SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 10/31/2016 TIME: 02:22:00 PM DEPT: CX102

JUDICIAL OFFICER PRESIDING: William Claster
CLERK: Gus Hernandez
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2016-00834366-CU-WM-CXC** CASE INIT.DATE: 02/09/2016
CASE TITLE: **Friends of Coyote Hills vs. City of Fullerton**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 72473439
EVENT TYPE: Chambers Work

APPEARANCES

Re: Ruling on Petition after Hearing

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 10/28/2016 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows: A copy of the Court's ruling is attached and incorporated herein.

Court orders clerk to give notice.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CIVIL COMPLEX CENTER

FRIENDS OF COYOTE HILLS; CENTER FOR BIOLOGICAL DIVERSITY; and FRIENDS OF HARBORS, BEACHES, AND PARKS

Petitioners and Plaintiffs,

v.

CITY OF FULLERTON; CITY COUNCIL OF THE CITY OF FULLERTON,

Respondents and Defendants.

PACIFIC COAST HOMES, a California Corporation,

Real Parties-in-Interest.

30-2016-00834366

RULING ON PETITION AFTER HEARING

HON. WILLIAM D. CLASTER

Dept. CX102

Introduction and Overview

Petitioners Friends of Coyote Hills; Friends of Harbors, Beaches, and Parks; and Center for Biological Diversity (collectively, "Petitioners") challenge the November 17, 2015 decision of the City of Fullerton and City Council of the City of Fullerton (collectively, the "City") to approve a Vesting Tentative Tract Map and related actions for the West Coyote Hills project ("Project"). The City's approval authorizes Real Party in Interest Pacific Coast Homes ("Pacific Coast") to develop a large residential subdivision in northern Orange County.

The Project is a proposed development of up to 760 residential units, 17 acres of mixed uses, over five acres of neighborhood commercial space, and 24 acres of new roadways over an undeveloped 510-acre site. The Project site is part of the former West Coyote oil field, which is operated by Chevron USA, Inc., but is no longer in production. Petitioners contend the City violated state law and its own municipal code by approving the Project because (a) the Project is inconsistent with the City's existing General Plan, Master Specific Plan, and zoning ordinance; and (b) the City did not certify an EIR or otherwise comply with CEQA prior to approving the Project. In a nutshell, Petitioners contend that (1) the voters voted "no" on Measure W, which asked if Ordinance no. 3169 should be adopted; (2) as a result, the Development Agreement (West Coyote Hills) by and Between City of Fullerton and Pacific Coast Homes recorded on 08/04/11 (the "Development Agreement") (AR 3762), was terminated and the remaining 2011 development approvals relating to the Project were rendered "null and void;" and (3) therefore, the City's approval of the Project (Resolutions Nos. 2015-61, 2015-62, and 2015-63), which depended on the 2011 development approvals, violated state and local law.

The Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") brings causes of action for: (1) Mandamus: Violations of State Law and the City

of Fullerton Zoning Code; and (2) Declaratory Relief: Violations of State Law and the City of Fullerton Municipal Code. For the reasons set forth below, the petition is DENIED.

Requests For Judicial Notice ("RJN")

A. **Pacific Coast's 06/17/16 RJN**

The Court DENIES Pacific Coast's RJN in its entirety. Exhibits A-H appear to be created after the relevant time period for this CEQA analysis, created by private parties, not shown to have been presented to the City Council for its consideration of the issues in dispute, and/or not cited by Pacific Coast in its briefing.

B. **Petitioners' 10/07/16 RJN**

Petitioners seek judicial notice of a document that is already part of the Administrative Record. (See Pacific Coast's 10/12/16 Opp. to RJN p. 2:1.) The request is DENIED because it is unnecessary to seek judicial notice of a document that is already part of the Record.

Discussion

The chief dispute between the parties is whether the Development Agreement was terminated by virtue of the 2012 election in which a majority of the voters voted "no" on Measure W. As framed, Measure W asked voters whether Ordinance No. 3169 shall be adopted. (AR 3871.)

According to Petitioners, by voting "no" on Ordinance No. 3169 (re: approval of the Development Agreement), the voters "terminated" the Development Agreement. Pursuant to Condition of Approval 26 contained in Resolution Nos. 2011-32 and 2011-33, "[i]n the event the Development Agreement is terminated, all other development approvals for the project

shall be null and void." (2011 AR 155, 212.) Petitioners thus argue that the following approvals were rendered null and void: (a) Resolution No. 2011-30 (2011 AR 5); (b) Resolution No. 2011-31 (2011 AR 111); (c) Resolution No. 2011-32 (2011 AR 120); (d) Resolution No. 2011-33 (2011 AR 178); and (e) Ordinance No. 3168 (2011 AR 236) (collectively, the "2011 Development Approvals"). (See Petition ¶ 32; see also Opening Brief p. 11:1-3.) Petitioners' entire case hinges on the success of this argument.

According to the City and Pacific Coast, the Development Agreement was not automatically terminated when it was disapproved by the voters at a referendum election. The results of the election only gave Respondents and Real Party the right to terminate the Development Agreement—which right was not exercised.

A dispute whether the Development Agreement was terminated presupposes the existence of a valid Development Agreement that can be terminated. After review of the parties' supplemental briefing on the issue, the Court finds that the Development Agreement was not valid and/or did not legally exist in the first place such that it could later be terminated. Given this finding, the Court concludes that the 2011 Development Approvals remained in effect following the referendum.

"A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum." (Gov. Code, § 65867.5(a).) "An ordinance is a local law which is adopted with all the legal formality of a statute. . . . an ordinance prescribes a permanent rule of conduct or of government." (*San Diego City Firefighters, Local 145, AFL-CIO v. Board of Admin. of San Diego City Employees' Retirement System* (2012) 206 Cal.App.4th 594, 607–08.)

A "'referendum is the means by which the electorate is entitled, as a power reserved by it under our state Constitution, to approve or reject measures passed by a legislative body.'" (*Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1108.) "An essential component of the referendum power is the ability to stay legislation until voters have had the opportunity to approve or reject it. With limited exceptions, every municipal ordinance is

subject to an automatic 30–day stay before it becomes effective. ([Elections Code] § 9235.) During that period, any qualified registered voter may circulate a referendum petition challenging the ordinance. (§ 9237.) Provided that the requisite number of signatures is obtained, 'the effective date of the ordinance shall be suspended, and the legislative body shall reconsider the ordinance.' (*Ibid.*)" (*Lindelli v. Town of San Anselmo, supra,* 111 Cal.App.4th 1109.)

Pursuant to Elections Code section 9241, "[a] legislative body reconsidering an ordinance has two options: it may repeal the ordinance, or it may submit the ordinance to a public vote. . . . The decision to put the ordinance to a vote continues the stay in effect: 'The ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it. If the legislative body repeals the ordinance or submits the ordinance to the voters, and a majority of the voters voting on the ordinance do not vote in favor of it, the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body or disapproval by the voters.' (*Ibid.;* see also Cal. Const., art. II, § 10(a) [parallel stay provision for statewide referendum power].)" (*Lindelli v. Town of San Anselmo, supra,* 111 Cal.App.4th at 1109.)

In the Petition and Complaint, Petitioners argue that the results of the referendum of Ordinance No. 3169 nullified and effectively terminated the Development Agreement. (Petition ¶¶ 57-58.) In their Answers, the City and Pacific Coast admit that the Development Agreement was never approved or is not effective. (City's Answer ¶¶ 37, 57 ["not approved"]; Pacific Coast's Answer ¶ 67 [not "fully in effect"].)

The text of the Ordinance no. 3169 supports the finding that the Development Agreement was never legally executed. It provides that "[t]he Mayor of the City is hereby authorized and directed to execute the Development Agreement on behalf of the City, the City Clerk is hereby authorized and directed to cause the Development Agreement to be recorded against the property subject to the Development Agreement in accordance with applicable law, ..." (2011 AR 240.) By virtue of the "no" vote on Measure W, it appears

that the Mayor was without authority to sign the Development Agreement and the City Clerk without the authority to record it (AR 3762), thereby rendering the Development Agreement—which was signed and recorded—invalid or legally ineffective. Because the Development Agreement never legally existed in the first place, it could not later be "terminated," thereby rendering the 2011 Development Approvals null and void. Furthermore, a prior draft of the Development Agreement had provided, in § 2.6, that it "shall be deemed terminated and have no further effect upon the occurrence of any of the following events: [¶¶] 2.6.3 Completion of a referendum proceeding or entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement." (2011 AR 4769-4770.) Thus, even if the Development Agreement was valid and could be terminated, it appears that termination was not automatic, but rather was the subject of negotiations between the parties. (As it turned out, the final version of the Development Agreement did not contain this language, instead giving either party to the Agreement the right to terminate it upon the occurrence of certain events. 2011 AR 5108)

The question then turns to the effect, if any, of the invalidity, or legal nonexistence, of the Development Agreement on the 2011 Development Approvals. Petitioners specifically argue that Resolutions 2011-30 [certifying final EIR], 2011-32 [approving amendment to Master (Specific) Plan], and 2011-33 [approving tentative tract maps 15671-15673] depended on a valid Development Agreement. (Opening Brief p. 12-13; see also Petitioners' Supp. Brief p. 10-11.) This position is without merit. Because the 2011 Development Approvals were never conditioned on the existence of a valid Development Agreement, they remained effective.

With respect to Resolution 2011-30, Petitioners argue that the Development Agreement was necessary to "put meat on the bones of the City's CEQA findings." (Opening Brief p. 12:20 -13:12.) But as the City notes, the adequacy of the City's CEQA review was litigated in a prior 2011 action brought by two of the same Petitioners in this action (OCSC Case No. 2011-00499466). A judgment on the merits in favor of the City was entered in that

action on June 22, 2012, and that judgment became final when the petitioners/appellants voluntarily dismissed their appeal. (2011 AR 3752-3757; AR 3958-61.) Petitioners may not now re-open the issue in this action.

With respect to Resolutions 2011-32 and 2011-33, Petitioners note that Condition of Approval 24 states that "Development Agreement shall identify Chevron as the entity that has responsibility for Environmental Remediation and Indemnification." (2011 AR 154, 212.) Although this language indicates that the Resolutions assumed the validity of a Development Agreement, it does not necessarily follow that the Resolutions depend on one.

"[T]he purpose of a development agreement is to provide developers with an assurance that they can complete the project." (*Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1223; see also Gov. Code, § 65864.) Development agreements effectively give builders a vested right at an early stage of the project, regardless of "any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the city, county, or city and county entering the agreement, which alters or amends the rules, regulations, or policies specified in Section 65866." (Gov. Code, § 65865.4.)

Although Condition 24 provides that the Development Agreement shall identify Chevron as the entity responsible for environmental remediation and indemnification, the purpose of the condition is to ensure that Chevron assumes these responsibilities, not necessarily that there be a Development Agreement that includes this provision. As noted by Pacific Coast, Resolution 2015-62 requires Chevron to guarantee environmental remediation and indemnification obligations, as Chevron was previously required to do under the Development Agreement. (AR 119-289- Conditions 16, 24, and 25; Exhibit 7 (Guaranty Agreement).)

Furthermore, whether or not Resolution 2011-33 depends on the validity of a Development Agreement appears irrelevant. The application relating to Resolution 2011-33

was "supersede[d] and replace[d]" by the application for Tract Map 17609, which was approved through Resolution PC 2015-31 (AR 4.115) and Resolution 2015-62 (AR 119).

Petitioners' remaining arguments are derivative or depend on the invalidity of the 2011 Development Approvals. As such, Petitioners have not shown that the City's approval of the Project (Resolutions Nos. 2015-61, 2015-62, and 2015-63) violated state and local law inasmuch as they depended on the invalid 2011 Development Approvals. Accordingly, the Petition is DENIED.

Respondents are ordered to prepare a proposed judgment in accordance with this ruling.

Dated: 10-31-16

William D. Claster, Superior Court Judge