



Item #16-12-6

Government Relations & Public Affairs Committee

Action

November 23, 2016

Amicus Support for the McKinley Village Project

Issue: Whether to file an amicus brief in the court of appeal case of *East Sacramento Partnerships for a Livable City v. City of Sacramento*, which reversed in part the trial court decision approving the McKinley Village Project in Sacramento.

Recommendation: That the Government Relations & Public Affairs Committee recommend that the Board authorize staff to file an amicus brief in support of the City of Sacramento's approval of the McKinley Village Project.

Discussion: The McKinley Project involves construction of a 328-unit residential development, along with a community recreation center and three parks, on an approximately 49-acre infill development site in East Sacramento. The City certified an environmental impact report (EIR) for the Project on April 29, 2014. In May, 2014, the East Sacramento Partnerships for a Livable City (ESPLC) filed a petition for writ of mandate alleging numerous violations of CEQA. The trial court denied the petition in its entirety, and ESPLC appealed.

On November 7, 2016, the Third Appellate District issued its decision in *East Sacramento Partnership for a Livable City v. City of Sacramento* 2016 Cal. App. LEXIS 963 ("Opinion"), reversing the trial court and invalidating the City's approval of the Project. The court upheld the trial court ruling in favor of the City on all but one issue related to the City's analysis of traffic impacts. Specifically, the Opinion held that the City's reliance on its General Plan traffic mobility policy that allows for flexible application of level of service (LOS) standards in certain parts of the City did not alone establish that the Project would not result in significant impacts. In so doing, the court applied the "fair argument" standard of review, ignoring longstanding CEQA precedent for affording deference to an agency's selection of significance thresholds.

On November 22, 2016, the City and Encore McKinley Village LLC ("McKinley"), the real party in interest in the proceeding, filed a petition for rehearing. Depending on the disposition of that request, SACOG would either support affirming the trial court approval of the Project or depublishing the Opinion in order to limit the impact of the decision on other local governments. In the event that the court of appeal does not grant rehearing, a request for depublication would be due no later than January 6, 2016.

The principal issue of concern in this case is the court of appeal's conclusion that the City could not rely solely on its General Plan policies as significance thresholds. In reaching that decision, the court used language (i.e., "fairly argued") indicating it was applying the standard of review that should only apply in the context of reviewing an agency's decision to adopt a negative declaration instead of an EIR. In the context actually before the Court, where the City had prepared an EIR, the Court's application of the "fair argument" standard instead of the

“substantial evidence” standard was improper. The Opinion should be depublished to prevent this erroneous conclusion from being applied by other courts.

Approved by:

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