SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME **JUDGE**	**May 30, 1:30 p.m.** **HON. ALLEN SUMNER**	**DEPT. NO** **CLERK**	**42** **M. GARCIA**
CITY OF ORANGE, et al. **Petitioners,** **v.** **MICHAEL COHEN, et al.** **Respondents.**		**Case No.: 34-2013-80001653**	
Nature of Proceedings:	**PETITION FOR WRIT OF MANDATE**		

Following is the court's tentative ruling granting the petition for writ of mandate scheduled for May 30, 2014, at 1:30 p.m., in Department 42.

INTRODUCTION

This is another in a line of cases arising out of the Legislature's decision to dissolve redevelopment agencies. Petitioners are (1) the City of Orange and the Successor Agency to the City's former Redevelopment Agency ("RDA") (collectively "the City"), and (2) OHDC Serrano LLC and C&C Serrano LLC (collectively "Serrano"), two private developers. Respondents are the Department of Finance and its Director (collectively "DOF").[1] Petitioners challenge DOF's determination that a $7,145,234 loan from the RDA to Serrano is not an enforceable obligation within the meaning of the dissolution procedures. For the reasons explained below, the court finds the loan was an enforceable obligation. The petition is thus granted.

[1] Jan Grimes, the Orange County Auditor-Controller, is also named as a Respondent. Grimes appeared but has not filed an opposition brief.

BACKGROUND

The Community Redevelopment Law and Tax Increment Financing

In 1945 the Legislature enacted the Community Redevelopment Law authorizing cities and counties to establish redevelopment agencies to remediate urban decay. (Health & Saf. Code § 33000 et seq.; see also *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, 245-46.)[2] Redevelopment agencies funded their activities primarily through tax increment financing: the redevelopment agency received property tax revenue in excess of the property tax revenue allocated to other local entities prior to the redevelopment plan. (*Matosantos*, *supra*, 53 Cal.4th at 246-47.) This excess tax revenue was referred to as tax increment. By 2011, redevelopment agencies were receiving 12 percent of all property tax revenue in California. (*Id.* at 247.)

In 1976 the Legislature amended the Community Redevelopment Law to require redevelopment agencies to set aside at least 20 percent of the tax increment they received to increase, improve and preserve their community's supply of low and moderate income housing. (§ 33334.2.) This money was to be held in a separate Low and Moderate Income Housing Fund ("Housing Fund"). (§ 33334.3.)

The Serrano Loan Commitment Letter and Loan Agreement

On March 8, 2011, the RDA approved a $7,145,234 loan to Serrano from its Housing Fund to finance construction of a 63-unit apartment complex for low and moderate income households ("the Project"). The loan and its material terms were memorialized in a Commitment Letter signed by both parties.[3] Interest was one percent a year; the term was 55 years. The loan was continent on Serrano receiving certain tax credits and satisfactory completion of environmental review. The Commitment Letter specified numerous other terms and conditions of the loan.[4]

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[2] Unless otherwise specified, all statutory references are to the Health and Safety Code.

[3] The Commitment Letter is attached as Exhibit 2 to the declaration of Mary Ellen Laster.

[4] Including the following: Serrano shall comply with applicable prevailing wage laws; Serrano shall prepare Project Budget and audited cost certifications; loan will be evidenced by non-recourse promissory note secured by deed of trust and other customary loan documents; Serrano

The Commitment Letter provides it "is not intended to describe all of the requirements, terms, conditions and documents" required for the loan. Instead, the parties agreed a Loan Agreement and related documents would be prepared at a later date. The Commitment Letter also provides: "The final form of the Loan Agreement . . . shall be subject to the discretionary approval of the [RDA] . . . ." (Comm. Ltr., p. 2, ¶ 5.)

In late March the City adopted a Mitigated Negative Declaration under the California Environmental Quality Act ("CEQA") finding any significant environmental impacts of the Project could be mitigated and the Project would thus have no effect on the environment.[5] (Laster Decl., Exs. 7, 9.)

On June 22, 2011, Serrano received the required tax credits. (Laster Decl., ¶ 20.)

The Loan Agreement contemplated by the Commitment Letter was executed in November 2011. (Laster Decl., Exs. 14-16.) The RDA disbursed the funds in December 2011, and construction commenced shortly thereafter. (*Id*., ¶¶ 26, 27.) Construction is now complete, and all of the loaned funds have been spent. (*Id*., ¶¶ 28, 29.)

The Dissolution Law

On June 28, 2011, ***after*** execution of the Commitment Letter but ***before*** execution of the Loan Agreement, the Legislature enacted AB 1X 26 ("AB 26"). AB 26 froze the activities of redevelopment agencies and provided procedures for their ultimate dissolution on October 1, 2011. (See generally §§ 34161, 34177.) Effective immediately redevelopment agencies were not permitted to incur new or expand existing monetary or legal obligations, and were specifically prohibited from making loans or entering into loan agreements. (§§ 34161, 34162, 34163.)

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shall not transfer its interest without RDA's consent; Serrano shall execute a "Regulatory Agreement" restricting occupancy to low and moderate income households for at least 55 years; Serrano to indemnify and hold RDA harmless for hazardous materials costs; Serrano to submit evidence of financing sufficient to complete Project.

[5] CEQA requires public agencies to prepare an environmental impact report ("EIR") for any project that could have a significant effect on the environment. (Pub. Res. C. § 21100, 21151; *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 776-77.) An EIR is not required if the public agency determines any significant effects on the environment can be mitigated, and adopts a "mitigated negative declaration" so stating. (*Parker Shattuck Neighbors*, *supra*, 222 Cal.App.4th at 776.)

AB 26 was immediately challenged. The California Supreme Court accepted original jurisdiction, hearing the case on an expedited basis to resolve "significant constitutional questions concerning the validity" of the law. (*Matosantos*, *supra*, 53 Cal.4th at 241.) Pending its decision, the Supreme Court stayed implementation of parts of the law.

In December 2011 the California Supreme Court upheld the constitutionality of AB 26. (*Matosantos*, *supra*, 53 Cal.4th 231.) It also reformed numerous deadlines that passed during the stay, including reforming the dissolution date to February 1, 2012. (*Id*. at 274-276.)

In June 2012 the Legislature adopted AB1484, modifying the provisions of AB 26 in response to *Matosantos*. The court refers to AB 26 and AB 1484 collectively as the "Dissolution Law." One of the primary goals of the Dissolution Law was to increase the share of property taxes going to cities, counties, schools and other local entities by reallocating to them the tax increment formerly allocated to redevelopment agencies. (See, e.g., *Matosantos*, *supra*, 53 Cal.4th at 241, 250, 263; 2011 Stats., 1st Ex. Sess., ch. 5, § 1.) This reallocation, however, would not happen immediately. Although the Dissolution Law eliminated redevelopment agencies, it did not eliminate their existing enforceable obligations, which would continue to be paid out of tax increment, now simply known as property taxes.[6] (*Matosantos*, *supra*, 53 Cal.4th at 251.)

To implement the Dissolution Law the Legislature established successor agencies to wind down the affairs of the former redevelopment agencies. (§§ 34173, 34177.) Here the City became the RDA's successor agency. The successor agency is required to remit the "unobligated" or "unencumbered"[7] balances of the redevelopment agency's funds to the county auditor-controller for distribution to other local taxing entities.[8] (See generally § 34177, subd.

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[6] Under the Dissolution Law, each county auditor-controller determines the amount of property tax revenue that would have been allocated to the former RDA prior to dissolution, and places that amount into what is known as the Redevelopment Property Tax Trust Fund ("RPTTF"). (§ 34182(c)(1).) The auditor-controller then distributes monies in the RPTTF to the successor agency to pay enforceable obligations. (§ 341823, subd. (a) and (b.)

[7] The Dissolution Law appears to use these two terms interchangeably. (Compare § 34177, subd. (d) [successor agency must remit "unencumbered balances" to county auditor-controller for distribution to taxing entities] with § 34179.5 [successor agency must perform DDR to determine "unobligated balances" available for transfer to taxing entities].)

[8] The local "taxing entities" to whom the former redevelopment agencies' unencumbered funds are distributed include cities, counties, special districts and school districts. (§ 34177, subd. (k).) The unencumbered funds are distributed to these entities in proportion to what each would have

(d); § 34179.5.) This includes any unobligated balance in the Housing Fund. (§ 34177, subd. (d); § 34179.5, subd. (a).)

To determine the unobligated balances available for distribution, the successor agency conducts a due diligence review ("DDR") of the Housing Fund. (See generally § 34179.5.) The DDR must account for all funds transferred from the redevelopment agency to any private party between January 1, 2011, and June 30, 2012. (§ 34179.5(c)(3).) For any transfer not required by an enforceable obligation, the amount transferred is added to the unobligated balances available for distribution to other local entities. (§ 34179.5, subds. (c)(5)(D) and (c)(6).)

The DDR must be approved by DOF, which may adjust the amount available for distribution. (§ 34179.6, subds. (c) and (d).) If DOF determines a transfer is not required by an enforceable obligation, the amount of the transfer is added to the amount available for distribution to other local entities. The successor agency must remit this amount to the county auditor-controller. (§ 34179.6, subd. (f).)

The Challenged DDR Determination

As required by the Dissolution Law, the successor agency conducted a DDR of the Housing Fund. The DDR identified the $7.1 million transferred to Serrano in December 2011. The successor agency determined the transfer was required by an enforceable obligation and thus was not available for distribution to other local taxing entities.

DOF disagreed. According to DOF, "While the statement of intent to issue a loan was executed on March 9, 2011, the actual loan agreement was entered into on November 8, 2011." Because AB 26 prohibited redevelopment agencies from entering into new contracts after June 27, 2011, DOF concluded the RDA lacked authority to enter into the loan agreement. The loan agreement was thus not an enforceable obligation and the $7.1 million was available for distribution to local taxing entities. The City challenges these determinations.[9]

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received absent the redevelopment agency. (§ 34177, subd. (d); § 34188; *Matosantos*, *supra*, 53 Cal.4th at 251.)

[9] As noted, Serrano is a party and also challenges DOF's determination. It is not clear why Serrano is before the court or how the requested relief would affect it. The issue is whether the RDA's commitment to loan Serrano $7.1 is an enforceable obligation under the Dissolution Law. The RDA made the loan. Serrano received and spent the loan proceeds. There is no suggestion DOF is attempting to recoup the loan from Serrano.

When the City failed to remit the $7.1 million demanded to the county auditor-controller, DOF directed the auditor-controller to withhold a portion ($1,566,934) from the property taxes allocated to the successor agency. In response, the City paid the $1,566,934 under protest.[10]

ANALYSIS

1. The loan is an enforceable obligation

The issue is whether the RDA's commitment to loan Serrano $7.1 million is an "enforceable obligation." If it is, the Dissolution Law allows the RDA to follow through with the loan: "Nothing in this part shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to . . . perform its obligations." (§ 34167, subd. (f); see also § 34169, subd. (b) [until successor agencies are authorized, redevelopment agencies "shall . . . [p]erform obligations required pursuant to any enforceable obligations"]; § 34177 ["Successor agencies are required to . . . [c]ontinue to make payments due for enforceable obligations."].)

An enforceable obligation includes "[a]ny legally binding and enforceable agreement or contract." (§ 34167, subd. (d)(5).) The City argues the Commitment Letter is an enforceable contract. DOF argues the Commitment Letter was merely the first of many steps in the parties' negotiations and no contract was formed until the Loan Agreement was executed, by which time the RDA was prohibited from making new contracts.

As explained below, the court finds the RDA's obligation to loan Serrano $7.1 million was not enforceable when the parties executed the Commitment Letter. But it did become enforceable when two conditions to the RDA's obligation were satisfied. Because both conditions were satisfied prior to enactment of AB 26, the loan is an enforceable obligation.

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[10] The City paid this amount under protest ***after*** the petition was filed. The petition thus does not seek an order requiring the return of this money. If the City intends to amend its petition to conform to proof, seeking a writ of mandate requiring the return of this money, the court would be inclined to allow such amendment.

A. The relevant law

The City cites two rules to support its argument.

First, the general rule an enforceable contract is formed when the parties reach agreement on the essential terms and memorialize that agreement – even though the parties intend to execute a formal contract later. (*Schwartz v. Shapiro* (1964) 229 Cal.App.2d 238, 247-48.) As explained by Witkin: "Parties may engage in preliminary negotiations, oral or written, in order to reach an agreement. These negotiations ordinarily result in a binding contract when all of the terms are definitely understood, even though the parties intended that a formal writing embodying these terms was to be executed later." (1 Witkin, Summary of Cal. Law (10th Ed.), Contracts, § 133, p. 172.) [11] The subsequent formal contract is merely evidence of the parties' prior agreement. (*Schwartz, supra*, 229 Cal.App.2d at 248.) "When parties intend that an agreement be binding, the fact that a more formal agreement must be prepared and executed does not alter the validity of the agreement." (*Blix St. Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 48.) "Whether a writing constitutes a final agreement or merely an agreement to make an agreement depends primarily upon the intention of the parties. In the absence of ambiguity this must be determined by a construction of the instrument taken as a whole." (*Beck v. American Health Group Intl., Inc.* (1989) 211 Cal.App.3d 1555, 1562.) The legal effect of the agreement between the RDA and Serrano is a question of law for the court. (*Citizens Utilities Co. v. Wheeler* (1957) 156 Cal.App.2d 423, 432.)

Second, the City cites a rule specific to loans: a loan commitment is binding and enforceable if (1) it contains all material terms and (2) the lender's obligation is unconditional or all conditions have been satisfied. (*Fischer v. First International Bank* (2003) 109 Cal.App.4th 1433, 1447-48; *Peterson Development Co. v. Torrey Pines Bank* (1991) 233 Cal.App.3d 103, 115; see also Miller & Starr, 9 California Real Estate (3rd Ed), § 36:1, pp. 4-5 ["A lender that makes a contractually enforceable commitment to loan money is liable for damages if it breaches the commitment."].)

Resolution of this case turns on three questions. (1) Did the RDA and Serrano intend to be bound by the Commitment Letter? (2) Did the Commitment Letter contain all material terms

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[11] Since, the agreement was to loan more than $100,000, it had to be in writing. (Civ. Code § 1624, subd. (a)(7).)

of the loan? (3) Were all conditions to the RDA's obligation to loan money satisfied? The answer to all three questions is *Yes*.

B. The Commitment Letter evidences an intent to be bound

The Commitment Letter contains several provisions bearing on the issue of ***when*** the parties intended to be bound.

The Commitment Letter opens by stating the RDA "has approved a commitment, to make a loan . . . subject to the terms and conditions set forth in this letter." The Commitment Letter then lists 24 "terms and conditions." Serrano's signature on the Commitment Letter signifies it "agree[s] to all of the terms and conditions set forth in this letter."

The Commitment Letter provides for the subsequent preparation of a detailed Loan Agreement: "This letter is not intended to describe all of the requirements, terms, conditions and documents necessary for the Agency loan. A Loan Agreement including the form of promissory note, deed of trust and related documents, will be prepared, and is subject to execution by Borrower prior to its consideration by the governing body of the Agency. The final form of the Loan Agreement approved by Borrower shall be subject to the discretionary approval of the Agency and shall include all provisions and attachments customarily included in Agency loan agreements, including but not limited to conditions precedent to the disbursement of the Agency Loan."

The court finds this language demonstrates the parties intended to be bound once Serrano agreed to all of the terms and conditions of the loan − before execution of the Loan Agreement itself.

The Commitment Letter uses the present tense to describe the RDA's obligation – the RDA "has approved a commitment." (Comm. Ltr., p. 1.) This suggests a present intent to be bound.

The Commitment Letter also specifies the terms and conditions on which the RDA will make the loan. By signing the Commitment Letter, Serrano accepted all those terms and conditions: Serrano "hereby acknowledge[s] and agree[s] to all of the terms and conditions set forth in this letter." (Comm. Ltr., p. 6.) This language again evidences an intent to be bound once Serrano agreed to all of the RDA's terms and conditions. In the language of contract

formation, the Commitment Letter was an offer by the RDA. Serrano accepted the RDA's offer when it agreed to all of the terms and conditions of the offer. Once Serrano accepted the RDA's offer, a contract was formed. (See *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 59 ["creation of a valid contract requires mutual assent ordinarily evidenced by an offer and acceptance"].)

Although the Commitment Letter states a Loan Agreement and related documents were to be prepared, this does not suggest the parties intended to be bound upon execution of the Loan Agreement. Instead, the subsequent Loan Agreement would simply memorialize the parties' agreement, supplying any remaining terms. Importantly, the RDA's commitment to make the loan is not conditioned on execution of the Loan Agreement.

As discussed below, the RDA's commitment was expressly conditioned on the Project being awarded tax credits: "this commitment is contingent on the Project being awarded 9% Low Income Housing Tax Credits." (Comm. Ltr., p. 1.) The parties clearly knew how to condition the RDA's commitment on the occurrence of a future event. That they did not condition the RDA's commitment on execution of the Loan Agreement again shows they intended to be bound immediately.

Finally, the Commitment Letter provides the RDA has "discretionary approval" over the "form of the Loan Agreement." (Comm. Ltr., p. 2, ¶ 5.) But the RDA did not retain discretionary approval over whether to make the loan in the first instance. Again the parties' language evidences their intent to be bound. (See, e.g., *Texaco, Inc. v. Pennzoil Co.* (Tex. App. 1987) 729 S.W.2d 768, 789 [contract formed where defendant "agreed in principle" to merge with plaintiff, even though transaction expressly made "subject to execution of a definitive merger agreement"].)

Construing the language of the Commitment Letter as a whole, the court finds it evidences a present intent to be bound – not an intent to be bound upon subsequent execution of the Loan Agreement.

This interpretation of the Commitment Letter is bolstered by the parties' subsequent actions. The same day it sent the Commitment Letter, the RDA appropriated $7.1 million to fulfill the loan. (Laster Decl., Ex. 3, p. 2.) Serrano immediately applied for both the required tax credits and a construction loan. (Bobert Decl., ¶ 21, 22.) By the end of March the City had re-zoned the property from single-family residential to multi-family residential and adopted a

Mitigated Negative Declaration. (Laster Decl., Exs. 7-9.) These actions suggest the RDA, the City and Serrano intended to be bound by the Commitment Letter. As our Supreme Court noted, actions sometimes speak louder than words in contract interpretation because "[w]ords are frequently but an imperfect medium to convey thought and intention." (*Crestview Cemetery Assn. v. Dieden* (1960) 54 Cal.2d 744, 754.) "The acts of the parties under the contract afford one of the most reliable means of arriving at their intention; and, while not conclusive, the construction thus given to a contract by the parties before any controversy has arisen as to its meaning will, when reasonable, be adopted and enforced by the courts." (*Id*. at 753.) The parties' actions here indicate they considered the Commitment Letter binding.

C. The Commitment Letter contains all material terms

The Commitment Letter was only binding if it contains all material terms of the loan. The material terms include the identity of the lender and borrower, the amount of the loan, and the terms of repayment. (*Peterson Development, supra*, 233 Cal.App.3d at 115.)

The Commitment Letter contains all the material terms. It identifies the lender and borrower (the RDA and Serrano); the loan amount ($7,145,234); the subject matter of loan (site acquisition and construction of 63-unit affordable housing complex located at 1820 East Meats Avenue, Orange, California, 92865); repayment terms (repayable over 55 years from share of residual receipts, net sales proceeds and net refinancing proceeds); interest rate (1 percent per year from disbursement date); security for the loan (non-recourse promissory note secured by deed of trust); and certain insurance requirements (RDA to receive at closing a "lender's policy of title insurance, showing the [RDA] deed of trust junior in priority only to deeds of trust to which the [RDA] has agreed to subordinate its interests").

The Commitment Letter also defines other terms by reference to custom and practice, for example: (1) the loan "will be evidenced by a non-recourse promissory note (subject to customary non-recourse carve-outs), and secured by a deed of trust and other customary loan documents"; and (2) Serrano to "obtain and maintain policies of insurance in the form and in the amounts required by the [RDA], not including earthquake insurance, naming the [RDA] as an additional insured and meeting the insurance requirements customarily included in [RDA] loan

agreements." (Comm. Ltr., ¶¶ 10, 23.) Parties are free to establish contract terms by reference to custom and practice. (See *Patel v. Liebermensch* (2008) 45 Cal.4th 344, 349.)

The Commitment Letter thus contains all material terms. DOF does not suggest otherwise.

D. All conditions to the RDA's obligation were satisfied

The Commitment Letter was not binding unless the RDA's obligation to loan the money was unconditional or all conditions were satisfied. (*Fischer, supra*, 109 Cal.App.4th at 1447-48; *Peterson Development Co., supra*, 233 Cal.App.3d at 115.) DOF's primary argument is the RDA's obligation was subject to numerous conditions. This is true, but not dispositive. While the RDA's obligation was conditional, it became binding once all the conditions were satisfied.

The case turns largely on terminology. DOF argues there were several conditions to contract ***formation***; the City argues there was a contract, with conditions to the RDA's ***performance***.[12] This distinction could have been relevant if the conditions were not satisfied until after AB 26 was enacted. However, the distinction is academic here because all conditions here were satisfied before AB 26 was enacted. Thus, whether viewed as conditions to contract formation or conditions to performance, the RDA's obligation to loan Serrano $7.1 million arose prior to AB 26.

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[12] A condition, sometimes called a condition precedent, is "either an act of a party that must be performed or an uncertain event that must happen *before* the contractual right accrues or the contractual duty arises." (*Wm. R. Clarke Corp. v. Safeco Ins. Co.* (1997) 15 Cal. 4th 882, 885 fn.1 [emphasis added]; see also Civ. Code § 1434.) There are two types of conditions precedent – conditions precedent to contract formation and conditions precedent to a party's duty to perform under the contract. (See, e.g., *Jacobs v. Freeman* (1980) 104 Cal.App.3d 177, 189 [noting distinction].) In the first instance, no contract is formed unless and until the condition occurs. In the second instance, a contract is formed, but the parties are not obligated to perform thereunder unless and until the condition occurs.

The Restatement uses the term in the second sense – an act or event which must occur before performance under an existing contract comes due. It does not use the term to refer or uncertain acts or events which are part of the process of contract formation. (Restatement 2nd, Contracts, § 224, cmt. c.) Witkin also appears to use the term primarily in the second sense. He discusses conditions under contract "performance" rather than contract "formation," and describes a condition as an act or event that must occur "before the promisor's duty of performance arises." (Witkin, Summary of Cal. Law (10th Ed.), Contracts, § 776.) A duty of performance only arises if there is a binding contract.

"The existence of a condition precedent normally depends upon the intent of the parties *as determined from the words they have employed* in the contract." (*Pfeifer v. Countrywide Home Loans, Inc.* (2013) 211 Cal. App. 4th 1250, 1267 [emphasis added].) Here, the Commitment Letter states the loan is "contingent upon" Serrano receiving certain tax credits. The loan is "conditioned on" and will "occur only upon" satisfactory completion of environmental review. This language evidences the parties' intent the RDA's obligation to make the loan was subject to two conditions: (1) Serrano receiving certain tax credits; and (2) satisfactory completion of environmental review. (See, e.g., *RC Royal Development & Realty Corp. v. Standard Pacific Corp*. (2009) 177 Cal.App.4th 1410, 1422 [promise made "contingent on" occurrence of certain event likely a condition precedent]; Farnsworth, Contracts (2nd Ed. 1990), § 8.2, p. 565 [language like "if," "on condition that," "provided that," and "in the event that" suggest conditions]; see also *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 124 [satisfaction of all CEQA requirements condition precedent to loan].) If either condition failed, the RDA would be under no obligation to loan the money. (See *1231 Euclid Homeowners Assn. v. State Farm Fire & Casualty Co*. (2006) 135 Cal.App.4th 1008, 1020-21.) However, both conditions were satisfied prior to enactment of AB.

DOF argues there were other conditions to the formation of a binding contract. This confuses contract terms with true conditions. (See Restatement 2d, Contracts, § 224 [criticizing use of term "condition" to "broadly refer to any term in an agreement (i.e., 'standard conditions of sale')."].) For example, the Commitment Letter states Serrano "shall prepare and submit a Sources and Uses Project Budget" and "shall obtain all land use entitlements, approvals and permits necessary for the construction of the Project." DOF argues preparing a budget and obtaining land use entitlements are conditions precedent to contract formation. No contract could arise until Serrano prepared a budget and obtained the entitlements. Not so. The parties' use of the word "shall" demonstrates preparing a Budget and obtaining land use entitlements were contract requirements imposed on Serrano, not conditions precedent to contract formation. (See, e.g., 1 Witkin, Summary of California Law, Contracts, § 778 [distinguishing covenants and conditions]; see also *Rubin v. Fuchs* (1969) 1 Cal.3d 50, 53 ["The rule is that provisions of a contract will not be construed as conditions precedent in the absence of language plainly requiring such construction"]; *Frankel v. Board of Dental Examiners* (1996) 46 Cal.App.4th 534, 550 [conditions precedent "not favored in the law"].)

DOF offers two alternative additional arguments: First, even if the RDA was obligated to make the loan prior to enactment of AB 26, the RDA was excused from performing that obligation with AB 26. Second, the RDA's obligation did not survive the enactment of AB 26, which eliminated the RDA's ability to take steps necessary to fund the loan. Neither argument persuades. AB 26 prohibited the RDA from making new loans or entering into new agreements. (§ 34163.) But if an existing enforceable obligation required the RDA to make the loan, the RDA could take steps after enactment of AB 26 to fulfill its obligation. (§§ 34167, subd. (f), 34169, subd. (b).) Under DOF's argument, only fully performed contracts would survive the Dissolution Law. However, the Legislature directed that existing obligations would continue to be honored. (§ 34169; see also *Matosantos, supra*, 53 Cal.4th at 250 ["[e]xisting obligations are unaffected" by Dissolution Law] and 263 [noting "serious impairment of contract questions" would arise if entity with "current contractual and other obligations" were required to dissolve instantly].) The two conditions to the RDA's obligation were satisfied prior to enactment of AB 26 which thereafter prohibited the RDA from entering into new loan agreements.

The RDA's agreement to loan Serrano $7.1 was an enforceable obligation.

2. Remaining Issues

Because the court concludes the loan is an enforceable obligation, it need not address the City's remaining arguments.

DOF makes one additional argument. The petition should be denied because the City failed to join indispensable parties – the other local taxing entities that would receive the $7.1 million. The court is not persuaded.

A person is necessary and must be joined if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations. (Code Civ. Proc. § 389, subd. (a).) DOF argues the other local taxing entities are necessary parties because they have an interest in the $7.1 million. Perhaps. But the taxing entities' interests will not be impaired as a practical matter if they are not joined. "A party's

ability to protect its interest is not impaired or impeded as a practical matter where a joined party has the same interest in the litigation." (*Deltakeeper v. Oakdale Irrigation Dist.* (2001) 94 Cal.App.4th 1092, 1102.) DOF and the other local taxing entities have the same interest. There is thus no practical impairment of the taxing entities interests.

CONCLUSION

For the foregoing reasons, the petition is granted. DOF is ordered to rescind its determination the Loan Commitment is not an enforceable obligation.[13]

The tentative ruling shall become the court's final ruling and statement of decision unless a party wishing to be heard so advises the clerk of this department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear. In the event this tentative ruling becomes the final ruling of the court, counsel for the prevailing party is directed to prepare a formal judgment and writ, incorporating this ruling as an exhibit; submit it to opposing counsel for approval as to form; and thereafter submit it to the court for signature and entry of judgment in accordance with Rule of Court 3.1312.

The court prefers that any party intending to participate at the hearing be present in court. Any party who wishes to appear by telephone must contact the court clerk by 4:00 p.m. the court day before the hearing. (See Cal. Rule Court, Rule 3,670; Sac. County Superior Court Local Rule 2.04.)

In the event that a hearing is requested, oral argument shall be limited to no more than thirty (30) minutes per side.

If a hearing is requested, any party desiring an official record of the proceeding shall make arrangement for reporting services with the clerk of the department not later than 4:30 p.m. on the day before the hearing. The fee is $30.00 for civil proceedings lasting under one hour,

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[13] The City's related claim for declaratory relief (i.e., seeking a judicial declaration that the Commitment Letter is an enforceable obligation) challenges DOF's decision interpreting and applying the Dissolution Law. Declaratory relief is not appropriate to review an administrative decision. (*Walter Leimert Co. v. Calif. Coastal Commn.* (1983) 149 Cal.App.3d 222, 230-231.) The related claim for declaratory relief is thus denied. The claim for injunctive relief duplicates the claim for mandate relief and thus appears unnecessary.

and $239.00 per half day of proceedings lasting more than one hour. (Local Rule 9.06(B) and Gov't. Code § 68086.) Payment is due at the time of the hearing.