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9 PATTY JOHNSON; JOE TEIXEIRA;  
10 OMAR AHMED, JR.; XIN GUO; and  
11 CAROLYN SOARES

12 SUPERIOR COURT OF CALIFORNIA  
13 COUNTY OF SACRAMENTO

14 PATTY JOHNSON; JOE TEIXEIRA;  
15 OMAR AHMED, JR.; XIN GUO;  
16 and CAROLYN SOARES,

17 Petitioners and Plaintiffs,

18 v.

19 CITY OF ELK GROVE,

20 Respondent and Defendant.

21 ELK GROVE TOWN CENTER, LP;  
22 HOWARD HUGHES CORPORATION; and  
23 DOES 1-20, inclusive,

24 Real Parties in Interest and  
25 Defendants.

CASE NO. 34-2016-80002493

**PETITIONERS' AND PLAINTIFFS'  
REQUEST FOR CLARIFICATION OF  
COURT'S RULING SUSTAINING  
DEMURRER WITHOUT LEAVE TO  
AMEND**

[CRC 3.1590j]

Hearing Date: June 23, 2017  
Ruling Issued: August 1, 2017  
Department: 24  
Judge: Hon. Shelleyanne W.L. Chang

Action Filed: November 23, 2017  
Trial Date: Not Set

26 TO THE HONORABLE COURT, AND TO COUNSEL OF RECORD FOR  
27 RESPONDENT, DEFENDANTS, AND REAL PARTIES IN INTEREST HEREIN:

28 Pursuant to CRC Rule 3.1590, Petitioners and Plaintiffs seek clarification of the Court's  
Ruling related to Court's determinations that (1) The Property in question has been taken into

1 trust for the benefit of the Wilton Rancheria tribe [Ruling, I. Background, pg. 1]; (2) that no writ  
2 of mandate should issue compelling City to hold hearings related to the transfer of the affected  
3 Parcel from Real Party in Interest Elk Grove Town Center, LP Howard Hughes Corporation to  
4 Boyd Gaming, Inc. and the Wilton Rancheria; and (3) that Declaratory Relief should not be  
5 granted as to the failure of the City to act as mandated by the language of the Development  
6 Agreement.

7 Petitioners have approved the form of the Final Order and Judgment prepared by City of  
8 Elk Grove in which the Court's Ruling is attached, as the proposed Order is consistent with the  
9 Order issued by the Court. However, prior to the Court's execution and filing of the Final Order  
10 or Judgment, Petitioners' seek clarification of the Court's Ruling on the legal and factual points  
11 listed below.

### 12 REQUESTS

13 (1) The Ruling sustaining Defendants and Respondents' demurrer appears to presume  
14 that the Federal Trust Decision is final, which was neither included in the pleadings nor is  
15 factually correct. No decision has been filed in the Federal Register. Petitioners request  
16 clarification as to the Court's Ruling, because the statement is not supported by any evidence in  
17 the record, and no citation to the record is made at Ruling, pg. 1, Background. As has been  
18 contested in the hearings and pleadings to date, any decision by the Department of Interior is not  
19 final. Amend. Pet. For Writ [AW] ¶¶83, pg. 18. Petitioners' Opposition to Demurrer [POD] 2:7-  
20 12; 7:11-28; 8-10:1-7; Demurrer Tentative Ruling [DTR] pg. 1; Background; and conclusion at  
21 pg. 6 §iv. The allegations of the Petition must be treated as true for the purpose of ruling on a  
22 demurrer. Ruling, pg. 4, II Discussion, citing Burt v. Orange (2004) 120 Cal.App.4<sup>th</sup> 273, 279,  
23 POD 1:8-9. All post-filing Department of Interior decisions remain non-final and has been  
24 challenged in federal court for the reasons stated in Petitioners' Opposition to COEG Demurrer,  
25 7:1-28; 8-11 and RJN No. 2<sup>1</sup> and such decisions remain stayed. No decisions have been  
26 published in the federal register. Therefore, the Court's statements made in the DTR should be  
27

28 <sup>1</sup> Amended Complaint, USDC Dist. Of Columbia No. 1:17-cv-00058-RDM filed August 10, 2017. [Attached]

1 included in the Final Ruling, and the unsupported sentence identified should be stricken from the  
2 Court's ruling.

3 (2) Petitioners request the Court revisit and clarify its Ruling to confirm that (a) the 2014  
4 Development Agreement ("2014") DDA remains effective as to the Property, (b) the City of elk  
5 Grove has adopted an ordinance incorporating the 2014 DDA into its municipal code, and (c)  
6 mandatory provisions of ordinances are enforceable by writ of mandate.

7 The City acknowledged the continued effectiveness of the 2014 DDA during Injunction  
8 Oral Argument Dec. 22, 2016 Reporter's Transcript [IOA] at 13:13-28, in its Ruling page 3  
9 referring to AW ¶62, 63, 73, 79, and the Court statement regarding the continued effectiveness of  
10 the 2014 DDA is at 16:15-23; and 20:17-24<sup>2</sup>.

11 The Court's Ruling refers the referendum petition which successfully challenged  
12 Ordinance 23-2016, the proposed amendment to the 2014 DDA. The valid referendum petition  
13 prevented application of Ordinance 23-2016, the proposed amendment to the 2014 DDA, to the  
14 Property. Ruling pg. 3, IOA 16:15-23 through 20:17-24, and Elections Code §9237. This means  
15 that even before the Repeal Ordinance February 8, 2017, the 2014 DDA remains on the Property.  
16 (This effect of the referendum petition served as the basis for this Court's denial of Petitioners'  
17 request for an injunction prohibiting the City from implementing Ordinance 23-2016 so to  
18 remove the 2014 DDA). Therefore, the 2014 DDA continued to apply to the Property at all  
19 times relevant but including to the present, including the conveyance of the Property to Boyd  
20 Gaming and the Tribe on January 19, 2017. Petitioner's Opposition to Demurrer at 1:20-27,  
21 Tentative Ruling Oral Argument June 23, 2017 Reporter's Transcript [TROA] 13: 17-28; 1-18<sup>3</sup>.  
22 In October 2014, the City of Elk Grove adopted Ordinance 28-2014 and 29-2014, which  
23 incorporated the 2014 DDA.

24 (3) The Court Ruling states that Petitioners failed to identify a duty on the part of the City  
25 and reiterates that the Property has been taken into trust for the benefit of the Tribe. [Ruling, pg.  
26 8]. As set forth above in Section 1, the statement about the Property having been taken into trust  
27

28 <sup>2</sup> Reporters Transcript for Dec. 22, 2016 hearing attached.

<sup>3</sup> Reporters Transcript for June 23, 2017 hearing attached.



1 for the benefit of the Tribe is both factually incorrect and is outside the scope of the record  
2 before the Court on this demurrer. Petitioners therefore request that the Court strike this  
3 erroneous statement for all reasons set forth in Section 1, above. Therefore, the second reference  
4 in the Ruling at page 8 should be clarified as stated above.

5 Petitioners also ask the Court to clarify the ruling to reflect that Petitioners have  
6 identified the City's duty to its citizens, because the City's obligations are identified in the 2014  
7 DDA which the City has adopted as an ordinance, and the City's mandatory duties under its  
8 ordinances are enforceable against it. [AW, Second Cause of Action; ¶¶ 92-96, pgs 19-21; POD,  
9 at 11:19-28; and 12; 16:13-28; 17; TROA 35:23-28; 36-37]. As the Court notes, the 2014  
10 DDAs is both a contract and was formally adopted as Ordinances 28-2014 and 29-2014 per  
11 Government Code §65864; 65867.5, cited in AW ¶ 102, pg. 22, Petitioner's Opposition at TROA  
12 at 27:18-28; 28:1-9.

13 Petitioners request that the Ruling clarify whether the City has a duty to enforce the  
14 mandatory terms of these ordinances. Specifically,

15 Although the 2014 DDA is incorporated as one of the City's ordinances, the Court's  
16 Ruling assumes that a writ of mandate is not available to enforce the terms of the 2014 DDA.  
17 Petitioners therefore request that the Ruling clarify whether the 2014 DDA is effective, whether  
18 the ordinance adopting the 2014 DDA remains as valid and enforceable, and whether a writ of  
19 mandate is available to compel the City's compliance with the mandatory provisions of tis  
20 ordinances.

21  
22 Thus, City's breach of its obligation to investigate the bonafides of the Assignees: Boyd  
23 Gaming and the Wilton Tribe can be enforced by a Writ of Mandate by Petitioners.

24 Specifically, Sections 10.2 and 10.3 of the 2014 DDA mandate that the City hold a  
25 hearing to examine the financial ability of prospective assignees of the DDA and their intentions  
26 to be bound by its terms. The record is undisputed that the City held no such hearing. AW ¶¶81,  
27 82, 83, 111 and 112. The 2014 DDA is Ex. A to the AW, and Petitioners argued a present duty  
28 and City's violation at TROA35:23-28; 36-37. Under the mandatory terms of the 2014 DDA, as

1 incorporated into the City's Ordinance, the City had an obligation to hold the hearing and make a  
2 determination regarding the obligations of Boyd Gaming and Tribe to comply with the 2014  
3 DDA.

4 Just as discussed in *International Brotherhood of Electrical Workers v. City of Gridley*  
5 (1983) 34 Cal.3d 191, 197, *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7  
6 Cal.4<sup>th</sup> 525, 539 even a 'sketchy and frequently vague framework for enforcement, where  
7 substantive duties are implicated', a court can compel the actions required or implied to be  
8 required by the ordinance or statute. Here, the ordinance incorporates the 2014 DDA, and  
9 Petitioners request that the Ruling clarify whether the writ of mandate will lie to compel the city  
10 to enforce the mandatory terms of the 2014 DDA where the 2014 DDA has been incorporated  
11 into a valid ordinance adopted by the City.

12  
13 Dated: August 12, 2017

Respectfully submitted,

14 BRIGIT S. BARNES & ASSOCIATES, INC.,  
15 A CALIFORNIA LAW CORPORATION

16  
17 By: 

18 Brigit S. Barnes, Attorney for Petitioners