# City's Breach of a Development Agreement Leads to a $30 Million Judgment

**Brian C. Fish**
*Partner*
P: 619.699.2424
F: 619.6455395
bfish@luce.com
www.luce.com/brianfish

*Luce Forward is a full service law firm with offices throughout California. The author, Brian Fish, is a land use/development partner at Luce Forward who has extensive experience negotiating, drafting and reviewing statutory development agreements. You can reach Brian Fish at 619.699.2424 or bfish@luce.com, or any of our other land use lawyers by searching at www.luce.com/landuse.*

Yes, you read that right! In the recent *Mammoth Lakes Acquisition, LLC v. Town of Mammoth Lakes* decision, a California Court of Appeal affirmed a jury's $30 million damage award **to a developer** due to the town's breach of a statutory development agreement. So, the natural follow on question, what does the case mean for the rest of us?

The facts of the case are interesting and key to a full understanding. In 1997, the Town of Mammoth signed a development agreement giving a developer an option to purchase certain city-owned property and vested rights to build a multi-phased mixed use development and other improvements at the Mammoth Airport. Critically, the development agreement did not limit the remedies the developer could pursue in the event of a breach.

As required by the development agreement, the developer spent $15-17 million on airport improvements and proceeded to prepare and process plans and permits for the mixed use portion of the project. The approvals went nowhere with the town. In fact, the Court of Appeal found that:

- In 1997, before the town entered into the development agreement, the Federal Aviation Administration ("FAA") told the town that the FAA had fundamental problems with key components of the deal;
- The town waited until 7 years after the parties signed the development agreement, and the developer had spent millions of dollars, to tell the developer about the FAA's concerns;
- In 2004, town officials met with the FAA and requested FAA assistance to "get rid of" the project contemplated by the development agreement; and
- The town refused to perform its obligation unless developer satisfied the FAA's concerns, a condition that was not part of the development agreement.

Some will argue that the case provides little, generally applicable guidance because the facts are so extreme, but that is not true. While one can certainly hope that other developers will not experience similarly terrible treatment, the case identifies a few principles that other developers might find useful. For example, this case illustrates the importance of well drafted vested rights and remedies provisions. The developer in this case relied on those provisions to successfully declare an "anticipatory breach" - an approach that allowed the prosecution of the lawsuit before the local agency ever formally denied the developer's permit application. The case also provides guidance regarding the type of evidence, both by experts and the developer, that can potentially justify an award of lost profits.

All that said, the case presents a cautionary tale. The developer's expert testified that the completed project would have conservatively generated $160 million in profits. While a $30 million damage award is significant, the State legislature created statutory development agreements in order to provide certainty, help expedite important projects and encourage investment by developers. Here, it took the developer 13 years just to get a favorable court of appeal decision, the developer had to spend millions of dollars to get to this point and the developer still has to actually collect the money from a small town. In short, while good news, the case shows why a developer needs to pay close attention to a development agreement's key terms such as the vested rights and remedies provisions, and why assistance from experienced legal counsel can prove invaluable. After all, if even a developer-friendly development agreement only buys a damage award, one can imagine what would happen with a less favorable agreement.