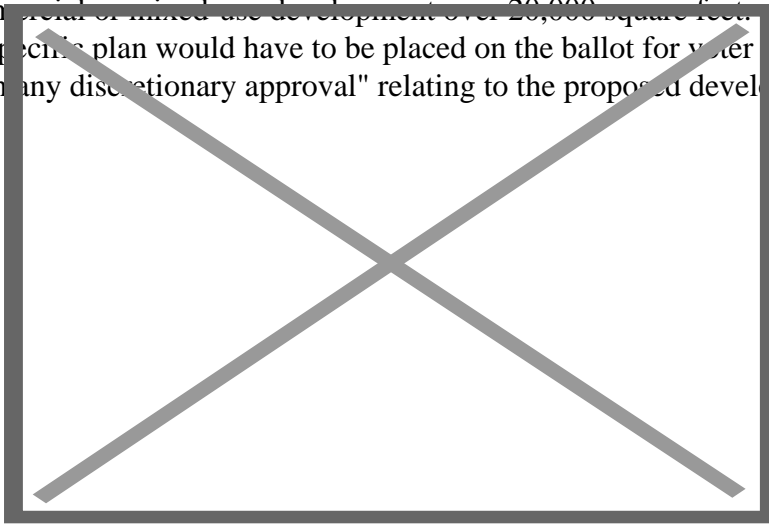


Voter-Approved Initiative to Limit Large Developments and Chain Stores Exceeded Initiative Power

In a case that illustrates the limits of use of voter-approved initiatives to limit development, the court of appeal invalidated an initiative passed by voters in the City of Malibu that sought to limit large developments and chain stores. *The Park at Cross Creek v. City of Malibu*, 12 Cal.App.5th 1196 (2017). The initiative at issue, Measure R, consisted of two components. The first required Malibu's City Council to prepare a specific plan for every proposed commercial or mixed-use development over 20,000 square feet. Following the City Council's approval, the specific plan would have to be placed on the ballot for voter approval. The City could not take any "final action or any discretionary approval" relating to the proposed development until voter approval of the

specific plan.



The second component of Measure

R required any proposed chain store (defined as an establishment with standardized features having ten or more outlets worldwide) to obtain a conditional use permit, which would "run solely with the operation of the [chain store] for which it was approved. The court of appeal invalidated Measure R's specific plan requirement on the ground that it exceeded the initiative power. The electorate's right to initiative and referendum applies only to legislative acts, not to administrative or adjudicatory actions. The court found that there was a "difference between, on the one hand, voter approval of a specific plan and, on the other, *requiring* a city council to prepare a specific plan and report, to hold a public hearing about the specific plan and report, and then requiring the plan to be submitted to voters for approval. The former is a legislative act; the latter is an adjudicative one." The court held that by requiring a specific plan and voter approval of a plan before the City's governing body could issue any permit or approval, Measure R "usurp[ed] administrative authority" by removing the City's ability to issue discretionary approvals for a project unless the project was approved by voters. The court also invalidated Measure R's CUP component on the ground that the CUP was specific to the identified *user* rather than to the use of land. Using the example of a Starbucks, the court noted that if "Starbucks, obtains a CUP, the CUP can be transferred to another Starbucks but not to Peet's, notwithstanding that Starbucks and Peet's have the same "use," i.e., both are coffee shops. Measure R CUPs thus are establishment-specific *and* restricted in their transferability." The court held that this ran contrary to the well-established principle that a CUP creates a right that runs with the land and accordingly found the CUP component of Measure R invalid.

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