

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. 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 October 21, 2021, now makes its ruling as follows:

Petitioner Fix the City (“Petitioner”) petitions for a writ of mandate compelling Respondents City of Los Angeles (“City”) and Los Angeles City Council (“City Council”) (collectively “Respondents”) to rescind their approval of the Exposition Corridor Transit Neighborhood Plan (“Expo Plan”) and its implementing zoning ordinances as well as any other resolutions or ordinances adopted by the City that are expressly contingent on the adoption of the Expo Plan. Respondents oppose. The court heard oral argument on October 21, 2021, after which it took the matter under submission. The court now issues its ruling.

Judicial Notice

Petitioner’s RJN Exhibits A-I – Granted.

Respondents’ RJN Exhibits 1-5 – Granted.

Petitioner’s Reply RJN Exhibit A – Granted.

Procedural History

On October 25, 2018, Petitioner filed its verified petition for writ of mandate and complaint for injunctive and declaratory relief against Respondents.

On October 15, 2020, the court granted Respondents’ motion for judgment pursuant to CCP

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

section 1094 with leave to amend.

On October 23, 2020, Petitioner filed its first amended petition.

On February 11, 2021, the court sustained Respondents' demurrer to the first amended petition's first cause of action with leave to amend.

On February 22, 2021, Petitioner filed its second amended petition ("SAP"). This is the operative pleading. The second cause of action challenges the City's adoption of a zone change ordinance on July 31, 2018, alleging that the required infrastructure findings were neither made nor supported by substantial evidence. (SAP ¶¶ 114-119.)

On July 13, 2021, the court sustained Respondents' demurrer to the SAP's first cause of action without leave to amend. The court stayed the third cause of action for declaratory relief, a non-writ cause of action, pending resolution of the writ causes of action. (See LASC Local Rules 2.8(d) and 2.9.)

On July 27, 2021, Respondents filed their answer to the SAP.

On August 18, 2021, Petitioner filed its opening brief ("OB") and request for judicial notice ("Moving RJN").

On September 16, 2021, Respondents filed their opposing brief ("Opposition") and request for judicial notice ("Opposition RJN").

On September 29, 2021, Petitioner filed its reply brief ("Reply"), request for judicial notice ("Reply RJN"), and the administrative record ("AR").

Statement of Facts

As narrowed by the proceedings and the briefs, this hearing only concerns the second cause of action, which challenges the adoption of zoning ordinances in July 2018. This claim focuses on Ordinance No. 185671, and the court's discussion of the facts does the same.

General Plan Framework for City of Los Angeles and Relevant Objectives and Policies

The City has a General Plan required by the Government Code that sets forth its fundamental

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

policy decisions about development. (See, *infra*, “Governing Law” section.)

The City’s General Plan includes a Framework Element, which “sets a citywide context to guide the update of the community plan and citywide elements” and contains certain objectives that are achieved by certain policies. (Moving RJN Exh. A at 5.) Relevant to the instant dispute, the Framework contains Objective 3.3 and Policy 3.3.2, which are as follows:

[Objective 3.3] Accommodate projected population and employment growth within the City and each community plan area and plan for the provision of adequate supporting transportation and utility infrastructure and public services.

...

[Policy 3.3.2] Monitor population, development, and infrastructure and service capacities within the City and each community plan area, or other pertinent service area. The results of this monitoring effort will be annually reported to the City Council and shall be used in part as a basis to:

- a. Determine the need and establish programs for infrastructure and public service investments to accommodate development in areas in which economic development is desired and for which growth is focused by the General Plan Framework Element.
- b. Change or increase the development forecast within the City and/or community plan area as specified in Table 2-2 (see Chapter 2: Growth and Capacity) when it can be demonstrated that (1) transportation improvements have been implemented or funded that increase capacity and maintain the level of service, (2) demand management or behavioral changes have reduced traffic volumes and maintained or improved levels of service, and (3) the community character will not be significantly impacted by such increases.

Such modifications shall be considered as amendments to Table 2-2 and depicted on the community plans.

- c. Initiate a study to consider whether additional growth should be accommodated, when 75 percent of the forecast of any one or more category listed in Table 2-2 (see Chapter 2: Growth and Capacity) is attained within a community plan area. If a study is necessary, determine the level of growth that should be accommodated and correlate that level with the capital, facility, or service improvements and/or transportation demand reduction programs that are necessary to accommodate that level.

- d. Consider regulating the type, location, and/or timing of development, when all of the preceding steps have been completed, additional infrastructure and services have been provided, and there remains inadequate public infrastructure or service to support land use development.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

(Moving RJN Exh. A at 23, 30.)

Community Plans constitute the General Plan’s Land Use Element. (Moving RJN Exh. A at 20 [“Community plans have been adopted as the City’s Land Use Element to guide growth and development in each of its 35 community areas.”].) Relevant to the instant dispute, the West Los Angeles Community Plan generally stresses the importance of infrastructure resources and the challenge of keeping pace with growth. (Moving RJN Exh. C at 18.) The West Los Angeles Community Plan contains Policy 1-2.3 and 16-2:

[Objective 1-2] To reduce vehicular trips and congestion by developing new housing in proximity to adequate services and facilities.

...

[Policy 1-2.3] Do not increase residential densities beyond those permitted in the Plan unless the necessary infrastructure and transportation systems are available to accommodate the increase.

Program: The decision maker should adopt a finding which addresses the availability and adequacy of infrastructure as part of any decision relating to an increase in permitted residential density.

...

[Objective 16-2] To ensure that the location, intensity and timing of development is consistent with the provision of adequate transportation infrastructure.

[Policy 16-2.1] No increase in density shall be effected by zone change, plan amendment, subdivision or other discretionary action, unless it is determined that the transportation infrastructure serving the property can accommodate the traffic generated.

Program: Decision makers shall adopt a finding with regards to infrastructure adequacy as part of their action on discretionary approvals resulting in increased density or intensity.

(Moving RJN Exh. C at 20 [emphasis original], 46 [emphasis original].)

Overview of the Expo Plan

The Metro Exposition Light Rail Transit Line (“Expo Line”) is a 15.2-mile long transit line running between Downtown Los Angeles and the City of Santa Monica that runs along Exposition Boulevard. AR 8. Phase 2 of the Expo Line, which was completed in 2016, extends approximately six miles from Culver City to Colorado/4th Street Station in Santa Monica. (Ibid.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

The Expo Plan is a specific plan that applies to properties located generally within one-half mile of the Exposition Light Rail Line Transit stations of Culver City, Palms, Westwood/Rancho Park, Expo/Sepulveda, and Expo/Bundy. (AR 37367.) The goal of the Expo Plan was “to plan for development around the Phase 2 stations in the City of Los Angeles” in order to “promote transit ridership [and] reduce automobile dependence.” (AR 2; see also AR 37375-76 [Expo Plan’s purposes, including promoting transit ridership and reducing automobile dependence].)

Preliminary Draft Plan and Environmental Impact Reports

The Department of City Planning prepared a Preliminary Draft Plan and a Draft Environmental Impact Report (“DEIR”) that were released in 2017. (AR 1-294 [Planning Staff Report]; AR 39750-39759 [DEIR Table of Contents].) The Planning Staff Report contains findings that the adoption of the Expo Plan and General Plan amendments and zone changes are consistent with the General Plan and General Plan Framework Element. (See generally AR 26-46.) The Planning Staff Report states in pertinent part that:

The proposed General Plan Amendments and corresponding Zone Changes will re-designate select sites within the Plan Area to allow for more compact, mixed-use, transit oriented development, allowing these areas to accommodate anticipated growth in housing and jobs within close proximity to the Exposition Line.

...

In sum, the General Plan Amendments are necessary to reinforce land use development patterns that are supportive of transit, consistent with numerous General Plan goals.

...

[T]he proposed Exposition Corridor Transit Neighborhood Plan (Proposed Plan), along with proposed zone and General Plan land use designation changes, is in substantial conformance with the purposes, intent, and provisions of the General Plan. The Proposed Plan is consistent with and helps to further accomplish the goals, objectives, and policies contained in portions of the General Plan, including the General Plan Framework Element, as outlined below. The General Plan Framework Element establishes the standards, goals, policies, objectives, programs, terms, definitions, and direction to guide the update of citywide elements and the establishment of specific plans.

...

One of the primary objectives of the Proposed Plan is to accommodate the employment, housing, and population growth projections forecasted throughout the planning horizon year of 2035 by focusing residential development and new job-generating uses around transit stations.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

(AR 26-27 [emphasis added], 31 [emphasis added].)

In May 2018, Planning Staff prepared a Final Environmental Impact Report (“FEIR”) adopting the DEIR with modifications and prepared a proposed Expo Plan. (AR 53719-53721 [FEIR Table of Contents].) The FEIR and DEIR are collectively referred to as the “Expo Plan EIR.”

The Expo Plan EIR discussed whether the City’s infrastructure could accommodate any impacts caused by the increase in density authorized by the Expo Plan, concluding that: (1) the Expo Plan would not significantly impact fire, police, or emergency services (AR 40114-40147); and (2) the zone changes were consistent with Framework Element Policy 3.3.2 and would not significantly impact fire, police, and emergency services (AR 53733-53749).

Regarding fire, police, and emergency services, the DEIR examined the eight fire stations to be impacted, service performance measures including deployment of resources, response times of fire and EMS, an EMS comparative analysis, and fire flow and response distance. (AR 40114-40125.) The DEIR concluded that “[c]ompliance with existing regulations would ensure this impact remains less than significant.” (AR 40114 [emphasis and capitalization removed].) The FEIR reached the same conclusion. (AR 53733-53749.) More specifically, because non-emergency vehicles must yield to emergency vehicles and the City has a preemption system with traffic lights that coordinates with emergency vehicles, the increased traffic impact would not have a direct relationship to response times. (AR 40124.) Further, the Los Angeles Fire Department “must respond to changing circumstances and, therefore, would act to maintain response times.” (AR 40125.)

The DEIR and FEIR evaluated the same impact on police services and reached the same conclusion of no significant impact. (AR 40125, 53748-53749.) The Los Angeles Police Department similarly concluded that the Expo Plan “would have minimal effect to the overall operations of the Los Angeles Police Department.” (AR 42672.) The DEIR noted that there is no direct relationship between increases in residential density and demand for police protection services. (AR 40129.) The DEIR found that the Los Angeles Police Department would be able to “maintain acceptable service levels through the provision of additional personnel and equipment as needed.” (AR 40129.)

Regarding consistency with the Framework Element, the FEIR considered comments raising concern about consistency with the General Plan Framework, including specifically Policy 3.3.2. (AR 53736.) However, the DEIR concluded that Policy 3.3.2 is not mandatory, and the General

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

Plan Framework provides broad discretion and flexibility in implementing desired policies. (AR 53737.) In any event, the FEIR concluded that the Expo Plan meets the goal of Objective 3.3 and Policy 3.3.2 “by locating growth on the Westside in an urbanized area already supported by infrastructure and services, where there has been a recent investment in a new transportation project that will give more mobility options to people living and working in close proximity to the line.” (AR 53738.) The FEIR identified that the City’s operating departments would keep these issues in mind:

[T]he City has consistently demonstrated that it plans for infrastructure and services in targeted growth areas and throughout the City. The City’s operating departments regularly prepare plans to show how they will provide the infrastructure and services to accommodate the growing population. Additionally, the City and other public agencies have demonstrated a pattern of finding new funding sources to pay for the provision of new infrastructure and services when gaps are identified.

(Ibid.) The FEIR found the project to be consistent with Framework Objective 3.3, and Policy 3.3.2. (AR 53742.) Finally, the FEIR found that that “the [Expo] Plan is consistent with the relevant Community Plans” and “is generally consistent with the applicable Community Plan Goals and Objectives.” (AR 53735.)

City Council Action

On June 26, 2018, the Los Angeles City Council Planning and Land Use Management (“PLUM”) Committee convened a public hearing on the Expo Plan and zoning ordinances. (AR 8233-8283.) Planning Staff told the PLUM Committee that “the specific plan establishes a number of new zones that would permit a greater mix of land uses and intensities . . . in particular repurposing under-utilized industrial land.” (AR 8237.) The PLUM Committed recommended that the City Council approve the zoning ordinances. (AR 8286-8288.)

On July 3, 2018, the City Council adopted the resolution and ordinances for the Expo Plan, specifically: (1) certifying the EIR and adopting the various findings required by the California Environmental Quality Act (“CEQA”); (2) adopting a Resolution to amend the General Plan by way of amendments to the affected Community Plans; and (3) “present[ing] and adopt[ing]” various ordinances, including an ordinance to amend Los Angeles Municipal Code section 12.04 to add new zoning designations to the list of Specific Plan Zones (Ordinance No. 185672) and an ordinance to amend the zoning map (Ordinance No. 185671). (AR 8940-43.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

The resolution stated that it would not become effective until the adoption by the City Council of the Expo Plan. (AR 8943.) The resolution was adopted “forthwith” and held over for a second reading on July 31, 2018. (AR 9496; see also AR 9490-9490 [notice of determination].)

The amendments to the affected Community Plans changed the land use designations of identified properties to permit rezoning of certain properties located near the new transit stations, allowing for higher density residential developments and new commercial uses. (See AR 6548-6552 [maps showing proposed new land use designations]; AR 7078-82 [maps showing corresponding zone changes].)

The resolution adopted on July 3, 2018, contains findings of consistency: “[t]he City Council has reviewed the City Charter, General Plan and Municipal Code findings of the Los Angeles City Planning Commission and adopts these findings as the findings of the City Council.” (AR 8941 [Item 2].) Additionally, the City Council expressly commented on the FEIR’s findings, finding that the FEIR “reflects Council’s independent judgment and analysis.” (AR 8942; see also AR 8941 [“In making the findings in this Resolution, the Council ratifies, adopts, and incorporates the analysis and explanation in the FEIR, and ratifies, adopts, and incorporates in these findings the determinations and conclusions in the FEIR relating to environmental impacts and mitigation measures.”].)

On July 31, 2018, the City Council voted to approve certain zoning ordinances, including Ordinance No. 185671, which changed the land use designations for various properties with the Expo Plan area:

Section 1. Section 12.04 of the Los Angeles Municipal Code is hereby amended by changing the zone and zone boundaries shown upon a portion of the zone map attached thereto and made a part of Article 2, Chapter 1 of the Los Angeles Municipal Code, so that each portion of the zoning map shall be as follows.

Section 2. This ordinance shall be effective on the effective date of the Exposition Corridor Transit Neighborhood Plan (Specific Plan) Ordinance.

(AR 36709.)

On August 2, 2018, the City filed a Notice of Determination regarding the City Council’s adoption of Ordinance No. 185671 to rezone properties within the boundaries of the Expo Plan. (AR 36705-36706.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

On November 5, 2019, the City Council voted to adopt the Expo Plan, Ordinance No. 186402. (AR 37367-37494.) Ordinance No. 186402 made express findings of consistency and need:

WHEREAS, in adopting this ordinance establishing the Exposition Corridor Transit Neighborhood Plan (ECTNP), the City Council finds that the supplemental development regulations of the ECTNP are consistent with, and necessary to implement, the programs and policies of the West Adams-Baldwin Hills-Leimert, Palms- Mar Vista-Del Rey, and West Los Angeles Community Plans, the Mobility Plan 2035, and the Framework Element of the General Plan;

...
WHEREAS, in adopting this ordinance establishing the Exposition Corridor Transit Neighborhood Plan (ECTNP), the City Council finds that the transportation infrastructure, including, but not limited to, the Exposition Light Rail Line, will adequately accommodate any traffic generated from the increase in density or intensity permitted in the ECTNP.

(AR 37367 [underlining added].)

Standard of Review

Petitioner does not clearly identify the applicable standard of review. (But see Reply 13 [discussing requirement for findings to be supported by substantial evidence]). By local rule, Petitioner was required to state its position on whether independent judgment or substantial evidence review applies. (Local Rule 3.231(i)(3).) Respondents contend that this is a quasi-legislative action reviewable by traditional mandamus pursuant to CCP section 1085. The court agrees.

“[W]here an agency is exercising a quasi-legislative function, judicial review must proceed under ordinary or traditional mandamus.” (Langsam v. City of Sausalito (1987) 190 Cal.App.3d 871, 879.) “Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts.” (Strumsky v. San Diego County Employees Retirement Assn. (1974) 11 Cal.3d 28, 34, fn. 2.) Generally, the petitioner “bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085.” (California Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1154.)

There are two essential requirements to the issuance of an ordinary writ of mandate under Code

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

of Civil Procedure section 1085: (1) a clear, present and ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (California Ass'n for Health Services at Home v. Department of Health Services (2007) 148 Cal.App.4th 696, 704.)

“Normally, mandate will not lie to control a public agency’s discretion, that is to say, force the exercise of discretion in a particular manner. However, it will lie to correct abuses of discretion. In determining whether a public agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency’s action, its determination must be upheld. A court must ask whether the public agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires.” (County of Los Angeles v. City of Los Angeles (2013) 214 Cal.App.4th 643, 654.)

“When [the court] review[s] an agency’s decision for consistency with its own general plan, [the court] accord[s] great deference to the agency’s determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citation.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. [Citations.] A reviewing court’s role ‘is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.’” (Pfeiffer v. City of Sunnyvale City Council (2011) 200 Cal.App.4th 1552, 1563 (Pfeiffer).)

“A city’s findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion. [Citation.] □ Thus, the party challenging a city’s determination of general plan consistency has the burden to show why, based on all of the evidence in the record, the determination was unreasonable.” (Ibid.)

“The standard for judicial review of administrative decisions by local public agencies with respect to consistency with applicable general plans ‘is whether the local adopting agency has acted arbitrarily, capriciously, or without evidentiary basis.’” (San Franciscans Upholding the Downtown Plan v. City & County of San Francisco (2002) 102 Cal.App.4th 656, 677.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

FIX THE CITY INC., A CALIFORNIA NONPROFIT CORPORATION vs CITY OF LOS ANGELES, et al.

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

General Plan

Under the Government Code, every county and city is required to adopt ‘a comprehensive, long-term general plan for the physical development of the county or city’ (Govt. Code § 65300; see also Los Angeles Municipal Code §§ 11.5.6, 11.5.8.)

The general plan must contain policies setting forth objectives, principles, standards, and plan proposals for development. (Govt. Code § 65302.) “In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.” (Govt. Code § 65300.)

A general plan provides a ‘charter for future development’ and sets forth a city or county’s fundamental policy decisions about such development.” (Pfeiffer, supra, 200 Cal.App.4th at 1562.)

After adopting a general plan, a city or county may also adopt a specific plan “for the systematic implementation of the general plan for all or part of the area covered by the general plan.” (Govt. Code § 65450; see also Los Angeles Municipal Code § 11.5.7 [“A specific plan is a regulatory land use ordinance specifically designated in the ordinance as a specific plan.”].)

Zoning Ordinances and Need for Consistency with General Plan

“County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met: (1) The city or county has officially adopted such a plan. (2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.” (Govt. Code § 65860(a).)

The Los Angeles City Charter and Los Angeles Municipal Code similarly require consistency with the general plan:

When approving any matter listed in Section 558, [including zone changes and zoning or other land use regulations] the City Planning Commission and the Council shall make findings showing that the action is in substantial conformance with the purposes, intent and provisions of

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

the General Plan. If the Council does not adopt the City Planning Commission's findings and recommendations, the Council shall make its own findings.

(Opposition RJN Exh. 1, Los Angeles City Charter § 556 [emphasis added].)

The Council may approve or disapprove an application or initiated proposed land use ordinance. It shall approve an ordinance only after making findings that its action is consistent with the General Plan and is in conformity with public necessity, convenience, general welfare and good zoning practice. If the Planning Commission recommends approval of an application, then the Council shall act within 90 days of receipt of the Planning Commission recommendation. The 90 day time limit to act on a Planning Commission approval of an application may be extended by mutual consent of the applicant and the Council.

(Reply RJN Exh. A, Los Angeles Municipal Code § 12.32(C)(7) [emphasis added].)

Analysis

The General Plan Framework, the FEIR, and West Los Angeles Community Plan Policies Regarding Infrastructure Adequacy

Petitioner contends that certain provisions in the General Plan Framework, and West Los Angeles Community Plan policies regarding infrastructure adequacy are mandatory.

The court first considers the plain language of the General Plan Framework. Objective 3.3 sets forth the City's objective to accommodate growth and plan for the provision of adequate supporting transportation and utility infrastructure and public services. Similarly, Policy 3.3.2 sets forth a policy for the City to monitor growth, infrastructure and public service capacities within each community plan area, and to produce an annual report. Among other things, the policy provides that the City use the report to determine the need for and establish programs for infrastructure investments, to change or increase the development forecast when transportation improvements have been funded, and to "consider" regulating the type, location or timing of development. While expressing goals and objectives, these General Plan provisions do not use language mandating a finding of adequate infrastructure before an action increasing allowed density may be adopted.

Petitioner argues that the West Los Angeles Community Plan, specifically Policy 16-2.1,

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

contains a mandatory finding of adequate infrastructure. Those provisions reads as follows:

Objective 16-2

To ensure that the location, intensity and timing of development is consistent with the provision of adequate transportation infrastructure.

Policy 16-2.1

No increase in density shall be effected by zone change, plan amendment, subdivision or other discretionary action, unless it is determined that the transportation infrastructure serving the property can accommodate the traffic generated.

Program: Decision makers shall adopt a finding with regards to infrastructure adequacy as part of their action on discretionary approvals resulting in increased density or intensity.

Despite use of the word “shall” in 16-2.1, Respondents argues that neither the General Plan Framework, or the West Los Angeles Community Plan require the City to make a finding of adequate infrastructure before adopting a zone change ordinance because implementation of the General Plan’s goals is an exercise of discretion. The City points to the following statement in the General Plan Framework: “[N]ot all plan policies can be achieved in any given action, and in relation to any decision, some goals may be more compelling than others. On a decision-by-decision basis, taking into consideration factual circumstances, it is up to the decision makers to decide how to best implement the adopted policies of the general plan in any way which best serves the public health, safety, and general welfare.” (General Plan Framework, Chapter 10, City’s RJN Exh. 4, p.22.)

City also argues that the unpublished decision in *Saunders v. City of Los Angeles* collaterally estops Petitioner from asserting the mandatory nature of the General Plan provisions. The court does not agree *Saunders* has preclusive effect. *Saunders* concerned the enforcement of the General Plan policy requiring annual reporting. The *Saunders* court found that duty involved an exercise of discretion, especially in light of the introductory remarks in the General Plan acknowledging that funding sources and timing, among other things, could affect implementation of programs. The *Saunders* court also found that the City had not eliminated the programs, but had only changed the timing and manner in which the programs were implemented. Collateral estoppel does not preclude Petitioner’s arguments, as the identical issues here were not actually litigated in *Saunders*.

Nonetheless, the *Saunders* analysis that the word “shall” in a General Plan program does not

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

necessarily mean a mandatory duty is persuasive. The Saunders court harmonized the word “shall” with other provisions in the Framework Element evidencing that implementation of programs is discretionary.

Further to the extent there are other policies in the General Plan which the Expo Plan advances, the City has authority to balance competing General Plan policies when making a specific land use decision. The City points to the Planning Commission findings, adopted by the City Council, which analyze how the Plan furthers other General Plan objectives, including General Plan Objective 3.1, 3.2, and 3.4.1 (encourage new commercial and mixed-use development to be located in proximity to rail and bus transit stations). As previously stated, a trial court is to grant great deference to an agency’s determination regarding consistency with its own general plan. A reviewing court is to determine whether city officials considered the applicable policies, but the governmental agency must be allowed to weigh and balance those policies when applying them. Pfeiffer, supra, 200 Cal.App.4th at 1563.

Based on the foregoing authority, and deference to City’s findings of consistency with the General Plan, the court finds the failure to make an explicit finding of infrastructure adequacy under West Los Angeles Community Plan Program 16.2-1 does not render City’s adoption of the Exposition Plan ordinances unlawful.

Petitioner argues that the City itself has adopted the position that the requirements of the General Plan linking increased density to adequate infrastructure are mandatory, not discretionary. Specifically, Petitioner argues that the City revised the Framework Element EIR Statement of Overriding Considerations and stated the following in briefs to the Court of Appeal in litigation related to the Framework EIR:

“In response to public concerns expressed during the administrative process about the feasibility of the various mitigation measures, the [Framework] contains a specific provision which prevents amendment of community plans to permit additional development until the supporting infrastructure is in place.” (Federation of Hillside and Canyon Associations v. City of Los Angeles, Respondent’s Brief, Petitioner’s RJN, Exh. B, p.8.)

To prove such statement is a judicial admission, Petitioner would need to show that City affirmatively took a specific position in a judicial proceeding, and that the appellate court adopted that position to the City’s benefit. See, e.g., *The Swahn Group, Inc. v. Segal*, (2010) 183 Cal. App. 4th 831, 842 (elements of judicial estoppel include “(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings;

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

(3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.”)

Petitioner has not met the elements for judicial estoppel. Petitioner argues that after City was unsuccessful in Federal I, it City made the above-quoted statement in Federation II (see Reply, p.10) a lawsuit in which the City was ultimately successful. At the hearing, Respondent pointed out that the statement Petitioner attributed to City’s brief in Federation II, was actually from City’s brief in Federation I. In Federation I the court ruled against City and found that there was no evidence mitigation measures had been required or incorporated into the Framework element in a manner compliant with CEQA. Thus, while City initially took the position quoted above, it was not successful in asserting that position. There can be no judicial estoppel under these circumstances.

The Findings Are Sufficiently Supported by Record Evidence to Demonstrate that the City Did Not Act Arbitrarily, Capriciously, or Wholly Without Evidentiary Support

Petitioner challenges whether the findings are adequately supported by the record evidence.

As a preliminary matter, there is no dispute that the zoning ordinance increases residential density in the Expo Plan area, which was a goal of the Expo Plan. (AR 31-32 [Planning Staff Report] and 39791 [DEIR]; see also OB 12:8-23 [generally explaining the effects].) While the City did not make a specific finding that existing infrastructure is adequate, the City did make findings of consistency with the General Plan, as discussed above.

Petitioner focuses on the City’s analysis of response times for police, fire and emergency services. The Expo Plan EIR examined the nature of response times and found no significant impact, including because of a requirement of non-emergency vehicles to yield to emergency vehicles, traffic light preemption system and the emergency services would respond appropriately to changing circumstances. (AR 40114-40125, 53748-53749.) The City adopted the findings of the EIR as its own, finding the increase in residential density does not automatically mean that there is an increased demand on infrastructure or that an increased demand on infrastructure would have a significant impact to police, fire, and emergency services.

At the hearing, Petitioner argued the findings regarding transportation impacts are not supported by the record, as the EIR indicated certain intersections were already operating at level E or F, inadequate by the City’s own measure. In response, the City argued that the transportation

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

18STCP02720

December 17, 2021

**FIX THE CITY INC., A CALIFORNIA NONPROFIT
CORPORATION vs CITY OF LOS ANGELES, et al.**

2:43 PM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N. DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

impact was also measured under vehicle miles traveled (“VMT”), and that the Expo Plan will improve VMT over the no project alternative.

This record evidence is sufficient to uphold the City’s adoption of the zone ordinance considering the standard of review. The court cannot conclude as a matter of law that the City’s action in adopting the ordinance is arbitrary, capricious, or entirely lacking in evidentiary support. Petitioner’s arguments to the contrary are primarily based on its contention that the City was required under the General Plan to make a specific finding of adequacy of existing infrastructure. The court has not found that position persuasive, as discussed further above.

Accordingly, the court denies the prayer for writ of mandate and the duplicative claim for declaratory relief.

Conclusion

The court denies the petition.

Counsel to prepare, serve and e-file the proposed form of judgment in accordance with Los Angeles Superior Court local rules, rule 3.231(n). The court will hold the proposed judgment ten days for objections unless approved by opposing counsel as to form.

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.

A copy of this minute order is mailed via U.S. Mail to counsel of record.

Certificate of Mailing is attached.