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Development Agreements are Meant to be Handled by Local Governing Bodies, not the Initiative Process

In *Center for Community Action and Environmental Justice v. City of Moreno Valley* (August, 2018), the Court of Appeal found that the legislature intended to exclusively delegate approval of development agreements to local legislative bodies and to make such approval subject to referendum, but not to initiative.

In 2015, the City of Moreno Valley ("City") adopted an initiative to approve a development agreement in connection with a development project. In the past, some developers and agencies have sought to adopt development agreements by initiative because CEQA review was not required. Here, the plaintiff and other environmental groups petitioned for a writ of mandate, contending that adoption of a development agreement by initiative violated the development agreement statute (Gov. Code § 65864, et seq.) and Article II, Section 12 of the California Constitution, which bars an initiative that "names or identifies any private corporation to perform any function or to have any power or duty." The Court of Appeal agreed.

Looking to the language of the development agreement statute, the statutory scheme, and the legislative history, the Court determined that the Legislature intended to exclusively delegate approval of development agreements to governing bodies and to preclude the right of initiative. Government Code Section 65867.5 explicitly makes development agreements "subject to referendum," while omitting "initiative." Further, the statute requires the "legislative body" to making findings that the agreement is consistent with the general plan and any applicable specific plan. The Court found that this language supported plaintiff's position that approval of development agreements was exclusively for local legislative bodies, and could not be done by initiative. Moreover, the Court found that use of the initiative process would be inconsistent with the concept of a development agreement as a "negotiated contract," and would leave no way for legislative bodies to ensure compliance with statutory requirements. Lastly, the Court found that the legislative history of the development agreement statute is consistent with an intent to exclusively delegate the adoption of development agreements to local governing bodies and to render them subject to referendum, but not initiative.

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