

December 2007**Court Rules Development Agreements May Only Allow Uses Permitted By Underlying Zoning**

A recent appellate decision invalidated a development agreement because it allows land uses that are not otherwise permitted or conditionally permitted by the underlying zoning for the property. *Neighbors in Support of Appropriate Land Use et al. v. County of Tuolumne et al.* decided by the Fifth District Court of Appeal (Fresno) on December 7, 2007.

The Court relied upon Government Code Section 65852 requiring zoning regulations to be “uniform for each class or kind of building or use of land throughout each zone” reasoning that the development agreement at issue allowed uses on one property in the zone that are not permitted on other properties in the same zone.

The Court rejected the County’s argument that in adopting a development agreement by the same process by which zone changes are adopted, the development agreement becomes a valid modification of the zoning ordinance, holding that all zoning enactments, including development agreements, must provide for uniformity of uses within the underlying zone. Additionally, nothing in the development agreement law (Government Code Sections 65864 et seq.) authorizes development agreements to create an exception to the uniformity requirement nor to the use requirements of a zone.

The case arose from a unique set of facts. The property in question was zoned Exclusive Agricultural AE-37 permitting agricultural uses and requiring minimum parcel size of 37-acre. The Tuolumne County Board of Supervisors had twice rejected efforts by the property owner to amend the zoning ordinance to allow commercial weddings and social events on land in this zone. Following the denial of these proposals, however, the Board approved the development agreement allowing commercial weddings and social events on the property.

The opinion is limited to the use of a development agreement to allow a use that is not permitted by the underlying zoning. It does not expressly address whether a development agreement may be used to authorize individualized development standards for a project inconsistent with the underlying zoning absent a variance or an accompanying specific plan providing for that alternative development standard. However, based on the rationale of the case and the court's reliance on the "uniformity" within zoning districts, public agencies will need to consider the issues raised by the case when they prepare and consider development agreements providing for uses or standards that vary from the underlying

zoning district.

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