

This is the second of two posts exploring whether the California Chamber of Commerce's ballot initiative to drastically reform CEQA might facilitate the construction of data centers in California. In the [first post](#), I examined whether data centers fall within the scope of the initiative (and concluded they likely do so).

What are the implications of data centers falling within the scope of the initiative?

First, the legislature would not be able to mandate that data centers must fall within the "old CEQA" (CEQA before the initiative) without a 2/3 vote in the legislature. The initiative states that any conflict between it, and subsequent legislation with respect to environmental review, is resolved in favor of the initiative, proposed new Section 21014(e), and amendments to the initiative require a 2/3 legislative vote, proposed new Section 21034. Environmental review for data centers would thus have to follow the extremely truncated provisions under the initiative. My earlier blog posts (links [here](#)) cover the drastic changes imposed by the initiative on CEQA, but the highlights here include: limiting alternatives analysis to only those alternatives identified by the proponent; limiting the scope of any analysis to that identified by the proponent; limiting analysis and any mitigation to violations of objective legal standards in force at the time the project is proposed; and elimination of most judicial review of compliance with those (limited) requirements.

But the implications of including data centers under the initiative go well beyond CEQA. That is because the initiative, for covered essential projects, provides for sweeping vested rights for those covered projects. Vested rights means that the regulatory rules – *any regulatory rules, whether local or state, whether environmental or otherwise* – cannot change after the rights vest. The initiative vests rights (with extremely narrow exceptions) at the time the project proponent submits a proposal to the permitting authority – which may be a very easy and quick step for proponents to do, depending on the relevant permitting requirements.

That means that local governments – unless they already restrict data centers – won't be able to stop a proposed data center project the moment an application comes in. It would not surprise me if you saw a lot of proposals submitted to lock in local and state regulations, even if most are not actually constructed.

And this is particularly important because data centers – at least at the scale that they are being developed today – are a very new kind of project, which may not be well covered by current regulatory rules. And there are a lot of examples in news

coverage of project proponents using non-disclosure agreements and other tools to keep their [proposals under wraps](#), away from public scrutiny, until late in the process. At which point, the initiative will prevent any changes to the rules that apply to the project! For instance, I do not think that a community could rezone the site for a proposed data center project consistent with the initiative.

Overall, I think the initiative could fundamentally change how data centers are reviewed and approved in California, making it much easier to construct them.