SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
WEST DISTRICT

COALITION FOR PRESERVATION OF THE ARROYO, an unincorporated association; EAST ARROYO NEIGHBORHOOD PROTECTION COMMITTEE, an unincorporated association; LINDA VISTA-ANNANDALE ASSOCIATION, a California non-profit corporation; SAN RAFAEL NEIGHBORHOODS ASSOCIATION, an unincorporated association; and DOES 1 TO 5, **Petitioners,** vs. **CITY OF PASADENA and PASADENA CITY COUNCIL,** **Respondents.**	CASE NO. **BS141038** **STATEMENT OF DECISION**

INTRODUCTION

This Statement of Decision address all issues tried to the Court on December 11, 2013 and that day submitted concerning the first and second causes of action of the

Petition for Writ of Mandamus, filed January 3, 2013.[1]

An EIR[2] is a document of accountability. It must be certified — or rejected — by public officials, such as the elected members of the City Council of the City of Pasadena who adopted the EIR now challenged in this case. If the requirements of CEQA[3] are scrupulously followed, the public will know the bases upon which these elected representatives of the people of the community either approved or rejected an environmentally significant action — and the public, being duly informed, can respond accordingly to any actions taken with which the community disagrees.

The EIR process protects not only the environment but also informed self-government.

When an EIR is challenged by litigation such as that now before this court, statutes limit the court's power of review. The scope of the court's inquiry is whether there was an abuse of discretion which was prejudicial. Abuse of discretion would be established here if the Pasadena City Council did not proceed in the manner required by law, or if the City Council's determination were not supported by substantial evidence.

This standard of review means that the court reviewing the EIR and the actions taken in adopting it does not substitute its judgment for that of the elected city officials. Nor does the court "pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." These limits on any court's scope of review are long-standing. *E.g.*, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

Thus, this Court is not a super-legislature with complete power to reverse actions

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[1] This Statement of Decision is issued pursuant to Public Resources Code section 21005(c) and not Code of Civil Procedure section 632. Therefore the process set out in section 632 and in Rule 3.1590, California Rules of Court do not apply. *City of Carmel by the Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 237.

[2] Environmental impact report.

[3] California Environmental Quality Act.

taken by the City Council in this case. Rather, this Court's review of the actions of the local elected officials is limited in scope to whether those actions constituted a prejudicial abuse of discretion. That limited review is based on the record of the proceedings that culminated in the City Council's action approving this EIR and related documents as that record is presented by the parties.

ICON

"America's Stadium," the Rose Bowl, was constructed in 1922, and is a National Historic Landmark. It has been the home to storied New Year's Day football games since 1923. In recent years it has been the home football field for UCLA, one of the nation's great public universities, as well as the site of five NFL Super Bowl games, three BCS National College Football Championship games, several large music events, and of an Olympic soccer match. It is located in a spectacular physical setting, on the floor of the Arroyo Seco — a location that is also a source of objections to the plan to also serve for up to five years as the site for as many as 13 professional football games each year.

Petitioners point also to the circumstance that America's Stadium is not isolated. The adjacent area is the site of a golf course with its own historic building, a public swimming pool, and extensive parkland, all of which attract recreational users, most frequently on weekends. Petitioners also point out that access to these recreational sites is only available over two lane, tree-lined streets which wind through residential areas.[4]

ANALYSIS OF THE EIR[5]

Petitioners contend that this bucolic setting will be shattered by the plan to allow up to 13 NFL games to be played in the Rose Bowl for up to 5 years, with as many as 11

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[4] The exterior of the Rose Bowl also serves as the site of a frequent swap meet. The road that encircles the floor of the arroyo also apparently is frequented by joggers and cyclists, both on a regular basis, and particularly on week ends.

[5] The following represents resolution of the issues presented; if any issue is not specifically address, it was nevertheless considered and found to be without merit.

such games to be scheduled on week ends (apparently on Sundays) (and with two NFL games potentially played on week days). As discussed at trial, it is reasonable to infer from the NFL schedule that all games would be played between August and December, with the result that there could be a football game, whether college or professional, virtually each week end on most week ends for 5 months of each year.[6] Alternatively, there might be two games each week end (a college game on Saturday and an NFL game on Sunday), "freeing" the area entirely for other activities on those weekends when there were neither a college nor an NFL game. However the schedule might work out, there is a potential for at least doubling of the football events (setting aside the unsubstantiated contention that the NFL events are more "intense" for any number of reasons).[7]

The Plan - definition of the project

Petitioners contend that the "project" (a defined term under CEQA) was not properly defined, including that it has been segmented impermissibly, both with the result that respondents have not proceeded in the manner required by law. In making these arguments, petitioners contend in particular that key elements — "reasonably

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[6] The college football schedule is not in the record, but it may be inferred that most of the 12 such events that have been permitted since UCLA made the Rose Bowl its home have been its home games. Assuming that there are 8 UCLA home games each fall season (the record suggest a lesser number) and there would also be 10 NFL games played in the Rose Bowl in each of the five potential NFL seasons, there is the potential for such uses of this venue in each of 18 weeks of the approximately 20 weeks from August to December in each of 5 years.

[7] The "nature" of the "NFL fan" (his or her energy level and degree of adherence to "acceptable social norms") was suggested in anecdotal oral and written comments made by objectors during the hearings held on the draft EIR, and was a lively subject of argument at trial, but there is little in the record to support the characterizations suggested by petitioners. However sociologically intriguing the argument, a court cannot infer the characteristics of a typical — or stereotypical — NFL fan; nor can a court merely surmise the impact an aggregate of such fans may have on a particular project. The "urban legend" of the "typical professional football" fan remains just that for lack of any substantial evidence to support petitioners' contentions in this regard.

foreseeable activities" — have been omitted; these being "the content of a prospective lease agreement, franchise commitment, and financing...;" and that all of these aspects of the ultimate transaction must be part of the EIR analysis to assess the project's costs and benefits and reach the reasoned conclusion required by CEQA (Petitioners' Opening Memorandum [hereafter O.M.], 11:18-25).

As respondents point out, "Choosing the precise time for CEQA compliance involved balancing of competing factors. EIRs... should be prepared as early as feasible in the planning process to enable environmental consideration to influence project program and design and yet late enough to provide meaningful information for environmental assessment." Respondents' Memorandum [hereafter Resp. M.], 8:1-7, citing 14 Cal. Code. Regs. sec. 15004(b).

In this case, respondents did arrive at a balance that is both practical and sufficient. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116. As respondents argue: "...had the City waited to conduct an environmental review of the Project until after entering into a lease with an NFL team, the City inevitable would have been accused of pre-committing to [the project]." Resp. M. 8:14-18; *Cedar Fair. L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150. Instead, respondents have avoided pre-commitment while adequately defining the scope of the project. While *Cedar Fair* may represent the extreme situation, as there the appellate court found no "pre-commitment" notwithstanding that a terms sheet for that development had been negotiated, here the project is sufficiently specific for environmental analysis yet not so specific that a charge of precommitment could validly be sustained. Petitioners' contention in this regard thus falls far short of its goal.[8]

Petitioners also contend that respondents' definition of the project is impermissibly segmented. Segmentation or "piecemealing" involves "chopping a large project into

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[8] Respondents point out that "City has expressly acknowledged that, if necessary, it will conduct further environmental review in accordance with CEQA prior to entering into a lease with the NFL...." AR 2393; Resp. M., 14:13-22.

many little ones" with the result that environmental considerations become submerged and insufficient. *E.g., Burbank-Glendale Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 557, 529. Leaving out key elements makes the analysis done without them environmentally unsound.

But that is not what has occurred in this case. Respondents have considered the appropriate elements of the proposed increased use of the Rose Bowl and its impact on the area. The details which petitioners claim are omitted are contract terms that constitute the precise financial details of the particular franchise agreement and lease. A proper EIR does not require the agency to guess which NFL team will be relocating on an interim basis to America's Stadium (or might be granted a new franchise to locate there while Farmer's Field is constructed). As respondents point out, they did analyze "the potential effects of the whole of the action — the reasonably foreseeable consequences of hosting NFL games at the Rose Bowl." Resp. M. 9:16-18. Further, "[r]equiring the City to speculate ... would be rife with uncertainty, and would impermissibly require the City to engage in sheer speculation and guesswork — precisely what the California Supreme Court has held is not a requirement of CEQA." (Resp. M., 10:16-22, citing *Laurel Heights Improvement Assn. v. Regents of University of California* [1988] 47 Cal.3d 376, 395.) Identification of the end-user is not a requirement of CEQA review. *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 443.[9] Here, respondents have correctly analyzed the situation, summarized in the following extract of the text of the EIR:

> "The EIR has not included any details regarding impacts caused by specific NFL teams and/or their requirements because the City is not aware of any evidence suggesting that any particular NFL team would cause environmental impacts that are more significant than the impacts caused by any other team. Given that the

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[9] The Court does take judicial notice that there is no NFL team now located in the greater Los Angeles area.

City does not know which NFL team will be using the Rose Bowl and given that the City is not aware of any evidence suggesting that any team would cause environmental impacts that are different than any other team, identification of a specific team that would play in the Rose Bowl is unnecessary." (AR 2993)[10]

The EIR and Mitigation Analysis

Petitioners contend that the essential components of a proper EIR (impacts on cultural resources, historical resources, recreation and aesthetics, air quality, and public services were incorrectly or insufficiently analyzed. These issues are analyzed in the following paragraphs.

Cultural resources

As respondents argue, no aspect of the project would cause any substantial adverse change in or to the Rose Bowl stadium itself, or in the Pasadena Arroyo Parks and Recreation District, or in the three adjacent residential historical districts. General wear and tear that may result from regular use of a resource (particularly one designed specifically for the use to which it would be put) is not a substantial adverse change under CEQA. All of the structures are built of sturdy materials, such as the reinforced concrete of the Rose Bowl itself. To the extent surfaces such as asphalt will need repair, respondents have committed to doing so. Petitioners are justifiably concerned about trash pick up after events, and use that as an example that respondents' credibility is in doubt, but, on this record there is insufficient basis to void the EIR for any delays in such activities as were noted by various members of the public who complained that trash pick up after college games was not completed within the 24 hour time limit which the City has in place. (And the argument that NFL fans are more prone to be disrespectful of their surroundings is not supported by any substantial evidence in the

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[10] Petitioners also argue that respondents did not analyze the "whole of the action" — that they approved the ordinance amendment without first analyzing the details of the contract with the NFL, thus "violating" *Save Tara, supra*. (O.M., 15:26-16:18) For reasons discussed in the text above that argument lacks merit.

record; nor is that claim a proper basis for judicial notice).

Residents also complained that the golf course is not fully restored to its pre-event status after being used for parking of vehicles in connection with athletic events. Yet, it appears that the complaint is as to the fairways only and not to the tees or greens. This contention was not supported by citation to evidence in the record and, if it is assumed the issue is limited to ruts in the fairways, petitioners have not carried their burden on this point.

The Cultural Resources discussion of the draft EIR concluded that the Project did not meet the threshold for concern articulated in the Guidelines; this was supplemented and confirmed by the Cultural Resources Consultation. Petitioners' arguments to the contrary are not supported by sufficient substantial evidence to warrant a finding that these resources would be materially impaired. Guidelines section 15064.5(b)(1); *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 238 [whether mitigation is feasible is subject to substantial evidence standard].

Historical resources

As respondents point out, the Rose Bowl was constructed for the express purpose of hosting football games and has — historically — done exactly that. They further point out that it and the nearby other historically designated sites will not be adversely affected by this potential increased use. Petitioners' argument that these resources would be degraded by the additional use proposed is not supported by any substantial evidence in the record. For example, the concern that use of the picnic areas adjacent to the Brookside Golf Course might cause deterioration of those structures is not supported by any evidence. (AR 628-630). This is particularly telling as the same area is available at present for the same function in connection with college football games.

There is nothing in the record to support petitioners' contention of inadequate consideration of potential degradation of historic resources.

Recreation and Aesthetics

The parties differ on whether there is an adequate baseline for measurement of these factors, particularly a claimed absence of proper data on "actual recreational users" of the Arroyo. The EIR does provide a baseline (AR 2447 and Response 7-10) that was developed in the years 2008-2012, which is sufficient.

Petitioners' criticism that there is no analysis of where users would go on the many weekends when football games were being played is interesting but legally lacking in persuasive force sufficient to overturn the respondents' analysis or actions to date. There is no doubt that residents living adjacent to the Rose Bowl (and others who might come to the area to use the recreational facilities in this bucolic setting) will be disadvantaged by the traffic and other aspects of "game days" — e.g., they will not be able to play golf, jog or swim (after the pool closes for the day), or just enjoy the quiet that otherwise pervades the Arroyo (even on game days prior to the "migration of football fans," but the dichotomy advocated by petitioners is actually false: That attending football games is far from aerobic exercise does not mean that it is not a form of recreation, albeit typically sedentary. (And, depending on the score and one's "team spirit," any football game may have its moments of increased cardiovascular effort.) Petitioners' implicit preference for more active forms of recreation is commendable -- but not legally sufficient to sustain their argument that watching others play football is without recreational value. Indeed, the one scenario that petitioners do not suggest is that members of the petitioners' organizations would also have the option of attending the football games themselves.

Respondents' concerns about timely clean up are not to be overlooked; nor are they to be minimized — yet, they are insufficient: The EIR contains provisions addressing timely clean up of trash and restoration of the golf course fairways (e.g., AR 209-10, 2487, 3072); if these are not met, residents can raise their concerns with their elected representatives at City Council meetings. These concerns do not equate to substantial evidence of error in the EIR. *See Masonite Corp. v. County of Mendocino*

(2013) 218 Cal.App.4th 230, 238 [substantial evidence standard governs whether mitigation measures are feasible].

Air quality and traffic

There is an obvious reason why these categories are related. The Rose Bowl sits at the bottom of a bowl surrounded by steep canyon walls, with limited access over only a few two lane streets that wind through tree lined residential neighborhoods. Traffic on game days is a model of Los Angeles roadways at their slowest, with lines of vehicles extending all the way up the Arroyo to freeway off ramps at some distance from America's Stadium. One does not need to be a scientist to know that considerable pollution is generated by such traffic.

Petitioners attack in particular whether the EIR determined and utilized the appropriate baseline measure for pollutants, contending that "specifically measured data close to the project site" should have been considered, and whether the EIR appropriately addressed the mitigation measures proposed by the South Coast Air Quality Management District (AR 2403-2407). In particular, petitioners argue "The AQMD pointedly directed that the City impose comprehensive mitigation measure already formulated for the Farmer's Field project in Los Angeles," also stating that respondents "declined". (O.M., 19:25-27)

Not quite. The AQMD noted that this EIR did not adopt the mitigation measures which AQMD had recommended for the Farmer's Field project, but did not direct that respondents adopt those measures. Instead, the AQMD "strongly recommend[ed] that the lead agency provide additional mitigation measures pursuant to CEQA Guidelines Section 15126.4" (AR 2403) In the additional comment letter issued by the AQMD after publication of the EIR for this project, it recommended that respondents adopt the mitigation measures discussed in the EIR for Farmer's Field, but also noted that "AQMD staff recognizes that there may be some exceptions to [the] level of commitment [contained in the Farmer's Field EIR]." The AQMD then reiterated a list of measures which it had recommended in its earlier comment letter. (AR 3781)

The AQMD recommendations are problematic. This record does not contain any more specifics with respect to the measures contained in the EIR for Farmer's Field. It is therefore not possible to compare the two sets of recommendations. Further, there appear to be no new specific recommendations in the AQMD's second letter (compare AR 2403-201407 with AR 3780-3782). Instead, AQMD's second letter "requests that the following measures be further considered." (AR 3781) The key and concluding recommendation in the AQMD's second letter is: "...the AQMD staff recommends that the lead agency provide a commitment to achieve a trip reduction target and monitoring/reporting plan similar to that developed for the Downtown LA Stadium Project." (AR 3781, final sentence).

The record in this case does not contain that other plan (as noted above). This record does contain this lead agency's analysis of the first AQMD letter, including an explanation of the differences in the two locations — particularly the greater access at Farmer's Field to public transportation — and the need for cooperation by the Metropolitan Transit Authority for any increase in Metro and Metrolink services to Pasadena and the Rose Bowl.

Before exhorting this lead agency to further efforts, the AQMD "recognizes that CEQA allows deferral of the formulation of specific mitigation strategies until after project approval ... when the agency is committed to a performance standard designed to reduce the significant effects of the project" (AR 3781, final paragraph). The EIR in this case contains sufficient substantial evidence that this agency is so committed, e.g., at AR 2408-2414. Rather than "decline" to adopt the mitigation measures which AQMD had recommended for the Farmer's Field project, respondents explained in their responsive comments to the AQMD what it found feasible and why comparison with the Farmer's Field project was not appropriate in several respects. Respondents also noted that certain of the issues raised by AQMD were not resolvable by respondents as they would require budget and other actions by the independent Metropolitan Transit Authority. (The MTA's comment letter [AR 2415-2417] was fully addressed in

respondents' EIR responses at AR 2418-2419.)

As respondents argued, the EIR appropriately responded to these (and other) comments on air quality and traffic issues, noting, as the court of appeal held in *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 937: "Responses to comments need not be exhaustive; they need only demonstrate a 'good faith' reasoned analysis. Guidelines section 15088 (c) [other citations omitted]." There is ample evidence of good faith analysis in this record. Petitioners have not met their burden to show that the EIR is legally inadequate. *Id.*, at 918-919.[11]

Specific arguments were advanced by petitioners based upon letters placed in the administrative record by residents who may be said to have particular expertise, for example, the comments of a Professor John Seinfeld, described as one of the world's leading experts on atmospheric aerosols. (AR 2671-2672) However, Responses 17-5 and 17-25 adequately addressed these concerns. Moreover, petitioners do not contradict the respondents' explanation in Response 17-25 that "[t]aking ambient air quality measurements locally, and only during displacement events at the Rose Bowl ... would provide evidence demonstrating that this was an inappropriate baseline measurement." Resp. M. 20:1-10. Petitioners' citation of *Berkeley Keep Jets Over the Bay Committee v. Port of Oakland* (2001) 91 Cal.App.4th 1344, is inapposite; there the agency made an affirmative misrepresentation creating a misleading impression (*id.*, at 1366-1367). No such fact, or argument, is made here. Nor is *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439 on point; there our supreme court held, inter alia, that exclusive use of a future base line was not error under the circumstances there at issue. That does not mean that use of *future*

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[11] Petitioners' contention that the EIR does not address the issue of fireworks ignores the statement in EIR Response 2-4 that there is no plan to allow fireworks at events analyzed in this EIR. (AR 2412). "Simply because Petitioners believe that some football games include fireworks does not constitute sufficient evidentiary grounds to demonstrate that there is no substantial evidence in support of City's position or that the City's response to the comment is not sufficient." Resp. M., 21:11-17.

estimates is always appropriate; and in this case petitioners have not explained how use of a *future* base line will aid them in their contention that "*up-to-date* assessment and mitigation of air pollutants using available technology [is] required to comply with CEQA (O.M., 21:8-13; emphasis added.) Their argument is instead that the *present* baseline is to be used, and they contend it has been inadequately measured. For reasons discussed, respondents' actions were neither distortions of fact (as was held to be the case in *Berkeley Keep Jets Over the Bay Committee v. Port of Oakland, supra*), nor otherwise contrary to law.

Public services

Citing *Many Brothers v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, petitioners pont out that public service issues (e.g., police and fire protection) are subject to CEQA review. Petitioners then characterize the treatment of these services in this EIR as anecdotal (O.M., 22:13). In the next paragraph petitioners themselves rely on generalizations: "'NFL fans can be rowdy and engage in drinking and fighting. We will need additional police to protect the Bowl area and our residential areas. (AR 556)" A similar argument was advanced at trial, but without citation to any other portion of the record.[12]

Petitioners mischaracterize the nature of the analysis undertaken by respondents on these matters. While petitioners assert that respondents relied "on conclusionary statements by its police department that it has 'adequate services to serve the proposed project'" (O.M., 23:4-6), a fair reading of the sections of the administrative record which petitioners cite (e.g., AR 2578 and 3842) shows instead that the analysis was based on

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[12] The Court also declined petitioners' request for judicial notice of a contract let by the City Council after it took action on this EIR. Shortly after taking the actions challenged here, the City Council approved a contract for up to $200,000 for "supplemental traffic control services at special events within the City" including Rose Bowl stadium events. (See O.M., 23:4-13). While that action was clearly outside the record, had the petitioners' request been granted, the additional fact would have supported respondents' claim that they are prepared to take appropriate actions to address issues as they arise.

the expertise of these public services agencies. On this point also, petitioners have not carried their burden to show that the EIR was legally inadequate.

Was the statement of overriding considerations improperly adopted?

Petitioners contend that the statement of overriding considerations was not properly adopted; specifically, that respondents "merely adopt[ed] [it] and approve[d] a project with significant impacts ...[without] first adopt[ing] feasible alternatives and mitigation measures", citing *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 185, and *City of Marina v. Board of Trustees* (2006) 39 Cal.4th 341, 368-369.

Petitioners' reliance on *Friends of Sierra Madre, supra*, is misplaced. The portion of that opinion upon which petitioners rely, in fact, illustrates a point contrary to that argued by petitioners: that the lead agency has options, one of which can be to approve the project "if the mitigation measures or alternatives identified in the EIR are not feasible, [and] there are overriding benefits that outweigh the impact on the environment. (Pub. Resources Code, § 21081.)" *Friends of Sierra Madre v. City of Sierra Madre, supra*, at 185. The citation of the just-noted Public Resources Code section makes clear that petitioners' contention is without support in statutory or case law.

Petitioners' citation of *City of Marina v. Board of Trustees, supra*, is closer to the mark. There, our supreme court ordered the trial court to vacate its original writ and issue a new writ, the supreme court concluding that the lead agency's decision to certify the EIR despite remaining unmitigated effects constituted an abuse of discretion. A key to understanding the holding of *City of Marina* is that the lead agency had erred it its conclusion that its contribution of funds for mitigation was impermissible as a gift of public funds in violation of Article XVI, section 6 of the state Constitution. Because the trustees abused their discretion in determining that the projects remaining effects could not be feasibly mitigated, their statement of overriding considerations leading to their approval of the development master plan (of a new state university campus) was invalid.

There are marked differences between the circumstances presented in *City of*

Marina and here.[13] Most importantly, the supreme court held in that case that if the state university trustees' reasons for determining that mitigation were infeasible, the court "would give much deference to [the trustees'] weighing of the [project's benefits against the remaining environmental effects" pursuant to Public Resources Code section 21081(b). *Id.*, 39 Cal.4th at 368.[14]

In this case, there is substantial evidence that respondents adopted those mitigation measure that are feasible, doing so based upon over decades of experience in hosting football events at the Rose Bowl, and properly adopted its statement of overriding considerations. A fair reading of Resolutions 9250 and 9251 and their attachments (AR 9-60 and 61-130) as well as the rest of the administrative record, demonstrates that respondents have met their obligations under CEQA. Mitigation measures have been adopted where feasible and, where mitigation is not feasible, there is overriding justification for proceeding. Respondents' experience in hosting events at this site — with over a decade of UCLA football games, 5 NFL Super Bowl games, a

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[13] In the end, the plan for expansion of the university campus was adopted.

[14] The court's reasoning was expressed in the following language:

"If we agreed with the Trustees that mitigation were infeasible for the reasons given in the findings, i.e., that the Trustees may not legally contribute to FORA and that the Trustees cannot ensure that FORA will actually construct infrastructure improvements—we would give much deference to the Trustees' weighing of the project's benefits against the remaining environmental effects. Generally speaking, "a court's proper role in reviewing a challenged EIR is not to determine whether the EIR's ultimate conclusions are correct but only whether they are supported by substantial evidence and whether the EIR is sufficient as an informational document." (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d 376, 407, 253 Cal.Rptr. 426, 764 P.2d 278.) Moreover, an agency's decision that the specific benefits a project offers outweigh any environmental effects that cannot feasibly be mitigated, while subject to review for abuse of discretion (Pub. Resources Code, § 21168.5), lies at the core of the lead agency's discretionary responsibility under CEQA and is, for that reason, not lightly to be overturned. (Cf. *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d 376, 392, 253 Cal.Rptr. 426, 764 P.2d 278 [court reviews the EIR's sufficiency as an informative document and not the correctness of its environmental conclusions].)" *City of Marina v. Board of Trustees of the California State University*, supra, 39 Cal.4th at. 368.

BCS Championship game, as well as other events, cannot be discounted or ignored in addressing the issues presented here.[15]

Nor can the Barrett Sports Group report be dismissed as petitioners have done. Petitioners argue that the Barrett Sports Group Report is not reliable because it "hedged its generalized economic projections." O.M., 14:3-9. That contention is not sufficient to overcome the substantial evidence contained in that report and elsewhere in the record which amply document the bases for respondents' actions. See, *e.g.*, *Concerned Citizens of South Central L.A. v. LAUSD* (1994) 24 Cal.App.4th 826 [agency decision is not lightly to be overturned when agency determines that specific benefits outweigh any environmental effects that cannot feasibly be mitigated]. Petitioners present no sufficient evidence to question the analysis and conclusions of the Barrett Sports Group and in particular its conclusion that respondents can reasonably expect to receive between $5 million and $10 million per year during the NFL's temporary use of the Rose Bowl. As respondents point out, petitioners do not present a fair statement of the evidence (*see Markley v. City Council* [1982] 131 Cal.App.3d 656, 73); nor do they provide any contrary substantial evidence challenging the method of analysis or conclusions of the report. This Court has nevertheless reviewed the record and finds it "more than sufficient to constitute substantial evidence supporting the findings" made by respondents. *Cf.*, *id.*, at 673.

PLANNING COMMISSION ROLE

Petitioners contend that the City failed to act in the manner prescribed by law because "it refused to allow the Planning Commission to review and make recommendations" on the project. O.M., 25:1-9. This contention is flawed both factually

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[15] It also is not to be overlooked that the maximum capacity of the Rose Bowl has been reduced over the years, from 102,000 for, inter alia, prior NFL Super Bowl games, to just over 90,000 today. Of particular significance to evaluation of the issues presented in this case is that the maximum attendance at any NFL even is limited to 75,000; this is a significant reduction in attendance from prior NFL events -- of over 25%.

and legally. First, there is ample evidence in the record that the Planning Commission held a hearing on the matter and, in addition to hearing from members of the community, individual commissioners expressed their views and concerns. Legally, as respondents point out, the Pasadena Municipal Code contains special provisions relating to Rose Bowl plans and operations (*e.g.*, Pasadena Municipal Code, Title 3, Article IV, sections 3.32.250 et seq.) with the result that Planning Commission action was not a part of the review or approval process for the actions now being challenged. It must also be noted that once respondents made this argument in their opposition, petitioners made no response in their reply brief, indicating that petitioners no longer assert this claim.

CONCLUSION

For the foregoing reasons, the petition for writ of mandamus is denied.

Respondents shall prepare, serve and lodge a proposed judgment within 10 days of the date of filing of this Statement of Decision.

DATED: January 21, 2014

ALLAN J. GOODMAN
JUDGE OF THE SUPERIOR COURT