

## Suit for Breach of Development Agreement Should Be Treated as a Breach-of-Contract Action, Not an Administrative Law Proceeding



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The City

of Oakland entered into a statutory development agreement with the plaintiff to redevelop a portion of the decommissioned Oakland Army Base as a commercial shipping terminal. While development agreements generally freeze existing regulations in place, this agreement provided that the city could adopt and apply new regulations if the City determined "based on substantial evidence and after a public hearing that a failure to do so would place existing or future occupants or users . . . neighbors, in a condition substantially dangerous to health or safety." Subsequently, in response to public opposition to shipping coal through the terminal, the City Council held public hearings, analyzed evidence presented by experts, and approved an ordinance prohibiting coal shipping. The City Council adopted factual findings in support of its determination that shipment of coal created a substantially dangerous health or safety condition. The appeal turned on whether the case should be treated as a breach-of-contract action (in which the trial court makes factual findings based on the evidence presented at trial, which are accorded deference on appeal) or as an administrative law proceeding (in which the evidence is limited to the record before the agency and the agency's factual findings upheld if supported by substantial evidence). The court concluded that administrative law principles should not apply in a breach-of-contract action because, among other things, deferring to the government agency's findings would "effectively create an escape hatch for the government to walk away from contractual obligations" through "self-serving regulatory findings insulated by judicial deference . . . ." The court therefore concluded that the trial court owed no deference to the City's factual determinations and did not err in considering evidence not presented at the public hearings to "shed light on the adequacy of the evidence that was actually before the City Council." Employing the standard of

review for a breach-of-contract action, the appellate court determined that the trial court did not err in finding that: (1) the City's estimates of dust emission from transported coal were unreliable; (2) a report purporting to show that plaintiff's coal shipping operations would cause particulate matter to exceed state standards was flawed; (3) the evidence relied on by the City did not credibly establish that the volume of coal emissions from shipping presented a substantial danger; and (4) evidence relied on by the City pertaining to the risk of coal fire was speculative and contradicted by the record.

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