

Development Agreements Cannot Be Adopted By Initiative

A development agreement cannot be adopted by initiative, the California court of appeal ruled in *Center for Community Action and Environmental Justice v. City of Moreno Valley*, 26 Cal. App. 5th 689 (2018). **The Development Agreement Statute** The Development Agreement Statute (Government Code sections 65864–65869.5) allows a municipal government and a property owner to enter into a contract that vests development rights by freezing the land use regulations applicable to a property. The statute includes procedural and substantive requirements for development agreements, including that "[a] development agreement is a legislative act that shall be approved by ordinance and is subject to referendum." (Government Code section 65867.5(a).) **Background** The project at issue in this case was a proposed logistics center in Moreno Valley. In 2015, the Moreno Valley City Council approved project entitlements, including a development agreement. Opponents then filed a CEQA lawsuit to challenge the environmental impact report for the project. A group backed by the developer responded by filing a petition for an initiative that would repeal the development agreement ordinance and approve a new development agreement. The initiative development agreement was substantially the same as the agreement the City Council approved for the project. The City Council adopted the initiative, rather than submitting it to the voters. Because [voter-sponsored initiatives are not subject to CEQA](#), no environmental review was completed before the City Council adopted the initiative. Opponents then filed this lawsuit, asserting that a development agreement cannot be adopted by initiative. **The Court's Decision** Based on the statutory language, statutory scheme, and legislative history, the court determined that the Development Agreement Statute did not permit adoption of a development agreement by initiative. First, the court found it meaningful that the Development Agreement Statute specifies that adoption of a development agreement is a "legislative act . . . subject to referendum" but omitted any reference to initiative. This omission, according to the court, indicated an intent by the Legislature to preclude adoption by initiative. The court also found the Development Agreement Statute's reference to a "legislative body" as providing support for the Legislature's intent to exclusively delegate power to adopt a development agreement to local governments. Second, the court determined that the statutory scheme was of statewide concern, which supported inferring a legislative intent to exclude initiatives. In addition, the court explained that the initiative process was inconsistent with the concept of a development agreement as a negotiated contract, because an initiative does not provide any opportunity for the local government to negotiate its terms. The court also observed that adoption by initiative could result in development agreements that did not include all provisions required by the Development Agreement Statute. Third, the court noted that the legislative history was consistent with an intent to prevent adoption of development agreements by initiative. The court cited an amendment to the text of the bill that stated that development agreements would be subject to referendum. Singling out referenda, the court stated, indicated an intent to exclude initiatives. The court also noted that numerous documents in the legislative history referred to referenda, but were silent as to initiatives. The court also analyzed the meaning of a bill that passed the Legislature in 2017 but was vetoed by the governor, which would have amended the Development Agreement Statute to prohibit adoption by initiative. The court concluded that this bill did not necessarily mean that the current statute would allow adoption by initiative, because the failed bill stated that it would "clarify" the law. **Implications** In holding that a development agreement may not be adopted by initiative, the court's decision affirms that a development agreement is a contract that must be negotiated by a local government and a property owner. The court's holding in this case is straightforward, but has important implications for developers. Adoption of a voter-sponsored initiative by the local legislative body has been an important tool in the developer's toolkit because CEQA does not apply to such an action. Going forward, local legislative bodies can still adopt voter-sponsored initiatives to amend a general plan, zoning ordinance, or other land use regulations,

but not development agreements to vest those regulations.

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