIR does not even discuss the transportation plan's failure to maintain emissions reductions after 2020, which is AB 32's minimum expectation. (See Health & Saf. Code, § 38551, subd. (b).)

The dissenting judge disagreed with the majority opinion on all issues. His stinging dissent pointed out that the Legislature had never specifically adopted a 2050 GHG emissions reduction goal, and in fact had considered such a goal in 2014 legislation without taking action. The dissenting opinion concluded that EO S-3-05 was not a statewide policy and, as a Governor's action, "does not unilaterally qualify as a threshold of significance." It was "merely a broad policy statement of goals issued by the Governor" that "does not have an identifiable foundation in the constitutional power of the Governor or in statutory law."

This is the opinion of one district of the Court of Appeal, and a split opinion at that. Whether this line of reasoning is taken up by other Appellate Court districts remains to be seen.

**Add the following after the fourth full paragraph on page 182.**

#### **Project Description and Mitigation Measures**

Mitigation measures are the result of the environmental analysis of the project's potential impacts.

Mitigation measures are not part of the EIR's project description. Instead, they are developed as a result of the impact analysis that examines the project description.

At the same time, including in an EIR's project description the project's integral design features or best management practices that will reduce or avoid potential impacts is good practice. However, this must not be done in a way that avoids disclosing potential impacts and a discussion of the means to mitigate those impacts. CEQA requires that the lead agency undertake a process of examining a project's potential for significant impact that follows a sequential path from project, to impact, to threshold of significance, to significance, and finally to mitigation. A discussion of the project's design features or best management practices should be part of that examination.

In *Lotus v. Department of Transportation* (2014) 223 Cal.App.4<sup>th</sup> 645, the Court of Appeal held that an EIR that included "avoidance, minimization, and/or mitigation measures" in its project description chapter and used those measures as a reason for finding that a road straightening project would not have a significant effect on old growth redwood trees was inadequate. In the words of the Court:

The failure of the EIR to separately identify and analyze the significance of the impacts to the root zones of old growth redwood trees before proposing mitigation measures is not merely a harmless procedural failing. Contrary to the trial court's conclusion, this short-cutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decision-making and informed public participation. It precludes both identification of potential

environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences. The deficiency cannot be considered harmless.

The environmental document in the *Lotus* case was a joint EA/EIR prepared to comply with both NEPA and CEQA. Because NEPA does not require identification of the significance of impacts and the EIR took its lead from the NEPA analysis, the document failed to meet CEQA's requirements for the discussion of the significance of impacts and the specific means of mitigating the potentially significant impacts.

A better approach is to identify in the project description the design features or best management practices that are intended to reduce or avoid project impacts. The impact analysis should cite those design features or best management practices, identify the impacts that they are intended to reduce or avoid, explain how they do so, and make a conclusion regarding whether they reduce the impact to a less than significant level or not.

### **Add the following after the first paragraph on page 243:**

In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4<sup>th</sup> 439, the Supreme Court established the basic rules for setting the baseline for project analysis. This decision weaves together prior court decisions relating to baseline into a coherent set of rules for when the baseline is not existing conditions.

In 2010, the Exposition Metro Authority prepared and certified an EIR for the second phase of the light rail line along the Exposition Corridor connecting downtown Los Angeles and Santa Monica (phase one was approved in 2005). The second phase was anticipated to be completed and begin operations in 2015. The Construction Authority prepared and certified an EIR for the project. The EIR described the existing environmental conditions and used that as the baseline for analyzing most environmental issues. However, for purposes of air quality, greenhouse gas emissions, and traffic analyses, the Construction Authority applied a 2030 baseline reflecting the Southern California Association of Governments' (SCAG's) 2030 regional demographic projections and its list of transit service and road improvements expected to be in place by 2030.

Neighbors brought suit, arguing among other things that a 2030 baseline was inconsistent with the CEQA Guideline's provision that the existing condition at the time of release of the NOP or at the initiation of the CEQA process is "normally" the baseline.

The Court reached the following conclusions:

- "[T]hat existing conditions is the normal baseline under CEQA, but that factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decisionmakers."
- "CEQA and the Guidelines dictate a rule less restrictive than *Sunnyvale West's* but more restrictive than that articulated by the Court of Appeal [in this case]. Projected future conditions may be used as the sole baseline for impacts analysis if their use in place of measured existing conditions—a

departure from the norm stated in Guidelines section 15125(a)—is justified by unusual aspects of the project or the surrounding conditions. That the future conditions analysis would be informative is insufficient, but an agency does have discretion to completely omit an analysis of impacts on existing conditions when inclusion of such an analysis would detract from an EIR’s effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public.”

- “[I]n appropriate circumstances an existing conditions analysis may take account of environmental conditions that will exist when the project begins operations; the agency is not strictly limited to those prevailing during the period of EIR preparation. An agency may, where appropriate, adjust its existing conditions baseline to account for a major change in environmental conditions that is expected to occur before project implementation. In so adjusting its existing conditions baseline, an agency exercises its discretion on how best to define such a baseline under the circumstance of rapidly changing environmental conditions. (*Communities for a Better Environment, supra*, 48 Cal.4th at p. 328.) [] we find nothing precluding an agency from employing, under appropriate factual circumstances, a baseline of conditions expected to obtain at the time the proposed project would go into operation.”
- “[T]he burden of justification articulated above applies when an agency *substitutes* a future conditions analysis for one based on existing conditions, omitting the latter, and not to an agency’s decision to examine project impacts on *both* existing and future conditions. As the *Sunnyvale West* court observed, a project’s effects on future conditions are appropriately considered in an EIR’s discussion of cumulative effects and in discussion of the no project alternative. (*Sunnyvale West, supra*, 190 Cal.App.4th at pp. 1381-1382.) But nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project’s significant adverse effects. (*Pfeiffer, supra*, 200 Cal.App.4th at p. 1573; *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 707.) The need for justification arises when an agency chooses to evaluate *only* the impacts on future conditions, foregoing the existing conditions analysis called for under the CEQA Guidelines.” (footnote omitted)
- “Even when a project is intended and expected to improve conditions in the long term—20 or 30 years after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. Though we might rationally choose to endure short- or medium-term hardship for a long-term, permanent benefit, deciding to make that trade-off requires some knowledge about the severity and duration of the near-term hardship. An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project’s impacts in the meantime, does not “giv[e] due consideration to both the short-term and long-term effects” of the project (Cal. Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA’s informational purpose well. The omission of an existing conditions analysis must be justified, even if the project is designed to alleviate adverse environmental conditions over the long term.”

- “*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council, supra*, 190 Cal.App.4th 1351, and *Madera Oversight Coalition, Inc. v. County of Madera, supra*, 199 Cal.App.4th 48, are disapproved insofar as they hold an agency may never employ predicted future conditions as the sole baseline for analysis of a project’s environmental impacts.”

In ***Tuolumne Jobs and Small Business Alliance v. Superior Court of Tuolumne County (2014) 59 Cal.4<sup>th</sup> 1029***, the California Supreme Court has held that a local initiative petition that has sufficient valid signatures to qualify for the ballot can be approved by a city council without a CEQA document. The City of Sonoma City Council held a public hearing on a qualified initiative that would establish a new specific plan allowing expansion of a WalMart store. When presented with an initiative petition with sufficient signatures to allow it to be placed on the ballot Elections Code Section 9214 requires a city to either (1) adopt the ordinance as presented, (2) place it on the ballot at a special election, or (3) order a report on the proposal prior to either adopting it or placing it on the ballot. Sonoma chose to adopt the initiative ordinance. This effectively approved the WalMart project without completing the EIR and hearing process that had been started prior to the submittal of the voter signatures.

The Supreme Court held that the clear language of Section 9214 precludes the application of CEQA to a voter-qualified initiative submitted to the City Council for action. In the Court’s words:

CEQA review is not required before direct adoption of an initiative, just as it is not required before voters adopt an initiative at an election. Appellants warn that developers could potentially use the initiative process to evade CEQA review, and that direct adoption by a friendly city council could be pursued as a way to avoid even the need for an election. Of course, the initiative power may also be used to *thwart* development. (See, e.g., *Associated Home Builders, supra*, 18 Cal.3d at pp. 589-590 [initiative prohibited issuance of residential building permits until certain standards were met].) However, these concerns are appropriately addressed to the Legislature. The process itself is neutral. The possibility that interested parties may attempt to use initiatives to advance their own aims is part of the democratic process.

Finally, voters have statutory remedies if direct adoption of an initiative results in the enactment of an undesirable law. Section 9235 stays the effective date of most local ordinances for 30 days. During this 30-day period, voters may circulate a referendum petition. (See § 9237.) If a city receives a “petition protesting the adoption of an ordinance” signed by at least 10 percent of the city’s voters, the effective date is suspended and the city must reconsider the ordinance. (*Ibid.*) Upon reconsideration, the city may either repeal the ordinance in its entirety or submit the ordinance to voters in an election to be held within 88 days. (§ 9241.) The Legislature has outlined clear procedures for voters to overturn an ordinance adopted against the majority’s will. Whichever path a city chooses in dealing with a voter initiative, voters have the final say.