Filed 5/28/15 Coalition for Preservation of Arroyo v. City of Pasadena CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COALITION FOR PRESERVATION OF THE ARROYO et al., Plaintiffs and Appellants, v. CITY OF PASADENA et al., Defendants and Respondents.	B255824 (Los Angeles County Super. Ct. No. BS141038)

APPEAL from a judgment of the Superior Court of Los Angeles County, Allan J. Goodman, Judge. Affirmed.

Brandt-Hawley Law Group and Susan Brandt-Hawley for Plaintiffs and Appellants.

Michele Beal Bagneris, City Attorney, Theresa F. Fuentes, Assistant City Attorney; Richards, Watson & Gershon, Laurence S. Wiener, Ginetta L. Giovinco and Stephen D. Lee for Defendants and Respondents.

INTRODUCTION

Pursuant to the California Environmental Quality Act (CEQA), the City of Pasadena evaluated the environmental impact of hosting a National Football League (NFL) team at the Rose Bowl Stadium for a period of up to five years. The City found that although hosting the NFL games had significant environmental impacts, its economic benefits to the City outweighed the environmental detriment. The City decided in favor of approving the proposal to temporarily host the NFL team, and enacted a city ordinance that permitted the Rose Bowl Stadium to host an additional 13 large-scale events per year specifically to accommodate the NFL games. Plaintiff and appellant the Coalition for Preservation of the Arroyo opposed the NFL's use of the stadium through public comment during the environmental review and subsequently brought a mandamus action in superior court, which was denied. The Coalition appeals from the superior court's denial of its mandamus petition.

On appeal, the Coalition asserts that the City's Environmental Impact Report (EIR) was premature because the City did not establish lease terms with an NFL team prior to environmental review. The Coalition also asserts that the EIR was inadequate as to the information it provided regarding historic and cultural resources, recreation and aesthetics, air quality and traffic, and public services. We affirm because the EIR was timely, the EIR adequately addressed the environmental impacts pursuant to CEQA, and the City's factual determinations were supported by substantial evidence.

FACTS AND PROCEDURAL BACKGROUND

Built in 1922, the Rose Bowl is a National Historic Landmark. It has hosted numerous large-scale sporting events and concerts, including five NFL games, Olympic and World Cup soccer matches, National College Football Championship Games, and numerous New Year's Day Rose Bowl Games. On the western edge of Pasadena, the Rose Bowl lies within the Arroyo Seco, a deeply cut canyon that links the San Gabriel Mountains and the Los Angeles River. The canyon contains three sections: the Upper, Central, and Lower Arroyos. The Rose Bowl is situated in the Central Arroyo, with residential neighborhoods to the east and west. Adjacent to the north of the stadium lies

the Brookside Golf Course, and the Brookside Park is just south of the stadium. The Rose Bowl Operating Company, a California non-profit, public-benefit corporation founded by the City, manages the Rose Bowl Stadium, the Brookside Golf Course, and the Golf Course's clubhouse.

In 2011, the Rose Bowl began to undergo a large scale renovation to improve ingress, egress, and concourse circulation, increase concession stand and restroom facilities, create a state of the art press box with premium seating, and install a new scoreboard and video board. Most of the renovation was completed by 2014. Following the renovation, the Rose Bowl seats 88,000 people. Notably, there is a funding gap in the Rose Bowl Stadium's renovation, which precipitated the City's efforts to obtain funding by temporarily hosting an NFL team at the Rose Bowl as we discuss in detail below.

The Pasadena Municipal Code permits no more than 12 displacement events (events where attendance exceeds 20,000 people) per year at the Rose Bowl In anticipation of a potential opportunity to enter into negotiations to temporarily host NFL games at the Rose Bowl Stadium while a permanent NFL stadium was under construction in Los Angeles, the City initiated an amendment to temporarily increase the number of displacement events at the Rose Bowl. Specifically, the amendment sought to add an additional 13 displacement events per year, specifically for NFL games, for up to a five year period. Pursuant to the amendment, a total of 25 displacement events per year could occur for a period of five years. Attendance for the NFL games would be limited to 75,000 patrons.

In March 2012, the City released its Initial Study regarding the environmental impact created by hosting an NFL team at the Rose Bowl for 13 games per year for a five year period. Consistent with CEQA terminology, we refer to this Rose Bowl proposal as "the project" in our discussion regarding its environmental review. The City thereafter prepared and circulated a Notice of Preparation, inviting interested parties to provide input regarding the scope and content of information to be included in the Draft EIR. The City also held two public meetings to provide the public with more information

regarding the project and obtain additional comments on issues to be addressed in the Draft EIR.

In August 2012, the City circulated the Draft EIR for the project. An express purpose of the project was to "[g]enerate revenue to fund City services and offset the costs associated with the Rose Bowl renovation project." The City provided a 60-day comment period on the Draft EIR, during which time the Draft EIR was presented at public meetings. The City then prepared written responses to all comments received on the Draft EIR, and those responses were incorporated into the Final EIR. The Final EIR acknowledged that even after employing mitigation measures to reduce the project's anticipated environmental impacts, hosting NFL games at the Rose Bowl would cause significant and unavoidable impact on air quality, noise, recreation, transportation, circulation, and parking. The City found that the Final EIR appropriately recommended approximately 16 mitigation measures to help reduce the project's impacts in those and other areas.

The City Council held a public meeting in November 2012 to consider the Final EIR and the proposed ordinance amendment. After the City Council reviewed and considered the Final EIR, all the comments and responses, and all oral and written testimony presented during the public meeting, the City certified the Final EIR, adopted findings pursuant to CEQA, adopted a mitigation monitoring and reporting program to diminish the project's environmental impacts, and adopted a statement of overriding considerations. The statement of overriding Considerations found that the economic benefits of the Project outweighed the significant and unavoidable impacts identified in the Final EIR. In December 2012, the City Council voted to approve the amendment to the City's Municipal Code that would allow for 13 NFL games per year for a period of five years at the Rose Bowl.

The Coalition, which represents residents in the Arroyo Seco neighborhoods surrounding the Rose Bowl Stadium, brought a petition for writ of mandamus against the City in January 2013, alleging that the City violated CEQA. The Superior Court denied the petition, and the Coalition now appeals.

DISCUSSION

The Coalition makes two main arguments regarding the City's compliance with CEQA. First, the Coalition argues that the EIR was premature because it failed to include NFL lease terms that would show the City's expected revenue. As a result, the Coalition contends that the EIR was segmented and the City's subsequent statement of overriding considerations was based on speculation. Second, the Coalition asserts that the EIR failed to comply with CEQA because it failed to adequately analyze project impacts and mitigation within several topics of the environmental impact analysis.

" 'An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.] We therefore resolve the substantive CEQA issues . . . by independently determining whether the administrative record demonstrates any legal error by the [agency] and whether it contains substantial evidence to support the [agency's] factual determinations.' [Citation.]" (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 76, overruled on another ground in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 457; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131 [" 'While we determine de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements" [citation], we accord greater deference to the agency's substantive factual conclusions.' "].)

" 'Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." ' [Citations.] Substantial evidence is not '[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment . . . . Substantial evidence shall include facts, reasonable assumptions

predicated upon facts, and expert opinion supported by facts.' " (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184,1198, citing Pub. Resources Code, § 21082.2, subd. (c); Cal. Code Regs., tit. 14, § 15384, subds. (a) & (b).)

1. *The EIR Was Timely and Properly Defined the Scope of the Project*

The Coalition argues that the EIR was premature and segmented because the City had not yet negotiated a lease with an NFL team. In a related argument, the Coalition asserts that the EIR should have been delayed until after a lease with the NFL was signed because then all of the ramifications of the NFL lease would have been more completely understood. At issue is whether the timing of the EIR was compliant with CEQA.

Pursuant to CEQA, public agencies must prepare an EIR *before* approving a project if the project may have a significant environmental impact. (*Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, 1160-61; Pub. Resources Code, § 21061 ["An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project."]; Pub. Resources Code, § 21151; Cal. Code Regs., tit. 14, § 15004(a) ["Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration"].) Approval in this context "means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. . . . Legislative action in regard to a project often constitutes approval." (Cal. Code Regs., tit. 14, § 15352, subd. (a).)

"A basic tenet of CEQA is that an environmental analysis 'should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395 (*Laurel Heights I*).) This principle balances two competing policy considerations. On one hand, "environmental resources and the public fisc may be ill served if the environmental review is too early.

On the other hand, the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project." (*Ibid.*) Due to the gravity of that latter concern, courts have repeatedly held that " ' "EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design." ' " (*Ibid.*)

In the context of the aforementioned policy considerations, this stage in the project proceedings appears to have been the most practical and meaningful opportunity for environmental review. Before the City could enter into a contract with an NFL team, the City needed to amend the ordinance, which previously limited the Rose Bowl to no more than 12 displacement events per year, to temporarily allow for 13 additional displacement events. As noted above, "[l]egislative action in regard to a project often constitutes approval." (Cal. Code Regs., tit. 14, § 15352, subd. (a).) Thus, for practical reasons, the City needed to perform environmental review prior to contracting with the NFL in order to amend the city ordinance to allow the City to go forward with NFL negotiations.

Had the City waited until it negotiated the specific terms of a lease agreement with an NFL team and was thus on the verge of executing the lease, the City's negotiations with the NFL could have been perceived as commitment to the project. At that point, the project could have such bureaucratic and financial momentum behind it that the "[EIR] would likely become nothing more than post hoc rationalizations to support action already taken." (*Laurel Heights I, supra,* 47 Cal.3d at p. 394, italic omitted.) Postponing the EIR until that stage in the progress of this project, as proposed by the Coalition, could have been a violation of CEQA.

Furthermore, the City had sufficient information to accurately describe the scope of the project in the EIR, and meaningfully and accurately prepare an EIR regarding the NFL lease of the Rose Bowl. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 78, fn. 5 [In discussing the parties' competing contentions regarding the timing of the

EIR, the court concluded that "[t]he issue thus narrows to the question whether the city, before drilling of the test wells, has sufficient reliable data to permit preparation of a meaningful and accurate report on the impact of commercial production."].) Based on the project description, it was clear that the project involved the temporary use of the Rose Bowl Stadium by the NFL for 13 games annually for up to five years, with an attendance of up to 75,000 people per game. The project specifically endeavored to amend a city ordinance to temporarily allow for "an additional 13 displacement events to occur annually at the Rose Bowl" for NFL games for a period of up to five years. Based on these statements in the draft and final EIR, we conclude that the scope of the project was clearly defined.

The Coalition nonetheless argues that the EIR "did not address the likely scope of the [NFL] lease." The Coalition asserts that, "[a]s a result, the City failed to consider the 'whole of the action' of the NFL/Rose Bowl project before certifying an EIR and amending the ordinance." The Coalition opines that as a result, the City "both segmented the environmental review process and created bureaucratic and financial momentum equating to an unlawful pre-commitment to an NFL lease." The Coalition specifically argues that the EIR failed to set forth the NFL lease terms regarding the amounts of money to be paid by the NFL team in rent and in support of mitigation measures. We disagree with the Coalition. We conclude that the data relied on by the City within the EIR addresses these aspects of the lease, and the review is not segmented.

As the City did not have an NFL lease at the time of the EIR, it relied on an analysis from Barrett Sports Group LLC (Barrett) for an estimate of the potential revenue that could be generated by an NFL team's temporary use of the Rose Bowl Stadium. Barrett reviewed nine different interim NFL stadium leases, considering each lease's key financial terms including rental payments, taxes, surcharges, revenue sharing, expense responsibility, and upfront investments. Barrett described each of these leases in detail within its report. Barrett stated that based on its research and review, "[a]lthough it is difficult to estimate with certainty the revenue-generating potential of a proposed deal given the numerous unknowns at this time, we believe [the Rose Bowl Operating

Company] could reasonably expect to generate approximately five million dollars per year from the NFL's interim use of the Rose Bowl Stadium and depending on the various circumstances and the alternative regional stadium options at the time of negotiations, it is possible that the [Rose Bowl Operating Company] could generate as much as ten million dollars per year under the right conditions. In addition, the [Rose Bowl Operating Company] could expect that an NFL team would be responsible for game day and related expenses."

The City's use of Barrett's revenue estimations and expense allocation was reasonable given that the City does not have a lease agreement with the NFL, and the use of this information does not appear to change the scope of the EIR. Regardless of the estimated revenue, the EIR still evaluated the impact of having 13 additional events at the Rose Bowl with an attendance of 75,000 people for a period of five years. The City's reliance on these estimations by Barrett did not create an "overly-narrow and misleading project description," as the Coalition asserts. Outside of the rent and expenses issue discussed above, the Coalition fails to indicate what other "critical specifics" were omitted from the EIR.

Furthermore, the EIR did not segment the environmental review process or create bureaucratic and financial momentum equating to an unlawful pre-commitment to an NFL lease, as asserted by the Coalition. On the contrary, had the City waited until after it engaged in extensive negotiations with an NFL team to establish the terms of the lease agreement, the project could have had such momentum behind it that environmental review would have been too late to have served its purpose in the City's decision-making process.

Based on our review of the record, we conclude that the EIR properly defined the scope of and accounted for all aspects of the project. "[T]he term 'project' is defined as 'the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . .' ([Cal. Code Regs., tit. 14,] § 15378, subd. (a).)" (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs* (2001) 91 Cal.App.4th 1344, 1358.) The

coalition has not identified any aspects of the project that could result directly or indirectly in change to the environment that have not been accounted for within the EIR.

The impermissible project segmentation that the Coalition refers to in its brief occurs in cases where the project is defined too narrowly and considers, for instance, one part of a construction plan but omits other foreseeable and intended construction and expansion. (See *Laurel Heights I, supra*, (1988) 47 Cal.3d at p. 396.) In such cases, " 'environmental considerations . . . become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.' " (*Ibid*.) That is not the case here. The record contains no evidence of any other foreseeable involvement with NFL games or any other plan to have additional displacement events at the Rose Bowl. The City's entire project consisted of having 13 yearly NFL games in addition to existing displacement events over the course of five years. As this was the entirety of the Rose Bowl's temporary accommodation for the NFL team, the City did not omitted any aspect of the project in the EIR.

For these reasons, we conclude that the EIR was timely and that its scope was appropriate.

2. *The City's Statement of Overriding Considerations Was Supported by Substantial Evidence*

Related to the timing issue discussed above, the Coalition also asserts that because the environmental review occurred before the terms of the lease were established, the City's statement of overriding considerations was premised on speculation rather than substantial evidence. "A statement of overriding considerations reflects the final stage in the decisionmaking process by the public body. A public agency can approve a project with significant environmental impacts only if it finds such effects can be mitigated or concludes that unavoidable impacts are acceptable because of overriding concerns. (Pub. Resources Code, § 21081; [Cal. Code Regs., tit. 14,] §§ 15091 and 15092.) If approval of the project will result in significant environmental effects which 'are not at least substantially mitigated, the agency shall state in writing the specific reasons to support its

action based on the final EIR and/or other information in the record.' ([Cal. Code Regs., tit. 14,] § 15093, subd. (b).) These reasons constitute the statement of overriding considerations which is intended to demonstrate the balance struck by the body in weighing the 'benefits of a proposed project against its unavoidable environmental risks.' ([Cal. Code Regs., tit. 14,] § 15093, subds. (a) and (c).)" (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222 (*Sierra Club*) disapproved on other grounds in *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 539.) "[A] statement of overriding considerations must be supported by substantial evidence contained in 'the final EIR and/or other information in the record.' " (*Sierra Club*, at p. 1223.)

Here, the City issued a statement of overriding considerations with an attachment, stating that the financial benefits of the project outweighed the environmental impact. The City acknowledged CEQA's requirements and reiterated that it adopted and certified the Final Environmental Impact Report that was prepared for the Project. The City also stated:

> "Section 3. During the public hearing on the Project, the City Council received oral and written evidence concerning the environmental impacts of the Project and the benefits of the Project. This evidence included the Final EIR, including the public comments about environmental impacts that were made on the draft environmental impact report prepared for the Project. This evidence also included a letter and written report from Barrett Sports Group, attached hereto as Exhibit A, which describes the revenue potential of a temporary lease of the Rose Bowl to an NFL team. The City Council finds the letter and report from Barrett Sports Croup to be credible.
>
> "Section 4. As indicated in the analysis provided by Barrett Sports Group, the Rose Bowl Operating Company (the 'RBOC') could reasonably expect to generate approximately five million dollars per year from the NFL's interim use of the Rose Bowl and, depending on circumstances surrounding the negotiations, could generate as much as ten million dollars per year. The RBOC could also expect that the NFL will be responsible for game day and related expenses. This revenue would play a significant role in bridging the funding gap associated with the Rose Bowl renovation project.

> "NOW THEREFORE, BE IT RESOLVED THAT, the City Council acknowledges the environmental impacts identified in the Final EIR and elsewhere in the record of proceedings, but finds that the economic benefits of the Project outweigh the significant and unavoidable impacts identified in the Final EIR and the record of proceedings. In making this finding, the City Council has balanced the benefits of the Project against its unavoidable impacts and indicates its willingness to accept those adverse impacts. The City Council finds that the benefits of the Project set forth in Section 4 above, independent of any other benefits, warrant approval of the Project notwithstanding the unavoidable environmental impacts of the Project." (Boldface omitted.)

The Barrett report referenced in the Statement of Decision is summarized above in our discussion of the EIR's timeliness. Daniel S. Barrett of Barrett Sports Group, LLC produced the Barrett report, and is a nationally recognized sports industry expert, having worked on over a thousand sports industry projects. Barrett has represented many private and public sector clients, including cities and NFL football teams. The Barrett report analyzed the anticipated revenue and cost sharing, and expressly stated that the City could earn at least five million dollars per year in revenue from the project. Contrary to the Coalition's arguments that Barrett's report was pure speculation, ample data from nine other interim stadium leases with NFL teams supported Barrett's conclusion regarding the revenue and cost sharing.

Based on the foregoing, we conclude that the Barrett report constitutes substantial evidence supporting the City's decision that the economic benefits of the project outweighed the environmental impact caused by it.

3. ***The EIR's Analysis of Historic and Cultural Resources, Recreation, Aesthetics, Air Quality and Traffic, and Public Services Was Adequate and Supported by Substantial Evidence***

The Coalition asserts that the EIR failed to adequately analyze several essential components of the EIR, and that the EIR was not supported by substantial evidence for that reason. The Coalition also argues that the City provided inadequate responses on these issues in responding to public comment.

It is well established that the EIR is "the 'heart of CEQA.' [Citations.] 'Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR "protects not only the environment but also informed self-government." [Citation .]' [Citation.] To this end, public participation is an 'essential part of the CEQA process.' [Citations.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*).) A public agency has the EIR prepared for a proposed project whenever the project could cause a " ' "substantial, or potentially substantial, adverse change in the environment." ' " (*Ibid*.)

"When an EIR is required, the lead agency initially prepares a draft EIR. Once the draft EIR is completed, a comment period is provided for the public and interested agencies. . . . [¶] In the course of preparing a final EIR, the lead agency must evaluate and respond to comments relating to significant environmental issues. [Citations.] In particular, the lead agency must explain in detail its reasons for rejecting suggestions and proceeding with the project despite its environmental effects. [Citation.] 'There must be good faith, reasoned analysis in response [to the comments received]. Conclusory statements unsupported by factual information will not suffice.' " (*Laurel Heights II, supra,* 6 Cal.4th at pp. 1123-1124.)

" ' " 'The EIR must contain facts and analysis, not just the bare conclusions of the agency.' [Citation.] 'An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.' " [Citations.] "CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive." [Citation.]' [Citations.] 'The question whether an EIR is sufficient as an informative document depends on the lead agency's . . . compliance with CEQA's requirements for the contents of an EIR: whether the EIR reflects a reasonable, good faith effort to disclose and evaluate environmental impacts and to identify and describe mitigation measures and alternatives; and whether the final EIR includes reasonable responses to comments on the draft EIR raising significant environmental issues.

[Citations.]' [Citations.] 'Analysis of environmental effects . . . will be judged in light of what was reasonably feasible.' [Citation.]" (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 897–898.) Reversal is required " 'when the omission of relevant information has precluded informed decisionaking and informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. [Citations.]' " (*Id.* at p. 898.)

Here, the Coalition asserts that the EIR was inadequate as to the information and responses to comments it provided regarding historic resources, recreation, aesthetics, air quality and traffic, and public services. We address each category in turn.

a. Historical Resources

The Coalition argues that the City's analysis of historical resources "did not survey or fully describe the historical environmental setting" and "failed to address any NFL-related impacts to the 'immediate surroundings' in the Arroyo Seco's historic districts." (Italics omitted.) It is well established that "a project that may cause a substantial adverse change in the significance of an historical resource is subject to CEQA." (*Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 374 (*Eureka Citizens*); Pub. Resources Code, § 21084.1.) "Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." (Cal. Code Regs., tit. 14, § 15064.5, subd. (b)(1).) Case law reiterates that "[t]he significance of historical resources is materially impaired when the project '*[d]emolishes or materially alters* in an adverse manner those *physical characteristics* of an historical resource that [account for or] convey its historical significance.' " ([Cal. Code Regs., tit. 14,] § 15064.5 subd. (b)(2)(A), italics added.)" (*Eureka Citizens*, at p. 374.)

In *Eureka Citizens, supra*, 147 Cal.App.4th at p. 374, opponents of a project that entailed constructing an outdoor playground argued that "the City failed to analyze the impact of the Project on the 'historic character' of the neighborhood." In that case, there was no evidence that "the Project contemplated any demolition of, or material alteration of, the physical characteristics of the identified historically significant structures." (*Id*. at p. 375.) Therefore, the court held that the opponents could not show any inadequacy in the EIR as to historical resource impact. (*Ibid*.)

Similarly, in the case at bar, there was no evidence that the project contemplated any physical, material change to an historic resource. Within "Topical Response 2 – Historic Resources" of the EIR, the City identified the historic resources within the Arroyo, stating: "The Rose Bowl Stadium and its environs include a number of historic resources recognized at the national, state, and local levels. The Rose Bowl Stadium itself is a National Historic Landmark and a contributing structure to the Pasadena Arroyo Parks and Recreation District, which is listed in the National Register of Historic Places. The Pasadena Arroyo Parks and Recreation District is roughly bounded by the Foothill Freeway on the north, the City limits to the south, Arroyo Boulevard to the east and San Rafael Ave on the west. It contains 27 contributing buildings, structures, sites, and landscape features, including the Brookside Golf Club, Brookside Park, the Brookside Theater, Jackie Robinson Memorial Field and Stadium, the Fannie Morrison Horticultural Center, the Holly Street Bridge, the Colorado Street Bridge, the Mayberry and Parker Bridge, Lower Arroyo Seco Park and the Lower Arroyo Bird Sanctuary." The City also noted that "[t]here are also three residential neighborhoods within the project vicinity that have been listed in the National Register of Historic Places as historic districts: Prospect Park located east of Brookside Park, Arroyo Terrace located south of Brookside Park, and the Lower Arroyo Seco located south of the 134 Freeway. Resources listed in the National Register of Historic Places are also listed in the California Register of Historical Resources. All of the resources mentioned above qualify as historic resources under CEQA."

After fully accounting for and describing the Arroyo's historical setting, the City stated: "The proposed temporary use of the Rose Bowl by the NFL for a period up to five years would not involve any demolition either on the Rose Bowl site or within its vicinity," "would not relocate any historically significant resources, either on the Rose Bowl site or within its vicinity," "would not convert, rehabilitate, or alter any historically significant resources, either on the Rose Bowl site or within its vicinity," and "would not include any new construction." The City explained that, "[t]he Rose Bowl was constructed specifically to accommodate football games. The general wear and tear that results from the regular use of a resource is not considered a substantial adverse change under CEQA. The materials that could be impacted by football games are primarily reinforced concrete, arroyo stone retaining walls, stucco, and asphaltic concrete. These materials always have and will continue to be repaired and maintained as needed. An increase in the number of football games each year for a temporary period will not materially impact any of the significant character-defining features of the stadium." The City also addressed the possible historic impacts to the golf course, stating that "Golf Courses 1 and 2 at Brookside Golf Club are currently used to accommodate parking for large events, including college football games and large-scale entertainment events. Although use of the golf courses as parking can damage fairways and landscaping there are systems and procedures in place for maintaining and repairing the landscaping after such events that would remain in place for any NFL use. Moreover, the actual tees, bunkers, fairways and landscaping of the golf courses have been altered and changed numerous times during the Golf Club's history, and are not considered character-defining."

The City concluded that, "temporary use of the Rose Bowl by the NFL will increase the number of times the Rose Bowl is used as a football stadium per year. The proposed temporary use would result in a maximum of 65 additional events over the life of the stadium. The project will not introduce a new use for the Rose Bowl but will instead temporarily expand the number of times it is used for its historic purpose. The Rose Bowl is a reinforced concrete structure specifically designed and constructed as a

football stadium. It has successfully hosted football games and capacity crowds since 1922. Moreover, the Rose Bowl is currently undergoing rehabilitation according to the Secretary of the Interior's Standards. There is no evidence to suggest that use of the Rose Bowl for 13 additional football games for a period of up to five years will cause any undue stress that might damage character-defining features such that the Rose Bowl would no longer be eligible for historic designation."

As we set forth above, the City properly and fully identified and described the historical setting of the Arroyo Seco and the Rose Bowl. The Coalition argues the City's description was deficient, but the Coalition fails to identify with specificity the alleged deficiencies. Based on our review of the record, there does not appear to be a deficiency in the description. In addition, the Coalition fails to identify how the City's statements were inaccurate and how any historical resource would be physically altered by the project. Rather, substantial evidence set forth by the City in Topical Response 2 supported the City's conclusion that there would be no environmental impact to historical resources pursuant to CEQA. There was clearly no contemplated demolition or construction. The only physical impact to the stadium would occur in the form of its typical use as a football stadium, and the sturdy building materials subject to that wear and tear have been and will continue to be repaired when necessary.

We conclude that the Coalition's assertions are unsupported. The EIR was not inadequate as to its discussion of historical resources and substantial evidence supported the City's conclusion that there will be no impact to historical resources.

b. Recreational User Displacement

The Coalition argues that the EIR failed to provide a baseline of actual recreational users in the Arroyo Seco for the purpose of analyzing their displacement. However, the EIR provided counts of recreational users from 2008 and 2012. The 2008 counts came from a report by the Urban Land Institute, which estimated the number of yearly Rose Bowl area recreational users and visits as follows: 800,000 annual golf course visits, 1.5 million Rose Bowl loop visits, 115,000 Brookside Park users, 16,800 swimmers and 250,000 visitors to the Rose Bowl Aquatic Center, and 200,000 visitors to

the Kidspace Museum. Based on those numbers, city officials estimated between 10,000 and 12,000 recreational users utilize the Rose Bowl loop, the golf courses, the aquatic center, the baseball fields, and the Kidspace museum on Sunday.[1] In 2012, the City supplemented the 2008 count by conducting an additional count of the number of users of the Rose Bowl loop on a Sunday in October from 11:15 a.m. to 12:15 a.m., which appears to be the time that users would typically be displaced for an NFL game. At the 2012 Rose Bowl loop count, the City counted a total of 232 pedestrians, 65 non-peloton cyclists, 3 skaters/scooters, and 234 motor vehicles.

These two studies provided substantial evidence regarding the frequency of recreational use and the number of users that would be impacted by the project. Further study was not necessary to engage in informed decision-making regarding the project. The City expressly recognized that a great number of recreational users would be displaced, and affirmed that regardless of the exact number of users, the project would cause a significant and unavoidable impact to recreational users. The City stated in response to comments regarding the recreational user count that "[t]he conclusions and mitigation measures presented in the Draft EIR are not based on an estimate of the total number of users in the Arroyo Seco and would not change depending on the number of users. The Draft EIR finds the displacement of users to be a significant and unavoidable impact due to the loss of access to these resources, this finding is not dependent on a numerical threshold as implied by the commenter, but on the basis that the project could substantially interfere with or preclude the use of existing recreational facilities in the Central Arroyo Seco." CEQA did not necessitate further investigation of the number of users because greater exactitude regarding the number of users was not necessary to evaluate the environmental impact and identify ways to mitigate it. Moreover, substantial

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[1] When the visits and user numbers from the ULI study are tallied, they amount to approximately 2.8 million users/visits. When divided by the days in a year, this equals 7,800 users/visits per day. During the special meeting on this EIR, the city officials presumed that more recreational users frequented the Rose Bowl facilities during the weekend, and thus concluded that there were approximately 10,000 to 12,000 users on any given Sunday.

evidence in the form of the 2008 and 2012 studies supported the City's assessment of this issue.

The Coalition also challenges Mitigation Measure 3.6-5, contending that it failed to adequately mitigate impacts to recreation resources outside of the Arroyo. However, after thorough review of the record, we conclude that the Coalition never challenged this issue below within its briefs supporting its petition for writ of mandate. "It is well established that a party may not raise new issues on appeal not presented to the trial court." (*A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1804.) The Coalition is therefore barred from raising this new issue for the first time on appeal, and we do not address it.

c. *Aesthetics*

As to aesthetics, the Coalition argues that the City failed to adequately address trash removal and that historically, trash removal has not occurred within 24 hours of displacement events. Citizens voiced concerns regarding trash removal within their comments responding to the Draft EIR. In response to those comments, the City added the following language to the EIR:

> Although they would not reduce any impacts associated with the project, the following measures have been included to respond to concerns expressed in comments on the Draft EIR:
>
> MM 2.0-1 RBOC shall be responsible for removal of all trash and debris associated with NFL events. Clean up shall commence within 24 hours of an NFL event and shall includ[e] all areas where patrons are directed to park within the Central Arroyo. Clean up shall be conducted to the satisfaction of the Department of Public Works. The RBOC shall provide funding as necessary.

The feasibility of these mitigation measures in addressing trash cleanup was supported by substantial evidence in the record. First, the RBOC has a standard trash removal plan to address clean up of the Rose Bowl after games, and this plan would be applied to the NFL. The terms set forth above were consistent with this preexisting plan, and clearly allocated responsibility to specific entities for the trash clean up. Not only does the RBOC contract with the Pasadena Department of Public Works for trash

removal after events, but the RBOC also coordinates with several different organizations, including the Los Angeles Conservancy for recyclable pickup. The City's Neighborhood Services Division's MASH program also assists in trash removal by walking local streets one or two days after events to remove any remaining trash. Based on the foregoing, we conclude that substantial evidence shows that the City has programs in place to ensure that environmental impacts from trash resulting from game days would remain less than significant.

In addition, the EIR determined that aesthetics would not be significantly impacted by the project. Based on evidence in the record, impacts to aesthetics appear to be less than significant, particularly because this multi-organization cleanup program collects trash within one to two days following the event. Under CEQA, mitigation measures are not required for a particular aspect of the environmental analysis where the EIR finds that there would be no significant environmental impact as to that aspect of the environment. (*Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 216 [Noise mitigation measures were not required in a particular area where the EIR found no significant noise impact from the project in that area.]; Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1)(A). [The discussion of mitigation measures "shall identify mitigation measures for each significant environmental effect identified in the EIR."].) Thus, the City's failure to provide additional mitigation measures for trash does not render the EIR inadequate. (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 841 [" ' "CEQA does not require analysis of every *imaginable* alternative or mitigation measure; its concern is with *feasible* means of reducing environmental effects." ' "].)

As substantial evidence supported the City's analysis of aesthetics and identification of reasonable mitigation measures, we hold that this aspect of the EIR was also CEQA compliant.

d. Air Quality

The Coalition makes two arguments regarding air quality impacts: (1) the EIR did not use the proper method to measure pollutants and (2) the City's response to comments and efforts at mitigation were inadequate.

i. *Pollutant Calculations*

As to the first issue, the Coalition asserts that the City failed to provide adequate analysis of air pollution because it lacked an adequate baseline measure of pollutants. "To decide whether a given project's environmental effects are likely to be significant, the agency must use some measure of the environment's state absent the project, a measure sometimes referred to as the 'baseline' for environmental analysis." (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315 (*Communities for a Better Environment*).) The statement of baseline conditions within the EIR consists of "a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, . . . from both a local and regional perspective." (Cal. Code Regs., tit. 14, § 15125.) From this baseline, the lead agency determines whether the project's environmental impact is significant. (*Ibid.*) CEQA does not provide a "uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence." (*Communities for a Better Environment*, at p. 328.)

The Coalition argues that the EIR did not utilize the appropriate methodology to determine baseline pollutants in the Rose Bowl Stadium area and surrounding neighborhoods, indicating that the baseline measurement was not taken close enough to the Rose Bowl. We disagree. In assessing air quality, the City used the nearest air quality monitoring station for data on ambient air quality to establish the baseline. In response to critiques on using this data for a baseline, the City stated that it was "standard practice, accepted by the various air districts in California including the [South Coast Air

Quality Management District] to use the nearest air quality monitoring station for data on ambient air quality. These stations have been carefully sited by the air districts to provide quality data for the area in which they are located. They are also carefully calibrated and maintained and collect data over long periods of time to provide an accurate measure of ambient air quality that is largely independent of statistical outliers. Taking ambient air quality measurements locally and only during displacement events at the Rose Bowl would provide results that are not a true reflection of ambient air quality."

The Coalition fails to identify evidence in the record showing how this methodology was inaccurate, fails to demonstrate how the City's rationale in using this baseline was an abuse of discretion, and fails to explain how this baseline precluded the City from making an informed decision regarding the project. The City's decision to use this particular baseline measurement was supported by the standard, accepted practices of agencies that engage in air quality monitoring. This choice of methodology was also bolstered by the reliability and breadth of data available from the local air quality monitoring station. Unlike the Coalition's suggested baseline methodology, that involved taking samples closer to the Rose Bowl, the City's use of data from the air quality monitoring station ensures more reliable, historic, and accurate measurements. We conclude that the City's decision to utilize this data for a baseline measurement was supported by substantial evidence.

The Coalition further maintains that the City failed to accurately estimate travel distances of event visitors in evaluating air quality impacts. The EIR estimated that patrons' average vehicle trip length to the Rose Bowl for attendance of the NFL games would be 45 minutes long. The EIR reasoned that this trip length represented a reasonable average trip length for football fans in the Los Angeles area based on default factors from CalEEMod (an emissions calculations model). The South Coast Air Quality Management District, which is the air pollution control agency for urban Los Angeles county, specifically suggested the City utilize CalEEMod to estimate emissions.

The Coalition provides no evidence that the City erred in calculating the average trip length. As no local trip length data existed for NFL games and as the pertinent air pollution control agency recommended the CalEEMod model, we conclude that the City's choice of methodology regarding the trip distance was also reasonable and supported by substantial evidence.

ii. *Mitigation Measures and Responses to Comments*

The Coalition also argues that the City failed to adopt comprehensive mitigation measures to combat air quality impacts. However, even though the City did not adopt all of the mitigation measures requested by commenters, the record indicates that the City adopted many mitigation measures to address vehicle emissions. "An EIR must only consider a reasonable range of project alternatives and mitigation measures." (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 379.) The Final EIR appears to consider a reasonable range of mitigation measures, as it suggested incentivized carpooling, prepaid parking to improve traffic flow, bicycle valet, charter bus services, a rideshare program for employees, use of public transportation, use of social media to promote the various modes of travel, requirements that vendors use 2010 or later model diesel trucks to reduce emissions, use of alternative fuel vehicles at the stadium, and use of electrical outlets to allow for electric barbeques at the stadium.

The Coalition fails to identify why the mitigation measures in the EIR were inadequate, which mitigation measures should have been adopted, and which responses to community comments were inadequate. Instead, the Coalition generally references the South Coast Air Quality Management District's "copious comments" that "directed . . . the City impose comprehensive mitigation measures already formulated for [one of the proposed new NFL stadiums] in Los Angeles," and the City's "failure to adopt additional feasible measures." We note that there are many air pollution mitigation measures discussed by the City: the City's response to the South Coast Air Quality Management District's comments alone addressed in detail over 23 mitigation issues, some with multiple subparts. Despite it being the Coalition's burden to prove that the EIR failed to comport with CEQA, the Coalition fails to identify with specificity how the

mitigation measures adopted by the City were inadequate or how the City's decision was not supported by substantial evidence. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 139 ["We presume the correctness of the agency's decision and the petitioners thus bear the burden of proving that the EIR is legally inadequate or that the record does not contain substantial evidence to support the agency's decision."].) The Coalition's general conclusory statements are insufficient to prove that the EIR is inadequate.

The Coalition also asserts that the City provided inadequate responses to the Metropolitan Transportation Authority's (Metro) comments regarding the need for additional Metro bus and rail services. We disagree. In response to Metro's statement that additional services may be needed, the City noted that it already had a mitigation measure in place that recognized the need for additional Metro services and acknowledged that the provision of those services was in Metro's jurisdiction. As such, the EIR recommended that the City coordinate and negotiate with Metro to determine and obtain the level of transit service needed to meet game-day demands. We conclude that this response is reasonable. With the information set forth in the comments and the EIR, the City Council could effectively make an informed decision regarding the impacts involved with transportation.

To the extent the Coalition asserts that the EIR failed to respond adequately to comments because the City did not address the potential use of fireworks, there is no evidence that fireworks would be used by an NFL team during games. As the City stated in a response to comments, "[t]here is currently no plan to allow or include fireworks at the events analyzed in this EIR. Consequently there would be no air quality impacts." Simply because the Coalition believes that some football games utilize fireworks does not constitute sufficient evidence that there would be fireworks at the NFL games, or render this EIR inadequate. As the project does not involve fireworks, the EIR analysis was sufficient as to this issue.

We thus conclude the City's responses to comments and discussion of mitigation were adequate.

e. Public Services

The Coalition argues that the City's conclusion that it has adequate police and fire services to serve the proposed project is not supported by substantial evidence. The City based its conclusion on information provided by the Police and Fire Departments, which have been involved in providing services to displacement events, like NFL games, college football games, and concerts, for many years.

The EIR explained that the Pasadena Police Department already provides police protection and traffic enforcement services on a regular basis to the Rose Bowl. The Police Department has a special Event Planning Section that carefully considers each special event's staffing needs and plans accordingly for police and security staffing levels and traffic control for special events at the Rose Bowl Stadium. Based on this staffing experience, "a traditional football game with a crowd size ranging from 60,000 to 90,000 people, [is estimated to require] police staffing (including traffic deployment) [ranging] from 125 to 150 officers." These staffing needs would be accommodated by the Police Department's 350 sworn officers and non-sworn personnel. Moreover, "[a]ll equipment, including police motorcycles, cars, jail vans, police helicopters, and radios, is provided by the [P]olice [D]epartment as part of the personnel deployment." In addition to police officers, the Police Department employs 86 Police Explorers to manage barricades on the various streets surrounding the Rose Bowl to prevent spectators from parking in the local neighborhoods. A private security company (Contemporary Services Corporation) also provides additional security staffing within the Rose Bowl to respond to public safety issues within seating areas.

Review of the project by the Police Department suggested that the project would not have any impact on the Police Department's day-to-day service to the Rose Bowl or the immediate area. The EIR found that although additional police resources may be required on the 13 NFL game days each year, there was no need to expand police services, and impacts to police services would be less than significant.

We conclude that the City's finding regarding the project's less than significant impact on police services was supported by substantial evidence. The Police Department has a long history of providing these services and its institutional knowledge provides it with the ability to assess the needs of 75,000-person NFL games. The Department appears to already have the personnel, knowledge, and resources to provide proper policing and traffic control to the Rose Bowl on game day, without neglecting the surrounding community. The Coalition's assertions regarding the EIR's deficient analysis of police services are baseless.

The same is true as to the Coalition's assertions regarding fire services. The EIR explained that the Pasadena Fire Department has eight stations located throughout Pasadena. Station No. 38 is located less than 0.25 mile west of the Rose Bowl, and would likely be the responding fire station to the Rose Bowl in the event of an emergency. All of the fire stations support one another and provide additional assistance to each other when necessary. There are three backup stations that could assist or respond in place of Station No. 38 to emergencies at the Rose Bowl. Moreover, a paramedic station exists on the Rose Bowl grounds, and would be staffed by 16 to 24 paramedics during events. An additional eight to 14 paramedics would be stationed outside of the Rose Bowl.

In addition the Fire Department has a special plan prepared for accessing the Rose Bowl during these events to ensure that their response times remain timely. Specifically, the Fire Department has implemented "the Traffic Control Deployment Operations Plan (TCDOP)," which designates two "emergency routes that must be established and maintained during operation." In the event of an emergency, pursuant to the TCDOP, fire personnel would coordinate with police to ensure that paramedic vehicles have safe and timely passage to the Rose Bowl.

Based on the foregoing, the EIR concluded that any impact on fire services would be less than significant. The EIR stated that the increase in displacement events at the Rose Bowl "would not affect the likelihood of a fire at the project site thereby resulting in the need for additional fire protection services, nor would increasing the number of allowed events at the Rose Bowl create a permanent population increase that would negatively affect fire response times." Substantial evidence supports this conclusion as the Fire Department does not provide fire fighter staffing at the Rose Bowl, and therefore the increase in the number of events will not increase fire fighter staff. The Fire Department's eight stations are capable of responding to emergencies as needed at the Rose Bowl and throughout the rest of Pasadena, with the resources and personnel it presently has. Although the Fire Department would provide paramedic services to the project, this provision of services would not create a substantial impact, as the Fire Department already provides these same services for the other 12 displacement events that occur at the Rose Bowl throughout the year. Like the Police Department, the Fire Department has spent many years providing these services to Pasadena and appears well-qualified to make a determination regarding the impact the project would have on the services it provides to the public.

In sum, substantial evidence supported the City's findings within the EIR that public services will not be significantly impacted by the project, and that the current infrastructure was capable of providing necessary services to the project.

DISPOSITION

The judgment is affirmed. Defendants and Respondents City of Pasadena and the Pasadena City Council are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

I concur:

EDMON, P. J.

EGERTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.