

Court Rules City Council Can't Skip CEQA By Adopting Voter-Proposed Legislation

Project proponents often ask whether there is a way to shortcut the CEQA timeline or head off litigation. In *Tuolumne Jobs & Small Business Alliance v. Superior Court*, the court of appeal squelched what had looked like a potential path around CEQA: use of the initiative process to adopt voter-initiated legislation, without placing the legislation on the ballot. The *Tuolumne* court emphatically rejected the plan, declaring: "Environmental review can be avoided when the voters choose to bypass it, not when the lead agency chooses to bypass the voters." Supporters of expansion of a Wal-Mart store had presented the Sonora City Council with a qualified voter-sponsored initiative measure. The council chose to enact it, rather than place it on the ballot. It did not certify an EIR or take any other CEQA action, relying on a published appellate opinion in which the court held such an action is exempt from CEQA. The Fifth District Court of Appeal disagreed with the prior decision, ruling that a city council's choice to enact legislation rather than place it on the ballot is a discretionary act. No fixed criteria dictate whether the city must adopt the legislation or not. Rather, doing so is a policy choice based on the council's judgment about the pros and cons of the measure and the costs of an election. The *Tuolumne* court acknowledged the direct conflict with the *Native American Sacred Site* case, which had been decided by another appellate district in 2004. The court there held that a city council decision to enact a voter-sponsored initiative was a ministerial act because the Elections Code requires that a general law city presented with a qualified initiative measure either enact it without alteration or place it on the ballot. Faced with this split of authority, the odds are good that the California Supreme Court will decide to hear the case if a petition for review is filed. [Tuolumne Jobs & Small Business Alliance v. Superior Court, No. F063849 \(5th Dist. Oct. 30, 2012\)](#). For further details, read the [Perkins Coie Update](#) on the case. *Native American Sacred Site Environmental Protection Association v. City of San Juan Capistrano*, 120 Cal.App.4th 961 (4th Dist. 2004).

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