At the Polling Station with No Information: The Initiative Process and Environmental Review in the Wake of *DeVita v. County of Napa*

by Seth Merewitz*

Introduction

To regulate growth, California requires cities and counties to establish planning goals and to document future land uses in a general plan.[1] The state also limits the number of general plan revisions that a municipality can conduct. Thus, changing a municipality's general plan can be time consuming and expensive.

Suppose a sophisticated developer wants to build a housing project in a small California college town of 50,000 people. The current general plan does not include the housing project and the city council is unwilling to amend the existing general plan. Moreover, the city council views all growth and development with hostility and requires proposed general plan amendments to undergo timely and costly environmental review.

Exhaustive environmental review can take months to complete, at a substantial cost. Through the ballot initiative process,[2] the developer may bypass the hostile city council and amend the general plan to include her project.[3] Bypassing the city council through the initiative process avoids the cost and delay associated with environmental review.[4]

In California, legislative bodies, rather than individual landowners, determine the overall land use for a community.[5] Thus, planning at the local level is, theoretically, comprehensive and general in nature.[6] However, the rights and desires of land owners, citizens, and third parties often differ and result in conflicts. These conflicts result as concerned parties support opposing policies regarding environmental protection, open space, economic growth, and housing development.

Since the early 1970s, California residents have resorted to direct legislation, through the initiative and referendum,[7] to counteract the strong influence of developers and real estate interests.[8] Many California citizens have expressed outrage at the ill effects that unbridled real estate development brings, such as traffic congestion, pollution, and diminished quality of life.[9] To protect their community, voters often preempt the local governing body's police power[10] by passing initiatives.[11]

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The validity of using these initiatives to amend the general plan was questionable prior to *DeVita v. County of Napa.*[12] To settle the matter, the California Supreme Court approved the use of the initiative process for general plan amendments.[13] The *DeVita* court held that the California Constitution impliedly reserves to its citizens the power to initiate amendments to a county general plan.[14]

This article addresses the significance of allowing the initiative process to play a role in land use

decision making. Part I discusses the role of the modern general plan and the requirements of the California Environmental Quality Act. Part II presents the current state of the law concerning land use decisions and the use of the initiative. In addition, Part II analyzes previous decisions and the implications of the *DeVita* decision for existing state mandates for comprehensive planning and environmental review. Finally, Part III proposes a legislative response that would ensure environmental review of citizen-initiated growth management proposals.

I. Background
General Plans And Environmental Review

Since 1927, California law has directed cities and counties to adopt general plans to guide land use development.[15] Before 1971, general plans were merely advisory with no binding requirements.[16] Local leaders therefore viewed general plans with little interest, as no law required local land use decisions to follow general plan dictates.[17]

A. The Modern General Plan

In 1971, several legislative changes altered the status of the general plan in California.[18] The state legislature enacted legislation requiring that proposed subdivisions and their improvements comport with the existing general plan principles.[19] The general plan records the basic physical planning for a city or county and provides the blueprint for all community development.[20] Thus, the general plan is the vehicle for balancing the competing interests and desires of the citizenry.[21]

More importantly, the general plan also serves as the constitution for a municipality.[22] It sits at the top of the hierarchy of local government law regulating land use.[23] The general plan provides the development policies for a community by setting forth objectives, principles, and standards for all land uses.[24] The plan consists of seven required elements, including land use, circulation, housing, conservation, open space, noise, and safety.[25] In addition, the plan may incorporate any other elements that, in the judgment of the local governing board, relate to the city or county's physical development.[26]

A general plan must also meet certain state mandated requirements.[27] California law requires that a general plan be comprehensive, long term and internally consistent.[28] In addition, all adoptions and amendments to a general plan by a local governing body must undergo environmental review.[29] The state legislature outlines the process for these environmental reviews in the California Environmental Quality Act.[30]

B. The California Environmental Quality Act

In 1970, the state legislature enacted the California Environmental Quality Act (CEQA).[31] CEQA responded to the failure of government agencies, at both the state and local level, to consider the environmental implications of their actions.[32] CEQA's basic purpose is to inform the public and governmental decision makers about the potential environmental effects of proposed activities.[33] Moreover, CEQA attempts to prevent major environmental damage by requiring proposed projects to adopt alternatives or implement mitigation measures.[34] Finally, CEQA requires public disclosure of the logic for approving a project if the proposed action may cause any significant environmental effects.[35]

Nevertheless, CEQA allows public agencies or local governments to approve projects that may

damage the environment.[36] Thus, despite a project's harmful environmental effects, it may proceed if economic or social factors prevent mitigation of the harmful effects.[37] CEQA merely attempts to inform elected decision makers and the public of a project's possible environmental effects to encourage rational decision making.[38] However, a recent development in the law concerning land use decision making and the initiative process threatens CEQA's scheme of environmental review.

II. State Of The Law And Anaysis
The Initiative And Land Use Decision Making

The initiative process represents the power of the people to propose, enact, or reject legislation independent of any legislative assembly. The United States Constitution does not provide for the initiative,[39] nor does the Constitution prohibit the initiative.[40] Instead state constitutions and statutes expressly provide for the use of the initiative.[41]

A. Limitations on Land Use Initiatives

The voters of California approved the use of the initiative at the local level in 1911.[42] However, limitations on the initiative power still exist.[43] Specifically, an initiative may not interfere with the efficacy of an essential city or county governmental function.[44] Furthermore, state law forbids city and county ordinances that conflict with provisions of general state law.[45] Courts have adopted these limitations which apply to measures adopted by a legislative body or by the express vote of the people, in their decisions.[46]

In 1921, a citizen sought to enforce an initiative to delay application of a city zoning ordinance in *Hurst v. City of Burlingame*.[47] The plaintiff appealed the lower court's decision, seeking to enjoin enforcement of the zoning ordinance. The California Supreme Court ruled against the plaintiff, holding that citizens could not use the initiative in zoning and planning matters. The court reasoned that, by failing to provide notice and hearing, the initiative process provides inadequate procedural protection to citizens.

After the *Hurst* case, the use of the initiative in the land use context developed slowly.[48] For almost fifty years, California courts did not allow zoning or planning through the initiative process.[49] Finally, in 1974, the California Supreme Court begin to clear the way for zoning by initiative.[50]

In 1974, the San Diego electorate enacted a zoning ordinance to limit building height to thirty feet which was challenged in *San Diego Building Contractors Ass'n v. City Council*.[51] The San Diego Building Association sued the San Diego City Council for an injunction to prevent the city council from enforcing the zoning ordinance. The California Supreme Court reversed the trial court's ruling in favor of the plaintiffs and upheld the validity of the initiative, despite the earlier ruling in *Hurst*. The court opined that zoning was a municipal affair; thus, the state law requirement of notice and hearing did not apply to San Diego, a charter city.[52]

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Nonetheless, in 1976, the California Supreme Court expressly overruled *Hurst* in *Associated*

Home Builders, Inc. v. City of Livermore.[53] There, the court allowed initiative zoning in general law cities as well as charter cities. Further, the court found that the legislature did not intend notice and hearing requirements to apply to initiative zoning ordinances.[54]

In recent years, California courts have liberally construed the power of the initiative to avoid its improper annulment.[55] The initiative itself must conform to several substantive requirements.[56] However, the courts have held that some procedural requirements, such as legislative findings and public hearings, are unnecessary when using an initiative to amend local ordinances.[57]

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While exempt from environmental review, initiatives are still subject to other state mandates.[58] State law provides a thirty day review period by the local governing body.[59] In addition, under the Elections Code, the governing body may make findings on any matter, including the initiative's fiscal impact.[60] Yet, despite these procedural limitations, the initiative process continues to expand in California.[61]

B. Expansion of Initiative Process to Amend General Plans - **DeVita v. County of Napa**

In 1990, the voters of Napa County, California enacted an antigrowth measure.[62] This initiative, Measure J, amended the county's general plan to preserve agricultural, watershed, and open space lands.[63] With certain exceptions, the measure conditioned designating existing agricultural land and open space on voter approval, until the year 2021.[64]

One year after Measure J's approval at the ballot box, Richard M. DeVita filed a complaint and a writ of mandate against the County of Napa and its Board of Supervisors.[65] He sought a declaratory judgment finding Measure J invalid and a writ of mandate ordering the board of supervisors to cease enforcing the measure.[66] The trial court upheld the validity of Measure J.[67] The First District Court of Appeal affirmed, approving the use of the initiative process to amend the land use element of a general plan.[68]

DeVita petitioned the California Supreme Court to decide whether voters can amend a county's general plan by initiative.[69] The court concluded that state statutes which govern local planning do not prohibit using initiatives to amend the land use element of a general plan.[70] The court relied on the legislative provisions related to the initiative process in the California Elections and Government Codes in approving the use of the initiative.[71] Moreover, in reaching its decision, the court considered CEQA's environmental concerns.[72]

C. Environmental Review and Comprehensive Planning In the Wake of DeVita

The *DeVita* court briefly discussed the statewide environmental inquiry that CEQA mandates, however the lack of environmental review was not dispositive.[73] CEQA applies only to those projects that fall within the statute's stated guidelines.[74] The statute covers all projects that might cause physical change to the environment.[75] Amendments to the general plan may cause physical changes to the environment,[76] and therefore are generally subject to environmental review under CEQA.[77] Nevertheless,

CEQA specifically exempts initiatives from review.[78]

The unavailability of CEQA review of the initiative process conflicts with state mandated comprehensive planning schemes. California law requires local governments to develop comprehensive general plans.[79] Further, the California Supreme Court recognized, environmental review plays an integral role in developing and adopting a comprehensive general plan.[80]

California law requires that municipalities engage in coordinated comprehensive planning when formulating their general plan.[81] Comprehensive planning involves evaluating and balancing various competing local interests and regional concerns.[82] Local governments accomplish comprehensive planning, as set forth in the general plan statutes, through a deliberative process.[83] Interested parties must confront, evaluate, and resolve competing environmental, social and political interests.[84] Therefore, the planning process necessarily compels cities and counties to consider alternative land use goals, policies, and implementation measures.[85]

Absent environmental review, comprehensive planning is impossible.[86] No state mandate requires local agencies to consult with each other in the planning process.[87] Comprehensive planning without environmental review undermines the goal of informed decisionmaking.[88] Therefore, to ensure continued comprehensive planning within the context of voter initiated legislation, the state should mandate environmental review.

III. Proposed Legislative Change

To further the goals of comprehensive planning and informed decision making,[89] the California legislature should enact a pre-election environmental assessment mechanism for land use initiatives. Thus, the state legislature should amend the Elections Code to include environmental review of all initiatives that amend general plans. This proposal would endure California's commitment to an informed electorate and to comprehensive planning through the environmental review of all projects.

Moreover, this legislative change would aid voter education by allowing municipalities adequate time to conduct environmental review before an election. The law currently requires that an initiative measure appear on a ballot within a specified time period.[90] Therefore, this proposal would ensure adequate time to survey the need for more substantial environmental review and provide additional time if necessary. If the project requires little or no further environmental review, then the initiative could move forward to the ballot. If however the survey reveals a need for greater environmental review, the legislative body could require this review before the election to provide the voters with complete information.

To further the goals of comprehensive planning and informed decision making, the California legislature should enact a pre-election environmental assessment mechanism for land use initiatives.

This proposal closely resembles procedures that the state legislature already mandates for fiscal review of proposed initiatives.[91] For example, to inform the electorate, the state provides thirty days for a municipality to gather information regarding the fiscal impacts of an initiative. The state legislature could create an analogous provision for review of environmental impacts of proposed initiatives.

This proposed change to the Elections Code will further ensure that the state will remain committed to environmental review. However, some argue that environmental review is not warranted for initiatives or any other project.[92] Many of these opponents would like to abolish CEQA completely because of the perceived economic harm.[93] These individuals view the *De Vita* decision, which obviates environmental review for land use initiatives, as a first step to removing all environmental review. Thus, these critics would be opposed to the proposal on the ground that it provides for greater environmental review.

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Contrary to the wishes of these critics, California expressly requires that comprehensive planning involve environmental review.[94] This proposal seeks to continue this scheme of review. More decisions like *De Vita* could eventually abrogate CEQA. Furthermore, weakening CEQA would greatly reduce the opportunity for regional planning and increase the expense associated with uncontrolled growth.[95]

Other opponents may argue that this proposal conflicts with the provisions that authorize the initiative in the California Constitution.[96] These individuals argue that the legislature does not have sufficient authority to circumscribe the power of the initiative through new requirements. However, the legislature already circumscribes the power of the initiative.[97]

Article II, section 11 of the California Constitution expressly authorizes the legislature to provide procedures governing the initiative and referendum.[98] The state legislature already requires initiative sponsors to follow many procedural steps before placing a measure on the ballot.[99] One such step should be to provide the electorate with the relevant environmental information before it votes on an initiative. The legislature could accomplish this in the same manner as the thirty day fiscal review.

Finally, other detractors may argue that the legislature previously adopted procedures to adequately inform the electorate and that others are not necessary.[100] However, none of the current procedures provide the voter with information regarding the environmental impact of a proposed ballot measure.[101] While safeguards concerning fiscal effects of projects exist, none exist to address the projects' environmental aspects.[102]

This proposal would provide for adequate information concerning the environmental impacts of initiatives that promote land use projects. Requiring environmental review for some projects, but not others, is inconsistent with the state mandate for comprehensive planning.[103] This proposal would ensure CEQA's application to all projects considered by the electorate.

Conclusion

In *De Vita v. Napa*, the California Supreme Court furthered the goal of allowing the initiative to supplement the shortcomings of representative government. By approving the use of the initiative to amend the land use element of a general plan, the court aided environmentalists in promoting antigrowth efforts. The powerful tool of the initiative, however, is also available to those promoting growth.

California has mechanisms to require environmental review of proposed land uses.[104] However, the courts have ruled that these mechanisms do not apply to initiative measures.[105] A lack of

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environmental review means that the voting public will be uninformed when the initiative goes to the ballot box. The legislature must rectify this situation to allow the voters to cast their vote with sufficient information concerning the project's effect on the environment.

CEQA emphasizes the importance of greater information for decision makers concerning environmental matters.[106] The legislature should ensure that the public receives adequate information before an election regarding the environmental impact of a proposed project. This proposed legislative enactment would further the goals of environmental review, comprehensive planning, and informing the electorate in the wake of the *DeVita* decision.

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NOTES

* The author would like to thank David Owen for his thoughtful editing and encouragement.
[1] *See* CAL. GOV'T CODE § 65300 (West 1995)
[2] *See* BLACK'S LAW DICTIONARY 705 (4th ed. 1979) (defining "initiative" as people's power to propose legislation and enact or reject it at polls, independent of legislative assembly).
[3] *See* CAL. CONST. art. II, § 8(b) (stating that initiative shall appear on ballot, at next general election or at special election, after initiative measure has gained sufficient signatures and qualified for ballot). Funding an initiative for the approval of the housing project in the hypothetical city of 50,000 people will cost the developer approximately $65,000. Costs consist of the following: $15,000 for signature gathering; $20,000 for mailings; $10,000 for phone calls and door-to-door solicitation; $5,000 for signs and advertising; and $15,000 for political consulting).
[4] *See, e.g.*, Northwood Homes, Inc. v. Town of Moraga, 265 Cal. Rptr. 363 (Ct. App. 1989) (holding that failure to comply with CEQA did not invalidate general plan amendment because voters adopted measure by initiative); Stein v. City of Santa Monica, 168 Cal. Rptr. 39 (Ct. App. 1980) (holding that initiative ordinance addressing rent control is not project under CEQA).
[5] *See* Mark A. Nitikman, *Instant Planning — Land Use Regulation by Initiative in California,* 61 S. CAL. L. REV. 497, 498 (1988).
[6] *See, e.g.*, Arnel Dev. Co. v. City of Costa Mesa, 620 P.2d 565 (Cal. 1980) (contrasting general plan amendments with zoning ordinances that may specifically apply to only one owner).
[7] *See* BLACK'S LAW DICTIONARY, *supra* note 7, at 1152 (defining "referendum" as power by which legislative body submits acts to people for their approval or rejection).
[8] *See* MICHAEL DURKEE, LAND USE INITIATIVES AND REFERENDA IN CALIFORNIA 5 (1990) (comparing corrupt railroad barons of early 20th century to modern developers).

[9] *See, e.g.*, Daniel J. Curtin, *Growth Management by the Initiative in California: Legal and Practical Issues*, 21 URB. LAW. 491, 492 (1989) (discussing Californians' distress with aspects of their deteriorating quality of life, including unprecedented traffic congestion, poor air quality, and loss of open space).
[10] *See, e.g.*, CAL. CONST. art. XI, § 7 (granting local governments authority, pursuant to police powers, to make land use decisions to benefit public health, safety, morals, and general welfare of particular population); *see also* Associated Home Builders v. City of Livermore, 557 P.2d 473 (Cal. 1976) (holding that ordinance is constitutional if question whether ordinance reasonably relates to public welfare is fairly debatable). The police power, as it applies to land use regulation, has broad parameters. *Cf.* Berman v. Parker, 348 U.S. 26 (1954) (finding that police power results from legislative determinations regarding role of government); Building Indus. Ass'n v. City of Camarillo, 718 P.2d 68 (Cal. 1986) (holding that police power decisions may not be arbitrary, unreasonable, or discriminatory).
[11] *See, e.g.*, California Association of Realtors, *Summary of Local Land Use Measures*, CALIFORNIA BALLOT MONITOR (1992) (stating that approximately 564 land use measures appeared on local ballots in California cities and counties between 1971 and 1992, and 415 since 1986); *see also* DANIEL J. CURTIN, CALIFORNIA LAW USE AND PLANNING LAW 259 (1995) (noting that, since 1971, approximately 46% of land use measures in California have been citizen-sponsored initiatives). Most ballot measures appear on the ballot by action of a city council or board of supervisors, often opposing measures that citizen groups have proposed. *Id.*
[12] *See* Lesher Communications, Inc. v. City of Walnut Creek, 802 P.2d 317 (Cal. 1990)
[13] *See infra* notes 63-72 and accompanying text (discussing Supreme Court's holding in *DeVita v. County of Napa*).
[14] *See* CAL. CONST. art. II, §§ 8-11 (establishing right of electorate to use initiative process); *see also* DeVita v. County of Napa, 889 P.2d 1019, 1021 (Cal. 1995) (holding that decision applies to general law cities, but not charter cities). *DeVita*, in many respects, continues the century old battle between wealthy development interests and community based organizations that favor growth control and preservation.
[15] 1927 Cal. Stat. 874.
[16] CAL. GOV'T CODE § 65860.1 (West 1995). Before 1971, the Government Code did not require any county or city to adopt a general plan prior to the adoption of a zoning ordinance. *Id.* Now, every city must adopt a general plan for that jurisdiction's physical development. *Id.* § 65300. All other land use regulations, actions, or approvals must be consistent with the applicable general plan. *Id.* § 65300. *See also* Lesher Communications, Inc. v. City of Walnut Creek, 802 P.2d 317 (Cal. 1990) (noting state mandated consistency requirements for actions of city council).
[17] *See* City of Santa Ana v. City of Garden Grove, 160 Cal. Rptr. 907 (Ct. App. 1979) (citing informal views of general plan by local officials).
[18] *See* 58 Op. Cal. Att'y. Gen. 21 (1975) (noting that initial 1971 legislation required cities to set forth development policies, objectives, and standards in general plan).
[19] CAL. GOV'T CODE § 65860 (West 1995). If a subordinate land use regulation is inconsistent with the applicable general plan, the regulation is void from the time of adoption. *Id.* *See also* deBottari v. City Council, 217 Cal. Rptr. 790 (Ct. App. 1985) (holding that inconsistent regulation is void ab initio).
[20] *See* CURTIN, *supra* note 11, at 7 (noting that general plan is fundamental planning document for local government).

[21] *Id.*
[22] *See* Citizens of Goleta Valley v. Board of Supervisors, 801 P.2d 1161 (Cal. 1990) (citing general plan as constitution for local municipality).
[23] Neighborhood Action Group v. County of Calaveras, 203 Cal. Rptr. 401 (Ct. App. 1984) (finding that general plan is most important document in local land use regulations).
[24] *See* CAL. GOV'T CODE § 65302 (West 1995) (stating that general plan is intended to outline broad principles).
[25] *Id.* § 65301 (noting required elements for general plan).
[26] *Id.* § 65303 (allowing for optional elements in general plan).
[27] *See* Sierra Club v. Board of Supervisors, 179 Cal. Rptr. 261 (Ct. App. 1981) (citing adequacy requirements for general plan). Therefore, the general plan must be comprehensive and conform with all other statutory requirements. *See* Resource Defense Fund v. County of Santa Cruz, 184 Cal. Rptr. 371 (Ct. App. 1982) (holding that general plan must be comprehensive and meet all state requirements). The legislature mandates consistency between the substance of an initiative and each of the elements of the general plan, including the seven state mandated elements. CAL. GOV'T CODE § 65302. In addition, any optional element included within the general plan must be consistent with existing maps and diagrams. *Id.*
[28] *See* CAL. GOV'T CODE § 65300 (stating adequacy requirements for general plan).
[29] *Id.* § 65358(a) (setting forth requirements for amending general plan). Once a local government adopts a general plan, the legislative body may amend it. *Id.* To keep the general plan current, the California Supreme Court requires local agencies to periodically review and revise their general plans as circumstances require. *See* Citizens of Goleta Valley v. Board of Supervisors, 801 P.2d 1161 (Cal. 1990) (requiring periodic review of general plan). The legislature also requires that the housing element, which relates to statewide concerns, undergo review at least every five years. CAL. GOV'T CODE § 65583 (West 1995).
[30] CAL. PUB. RES. CODE §§ 21000-178 (West 1995) (outlining procedures for CEQA review).
[31] *See, e.g.*, Daniel P. Selmi, *Judicial Development of the California Environmental Quality Act,* 18 U.C. DAVIS L. REV. 197, 202-03 (1984) (discussing development of California Environmental Quality Act).
[32] *Id.* at 202 (discussing failure of governmental agencies to consider environmental issues prior to CEQA).
[33] *Id.* at 203 (discussing background and purpose of CEQA legislation). In short, CEQA requires an initial study to determine the possible environmental impacts of development. *Id.* at 204; *see also* CAL. ADMIN. CODE. § 15365 (West 1995) (establishing administrative process and procedure for environmental review). CEQA requires an Environmental Impact Report (EIR) if the project may adversely affect the environment. CAL. PUB. RES. CODE § 21151. The EIR must be complete before a governmental agency or local government approves a proposal. *Id.* If an initial study finds the project to have no adverse effects, CEQA allows the lead agency to file a negative declaration. *See* CAL. PUB. RES. CODE § 21008(c) (requiring lead agency to adopt negative declaration if proposed project has no significant effects on environment). A negative declaration obviates the need for further CEQA reporting. *Id.*
[34] *See* Selmi, *supra* note 43, at 203 (commenting on process to include mitigation measures or amend projects to meet municipal guidelines).
[35] *Id.* at 204 (discussing "overriding considerations" that allow legislative bodies to approve

projects even when environmental problems exist).
[36] CAL. PUB. RES. CODE § 21002 (stating that, if specific conditions make project alternatives and mitigation measures unfeasible, then legislative body can approve project despite one or more specific adverse effects).
[37] *Id.*
[38] *Id.*
[39] *Cf.* THE FEDERALIST No. 10 (James Madison) (favoring representative democracy over direct legislation to protect minority from tyranny of majority).
[40] *See* In re Phahler, 87 P. 1026, 1028 (Cal. 1906) (holding that U.S. Constitution does not prohibit electors from directly participating in legislation concerning local affairs). The power of initiative differs among various states. *Id.* at 77 (holding that direct participation in legislating is pure question of state policy).
[41] *See* Eastlake v. Forest City Enter., 426 U.S. 668 (1976) (legitimizing direct legislation and addressing constitutional issues regarding its use in planning or rezoning of private property). The *Eastlake* majority narrowly defined the issues in determining whether the Constitution prohibited the use of the initiative in land use regulation. *Id; see also* J.R. Kemper, Annotation, *Adoption of Zoning Ordinance or Amendment Thereto through Initiative Process*, 72 A.L.R. 3d 991, 996 (1976) (discussing 28 states plus the District of Columbia which allow initiative process).
[42] *See, e.g.*, DAVID BUTLER & AUSTIN RANNEY, REFERENDUMS 29 (1978) (chronicling Progressive movement's advocacy for direct legislation). The membership of the Progressive Party included labor organizations, farmer organizations, grass-roots citizen groups, and reformers within established political parties. *Id.* The Progressive party began the drive for direct public participation with the beacon call, "The cure for the ills of democracy is more democracy." *Id.* at 30. The desire for more democracy inspired direct legislation, through the initiative and referendum. *See* CALIFORNIA COMMISSION ON CAMPAIGN FINANCING, DEMOCRACY BY INITIATIVE 33 (1992) (noting that movement's fundamental goals were to make government more responsive to will of people and to limit power of special interest groups).

In California, concern over corruption in many city and county governments motivated the Progressive movement. *See* DURKEE, *supra* note 8, at 5 (discussing concern of Progressive Party with influence and corruption of Southern Pacific Railroad). Of specific concern was the influence of big corporations in statewide and local politics. *Id.* In 1910 the people elected the Progressive party candidate Hiram Johnson as Governor of California. *See* BUTLER & RANNEY, *supra,* at 29 (describing election of Hiram Johnson as Governor of California). The Progressive Party campaign directly addressed the corruption in state and local government. *Id.* at 30 (noting that slogan of Progressive party was "Kick the Southern Pacific out of politics in the state of California"). Following the election of 1910, the voters approved a constitutional amendment reserving the right of the electorate to exercise the initiative at the state and local level. *See* CAL. CONST. art. II, §§ 8-11 (outlining use of initiative and referendum powers by electors of each city or county under procedures that Legislature provides).
[43] *See* Robert H. Freilich & Derek B. Guemmer, *Removing Artificial Barriers to Public Participation in Land Use Policy: Effective Zoning and Planning by Initiative and Referendum*, 21 URB. LAW. 511, 512 (1989) (displaying limited application of initiative in land use context).
[44] *See, e.g.*, City of Atascadero v. Daly, 185 Cal. Rptr. 228 (Ct. App. 1982) (holding

initiative ordinance invalid if it impedes city's taxing power). Furthermore, the initiative power only applies to legislative, as opposed to administrative acts. *See, e.g.*, Yost v. Thomas, 685 P.2d 1152 (Cal. 1984) (limiting use of initiative to legislative acts); Arnel Dev. Co. v. City of Costa Mesa, 620 P.2d 517 (Cal. 1980) (distinguishing legislative acts from administrative acts).

[45] *See* CAL. CONST. art. XI, § 7 (noting local police power limitations in relation to state laws). The initiative must also meet substantive requirements, such as the single-subject rule. *See id.* art. II, § 8(d) (noting single subject limitation of initiative measure). *See also* CURTIN, *supra* note 11, at 262 (discussing limitation of initiative to single subject).

[46] *See* Legislature v. Deukmejian, 669 P.2d 17 (Cal. 1983) (holding that municipal initiatives must conform with state laws); Galvin v. Board of Supervisors, 235 P. 450 (Cal. 1925) (finding initiative invalid for violating state laws).

[47] 277 P. 308 (Cal. 1929)

[48] *See* DURKEE, *supra* note 8, at 9 (outlining need for notice and hearing to achieve due process of law).

[49] *Id.*

[50] *See* San Diego Bldg. Contractors Ass'n v. City Council 529 P.2d 570 (Cal. 1974) (approving use of initiative to enact height ordinance).

[51] *Id.*

[52] *See* DURKEE, *supra* note 8, at 9 (discussing California's second constitution, adopted in 1879, which provides that cities can adopt their own charter and gain autonomy over matters of strictly local concern). The charter serves as the city's constitution as to municipal affairs, and contrary state laws do not apply. San Diego Bldg. Contractors Ass'n, 529 P.2d 570 (Cal. 1974). The *San Diego* court held that zoning is a "legislative" act to which the constitutional due process right to notice and hearing does not apply. *Id.*

[53] *See* Associated Home Builders, Inc. v. City of Livermore, 557 P.2d 473 (Cal. 1976) (holding initiative power valid for municipalities).

[54] *Id.*

[55] *See* Building Indus. Ass'n v. City of Camarillo, 718 P.2d 68 (Cal. 1986) (noting judicial stance favoring initiative process); Associated Home Builders, 557 P.2d 473 (Cal. 1976) (noting rebuttable presumption in favor of initiative); Mervynne v. Acker, 11 Cal. Rptr. 340 (Ct. App. 1961) (holding that initiative process is presumptively valid). The presumption in favor of the initiative coexists with the legislative power of the local governing body. *See* Simpson v. Hite, 222 P.2d 225 (Cal. 1950).

[56] *See, e.g.*, Arnel Dev. Co. v. City of Costa Mesa, 620 P.2d 517 (Cal. 1980) (holding that land use initiative may not violate due process or equal protection rights of affected property owners).

[57] *See, e.g.*, Building Indus. Ass'n, 718 P.2d at 74 (holding that legislative findings are not required when using initiative process); Associated Home Builders, 557 P.2d at 473 (holding that public hearings are not required when using initiative process).

[58] *See, e.g.*, CAL. CONST. art. II, § 8(d) (noting single subject limitation of initiative measure); *see also id.* § 9(a) (noting that initiative measure may not impede city's taxing power).

[59] *See* CAL. ELEC. CODE § 3705.5 (West 1995) (requiring 30 day review period after initiative measure has qualified).

[60] *Id.* The governing body may also look to the initiative's effect on the internal consistency of the general plan and stated housing goals. *See* CAL. GOV'T CODE § 65583 (West 1995). However, the code fails to specifically include or allow sufficient time for environmental

review. CAL. ELEC. CODE § 3705.5. A 30 day review period may suffice for a fiscal review of the proposed measure. Thirty days, however, are insufficient to research and evaluate the project site and to inform the voter of potential environmental effects.

[61] *See* DeVita v. County of Napa, 889 P.2d 1019(Cal. 1995) (holding use of initiative process valid when amending land use element of county's general plan).

[62] *See, e.g.*, Bradley Inman, *Ballot-box Planning Comes Under Assault*, SAN DIEGO UNION-TRIBUNE, June 19, 1994, at H2 (reporting that Measure J won with overwhelming voter approval).

[63] *See* Measure J, CALIFORNIA BALLOT PAMPHLET, GENERAL ELECTION, NOV. 5, 1990, at 4 (providing intent of initiave as, "Agricultural, Watershed, and Open Space" designations). The measure designates the following types of land: agricultural, watershed areas, flood plain tributaries, land unsuitable for urban development, and land where urban development would adversely impact all such uses. *Id.* Other designations include land set aside to protect agriculture, watersheds, and flood plain tributaries from fire, pollution, and erosion. *Id.*

[64] *See* DeVita v. County of Napa, 26 Cal. Rptr. 2d 274, 276 (Ct. App. 1993) (noting exceptions to initiative measure). The exceptions include redesignation of land use upon annexation to city or upon certain specified legislative findings that land is physically unsuitable for agriculture. *Id.* Other exceptions include the change in land use required for the sitting of a solid waste disposal facility and the necessity of removing restrictions to avoid an unconstitutional taking of private property. *Id.*

[65] *See* DeVita v. County of Napa, 889 P.2d 1019, 1020 (Cal. 1995) (noting that other plaintiffs included four Napa County residents, Building Industry Association of Northern California, and Security Owners Corporation, Inc.).

[66] *See* DeVita, 26 Cal. Rptr. 2d at 276 (discussing original complaint that Measure J rendered general plan internally inconsistent and violated state housing law). When the case came before the Napa County Superior Court, however, the plaintiffs abandoned all but two claims. DeVita, 889 P.2d at 1021.

[67] *See* DeVita, 889 P.2d at 1024 (discussing trial court's disposition of case).

[68] *See* DeVita, 26 Cal. Rptr. 2d at 291 (holding that use of initiative is valid to amend land use element of general plan).

[69] *See* DeVita, 889 P.2d at 1034 (questioning procedures which the legislature delineated pursuant to article II, section 11 of the California Constitution).

[70] *See id.* at 1044 (holding that state constitution does not prohibit use of initiative). Moreover, the court found that a California law governing elections specifically allows for such an amendment. *See* CAL. ELEC. CODE § 3705.5 (establishing process for amending legislation through use of initiative).

[71] *See DeVita,* 889 P.2d at 1034 (finding that CAL. ELEC. CODE § 3705.5 and CAL. GOV'T CODE § 65358 allow general plan amendments by initiative process).

[72] *See id.* at 1052 (discussing provisions of CEQA and finding that legislature must have considered amendment to general plan by initiative valid).

[73] *Id.* at 1039 (finding that, while CEQA is on point, it is not controlling).

[74] *See* CAL. CODE REGS. tit. 14, § 15378(a)(1) (1995) (defining "project" for CEQA review).

[75] *Id.*

[76] *See, e.g.*, City of Santa Ana v. City of Garden Grove, 160 Cal. Rptr. 907 (Ct. App. 1979) (holding that general plan adoptions and amendments are subject to CEQA review); *cf.* CAL. PUB. RES. CODE §§ 21000-178 (outlining CEQA procedures).

[77] *See* CAL. CODE REGS. tit. 14, § 15378(a)(1) (defining "project" for CEQA review). Thus, CEQA guidelines define projects that are subject to environmental review. *Id.*
[78] *See id.* § 15378(b)(4) (exempting initiative measure from CEQA review); *see also* Stein v. Santa Monica, 168 Cal. Rptr. 39 (Ct. App. 1980) (holding that initiative ordinance addressing rent control is not project under CEQA). The *Stein* case concerned the economic, not the environmental effects, of an initiative. *Id.* at 40. However, CEQA's primary purpose is to inform decision makers of the potential environmental effects of a proposed project.
[79] *See* CAL. GOV'T CODE § 65030.1 (requiring decision makers to make planning choices pursuant to an effective and comprehensive process).
[80] *See* Citizens of Goleta Valley v. Board of Supervisors, 801 P.2d 1172 (Cal. 1990) (citing regional nature of environmental review).
[81] *See* CAL. GOV'T CODE § 65030.1 (requiring decision makers to make planning choices pursuant to an effective and comprehensive process).
[82] *See* CURTIN, *supra* note 11, at 494 (discussing regional nature of land use decisions). Comprehensive planning requires careful consideration of the competing interests and of all the alternative approaches available for addressing those interests. *Id.* at 495. Processes of compromise and coordination with others in the region are essential to develop policies that serve the overall public interest. *Id.*
[83] *See* CAL. GOV'T CODE § 65103(e) (West 1995) (requiring that process involve coordination with public agencies, civic, educational, and professional organizations).
[84] *Id.* § 65103(f) (noting that development of general plan promotes coordination with plans and programs of other interested local parties). Group discussions, involving expert input of consultants, allow balance and compromise to achieve the legislative purpose. *See* CURTIN, *supra* note 11, at 7.
[85] *See* CAL. GOV'T CODE §§ 65100-03 (requiring creation of local planning agencies). The state legislature requires that local planning agencies have the power necessary to engage in comprehensive planning. *Id.* The planning agency can take the form of a planning department, one or more planning commissions, other designated agencies or officials, or the legislative body itself. *Id.*
[86] *See* Curtin, *supra* note 17, at 450 (discussing environmental review as necessary to regional planning focus).
[87] *Id.*
[88] *See* CURTIN, *supra* note 11, at 255 (discussing need for environmental review to bring together regional interests).
[89] *Id.* at 259 (defining decision makers as either elected officials or voters in case of initiative or referendum).
[90] *See* CAL. CONST. art. II, § 8(b) (noting that initiative must appear on ballot at next general election, or at special election, after initiative measure has gained sufficient signatures and qualified for ballot).
[91] *See* CAL. ELEC. CODE § 3705.5 (establishing procedure for legislative body to gather information regarding fiscal affects of initiative).
[92] *See* CAL. CODE REGS. tit. 14, § 15378(a)(1-3) (defining "project" as any action that has potential to physically change environment). A "project" includes all activities of a public agency relating to public works construction, grading land, improvements to existing public structures, enactment and amendment of zoning ordinances and general plans, and issuance of lease, permit, or license, etc. *Id.*

[93] *See, e.g.*, COUNCIL ON CALIFORNIA'S COMPETITIVENESS, CALIFORNIA'S JOBS & FUTURE 37 (1992) (noting that CEQA is cumbersome, costly, and often abused, damaging business environment in California). The economic downward spiral of the 1990s underlies the opposition's argument. *Id.* at 18 (reporting that, in early 1990s California's economy stopped growing and began to contract at a rate unparalleled since Great Depression). Under this analysis, California's "competitiveness" suffers because of the cost of environmental review. *Id.* at 19 (concluding that CEQA is one of many factors adversely affecting California's ability to grow and succeed in next century). Other studies counter this argument.
See CALIFORNIA'S GROWTH MANAGEMENT COUNCIL, STRATEGIC GROWTH: TAKING CHARGE OF THE FUTURE 46 (1993) (noting need for comprehensive plans to allow for programming of infrastructure to accommodate growth). A consensus of industrial leaders, unions, farmers, and others argues that California needs more planning, not less. *Id.*
[94] *See* CAL. PUB. RES. CODE §§ 21000-178 (outlining CEQA process and procedure for environmental review).
[95] *See* CALIFORNIA'S GROWTH MANAGEMENT COUNCIL, *supra* note 114, at 48 (recommending comprehensive plans to increase environmental assessment and ensure adequate statewide infrastructure).
[96] *See* CAL. CONST. art. II, §§ 8-11 (outlining process for initiative measure); *see also* CAL. CODE REGS. tit. 14, § 15378(b)(4) (exempting initiative measures from CEQA review); Northwood Homes, Inc. v. Town of Moraga, 255 Cal. Rptr. 363 (Ct. App. 1989) (holding that initiative-based general plan amendment is not invalid for failure to comply with CEQA).
[97] *See, e.g.*, CAL. ELEC. CODE § 3702 (West 1995) (requiring that sponsors of initiative file their intention to circulate petition with county clerk); *id.* § 3702.5 (requiring that county counsel prepare title and summary of initiative before gathering of signatures); *id.* § 3705 (requiring that sponsors return signatures to clerk within 180 days after filing); *id.* § 3703 (noting that county clerk must verify that at least 10 percent of county voters who voted in last gubernatorial election signed petition).
[98] *See* CAL. CONST. art. II, § 11 (noting responsibility of legislature to implement initiative process). The voters amended the California Constitution in 1911 to include the initiative provision. *See* BUTLER & RANNEY, *supra* note 56, at 30 (discussing history of initiative in California).
[99] *See* sources cited *supra* note 118 (noting procedures that legislature has required for initiative).
[100] *See, e.g.*, CAL. ELEC. CODE § 3705.5 (establishing procedure for legislative body to gather information regarding fiscal effects of initiative).
[101] *Id.*
[102] *See id.* (establishing procedure for legislative body to gather information regarding fiscal affects of initiative).
[103] *See* CAL. GOV'T CODE § 65030.1 (requiring decision makers to make planning choices pursuant to effective and comprehensive process).
[104] *See* CAL. PUB. RES. CODE §§ 21000-178 (outlining CEQA procedures).
[105] *See* Stein v. City of Santa Monica, 168 Cal Rptr. 39 (Ct. App. 1980) (holding that initiative ordinance dealing with rent control is not project within scope of CEQA).
[106] *See* Selmi, *supra* note 43, at 204 (discussing California Environmental Quality Act as state mandate to ensure environmental review of projects).