A key question under the CEQA initiative on the ballot this fall, should it be enacted, is how it will relate to planning in California law. The question is an important one because planning has long been a key component of California land-use and environmental law. All local governments are required by state law to have general plans. Local zoning rules (and all projects approved pursuant to those rules) must be consistent with general plans. Amendments to general plans must be done by local legislatures (e.g., city or town councils or county boards of supervisors) and are projects covered by CEQA. A local legislature can only amend its general plan up to four times a year.

The first point is that the initiative is project-focused. It provides exemptions for eligible projects. While the initiative does include legislative decisionmaking by local governments – which is how plans are enacted at the local level – it appears to do so in the context of projects that require plan amendments, not in terms of standalone plan changes that are not connected to specific projects.

That means that standard planning decisionmaking by state and local agencies probably is not covered by the initiative. That includes the enactment of housing elements by local governments.

That in turn might have a number of follow-on effects. First, it will probably push more development approval processes in California to use individual zoning or planning changes rather than systemic reviews and updates of planning and zoning. That in turn may well be harmful for long-term infrastructure and financial planning, and will undercut consideration of cumulative impacts of development (whether environmental or otherwise).

Relatedly, it will likely mean there will be more pressure for local governments to do plan amendments for specific projects – that process would presumably fall under the new CEQA under the initiative – and thus do piecemeal development decisions.

The initiative will thus exacerbate pressures that already encourage local governments to push development approvals to individual projects, and away from planning level consideration. Local governments generally pay for any required analysis (including CEQA analysis) for large-scale zoning or planning changes that are not connected with a particular project. Project proponents generally pay for the analysis for specific projects. If CEQA review is now much cheaper for individual projects than for planning, and that CEQA review is covered by proponents anyway, that will likely push local governments away from planning and towards individual

project review.

The main constraint here – as I will discuss in a separate blog post – is the extent to which existing local government plans constrain development. If they are fairly constraining, then the cap on four general plan amendments in a year will significantly limit the number of plan-inconsistent projects that can be approved. This will particularly be true for large jurisdictions such as the City of Los Angeles, where there are a lot of potential projects to consider.

One last possibility is that the passage of the initiative might change how courts view CEQA compliance for plan and zoning amendments not connected to specific projects. If those plan and zoning amendments will allow projects to proceed under the new CEQA under the initiative, with substantially less environmental review, does that mean there should be a heightened burden under the old CEQA for review of those plan and zoning amendments? In important ways, going forward planning and zoning amendments that enable projects that are covered by the new CEQA will significantly constrain the ability of local governments to regulate the environmental impacts of those projects. That in turn may mean that the local government has more of a burden to analyze those potential future environmental impacts when it does the plan and zoning amendments.

Overall, all of these dynamics may encourage more “lock in” to existing planning and zoning in California, since project-level decisionmaking will become substantially more appealing. And if that is the case, that may in the aggregate undermine the initiative’s efforts to advance development projects in the state.

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