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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

INGLEWOOD RESIDENTS AGAINST TAKINGS AND EVICTIONS,

Plaintiff and Petitioner,

v.

CITY OF INGLEWOOD, a municipal corporation, et al.,

Defendants and Respondents.

MURPHY'S BOWL LLC, a Delaware Limited Liability Company; ROES 10-20,

Real Parties in Interest.

Case No. BS170333
(Related to Case No. BS174709)

[~~PROPOSED~~] JUDGMENT

Judge: Hon. Mitchell L. Beckloff
Date: December 7, 2018
Time: 9:30 a.m.
Crtrm.: 86

Action Filed: July 20, 2017
Trial Date: December 7, 2018

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This matter came on for hearing on December 7, 2018 in Department 86 before the Honorable Mitchell Beckloff of the Los Angeles Superior Court.

Jonathan R. Bass and Charmaine G. Yu of Coblentz Patch Duffy & Bass LLP appeared on behalf of Real Party in Interest Murphy's Bowl Inc.

Douglas P. Carstens of Chatten-Brown and Carstens LLP appeared for Petitioner Inglewood Residents Against Takings and Evictions.

Jason H. Tokoro of Miller Barondess, LLP and Bruce Gridley and Royce K. Jones of Kane, Ballmer and Berkman appeared for Defendants and Respondents City of Inglewood, City of Inglewood City Council, Successor Agency to the Inglewood Redevelopment Agency, Governing Board of the Successor Agency to the Inglewood Redevelopment Agency, and the Inglewood Parking Authority, the Inglewood Parking Authority Board of Directors (collectively, "Respondents").

The Court, having reviewed the record of administrative proceedings in this case and the parties' briefs, having considered the oral arguments of counsel presented at the December 7, 2018 hearing, and having prepared a written statement of the factual and legal bases for its decision, which is attached as Exhibit A,

IT IS ORDERED, ADJUDGED AND DECREED:

1. The Petition for Writ of Mandamus in Case No. BS170333 is denied.

2. Judgment is entered in Case No. BS170333 against Petitioner Inglewood Residents Against Takings and Evictions and in favor of Respondents.

3. Respondents and Real Party in Interest Murphy's Bowl LLC shall recover their costs and disbursements herein, as allowed by law.

DATED: 01/25/2019

Mitchell L. Beckloff / Judge
Hon. Mitchell L. Beckloff

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 86

BS170333
INGLEWOOD RESIDENTS AGAINST TAKINGS AND EVICTIONS VS CITY OF

December 27, 2018
3:09 PM

Judge: Honorable Mitchell L. Beckloff
Judicial Assistant: Nancy DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE RULING ON SUBMITTED MATTER

The court having taken the above matter under submission on December 7, 2018, now makes its ruling as follows:

Petitioner Inglewood Residents against Takings and Evictions seeks a writ of mandate setting aside Respondent City of Inglewood's approval of an exclusive negotiating agreement with Real Party in Interest Murphy's Bowl, LLC for the development of the Los Angeles Clippers arena project.

Respondent City of Inglewood and Real Party in Interest Murphy's Bowl, LLC jointly oppose the Petition.

The petition for writ of mandate is DENIED.

Statement of the Case

The Los Angeles Clippers, an NBA professional basketball team, currently play their home games at Staples Center in downtown Los Angeles, pursuant to a lease set to expire in 2024. (AR 971.) In January 2017, negotiations began for the possible development of a new home arena for the Clippers in the City of Inglewood. (AR 564.)

On June 14, 2017, the City Council for Respondent issued a notice it would hold a special joint meeting the following day to consider an exclusive negotiating agreement with Murphy's Bowl for this new proposed Clippers arena. (AR 149-151, 152.) On June 15, 2017, the City Council, Successor Agency to the Inglewood Development Agency, and the Inglewood Parking Authority (Parking Authority), (collectively, the City) voted to approve the exclusive negotiating

agreement with Murphy's Bowl (the Original ENA). (AR 150-151, 160-161.) The Original ENA concerned a multi-parcel 80-acre study area. (AR 101.)

On July 14, 2017, Petitioner objected to the City Council's decision to approve the Original ENA on grounds the City did not provide 24-hour notice as required by the Brown Act. (AR 252-253.) In response to Petitioner's complaint and in an apparent attempt to ensure compliance with the Brown Act, the City Council held a second meeting on the issue and agreed to recommit the City to the Original ENA. (AR146-147.)

On July 20, 2015, Petitioner filed its original petition for writ of mandate and complaint for injunctive relief. In the petition, Petitioner alleged violations of the California Environmental Quality Act (CEQA).

On August 15, 2015, the City and Murphy's Bowl executed an amended and restated exclusive negotiating agreement (ENA), reducing the number of parcels under consideration and specifing no privately owned, occupied residences or churches would be acquired for the project through eminent domain. (AR 5-6, 123-124, 127-128, 131-132.) The City and Murphy's Bowl made other revisions and changes in their agreement.

Those revisions and changes provided additional details of the agreement between the parties. For example, Section 7 concerning CEQA added an additional lengthy sentence to address the results of environmental study. (Compare AR 16 with 240.) The parties also added language to the ENA in Recital E specifying the "unique economic development and employment opportunities the Proposed Project would provide to the financial base and overall fiscal stability of the City that might not otherwise be available . . . ." (Compare AR 7 with 230.)

The Original ENA's provisions related to the City having "sole and absolute discretion" to approve a Disposition Development Agreement (DDA) with Murphy's Bowl as well as "the proposed development of the Site" remained unamended in the ENA. (Compare AR 19 with 243.) The same is true of the Original ENA's provisions stating the City had no obligation "in any way" to approve the development. (Compare AR 23 with 247.)

On September 7, 2017, the Oversight Board of the City of the Successor Agency to the Inglewood Redevelopment Agency, voted to approve the ENA.

At the time the City entered into the ENA, it had undertaken no environmental review of the project.

BS170333 December 27, 2018
INGLEWOOD RESIDENTS AGAINST TAKINGS AND EVICTIONS VS CITY OF 3:09 PM

Judge: Honorable Mitchell L. Beckloff CSR: None
Judicial Assistant: Nancy DiGiambattista ERM: None
Courtroom Assistant: None Deputy Sheriff: None

Statement of Issues

Petitioner submitted the following Statement of Issues pursuant to Public Resources Code section 21167.8(f):

1. In approving the exclusive negotiating agreement (ENA) with Real Party in Interest Murphy's Bowl, LLC for the development of the Clippers Arena project prior to conducting environmental review, did Respondents violate California Environmental Quality Act (CEQA)?

a. Did Respondents' execution of the ENA constitute an approval of one of the essential steps necessary to eventual implementation of the Clippers Arena Project;

b. Did Respondents' execution of the ENA foreclose consideration and approval of meaningful alternatives and mitigation measures;

c. In view of the totality of the circumstances, did Respondents commit themselves as a practical matter to a definite course of action with respect to the development of the Clippers Arena Project?

Standard of Review

"CEQA is a comprehensive scheme designed to provide long-term protection to the environment." (Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105, 112.) In general, "CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives. It permits government agencies to approve projects that have an environmentally deleterious effect, but also requires them to justify those choices in light of specific social or economic conditions." (Sierra Club v. State Bd. of Forestry (1994) 7 Cal.4th 1215, 1233.)

Under CEQA, local agencies are required to prepare "an EIR [environmental impact report] whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment." (Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Assn. of Governments (2009) 179 Cal.App.4th 113, 117.)

The question of whether "the lead agency approved a project with potentially significant environment effects before preparing and considering an EIR for the project 'is predominantly one of improper procedure' [citation] to be decided by the courts independently." (Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 131.) When the issue is predominantly one of improper procedure rather than a dispute over the facts, the court must review the agency's action de novo, "scrupulously enforc[ing] all legislatively mandated CEQA requirements." (Oakland Heritage Alliance v. City of Oakland (2011) 195 Cal.App.4th 884, 898 [citing Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 435].)

Analysis

Approval of the ENA was not an "Approval" of a "Project"

Petitioner contends, "Here, in their single-minded determination to attract the construction of a professional basketball arena, officials of the City . . . have violated the main principles and purposes of CEQA and the environmental impact report (EIR) process, committing the City to approval of a project before a single CEQA analysis was prepared . . . ." (Opening Brief 2:13-17, (9:11-14.) Petitioner asserts the ENA was "a significant step towards overall approval of the project." (Opening Brief 9:12.) Thus, the threshold determination for this court is whether the City's approval of the ENA was an "approval" of a "project" as defined by Section 21065 such that the City was required to undertake environmental review prior to execution of the ENA.

A "project" subject to CEQA is defined as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: [¶] (a) An activity directly undertaken by any public agency. [¶] (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. [¶] (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Pub. Resource Code § 21065.) "'Approval' means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." (Sustainable Transportation Advocates, supra, 179 Cal.App.4th at 117.)

As correctly argued by Petitioner, "CEQA requires a lead agency to prepare an EIR for a project "'at the earliest possible stage[.]'" (California Oak Foundation v. Regents of University of California (2010) 188 Cal.App.4th 227, 271.) "However, an agency has no duty of compliance with CEQA unless its actions will constitute (1) 'approval' (2) of a 'project.' [Citation.]"

(Concerned McCloud Citizens v. McCloud Community Services Dist. (2007) 147 Cal.App.4th 181, 191.)

Petitioner's Issue 1(a): Did Respondents' execution of the ENA constitute an approval of one of the essential steps necessary to eventual implementation of the Clippers Arena Project?

In Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist. (2007) 147 Cal.App.4th 643, citing Fullerton Joint Union High School Dist. v. State Bd. of Education (1982) 32 Cal.3d 779, the Court discussed circumstances in which an approval or an action that opens the way to future development could be defined as "approval" of a "project" where it constitutes "an essential step leading to an ultimate environmental impact." (Id. at 654; Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist. (1992) 9 Cal.App.4th 464, 474.)

Simply stated, Petitioner contends the ENA is the first significant step towards approval of the project. During argument, Petitioner explained the ENA was a necessary link to the ultimate construction of the Clippers arena. Petitioner primarily relies on Bozung v. Local Agency Formation Commission (1975) 13 Cal.3d 263 and Fullerton Joint Union High School Dist. v. State Bd. of Education (1982) 32 Cal.3d 779 to support its position.

Both Bozung and Fullerton, however, are distinguishable. Both cases addressed the concept of a "project" requiring environmental study under CEQA. The cases involved agency action that demonstrated a commitment to proceed with a project. The action taken by the agencies in those cases necessarily dictated a project with an ultimate environmental impact would follow the action taken. Neither case involved an exclusive negotiating agreement like that involved here.

Fullerton involved the approval of the State Board of Education's plan to allow the city of Yorba Linda to create a new school district and transfer responsibility for high school education from a school district in Fullerton to one in Yorba Linda; the Court determined approval of the succession plan constituted a project because the approval necessitated the construction of a high school in Yorba Linda. (Fullerton Joint Union High School Dist. v. State Bd. of Education, supra, 32 Cal.3d at p. 797.) The agency's decision thus committed the agency to a definite course of action. The Court noted, "Succession will likely require the construction of a new high school in Yorba Linda and may result in abandonment of some facilities in the remaining portion of the Fullerton [High School District]. It will change bus routes and schedules, and affect traffic patterns. Although it is uncertain whether the total impact will be significant enough to require an environmental impact report, it is clear that it is sufficient to require at least an initial study to inquire into the need for such a report." (Id. at 794.)

Bozung is similar. In Bozung, the Court concluded the city's approval of annexation of property intended for later residential and commercial development was a project because it granted the city an "entitlement for use." (Bozung v. Local Agency Formation Commission, supra, 13 Cal.3d at 278-279.) The Court further explained "[p]lanning was completed, preliminary conferences with city agencies had progressed 'sufficiently' and development in the near future was anticipated." (Ibid. at 281 [fn. omitted].) Therefore, the Court found the annexation would "culminate in physical change to the environment." (Ibid.) The Court also emphasized, however, its findings in that case were not intended to imply "any . . . approval of any annexation to any city may have a significant effect on the environment." (Id. at p. 281.)

Both Fullerton and Bozung involved decisions demonstrating a level of commitment by a local agency to a specific project – the decisions committed the agency to a definite course of action, a new school district in Fullerton and annexation with an intention of development and "entitlement for use" in Bozung.

In contrast, a city's agreement to engage in good faith negotiations with a developer – to potentially reach a development agreement -- does not constitute approval of a project even where "extensive details" concerning a project are included in that agreement. (Cedar Fair, L.P. v. City of Santa Clara (2011) 194 Cal.App.4th 1150, 1169, 1171.) This is especially true where the parties' agreement does not make any "terms binding or even conditionally binding." (Id. at 1171.)

Here, the ENA does not commit the City to a definite course of action – the ENA is replete with provisions specifying it has complete discretion whether to approve some form of the project. Murphy's Bowl expressly "acknowledge[d] and agree[d] that [the ENA] does not confer upon [it] the right to have a DDA or develop the Proposed Project within the Study Area Site or any portion thereof absent an approved and executed DDA by the Public Entities." (AR 19.) The ENA provides, "The Parties in no way intended for this Agreement to waive or restrict the Public Entities' exercise of their independent, discretionary judgment with regard to CEQA or a DDA for the development of the Proposed Project within the Study Area Site or any portion thereof, or any City discretionary decisions or determinations relative to Entitlements required for the Proposed Project." (AR 19.)

The ENA does not make, authorize or fund the Clippers arena; it merely authorizes good faith negotiation in an attempt to reach a DDA acceptable to all parties. The ENA preserves all authority over approval to the City. While the ENA is, of course, some step toward the

possibility of development, the ENA does not commit the City to any course of action except that of good faith negotiation. The ENA is a step requiring nothing more than good faith negotiation. "[T]he terms of the agreement demonstrate the [City] retains the right to participate in and approve or disapprove of or modify major aspects of the prospective project." (Concerned McCloud Citizens v. McCloud Community Services Dist., supra, 147 Cal.App.4th at 193.) Thus, the ENA is not an essential necessary action -- like those of the State Board of Education in Fullerton or the city in Bozung -- toward eventual implementation of the Clippers arena.

Petitioner's Issue 1(b): Did Respondents' execution of the ENA foreclose consideration and approval of meaningful alternatives and mitigation measures?

At the commencement of the hearing on this writ petition, the court listed those provisions in the ENA expressly retaining the City's complete and unfettered discretion over the proposed project: Recital D ("if the Proposed Project is approved" and "[t]he Developer acknowledges that the Public Entities have not approved the Proposed Project . . . in the exercise of their respective absolute discretion"); Recital E ("agreed to negotiate with the Developer for" and "[t]he Public Entities have also agreed to negotiate with the Developer . . ."); Recital F (in its entirety); Recital G ("subject to changes" and "as may arise from the City's independent regulatory review of the Proposed Project"); Recital H ("objective of negotiating a proposed mutually acceptable DDA"); Section 3(a) (limiting the City's financial exposure and providing for the City's control over budget); Section 3(d) (approval of site plans contingent on City's approval); Section 3(f) (non-refundable deposit limiting the City's financial exposure); Section 3 (g) (developer reimbursement for properties purchased thereby limiting City's financial commitment); Section 6 ("good faith efforts to negotiate and enter into a DDA" and "nothing herein binds the Public Entities"); Section 7 (final sentence); Section 13 ("nothing in this Agreement shall obligate the Public Entities to approve a DDA nor any proposed development within the Study Area Site," "sole and absolute discretion," and "independent, discretionary judgment with regard to CEQA"); and Section 25 (no obligation to approve project). (AR 6-24.)

Petitioner agreed the provisions purported to provide the City with absolute discretion, but Petitioner argued other provisions in the ENA impermissibly foreclosed alternatives and mitigation measures. Petitioner contends the foreclosure of alternatives through the ENA committed the City to a definite course of action requiring environmental study. (See Citizens for Responsible Government v. City of Albany (1997) 56 Cal.App.4th 1199, 1219.)

In support of its position, Petitioner relies on Citizens for Responsible Government v. City of Albany, supra, 56 Cal.App.4th at 1199. In City of Albany, the city council reached an agreement

with a developer to allow the developer to add a cardroom gaming facility to an existing horse racing track. (Id. at pp.1205-1206.) The city council then passed resolutions to place the development agreement on the ballot for voter approval along with a proposed zoning amendment and gaming ordinance. (Id. at p. 1206.) The court determined the development agreement qualified as "project" because it gave the developer "a vested right to complete a gaming facility within certain clear and narrowly defined parameters." (Id. at 1215.)

Although the developer's agreement in City of Albany noted a subsequent environmental review would be required, the court found the inclusion of this environmental review provision did not change the city council's obligation to perform an environmental impact report prior to entering into the agreement. The court explained the development agreement essentially contracted away the city council's power to consider a full range of alternatives and mitigation measures required by CEQA and did not include the option of a "no project" alternative. (Id. at 1221-1222.) The agreement limited the city's options in response to issues raised by environmental study.

The court agrees with the City; City of Albany is inapposite. The ENA merely requires the City and Murphy's Bowl to negotiate in good faith. The ENA does not create any vested rights in favor of the developer and specifically states as much – "The Developer further acknowledges and agrees that this Agreement does not confer upon the Developer the right to have a DDA or develop the Proposed Project within the Study Area Site or any portion thereof absent an approved and executed DDA by the Public Entities." (AR 19.) The ENA does not limit the City's options. The City retained its discretion in the ENA to consider alternatives and mitigation measures.

Nothing in the ENA commits the City to a particular course of action other than an obligation to negotiate in good faith. The City has absolute discretion under the ENA to consider project alternatives or reject the project entirely; the City retained its discretion to approve, modify or reject the potential development of the arena in the ENA. (AR 16, 19, 23-24 [ENA, §§ 7, 13, 25].) The ENA explicitly conditioned any future approval of a project on compliance with CEQA. (AR 10, 16 [ENA § 3(d) ["[N]o such site plans or architectural renderings shall be deemed final until the Completion of the Environment Review in accordance with CEQA and approved by the City . . ."], § 7.) Moreover, the ENA is entirely consistent with the City's obligations under CEQA, which states, in relevant part:

"If the Proposed Project is found to cause significant adverse impacts that cannot be mitigated, the Public Entities retain absolute discretion to require implementation of mitigations measures, modify the Proposed Project or select feasible alternatives to mitigate or avoid significant

adverse environmental impacts, reject the Proposed Project if the economic and social benefits of the Proposed Project do not outweigh otherwise unavoidable significant adverse impacts the Proposed Project . . ."

(AR 16 [ENA § 7].) Finally, Section 13 of the ENA states "Developer acknowledges and agrees that nothing in this Agreement shall obligate the Public Entities to approve a DDA nor any proposed development within the Study Area Site or shall otherwise expressly or impliedly obligate the Public Entities to sell and/or lease any property or interest therein." (AR 19 [ENA § 13].) The ENA contains no limitations to the plans for the project and includes the City's option to reject the proposed project entirely.

Notwithstanding the foregoing, Petitioner argues the City contracted away its ability to consider a full range of alternatives because of the ENA's exclusivity provision. Section 2(a) of the ENA provides a period of at least 36 months within which the City "shall not negotiate with or consider any offers or solicitations from, any person or entity, other than the Developer, regarding a proposed DDA for the sale, lease, disposition, and/or development of the City Parcels or Agency Parcels within the Study Area Site . . . ." (AR 8.)

As noted earlier, the ENA does not preclude the City from considering a full range of options for the proposed project depending upon CEQA review. The above-quoted language from Section 7 of the ENA makes clear the City can require implementation of mitigation measures, modify the proposed project or reject it depending on subsequent CEQA review. If the City determines the property would be better suited to an alternative use like a bakery or a philharmonic concert space, nothing prevents the City from rejecting the arena project in favor of such an alternative use. Sections 7, 13 and 25, individually and/or collectively, all establish the City's unfettered discretion and a "no project" alternative.

The exclusivity provision concerns only the timing of potential alternative uses – the provision does not prevent the City from considering a full range of alternatives as required by CEQA. While the City might be delayed in commencing an alternative project, the City may reject this proposed project in favor of an alternative.

The ENA's exclusivity provision is similar to one approved of by our Supreme Court in Concerned McCloud Citizens v. McCloud Community Services Dist., supra, 147 Cal.App.4th at 194. In Concerned McCloud Citizens, the high court noted,

"In exchange for the District's forbearance from negotiating with any other water bottler [for a

five-year period] while such CEQA review takes place and other governmental permits and approvals are sought, Nestle has agreed to make certain contingency fees payments and to shoulder the costs of, among other things, CEQA compliance. Clearly the District is favorably disposed to the ultimate success of the project, but the agreement does not preclude it from considering a full range of options depending on subsequent CEQA review."

(Ibid.)

Here, as in Concerned McCloud Citizens, Murphy's Bowl made a non-refundable $1.5 million payment to the City and agreed to pay the costs of CEQA compliance. The exclusivity agreement under these facts did not limit the City's ability to consider a full range of alternatives.

Based on the foregoing, the court finds the City's execution of the ENA did not impermissibly foreclose consideration and approval of meaningful alternatives and mitigation measures.

Petitioner's Issue 1(c): In view of the totality of the circumstances, did Respondents commit themselves as practical matter to a definite course of action with respect to the development of the Clippers Arena project?

As urged by Petitioner and as noted during the hearing when discussing the provisions of the ENA providing the City with absolute discretion, the court must "look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project." (Save Tara v. City of West Hollywood, supra, 45 Cal.4th at 139.)

In Save Tara, the City of West Hollywood took a number of actions our Supreme Court found "for CEQA purposes" impermissibly constituted approval of a project because there had been no environmental review. (Id. at 122.) That the agreement contained a CEQA compliance condition was of no consequence to the Supreme Court: "A CEQA compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review." (Id. at 132.)

There were many underlying distinctive factual circumstances the Supreme Court considered in determining the city had committed itself to a project prior to environmental review. The city granted a non-profit organization an option to purchase the real property at issue to facilitate a United States Urban and Housing Development (HUD) grant. (Id. at 122.) The city manager informed HUD the city had approved the sale at a negligible cost thereby contributing $1.5 million toward the project as well as a commitment toward another $1 million in development costs. (Id. at 123.) The city's mayor announced the $4.2 million HUD grant to be "'used to build 35 affordable senior residential units . . . .'" (Ibid.) The city noted in its newsletter it was doing to develop the property. (Ibid.) The city's housing manager considered the project an obligation owed to HUD, and a city council member's deputy made a similar statement. (Ibid.)

In addition, the city agreed to lend the developer $500,000 for the project with repayment from the project's receipts over a 55-year period thereby providing the city with a direct financial investment in the project. (Id. at 140.) The city also began relocating tenants, which the Supreme Court determined was a likely "irreversible" step in a development project's progress. (Id. at 142.)

The Supreme Court found the city had "committed itself to a definite course of action regarding the project before fully evaluating its environmental effects" because of (1) public announcements the city was determined to proceed; (2) preparation for relocation of tenants; (3) the city's substantial financial contributions to the project; and (4) the city's willingness to bind itself to convey the property if the developer satisfied CEQA's requirements as "reasonably determined by the City Manager." (Ibid.)

Using Save Tara as a benchmark, Petitioner contends the City's overall conduct towards the proposed development demonstrates the City's commitment to a definite course of action. This commitment, Petitioner argues, is approval of a project running afoul of CEQA's requirements for failure to fully consider the project's environmental effects.

As explained in Save Tara, advocating publicly for a project and defending it against criticism may be a relevant factor showing an agency's commitment to a proposed project. (Id. at 142 n. 13.) Petitioner points to the Mayor's letter to a state senator supporting Senate Bill 789. The proposed bill created CEQA streamlining provisions for the proposed arena project. (AR 182-183.)

The court does not find this evidence (standing alone or in conjunction with other circumstances) suggests a commitment by the City to develop, construct, or improve any facilities or to issue

any permit or entitlement for use. Rather, the City's support of this legislation would merely facilitate the CEQA process should the City reach an agreement with Murphy's Bowl and a DDA. The Mayor specifically noted the bill did not eliminate substantive provisions of CEQA review instead reducing "the normal time required for challenges and judicial review . . . ." (AR 182.) The Mayor also noted the streamlining provisions had been granted previously to other stadium and arena projects in California. (AR 182.)

Petitioner also argues the Mayor's press packet regarding the ENA suggests a commitment to the project. As an initial issue, the court notes the press packet did not reflect a commitment; instead, the press packet highlighted the ENA was to "explore" building an arena in Inglewood through boldfaced text. (AR 963.) The Mayor also suggested that the City's approval of the ENA was a promise ring and that a development agreement would be an engagement ring; he further stated that the City has a "pretty good track record for turning those promise rings into marriages." (AR 971) Unlike Save Tara, there were no statements that such a project "will" happen. (Save Tara v. City of West Hollywood, supra, 45 Cal.4th at 141-142.) Instead, this "promise ring" language inherently accepts the possibility that the relationship between the City and Murphy's Bowl may never be consummated into a DDA.

Finally, Petitioner argues the Mayor's statements at a City Council meeting on October 3, 2017 demonstrate the City has foreclosed consideration of alternatives in advance of any environmental review. The statements must be considered in context. Several citizens spoke at the meeting expressing the City "should put homes before arenas" and had not supported the City's claim the proposed study site area was "not suitable for housing." (AR 954.) The Mayor explained the issues associated with the property and a covenant with the Federal Aviation Administration (FAA). (AR 959.) The Mayor stated he believed using the land for residential purposes "nobody cared about until [the City] got into an ENA with the Clippers" was "disingenuous" and "smack[ed] of some kind of collusion." (AR 960.) The Mayor said, "I'll say it on my behalf – it would be malpractice to do that with this land that's generated no property taxes, no revenue, no jobs, and take the potential to generate 15 million a year in property taxes split between the city, the state, the sanitation district, the community college district, and the schools are funded. They're funded by property taxes that pass through the state. So, this is just a total sham, it's ridiculous, and I, for one, am not going to entertain it for one minute." (AR 960.)

The Mayor's statements do not show a commitment to the proposed project. They reflect skepticism concerning the suitability/practicality of the study site area as appropriate for residential purposes given the history of the property with the FAA and enthusiasm for the project. While the Mayor expressed his personal view ("I'll say it on my behalf") a residential

alternative was not feasible, he did not speak to other alternatives. He also did not foreclose an EIR from reviewing a full range of alternatives for consideration.

Based on the foregoing, the court declines to characterize the Mayor's statements as "conducting active and aggressive advocacy to the exclusion of all other possible alternatives." (Reply Brief 15:6-7.) The court cannot find, based on the record, that the City had committed itself to the project by engaging in "fervent" advocacy and support for the project. (See City of Irvine v. County of Orange (2013) 221 Cal.App.4th 846, 859 [internal quotations omitted] ["[A]n agency does not commit itself to a project simply by being a proponent or advocate of the project."].)

Petitioner further argues the $1.5 million payment to the City without any contractual limits "must inevitably create interest, goodwill, a feeling of obligation, and intense 'bureaucratic momentum' in favor of the project." (Reply Brief 15:15-19.) To the extent Petitioner suggests the $1.5 million payment for entering into the ENA shows commitment to build the proposed arena, the court disagrees. The parties expressly characterized the $1.5 million payment as a non-refundable deposit the City had the right to retain regardless of the outcome of the ENA negotiations to use for any purpose. (AR 12 [ENA § 5]. See Concerned McCloud Citizens v. McCloud Community Services Dist., supra, 147 Cal.App.4th at 194.) As noted earlier, the payment can reasonably be viewed as consideration for the exclusivity provision and as recompense for time expended by the City's staff in assisting in the good faith negotiations required by the ENA.

Contrary to Petitioner's view, nothing in the record suggests any legal obligation was incurred as result of the $1.5 million payment by Murphy's Bowl, and it is speculative to suggest this payment would create some informal obligation owed by the City. In Save Tara, it was the City – not the developer – who had made a significant financial contribution to the project.

Finally, Petitioner contends the exclusivity provision in the ENA is a surrounding circumstance showing the City's commitment to the proposed project. As discussed above, Petitioner argues the ENA commits the City to exclusively negotiate with Murphy's Bowl for at least a three-year period during which time the City may not transfer the property or negotiate other uses for it.

Petitioner's Reply Brief substantially expands on this point. In reply, Petitioner raises an argument regarding the specific costs incurred by this exclusive nature of the ENA; Petitioner argues the City's willingness to incur these "costs" demonstrates the City's commitment to this project. In reply, Petitioner cites certain parking leases the City terminated and argues that the City has incurred a cost because it is no longer able to renew these leases or obtain new leases as

a result of the limitations in the ENA.

The court recognizes the City has had no opportunity to address this specific, new argument in writing. Nonetheless, the record does not demonstrate these costs were incurred because of the approval of the ENA. (AR 447-449.) It appears termination of the leases resulted from a dispute between the City and the lessees.

Moreover, under the ENA, the City could relet the parking lots even given the exclusivity provision. That provision prevents the City from negotiating or considering "offers or solicitations . . . regarding a proposed DDA for the sale, lease, disposition and/or development" of the study site area. (AR 8 [ENA §2(a)].) Thus, without regard to the ENA, the City may choose to relet the parking lots thereby eliminating the alleged loss focused on by Petitioner. The City is precluded from negotiating "a proposed DDA." (AR 8 [ENA §2(a)].) "[S]ale, lease, disposition and/or development" all modify "DDA" in the sentence.

All surrounding circumstances considered, the court does not find the circumstances surrounding the approval of the ENA demonstrated a commitment by the City to a definite course of action regarding the proposed project. (City of Irvine v. County of Orange (2013) 221 Cal.App.4th 846, 865 ["An approval under CEQA requires both a definite course of action and a commitment to that definite course of action."].)

Requiring an EIR Before the Approval of the ENA Would Have been Premature

CEQA requires the lead agency prepare an EIR where it will serve to "inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment but also informed self-government." (Citizens for Responsible Government v. City of Albany, supra, 56 Cal.App.4th at 1210 [internal citations and quotations omitted].)

CEQA requires an "accurate, stable and finite project description," which is "the sine qua non of an informative and legally sufficient EIR." (San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 655.) A "premature environmental analysis may be meaningless and financially wasteful." (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 396.)

The City contends approval of the ENA merely allows for consideration of development of the project and the ENA is not well defined "enough" to permit meaningful environmental

evaluations. As such, requiring an EIR before approval of the ENA would be premature because virtually every specific action and characteristic of the project was still to be determined. (Opp. Brief 9.)

The City cites Cedar Fair, L.P. v. City of Santa Clara, supra, 194 Cal.App.4th 1150 to support its position an EIR prior to the approval of the ENA would have been premature under these facts. Cedar Fair is instructive.

In Cedar Fair, the Court of Appeal considered whether adoption of a term sheet constituted an approval of a project under CEQA. In that case, the term sheet was a 39–page document containing extensive details concerning a proposal to develop a football stadium complex. (Id. at 1169.) The court found the city's approval of the term sheet did not trigger the requirement of an EIR, even though the term sheet was highly detailed and the redevelopment agency had invested significant funds into the project. (Id. at 1167–1173.) In addressing these issues, the court explained:

"[the term sheet '"merely 'memorialize[d] the preliminary terms' and only mandate[d] that the parties use the term sheet as the 'general framework' for 'good faith negotiations . . . [the term sheet did not] " 'create any binding contractual obligations' with respect to the development of the stadium" [and] a "no-project option was still available . . . [Further,] although the term sheet [wa]s extremely detailed, it expressly binds the parties to only continue negotiating in good faith. [Citation.] A contract to negotiate an agreement is distinguishable from the ultimate agreement that parties hope to eventually reach."

(Id. at 1170-1171.) The court highlighted the city and redevelopment agency "'retain[ed] the absolute sole discretion'" under CEQA, including deciding "'not to proceed with the Stadium project.'" (Id. at 1170.)

Here, the City argues the arena's exact location has not been determined; the ENA only identified a prospective site that was larger than the parties anticipated would be required for the project. (AR 5-6, 101.) Additionally, certain details were unknown. For example, whether parking would be surface, underground, offsite, on a newly constructed garage, or some combination of all of these parking accommodations was undetermined. (AR 6, 10, 13.) Thus, logistics of transportation and access points could not be addressed or analyzed in an EIR.

Also, the operational scope of the project has not been determined; the height of the building, the acreage it would occupy, and the types of events that it would host over the year have not been

determined. (AR 10, 13.) Even the exact capacity of the venue has not been decided, although the parties contemplated a facility of approximately 18,000-20,000. (AR 6)

Finally, there was no determination on the construction period or the energy consumption for the construction of the project. (AR 5-26.)

Here, the ENA is an agreement to negotiate and explore different sizes, designs and locations of the proposed project—in addition to determining feasibility—in order to reach a DDA. (AR 2, 8-16.) Specifically, the ENA states the City has "the objective of negotiating a proposed mutually acceptable DDA for consideration by the Public Entities" and that it shall use "good faith efforts to negotiate and enter into a DDA" but that "[e]xecution of a DDA shall be subject to compliance with [CEQA]." (AR 7, 13, 16.) The ENA contains no requirement the City must enter into a DDA.

Based on the foregoing, the court agrees an EIR would be premature because any analysis of the environmental impacts would be "wholly speculative and essentially meaningless." (Concerned McCloud Citizens v. McCloud Community Services Dist., supra, 147 Cal.App.4th at 197.)

Request for Judicial Notice

Petitioner requests judicial notice of Exhibits A-H in the Moving Brief and Exhibits I-J in the Reply Brief. The request for judicial notice is denied.

The court finds that Exhibits A, B, and E are not subject to judicial notice. (Evid. Code §§ 450, 451, 452.) The court may take judicial notice of the existence of Exhibits G, H, I and J but not the truth of the matters contained therein. (Evid. Code § 452(d).) As argued by the City, "[a] matter ordinarily is subject to judicial notice only if the matter is reasonably beyond dispute" and the "facts" contained in the documents are not reasonably beyond dispute. (Tenet Healthsystem Desert, Inc. v. Blue Cross of California (2016) 245 Cal.App.4th 821, 835.) Further, the court finds that Exhibits A through J are not relevant to the court's ruling on the writ of mandate.

Conclusion

For the foregoing reasons, the petition for writ of mandate is DENIED.

_ENDNOTES_____
1- Respondents are referred to herein collectively as the City. In addition to the City of

Inglewood, the respondents are City of Inglewood City Council; Successor Agency to the Inglewood Redevelopment Agency; Governing Board of the Successor Agency to the Inglewood Redevelopment Agency; the Inglewood Parking Authority; the Inglewood Parking Authority Board of Directors; and the Oversight Board to the Successor Agency to the Inglewood Redevelopment Agency.

2- The parties added the following sentence to Section 7 concerning CEQA: "If the Proposed Project is found to cause significant adverse impacts that cannot be mitigated, the Public Entities retain absolute discretion to require implementation of mitigation measures, modify the Proposed Project or select feasible alternatives to mitigate or avoid significant adverse environmental impacts, reject the Proposed Project as proposed if the economic and social benefits of the Proposed Project do not outweigh otherwise unavoidable significant adverse impacts of the Proposed Project, or approve the Proposed Project upon a finding that the economic, social, or other benefits of the Proposed Project outweigh the unavoidable significant adverse impacts of the Proposed Project."

3- Section 13 specifies, among other things, "The Developer [Murphy's Bowl] further acknowledges and agrees that approval of this Agreement and a DDA and any participation in any portion of the Proposed Project by the Public Entities shall be in the sole and absolute discretion of the Public Entities." (AR 19.)

4- Section 25 of the Original ENA and the ENA provide in part: "Notwithstanding any provision of this Agreement to the contrary, Developer [Murphy's Bowl] acknowledges and expressly agrees as follows: (i) that this Agreement does not obligate the Public Entities in any way to approve, in whole or in part, any of the matters described in this Agreement, including, without limitation, matters pertaining to land use entitlements or approvals, permits, waivers or reduction of fees, development or any other matters (the 'Entitlements') to be acted on independently by the City; (ii) that all such required Entitlements shall be considered and processed by the City in accordance with all City requirements and procedures; and (iii) that the City reserves all rights to approve, disapprove or approve with conditions all such Entitlements in its sole and absolute discretion." (AR 23-24.) During the hearing, the court indicated its belief 4- Section 25 was not included in the Original ENA and had been added into the ENA. Respondents indicated to the contrary. After the hearing, the court determined the copy of the Original ENA from AR 38-56 excluded pages 19 and 20 of the Original ENA in error.

5- All further statutory references are to this Code unless otherwise specified.

6- During the hearing, the court and parties parsed the language of this sentence. Petitioner suggested the sentence was likely heavily negotiated given that the Original ENA did not contain this language. While the sentence is not a model of clarity, it includes a "no project" alternative and notes the City retains "absolute discretion" concerning mitigation and alternatives. As noted during the hearing, Sections 13 and 25 of the ENA make clear the ENA is not intended to limit

the City's absolute discretion over the proposed project. The ENA does not provide Murphy's Bowl with any "right to have a DDA or develop the Proposed Project within the Study Area Site . . . ." (AR 19.)
7- The ENA has provisions for extension beyond the 36-month period. (See ENA Section 4. AR 11-12.)
8- Of course, if, in exercising its discretion after environmental review, the City elected not to proceed with the proposed arena project determining an alternative use was more appropriate, there would be no reason for the parties to continue their contractual relationship.

Petitioner's exhibit 1 is ordered returned forthwith to the party who lodged it, to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of appeal in the event of an appeal.

Counsel for respondent is to prepare, serve and lodge the proposed judgment within ten days. The court will hold the proposed judgment ten days for objections unless it is approved as to form and content by opposing counsel.

A copy of this minute order is mailed to counsel of record.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Los Angeles 12/27/2018 Sherri R. Carter, Executive Officer / Clerk of Court By: Nancy DiGiambattista Deputy
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	
PLAINTIFF/PETITIONER: Inglewood Residents Against Takings and	
DEFENDANT/RESPONDENT: Inglewood, City of et al	
CERTIFICATE OF MAILING	CASE NUMBER: BS170333

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 12/27/2018

By: Nancy DiGiambattista
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is One Montgomery Street, Suite 3000, San Francisco, CA 94104-5500.

On January 4, 2019, I served true copies of the following document(s) described as

[PROPOSED] JUDGMENT

on the interested parties in this action as follows:

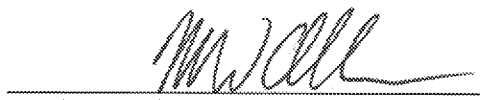
SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mallen@coblentzlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY FEDEX: I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 4, 2019, at San Francisco, California.



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