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April 18, 2023

Los Angeles City Council
c/ o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**PLUM COMMITTEE CONSIDERATION ITEMS FOR THE PROPOSED HOLLYWOOD
COMMUNITY PLAN; CF 21-0934; CASE NO. CPC-2016-1450-CPU; ENV-2016-1451-EIR**

This report includes four sections. It includes a discussion of topics that were elevated by the City Planning Commission (CPC) during its March 18, 2021 meeting, with a request by CPC to provide further study and recommendations to the Planning and Land Use Management (PLUM) Committee, and a discussion of additional topics that were raised by Council District 4-Raman, Council District 5-Young-Yaroslavsky, Council District 13-Soto-Martinez and the Cultural Heritage Commission (CHC) through various letters and discussions, during and following CPC's March 2021 meeting.

This report also includes for City Council consideration optional modifications (Council Modifications) to CPC's recommendations on the proposed ordinances of the Hollywood Community Plan Update that were transmitted to the City Council on August 18, 2021. Optional Council Modifications are provided by topic in the subsections of this report and are indicated under the sub-heading "Optional Council Modifications- [Subject Matter]." Additions to a proposed ordinance are indicated by underlined text and deletions to a proposed ordinance are indicated by ~~strikethrough~~.

This report also includes supplemental environmental analysis to the Final EIR to support that the optional modifications, changes in circumstances, and/or new information are not "significant new information" as defined by CEQA Guidelines Section 15088.5.

Finally, this report includes supplemental recommended findings to support that the April 2, 2014 amendment to the Framework Element is supported in the law and does not require repeal or amendment, and that the Hollywood Community Plan Update does not need to include policies or programs to monitor growth and infrastructure pursuant to Framework Element policies or programs.

Table of Contents

I. CPC Directed Items	4
A. Floor Area Ratio (FAR) Base/Bonus and Affordability Set Aside Feasibility	4
B. Feasibility of Publicly Accessible Open Amenity Space (PAOAS) Incentives	4
C. Housing Stability and Tenant Protections	5
II. Additional Items for Consideration by the PLUM Committee	5
A. Optional Council Modifications - Proposed Zone Changes	6
B. Optional Council Modifications - Proposed Hollywood CPIO District	7
III. Supplemental Analysis for the Final Environmental Impact Report (FEIR)	14
A. Senate Bill (SB) 9	14
B. Baseline Population	17
C. Wildlife Ordinance	22
D. Santa Monica Mountains Conservancy (SMMC) Resolution and SMMC's Habitat Linkage Maps	23
E. California Black Walnut Trees	25
F. Non-special Status Species	26
G. Biological Resources Mitigation Measures	27
IV. Framework Element Reconsideration and Supplemental Findings	30

I. CPC Directed Items

The City Planning Commission (CPC) at its meeting on March 18, 2021 voted 5-2 (5 in favor and 2 in opposition) to recommend approval of the Proposed Plan, with a few modifications. The following section describes the specific recommendations of the CPC and the findings from additional studies that were requested by the CPC.

A. Floor Area Ratio (FAR) Base/Bonus and Affordability Set Aside Feasibility

At the March 18, 2021, CPC meeting, Commissioners directed the Department of City Planning to study alternate affordable housing and public open space requirements for the proposed Hollywood Community Plan Implementation Overlay (CPIO) District's subareas. HR&A Advisors, Inc. (HR&A) was retained to address this topic, and their memo, [Targeted Financial Feasibility Analysis for the Hollywood CPIO District](#), is provided for the consideration of the PLUM Committee, and included in Council File CF# [21-0934](#)).

The study assessed the feasibility of the base and bonus FAR and the percentage of affordable housing set asides included in CPC's Proposed CPIO District. As recommended by the CPC, the Regional Center would permit a base 4.0:1 Floor Area Ratio (FAR) for RC1B Subarea, and additional residential density and FAR would be permitted if a set percentage of Restricted Affordable Units are provided at the affordability percentages consistent with Transit Oriented Communities (TOC) Guidelines Tier 3 set-asides. The TOC Tier 3 minimum affordability percentages are: 10% Extremely Low Income, 14% Very Low Income, or 23% Lower Income.

Along the CPIO's Corridors subareas, the CPC recommended TOC Tier 3 affordability percentages in the Corridor 2 Subarea that includes commercial corridors such as Sunset Boulevard west of La Brea Avenue, and portions of Melrose Avenue, La Cienega Boulevard, Santa Monica Boulevard, Vine Street, and Western Avenue. HR&A's study was compiled in a memo that concluded that while higher-density multi-family rental prototypes in the Regional Center are more likely to feasibly support the lower Transit Oriented Communities Guidelines (TOC) Tier 1 set-asides, the medium density prototypes in the Corridors 2 Subarea, which is within a stronger market area, can feasibly support the higher percentage of set asides included in TOC Tier 4. The TOC Tier 4 minimum affordability percentages are: 11% Extremely Low Income, 15% Very Low Income, or 25% Lower Income

B. Feasibility of Publicly Accessible Open Amenity Space (PAOAS) Incentives

CPC's Recommended Hollywood CPIO District establishes incentives for non-residential projects that provide publicly accessible outdoor amenity spaces within the Regional Center subareas. The outdoor spaces could include public plazas, pocket parks, and passive and active recreation areas that are accessible for use by the general public daily at least during the hours between

sunrise and sunset. The Proposed CPIO District requires a minimum of 15% of a project site lot area be designated for outdoor amenity space to qualify for incentives. HR&A's study concluded the Regional Center subareas can support open space requirements as proposed in the Hollywood CPIO.

C. Housing Stability and Tenant Protections

At the March 18, 2021, CPC meeting there was robust discussion on the topics of housing stability and tenant protections and there was interest for Los Angeles City Planning to further analyze the following topics: extending the covenant length from 55 years to 99 years; and requiring a one-to-one replacement of RSO units for projects that housing projects that are using the Hollywood CPIO's Community Benefits Program.

The memo concluded that requiring a 99-year affordability covenant for mixed-income projects would be financially feasible, but that a 99-year affordability covenant for 100 percent affordable housing projects appears to be more challenging to implement, in part because of the large number of impacted parties in each transaction, each with a different set of regulations and interests. Therefore, implementing longer-term affordability covenants would require substantial coordination across public entities, with Low Income Housing Tax Credit developers and with third-party funders to avoid confusion or delay development of much needed affordable housing. HR&A concluded that any policy changes should be adopted on a citywide basis, in coordination with the City's Housing Department, to provide clarity and consistency for developers.

The memo also concluded that the feasibility of replacement requirements is highly sensitive to the number of existing units needing to be replaced. Replacement requirements for 100 percent deed-restriction units generally have minor financial feasibility implications compared to the existing 69 percent replacement requirement. The memo determined that it may be financially feasible in stronger market areas for podium projects but are unlikely to be feasible for weaker market areas or for high-rise prototypes where the number of units to be replaced exceeds TOC set-aside requirements. The study also concluded that requirements to count replacement units in addition to those required for TOC set-aside units may impact financial feasibility.

II. Additional Items for Consideration by the PLUM Committee

The following section includes discussions and optional Council Modifications to CPC's Recommendations for consideration by the PLUM Committee. The following sections represent items that were raised to City Planning staff by Council District 4-Raman, Council District 5-Young-Yaroslavsky, Council District 13-Soto-Martinez, and the Cultural Heritage Commission (CHC) through various letters and discussions.

The optional modifications to the Proposed Plan, described below, were considered for their potential to cause additional environmental impacts beyond those analyzed in the Proposed Plan's Draft Environmental Impact Report (EIR). The modifications do not result in "significant

new information,” as defined by Guidelines Section 15088.5, requiring recirculation of the Draft EIR. Specifically, none of the modifications result in a new significant impact or a substantial increase in the severity of an environmental impact analyzed in the Draft EIR.

A. Optional Council Modifications - Proposed Zone Changes

Modifications to Subarea (SA) 13:1 on Hillhurst Avenue generally between Los Feliz Boulevard and Franklin Avenue

The existing zoning for this area, which is part of Subarea 13:1 of the Proposed Plan, is C4-1D, and the “D” limits the Floor Area Ratio to 1:1. In the CPC Staff Recommendation Report, LACP recommended a zone change to [Q]C4-1, where the [Q] specified that “no building or structure shall exceed a height of 36 feet above grade.” At the March 18, 2021 meeting, CPC recommended the following: remove the proposed height limit on Hillhurst Avenue with a suggestion that City Council insert a height limit that is more conducive to achieving affordable housing on site under a base and bonus system.

The following Option 1 would require modifications to CPC’s recommended Zone Changes included as Exhibit D of the PLUM Transmittal and Exhibit E (Change Area Matrices and Mapping) of the PLUM Transmittal.

Option 1: Change the recommended [Q] condition from a 36-foot building height limit to a 40-foot height limit.

Modifications to Subarea (SA) 38 on La Cienega Boulevard generally between Melrose Place and Romaine Street

Option 2, which would change the proposed zoning for Subarea 38 from [Q]C4-2D-CPIO to [Q]C2-2D-CPIO to allow for greater flexibility of permitted uses, would require modifications to CPC’s recommended Zone Changes included as Exhibit D of the PLUM Transmittal and Exhibit E (Change Area Matrices and Mapping) of the PLUM Transmittal.

Option 2: Change the zoning for Subarea 38 from [Q]C4-2D-CPIO to [Q]C2-2D-CPIO.

Modifications to the Proposed FAR in the Regional Center Subarea RC1B

Option 3: Modify Exhibit E (Change Area Matrices and Mapping) of the PLUM Transmittal to change the Proposed FAR in the Hollywood CPIO’s RC1B Subarea from 4:1 to 3:1 FAR.

B. Optional Council Modifications - Proposed Hollywood CPIO District

Optional Modifications to Exhibit F of PLUM Transmittal

Inclusion of Cultural Heritage Commission's Recommendations

Option 4: Modify the definition of "Eligible Resources" in section I-4 (Definitions) to read as follows (delete text ~~struckthrough~~):

Eligible Resource - A building, structure, object, site, landscape, natural feature, or historic district identified as eligible for listing either individually ~~on the National Register of Historic Places or on the California Register of Historic Resources~~, or as a contributor to a historic district under a local, state, or federal designation program through Survey LA (the Los Angeles Historic Resources Survey), the January 2020 Historic Resources Survey Report prepared by CRA-LA Designated Local Authority, or any subsequent historic resource survey completed by a person meeting the Secretary of the Interior's Professional Qualification Standards for Historic Preservation and accepted as complete by the Director, in consultation with the Office of Historic Resources. This term does not include a non-contributor to an eligible or designated historic district.

Include Enhanced Demolition Review Procedures for National Register District

Option 5: Add language to Section I-6 (Review Procedures) to provide further protections for contributing historic resources by applying expanded demolition review provisions, specifically under Section I-6 C 7 (b) which addresses demolition of eligible historic resources. Modify Section I-6 C 7 (b) to read as follows (new language underlined):

(b) **Demolitions.** For any Project that involves the demolition of an Eligible Historic Resource, no CPIO Approval shall be issued until one of the following occurs:

(i) The Director, in consultation with the Office of Historic Resources, determines, based upon a Phase 1 Historic Resource Assessment and substantial evidence, that the Eligible Historic Resource is not an historical resource, as defined by Public Resources Code Section 21084.1; or (ii) Environmental review in compliance with CEQA was completed on the Project, including if necessary, the adoption of a statement of overriding considerations.

- a) No Director's Determination shall be issued for Demolition or removal of any building or structure, within a National Register Historic District, or California Register of Historical Places, that is designated as a Contributing Element, or Altered Contributing Element, and the application shall be denied unless the Owner can demonstrate to the Director that the owner would be deprived of all economically viable use of the property. In making its determination, the Director shall consider any evidence presented concerning the following:

- i) An opinion regarding the structural soundness of the structure and its suitability for continued use, renovation, Restoration or Rehabilitation from a licensed engineer or architect who meets the Secretary of the Interior's Professional Qualification Standards as established by the Code of Federal Regulation, 36 CFR Part 61. This opinion shall be based on the Secretary of the Interior's Standards for Architectural and Engineering Documentation with Guidelines;
- ii) An estimate of the cost of the proposed, demolition, and replacement project and an estimate of the cost that would be incurred to execute a Secretary of the Interior's Standards for Rehabilitation alternative to the project, as identified in a Project Environmental Impact Report (EIR), or in the absence of an EIR, when appropriate under CEQA, as identified by the Director of Planning in consultation with the Cultural Heritage Commission or its designee.;
- iii) An estimate of the market value of the property in its current condition; after completion of the proposed Demolition and replacement project; and after any expenditure necessary to execute a Secretary of the Interior's Standards for Rehabilitation alternative to the project, as identified in a Project Environmental Impact Report (EIR), or in the absence of an EIR, when appropriate under CEQA, as identified by the Director of Planning in consultation with the Cultural Heritage Commission or its designee;
- iv) An estimate from architects, developers, real estate consultants, appraisers, or other real estate professionals experienced in Rehabilitation as to the economic feasibility of Restoration, renovation or Rehabilitation of any existing structure or objects. This shall include tax incentives and any special funding sources, or government incentives which may be available.

Reinforce Non-residential Public Benefit Incentives

Option 6: Provide an increased Site Plan Review threshold for projects that provide Publicly Accessible Open Space, Transfer of Development Rights, or an increased Affordable Housing Linkage Fee payment by amending Section I-5 M and Section II-4. Modify Section I-5 M to read as follows (new language underlined):

M. For Projects using the affordable housing incentives as outlined in the Hollywood CPIO, review pursuant to the Site Plan Review regulations in LAMC Section 16.05 is not required for Projects within the Regional Center (RC1A, RC1B, RC2, RC3) subareas that create or result in a total of 200 or less dwelling units; or Projects within the Multi-Family Residential subareas (MF1, MF2, or MF3) that create or result in a total of 100 dwelling units or less. Projects shall be subject to the regulations and environmental standards as set forth in the CPIO.

For Projects using the Transfer of Development Rights procedures, Publicly Accessible Outdoor Amenity Space incentives, or increased linkage fee payment, as outlined in the Hollywood CPIO, review pursuant to the Site Plan Review regulations in LAMC Section 16.05 is not required for Projects within the Regional Center (RC1A, RC1B, RC2, RC3)

subareas that create or result in a total of 200,000 square feet or less of new non-residential.

Modify Section II-4 to read as follows (new language underlined):

Site Plan Review Threshold: For a Project in this Subarea, participating in the Hollywood CPIO Community Benefits Program that meets the minimum requirements to be eligible for a benefit under this Subarea, the threshold for site plan review for a development project under LAMC Section 16.05 C.1. (a) or (b) will be increased from 50 dwelling units to 200 dwelling units and from 50,000 square feet to 200,000 square feet for non-residential projects.

Option 7: Allow increased Affordable Housing Linkage Fee (AHLF) payment to achieve bonus FAR in the Regional Center subareas. Amend Section II-4 of the CPIO to add a new subsection “E” to state that non-residential projects can exceed the base FAR up to the maximum FAR specified in the Regional Center Subarea through increased Affordable Housing Linkage Fee payment into the Affordable Housing Trust Fund. The fee amount will be consistent with the high feasible fee in the High Market Zone as noted in the Los Angeles Affordable Housing Linkage Fee Nexus Study with additional accounting for inflation to achieve bonus FAR.

Increase the Duration of Affordable Housing Covenants for Mixed-Income Projects

Option 8: Modify the term for which housing units would be established as affordable within a mixed-income development that is receiving incentives from 55 years to 99 years. Modify Section I-8 B.2 (Records and Agreements) to read as follows (new language underlined):

2. Records and Agreements

Prior to issuance of a Building Permit for any CPIO Affordable Housing Project, the following shall apply:

- (a) For CPIO Affordable Housing Projects qualifying for a CPIO incentive that contains rental housing for Extremely Low, Very Low, or Lower Income households, a covenant acceptable to the Housing and Community Investment Department (HCIDLA) shall be recorded with the Los Angeles County Recorder, guaranteeing that the affordability criteria will be observed for at least 99 years or longer; except for 55 years from the issuance of the Certificate of Occupancy or a longer period of time if required by the construction or mortgage financing assistance program, government requirement, mortgage assistance program, or rental subsidy program.

- 1) A housing development project in which one hundred percent of all dwelling units, exclusive of a manager's unit or units, are restricted affordable units, which are subject to a recorded affordability restriction of at least 55 years or utilize public

subsidies that are tied to a specified covenant period. At minimum, all restricted affordable units in the housing development project shall be covenanted for at least 55 years.

2) A mixed-income housing development project utilizing public subsidies that are tied to a specified covenant period. At minimum, all restricted affordable units in the housing development project shall be covenanted for at least 55 years.

Housing Replacement Requirements

Option 9: Modify the housing replacement requirements of Section I-8 B.1(c) to read as follows:

(c) Housing Replacement. Projects that qualify as a CPIO Affordable Housing Project must meet any applicable housing replacement requirements of California Government Code Section 65915(c)(3), with the requirement that units occupied by persons or families above low-income be replaced according to Sec. 65915(c)(3)(C)(i) if the income level is not known or if the income is above low-income, or by persons or families of the same restricted affordable income level as existing tenants if the income is known, as amended from time to time, as verified by the Housing and Community Investment Department (HCIDLA) prior to the issuance of any building permit. Replacement housing units for CPIO Affordable Housing Projects shall not required per this section may also count towards other On-Site Restricted Affordable Units requirements.

Incorporate Tenant Protections Under SB330/SB8

Option 10: Update Section I-8 to incorporate additional provisions under SB330/SB8 such as relocation, right to return, and right of first refusal.

Recalibrate the Base FAR in Regional Center Subarea RC1B

Option 11: Modify the base FAR in the RC1B Subarea from 4:1 FAR to 3:1 FAR. Reflect these changes in Figure II-2: Regional Center FAR Base to change the areas shown with the base 4:1 FAR to a base of 3:1 FAR.

Recalibrate the Affordability Set-aside for Regional Center Base/Bonus

Option 12: Modify the minimum number of on-site restricted affordable units required in Section II-4.A of the CPIO to align with TOC Tier 4 affordability percentages (currently aligned to Tier 3). Modify Section II-4 A.1(a) to read as follows (new language underlined and deleted language ~~struck through~~):

(a) **Minimum Number of On-Site Restricted Affordable Units.** CPIO Affordable Housing Projects shall provide On-Site Restricted Affordable Units at one of the following

minimum percentages, depending on income category. The minimum number of On-Site Restricted Affordable Units shall be based on the minimum percentages described below, and calculated upon the total number of units in the final project. Any number resulting in a fraction shall be rounded up to the next whole number:

- ~~40~~ 11% for Extremely Low Income Households
- ~~44~~ 15% for Very Low Income Households
- ~~23~~ 25% for Lower Income Households

Recalibrate the Affordability Set-aside for Corridors Base/Bonus

Option 13: Modify the minimum number of on-site restricted affordable units required in Section III-2.A of the CPIO to align with TOC Tier 4 affordability percentages. Modify Section III-2 A.1(a) to read as follows (new language underlined):

- (b) **Minimum Number of On-Site Restricted Affordable Units.** CPIO Affordable Housing Projects shall provide On-Site Restricted Affordable Units at one of the following minimum percentages, depending on income category, and based on the applicable Corridor Subarea. The minimum number of On-Site Restricted Affordable Units shall be based on the minimum percentages described below, and calculated upon the total number of units in the final project. Any number resulting in a fraction shall be rounded up to the next whole number.

- i. Corridor 1 Subarea:
 - 11% for Extremely Low Income Households
 - 15% for Very Low Income Households
 - 25% for Lower Income Households
- ii. Corridor 2 Subarea
 - ~~40~~11% for Extremely Low Income Households
 - ~~44~~15% for Very Low Income Households
 - ~~23~~25% for Lower Income Households

Modify Recommendation to Section III-2 Corridors Subarea Community Benefits Program

Option 14: Add language to Section III-2.A.3(c)(vii) (Height) to provide further clarification so buildings that have a 30-foot base height and 52-foot bonus height do not exceed a total of 4 stories. Modify Section III-2.A.3(c)(vii) to read as follows (new language underlined):

(b) Height - The applicable Height Increase and Transitional height standards below count as one incentive. The allowable increase in height shall be applicable to a CPIO Affordable Housing project over the entire Project site regardless of the number of underlying height limits.

- Height Increase - In any zone in which height or number of stories is limited, the following height increase applies:
 - Projects located in the Corridor 1 Subarea: Not applicable.
 - Projects located in the Corridor 2 Subarea: Up to 2 stories or 22 feet height increase. For sites that have a 30-foot height limit, an additional 2 stories or 22 feet height increase is permitted as long as the total building height does not exceed 4 stories.

Modifications for Additional Flexibility for Commercial Tenant Sizes and Transparency Requirements for Corridor 2 Subarea (Melrose Avenue between Fairfax Avenue and Highland Avenue)

Option 15: For properties on Melrose Avenue between Fairfax Avenue and Highland Avenue within corridor 2 Subarea, allow murals or similar artwork that are compliant with the City's Mural Ordinance along a ground floor building to count towards a portion of the transparency requirement. Modify Section III-3.F to read as follows (new language underlined and deleted language ~~struck through~~):

- F. With the exception of portions of facades occupied with Ground Floor residential dwelling units and for properties along Melrose Avenue between Fairfax Avenue and Highland Avenue that provide murals or similar artwork that comply with the City's procedures and provisions regarding murals and signs, along the Ground Floor, all building facades located along street frontages shall comply with the below:
 - 1. Transparent glazing shall occupy a minimum of 50 percent of the Ground floor façade, and a minimum of 30 percent of each of the upper story facades located along street frontages.
 - a. Exception: For properties along Melrose Avenue between Fairfax Avenue and Highland Avenue that provide murals or similar artwork that comply with the City's procedures and provisions regarding murals and signs, along the Ground Floor building façade, transparent glazing shall occupy a minimum of 30 percent of the Ground Floor façade.

Option 16: For properties on Melrose Avenue between Fairfax Avenue and Highland Avenue within corridor 2 Subarea, exempt certain commercial uses from the maximum tenant size limitation of 5,000 square feet. Modify Section III-3.N to read as follows (new language underlined and deleted language ~~struck through~~):

- N. Tenant Size. Properties in the Corridor 2 Subarea located on Melrose Avenue between Fairfax Avenue and Highland Avenue are subject to the following limitations, with the exception of Art Galleries, Furniture and Rug Stores, and Secondhand Clothing Stores:

Additional Regulations for Hotels

Option 17: Require a Conditional Use Permit for new hotels within the CPIO District. Modify Section I-5L to read as follows (new language underlined and deleted language ~~struckthrough~~):

- L. Conditional Use Permit for Hotels.** Hotel projects ~~that require the removal of residential units in the Regional Center subareas (RC1A, RC1B, RC2, RC3)~~ are required to obtain a Conditional Use Permit complying with the procedures in LAMC Section 12.24W.

Option 18: Prohibit new hotels in Regional Center Subareas that remove existing residential units. Modify Sections II-1.A and II-2.C to read as follows (new language underlined and deleted language ~~struckthrough~~):

Section II-1. LAND USE REGULATIONS

- A. **Use.** Any new use or change of use shall be subject to the use regulations set forth by the underlying zoning and the LAMC except where modified herein.
1. Outdoor dining above the ground floor level of a building is prohibited. This includes outdoor dining for restaurants, bars, nightclubs, cafes, eating establishments, or refreshment stands with incidental dining terraces or outdoor eating patios above the ground floor. This restriction does not apply to uses conducted wholly completely enclosed building.
 2. New hotels that require the removal of residential units in the Regional Center subareas (RC1A, RC1b, RC2, RC3) are prohibited.

Section II-2. CONDITIONAL USE PERMIT

- ~~C. New hotels in Regional Center Subareas RC1A and RC1B, RC2, or RC3 that remove existing residential units shall first obtain a conditional use permit pursuant to LAMC 12.24 W.~~

III. Supplemental Analysis for the Final Environmental Impact Report (FEIR)

The following section is intended to provide further clarification, information, and analysis to support the City's certification of the Hollywood Community Plan Update EIR, and adoption of EIR findings, a statement of overriding considerations, and a mitigation and monitoring program. Among other things, this supplemental analysis includes additional discussion and analysis of state land use legislation, adopted City resolutions and ordinances, and updated data, all enacted, adopted, or released since the FEIR for the Hollywood Community Plan Update was published in August 2021.

A. Senate Bill (SB) 9

SB 9, which went into effect on January 1, 2022, aims to increase housing production in areas zoned for single-family housing. The state legislation provides for a ministerial process, not subject to environmental review under CEQA, to allow for two-unit developments and the subdivision of existing single-family zoned lots into two new parcels, also known as an Urban Lot Split. SB 9 requires that new units are a minimum of 800 square feet. Projects using this streamlined process may be subject to objective standards and specific eligibility criteria. For a parcel to be eligible for SB 9, they must be in a single-family zone and not within a historic district (HPOZ) or within a site that is designated as a Historic Cultural Monument (HCM). Under the provisions of SB 9, the project cannot demolish or alter protected units, such as affordable housing and units subject to the Rent Stabilization Ordinance (RSO). There are environmental standards that must be verified to determine eligibility for SB 9, such as the development cannot be located in farmland, wetlands, hazardous waste sites, flood hazard zones, conservation areas, and lands under a conservation easement. For parcels in Very High Fire Hazard Severity Zones or earthquake fault zones, certain standards must be met to verify eligibility for SB 9. For parcels in certain hillside, coastal, or other sensitive areas further review is also necessary to determine if the area is identified as having habitat for protected species. The City's Protected Areas for Wildlife (PAWs), County-designated Significant Ecological Areas (SEAs), and US Fish and Wildlife Service Critical Habitat areas are identified as having habitat for protected species, and therefore are excluded from SB 9 eligibility.

Within the Hollywood CPA, there are approximately 17,000 parcels with a single-family land use designation, with approximately 90 percent of those triggering additional eligibility requirements, such as being located within a Very High Fire Hazard Severity Zone or Alquist-Priolo Earthquake Zone, or being excluded from eligibility based on site conditions, such as being located with the PAWs or in a designated SEA. Parcels that currently have four or more units are also excluded from further consideration as they already exceed the four units allowed under SB 9. Analyzing all of the potential 17,000 parcels indicates that approximately 1,800 single-family parcels may be eligible to use SB 9 without additional eligibility requirements. Of these parcels, approximately 300 parcels would not foreseeably utilize SB 9 because they are currently developed with three

units, duplexes or two units, or zero units but developed with parking lots for nearby businesses. The remainder 1,500 approximate parcels with one existing residential unit were further evaluated on a qualitative basis using aerial images and physical site features to assess SB 9 feasibility.

The qualitative analysis focused on parcels with one unit, based on the assumption that the parcels used for parking, or have two or three units, are less likely to redevelop. The analysis examined whether the identified areas would be more likely or less likely to redevelop based on local context and physical factors: parcel size, existing structures, building footprint location, lot coverage, and setbacks.

The analysis assumed that areas with parcels with several of these features would be less likely to redevelop or participate in urban lot splits:

- Smaller or average lot square footage
- Existing houses that appear to occupy more than fifty percent of the lot coverage including front setbacks
- Houses built in the center of the parcel
- Larger front yard setbacks
- Smaller side yard setbacks
- Pools or other backyard accessory structures

These factors, such as small parcel size, house location in the center of the parcel, larger front yard setbacks and small side yard setbacks, can limit the development potential due to lack of physical space to build a second unit or achieve lot split and meet various development standards, unless significant investments are made for alterations or demolitions¹. Conversely, areas with parcels with above average lot square footage, existing houses built within the front half of the property (including setbacks), smaller front yard setbacks, and adequate side yards were assumed to be more likely to use SB 9. These factors can potentially make redevelopment more feasible by having space in the back half of the parcel to add a second unit, or achieve a lot split, and the space for driveways to provide access to the public right-of-way.

The City identified and qualitatively evaluated 14 single-family areas with parcels that have one existing residential unit, which were grouped together based on location and neighborhood similarities observed from aerial imagery from the City's Zone Information and Map Access System (ZIMAS)². Most of the areas are in the southwest part of the Hollywood CPA along Melrose Avenue and south of Santa Monica Boulevard, while a few are located on the east side in Los Feliz and Silver Lake, and one is in the central part of the Plan Area.

¹ Note: The year that a house was built (year built) was also a factor that was considered but given that most single-family houses in the Hollywood Community Plan Area were built more than 30 years ago, year built was excluded.

² City of Los Angeles. Zone Information and Map Access System. <http://zimas.lacity.org/>. Accessed March 17, 2023.

Of the 14 identified areas, two areas could be more likely for potential redevelopment and urban lot splits. The first area is on the east side of Orlando Avenue, between Santa Monica Boulevard and Waring Avenue. In this area, the square footage of the parcels is above average (generally between 12,000 and 13,000 square feet) and some of the existing houses are located at the front of the lot. The single-family average parcel size eligible for SB 9 in the Hollywood CPA is typically between 5,000 square feet and 7,000 square feet. The second area is on Vista Street, between Romaine Street and Willoughby Avenue. Redevelopment is also more likely in this area because many of the existing houses appear to be located within the front half of the parcel, front yard setbacks appear to be smaller than average, and the side yards appear to have adequate space for a driveway. The parcel sizes are about average on Vista Street.

The remaining 12 areas in this analysis are less likely to redevelop without significant investments, including alterations and demolitions. Approximately 90 percent of the single-family parcel size in these areas are less than 7,500 square feet and many houses appear to be in the center of the parcel. Many appear to have existing houses that also occupy more than fifty percent of the parcel, including the front yard setbacks. In addition, many of the houses have backyard accessory structures such as pools, detached garages, or sheds. The side yards vary but many are not adequate to allow a driveway for access to the public right-of-way.

Another important factor to consider as part of this analysis is the economic considerations for development and homeowner motivations to preserve single-family units, which is likely to have a significant impact on property owners using SB 9 to build additional housing units. In January 2023, the University of California-Berkeley's Turner Center for Housing Innovation released a report³ that looked at how SB 9 has been implemented in different jurisdictions throughout the state since it was enacted. The report identifies high construction costs, lack of expertise with homebuilding, and restrictions from local regulations as contributing factors that make SB 9 developments infeasible. Within the City of Los Angeles, there have been 211 applications filed for SB 9 units, 38 of which have been approved and 28 filed applications for urban lot splits, none of which have been approved. Within the Hollywood CPA, the potential of SB 9 development is limited since many of the existing single-family zones are in an HPOZ, in a hillside area with habitat for protected species such as the PAWs or are in areas that are subject to environmental standards. As of March 2023, there have not been any approved SB 9 projects in the Hollywood CPA. Similar to the Transit Oriented Communities (TOC) and Accessory Dwelling Unit (ADU) programs, SB 9 is intended to provide augmented mechanisms through which housing could be constructed within the City. While the qualitative analysis of SB 9 in the Hollywood CPA identified single-family residential areas where SB 9 could be used without additional environmental standards or applicable regulations, recent assessments such as the Turner Center's report indicate that it is expected that SB 9 is unlikely to be widely utilized. Based on the case activity and permit data, SB 9 would not necessitate an adjustment to the reasonably expected number of housing units that was analyzed in the EIR.

³ "California's HOME Act Turns One: Data and Insights from the First Year of Senate Bill 9"
<https://turnercenter.berkeley.edu/research-and-policy/sb-9-turns-one-applications/>

B. Baseline Population

Master Response No. 2 (Population, Housing and Employment) of the FEIR (pages 3-13 to 3-22) included a detailed discussion about how the EIR's 2016 Baseline is supported by substantial evidence and the multiple sources of data verification that included the SCAG's 2016-2040 RTP/SCS and the 2020-2045 RTP/SCS.⁴ The FEIR discussed different data sources for the baseline year, including the 2016 Baseline included in the Notice of Preparation (NOP) interpolated from SCAG's 2016-2040 RTP/SCS, and additional data sources that were released during the preparation and after publication of the EIR. This included the Census Bureau's 2016 American Community Survey (ACS) 5-year data and SCAG's 2020-2045 RTP/SCS, which was adopted during the preparation of the FEIR. To summarize the discussion in Master Response 2 of the FEIR, the 2020-2045 RTP/SCS utilized a 2016 estimated population of approximately 203,000 persons for the Hollywood CPA. For comparison, the Hollywood Community Plan EIR used an estimated 206,000 persons from the earlier 2016-2040 RTP/SCS, which is an approximately one percent difference. The Master Response also indicated that the City contemplated that the final 2020 Census (that was not available when the FEIR was prepared) could show a 10,000 or more decrease in population, but such a change would not support changing the baseline because the 2016 baseline was supported during normal conditions and the 2020 Census was taken in the abnormal times of a pandemic and potentially not reliable based on published issues with Census questions.

Since the FEIR was published in August 2021, the 2020 Census and the 2021 ACS were released, which show an estimated population for the Hollywood CPA of 197,000 and 190,000, respectively. For all of the following reasons and those previously stated in Master Response 2 and the entire record, the City finds the 2020 Census and 2021 ACS data do not provide "significant new information" requiring recirculation of the EIR pursuant to CEQA Guidelines Section 15088.5. They also do not support changing the baseline used in the EIR.

As an initial matter, the 2020 Census and 2021 ACS 5-year data do not show the 2016 baseline in the EIR was incorrect. As stated above, the 2020-2045 RTP/SCS and the 2016 ACS 5-year survey showed population data that was within one percent of that used in the Draft EIR, which is within a reasonable margin of error for this type of demographic data collection and population size. Additionally, the 2021 ACS 5-year data is an average between the years 2017 and 2021, and therefore, does not include data from the 2016 baseline year.⁵ Similarly, the 2020 U.S. Census was taken after the 2016 baseline year.

Second, changing the baseline to the 2020 Census and 2021 ACS 5-year data would not provide a more accurate picture of project impacts because:

⁴ The City of Los Angeles is a member agency of the Southern California Association of Governments (SCAG) and participates in reviewing data (both existing conditions and forecasts) prepared by their expert demographers each RTP cycle. SCAG generates TAZ-level data each RTP cycle.

⁵ US Census, American Community Survey 2017-2021 5-Year Data Release; available at, <https://www.census.gov/newsroom/press-kits/2022/acs-5-year.html>

- (1) population data is dynamic and fluctuates over time and this Plan Area with a 20-year plan horizon has been shown to fluctuate widely in the last twenty years⁶,
- (2) the 2020 Census and the 2021 ACS include data collected in 2020 and 2021 during the height of the COVID-19 pandemic, which as discussed in the FEIR Master Response at page 3-17, was a once in a hundred-year world pandemic that resulted in migration shifts in where people lived and that are still not fully understood.
- (3) the 2020 Census has reliability issues based on the impact of the Trump Administration's widely publicized attempt to put a citizenship question on the Census — a 2022 Pew Study found that the Census had historic undercounts of Hispanics (missing one in twenty individuals);⁷
- (4) even if the population has declined and does not rebound on pace with the EIR's projections, the EIR impact analysis provides a conservative estimate of both incremental and total impacts in 2040; and
- (5) preparing a new EIR with an adjusted baseline could take years and the population would fluctuate again without providing any additional meaningful information.

As discussed in the Master Response No. 2, the pandemic has had an impact on populations of urban areas as more people have been able to work from home/remote locations. Declining urban populations have resulted in lower household occupancies (fewer persons per household) and higher vacancy rates. It is still not clear whether these trends will continue or whether they will reverse. Employers continue to seek ways to encourage and mandate workers back into the office; how the workforce will respond in terms of choosing residential types/locations is not clear. In April 2023 the Los Angeles Times reported on how recently released Census demographic data shows that population did shift during the pandemic out of urban centers, but that the population in urban centers, such as those in Los Angeles County, is starting to rebound, indicating some pandemic recovery over the last year.⁸ The U.S. Census Bureau's Vintage 2022 estimate of population and components of changes, released in late March 2023⁹, show that domestic outmigration from counties such as Los Angeles County occurred at a slower pace between 2021 and 2022 than in the previous year (2020 and 2021). While these new estimates indicate that the population in Los Angeles County, which includes the City of Los Angeles, is beginning to rebound, a stable "new normal" has not yet developed. Moreover, the vacant units

⁶ For example, between 2000 and 2020, the vacancy rate identified by Census counts has varied between a low of 4.6 percent (2000) and a high of 8.4 percent (2020).

⁷ Pew Study recognizing historic undercount of Hispanics. See <https://www.pewresearch.org/fact-tank/2022/06/08/key-facts-about-the-quality-of-the-2020-census/#:~:text=The%20Census%20Bureau's%20own%20research,some%20states%20and%20demographic%20groups>.

⁸ Castleman, Terry. "California population winners and losers: Why some counties boomed and others shrank." Los Angeles Times, April 5, 2023. Available at, <https://www.latimes.com/california/story/2023-04-05/here-are-californias-fastest-growing-and-shrinking-counties>

⁹ US Census, County Population Totals and Components of Change: 2020 - 2022; available at, <https://www.census.gov/newsroom/press-releases/2023/population-estimates-counties.html>

that were previously occupied can be reoccupied at any time whether people who left during the pandemic need to return for employment reasons, find it desirable to return, or if the units are reoccupied due to any other unforeseen social or economic trend.

The Proposed Plan is a 20-plus year plan, which based on history will experience population fluctuations, but substantial evidence supports that population is anticipated to increase over time based on evidence from Department of Finance (DOF), the SCAG Annual Demographic Workshop presentations, and historical data. Over the past few years, expert demographers have presented data during SCAG's Annual Demographic Workshops affirming that population will continue to grow in the state and in the SCAG region over the next few decades but at slower rates than in past decades. COVID-19 has contributed to excess mortality and reduced immigration, and we are still in the early stages of the lift of COVID-19 emergency orders. The impacts of such effects need to be considered. As SCAG prepares for their next RTP/SCS in 2024 they have determined that the years 2020 through present do not represent a stable baseline for their analysis of the 2024 RTP/SCS and therefore they are using 2019. In summary, current conditions as they relate to population are unusual and not normal times and updating the City's baseline with the 2020 Census or 2021 ACS would not provide the most accurate picture practically possible of the Proposed Plan's impacts as called for by the CEQA Guidelines.

Additionally, even were the City to adjust the baseline on the basis that the 2020 Census or the 2021 ACS data show a temporary decrease or continuing long term trend in population, it would not provide a more accurate picture of the Proposed Plan's impacts. The EIR complied with CEQA and analyzed a conservative reasonable worst case scenario of impacts.

As an initial matter, the Proposed Plan is a land use plan, not a population plan. The City's project is not to have a population of 264,000 persons in the Plan Area. The stated purpose of the project as described in Project Description (Chapter 3) of the Draft EIR and throughout the Final EIR and the administrative record, is to accommodate growth projected by SCAG¹⁰. To do this, the Proposed Plan is proposing to modify its land use plans and zoning to increase allowed density in certain areas of the Plan. The City then creates reasonable estimates of development that could occur with those proposed land use and zoning changes—i.e., the City estimates how many housing units and square footage of commercial, industrial and other uses would result from the new land use designations and zoning. The Draft EIR concluded a range of reasonably expected development of new housing units of 17,000 - 28,000. After applying a per housing unit rate, the City estimated an increase of housing units of 17,000 - 28,000 would result in a population increase range of 37,000 - 58,000. (DEIR Chapter 3, p. 3-17, Table 3-4.) When the Final EIR was prepared, the City determined modifications to the proposed land use and zoning changes would

¹⁰ SCAG allocates growth to jurisdictions within the region based on land use designations; in accommodating SCAG forecasted growth the City seeks to implement SCAG policies, in particular those associated with increasing infill development and development near transit. The intent is not to match SCAG population forecasts in each planning area but to implement the policies so that the City and region as a whole accommodates SCAG population forecasts and develops in a sustainable manner.

increase the range of new housing units by 7,000. (FEIR at 2-4.) With that, the range of housing units from the Proposed Plan changed to 24,000 - 35,000 units. But the City found that the population range would not be anticipated to increase because the Draft EIR assumed full occupancy of all housing units. But, the FEIR concluded that this was overly conservative and not reasonably foreseeable. The average vacancy rate in the City was 7.3 percent and the average for the Plan Area was 13.1 percent (the 2021 ACS found the average vacancy rate for the Plan Area is 14.6 percent). The City recognized that using the 13.1 would not be reasonable based on the unusual times (i.e., pandemic), but found that even in normal times the Plan Area would not be fully occupied. Applying the Citywide average of 7.3 percent to the total 2040 housing unit estimate (139,000 – the high end of the housing unit range) results in 258,000 persons. Based on this and the fact that it is unusual times, the analysis in the EIR of 264,000 persons was and is found to be a reasonably conservative estimate for the Proposed Plan.

Importantly though, the Proposed Plan is a plan to accommodate new housing units with land use allowances that are anticipated to result in 24,000 to 35,000 units. The EIR analyzed the reasonable worst case scenario of 35,000 more units to the existing baseline of 104,000 units, resulting in 139,000 units in the Plan Area in 2040, resulting in a reasonable worst-case scenario of a population of 264,000 persons. This would result from an occupancy of 2 persons per household (consistent with SCAG 2016-2020 RTP/SCS rates [FEIR at 2-5, n. 1] and to 2021 ACS), and a vacancy rate of 5 percent. The City finds this is a reasonable worst case estimate of the impacts from the Proposed Plan which the City is required to analyze under CEQA. The EIR recognized that 35,000 housing units may not be built and the population may not be 264,000. That is why ranges were provided in the Project Description. (DEIR at 3-17, Table 3-4.) The EIR identifies a range of population increase of 37,000 - 58,000. But it analyzed a change up to 58,000 to be conservative.

One consideration in forecasting future changes in population is the annual rate of change. In 2023 we are now nearly one third of the way through the analysis period evaluated in the EIR. In 2016 the annual increase in population (2016 to 2040) was anticipated to be 2,416 persons, in 2023 (2023 to 2040) that number would need to be 3,411 people per year (i.e., 40% greater). To achieve a total of 264,000 people in 2040 assuming a base of 196,000 people (i.e., an increase of 68,000 people), the annual increase from 2023 would need to be 4,000 people. If we changed the base to 190,000 people, the annual increase to get to 264,000 (i.e., an increase of 74,000) people in 2040 would need to be 4,350 (i.e., 80% greater than the annual increase contemplated in the EIR). Such an increase is not reasonable or anticipated.¹¹ The City finds that a total increase of 58,000 people as analyzed in the EIR is conservative worst case (i.e., high) and that, the 2020 Census and 2021 ACS, do not conflict with this high-end estimate or with a total population that

¹¹ Even though not required by CEQA, with respect to informing the decisionmakers about their decision in 2023, assuming that the population has decreased, the EIR continues to present a conservative analysis of impacts because an increase of even 58,000 people in 17 years (2023 to 2040) let alone higher would represent a sustained rate of increase greater than previously experienced or forecast for the area, which would be unreasonable and speculative.

City staff continue to reasonably anticipate will be within, although towards the lower end of, the range identified in the EIR (i.e., 243,000 to 264,000 people).

Ultimately, if 35,000 housing units do not get built, vacancy rates do not significantly reduce, or occupancy rates decrease by 2040, the population will not reach 264,000 by 2040. If this occurs, the impacts associated with population, i.e., air quality, greenhouse gas (GHG), energy, transportation, noise from mobile sources, population, housing and employment, utilities and public services (including recreation) that have been identified in the EIR will be less than identified in the EIR. Also, there is no basis to find that the population change analyzed in the EIR of 58,000 should be greater because of the 2020 Census or 2021 ACS data. Greater population change than 58,000 would require either a miscalculation of the original population numbers in 2016 and/or a higher forecasted increase. As to the original population numbers (206,000 in 2016), those numbers are supported with substantial evidence and as discussed above, nothing in the 2020 Census or 2021 ACS, which collected data after 2016 and during the pandemic, support that the 2016 population numbers were wrong. As to a higher forecasted increase than 58,000, that would require build-out of the 35,000 or more units, and/or a vacancy rate lower than 5% and/or average occupancy rates above 2 persons per unit. Nothing in the 2020 Census or 2021 ACS supports any of those scenarios. At worst, the EIR is overly conservative. Based on all of the above, there is absolutely no basis to find that any impacts to the environment caused by the Proposed Plan will increase based on the 2020 Census or the 2021 ACS data.

Moreover, the EIR presents a qualitative discussion of all impacts that is supplemented with estimates and modeling. As the City has found in preparing analyses of different community plan areas, estimating populations of rapidly evolving areas is inherently difficult as the data keeps changing. While the data may change with respect to population within the Hollywood Community Plan Area, the basic (qualitative) analyses and conclusions do not.

As discussed in the Final EIR, Master Response 2, the City also rejects arguments that data such as the 2020 Census or 2021 ACS supports that the project is unnecessary to accommodate growth or that an Alternative with less density or no growth is more feasible. As the City discussed in the FEIR Master Response 2, the City's purpose with the Proposed Plan is to accommodate growth identified by SCAG, but also to put density in places such as the Change Areas of the Proposed Plan that encourage multi-modal travel and reduce VMT and GHG as called for by the State (See 2017 and 2022 Scoping Plan)¹² and SCAG in every RTP/SCS since at least 2008. The Proposed Plan also is identified in the Housing Element as part of the rezone program to accommodate the RHNA. [See Housing Element, Ch. 6, Program 121, at 343¹³]. Since the release of the Final EIR, the City adopted the 2021-2029 Housing Element, which identifies the City's regional housing need assessment (RHNA) to accommodate more than 450,000 housing

¹² <https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan/2022-scoping-plan-documents>

¹³ [https://planning.lacity.org/odocument/6fbfbdd0-a273-4bad-a3ad-9a75878c8ce3/Chapter_6_-_Housing_Goals,_Objectives,_Policies,_and_Programs_\(Adopted\).pdf](https://planning.lacity.org/odocument/6fbfbdd0-a273-4bad-a3ad-9a75878c8ce3/Chapter_6_-_Housing_Goals,_Objectives,_Policies,_and_Programs_(Adopted).pdf)

units. The Proposed Plan is identified in the Housing Element as part of the City's rezoning program. Based on this and all of the other reasons stated in the DEIR, FEIR and the EIR Findings, the City rejects a no growth, slow growth, reduced density plan as feasible.

Finally, changing the baseline numbers for population would effectively require starting over with the preparation of a new EIR. As history has shown with the 2012 EIR and the current FEIR, Plan-level EIRs require several years to complete, and bringing comprehensive general plan updates to the legislative body also can take years as the policy interests of stakeholders and the decision-makers change over time, state laws change, and by the time a new EIR would be released for public comment and the EIR and a proposed plan update make its way to the decisionmaker, population estimates would likely fluctuate again, resulting in a never ending cycle of EIR preparation. This would further delay the adoption of a Community Plan that is intended to facilitate important local and state goals of accommodating needed housing, which is consistent with the City's 2021-2029 Housing Element, and reducing per capita Greenhouse Gas (GHG) emissions and Vehicle Miles Traveled (VMT). And the new EIR would not come to any new conclusions and would provide no meaningful new information.

CEQA does not require continuously updating baselines. CEQA Guidelines Section 15125(a)(1) provides the following when existing conditions fluctuate:

Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency defines existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence.

Therefore, the City rejects changing the baseline to the 2020 Census or more recent 2021 ACS Survey because of the strong evidence that the population fluctuated based on highly unusual conditions and relying on existing conditions in 2016 provides the most reasonable, accurate, and conservative picture practically possible of the project's impacts. Based on all of the above, the City finds the 2020 Census and the 2021 ACS do not provide significant new information as defined by CEQA Guidelines Section 15088.5.

C. Wildlife Ordinance

During the preparation of the Hollywood Community Plan DEIR and the FEIR, a draft of the City's Wildlife Ordinance had not been released. At the time of the publication of the FEIR, DCP was in the process of creating wildlife protection areas and regulations in the eastern area of the Santa Monica Mountains. In late 2022, the City Planning Commission recommended approval of the Wildlife Ordinance and it is currently pending approval by the City Council.

The Wildlife Pilot Study (Study) was the first step in developing the Ordinance, and it identified ecologically sensitive areas within the City and the types of land use regulations that might be applied within those areas to create a “wildlife corridor” by protecting and connecting plants, animals, and other natural resources. As part of the Study, DCP staff worked with biological and ecological consultants to prepare the Protected Areas for Wildlife and Wildlife Movement Pathways Report (PAWs Report), which informed the Wildlife Ordinance. The PAWs Report provided an assessment of potential wildlife supportive areas in the entire city based on staff’s understanding of regional habitat, ecology, and geography.

The Wildlife Ordinance is proposed to be applied first to a portion of the Santa Monica Mountains, between the 405 and 101 Freeways. The portion within the Hollywood CPA includes hillside areas west of US-101 (see Exhibit F1 - Map of Draft Wildlife Ordinance District Boundary)¹⁴. This proposed District is part of the Santa Monica Mountains Zone and was initially identified as one of several Protection Area for Wildlife (PAW) by a team of consultants that the City worked with during the Wildlife Pilot Study. The Wildlife Ordinance proposes development standards for lot coverage, floor area, grading and height limitations and as well as native landscaping/trees, fence, trash enclosure, window, and lighting requirements. The development standards are intended to reduce cumulative development impacts on plants, animals, and natural resources while providing co-benefits related to climate resilience and public health. The Ordinance includes regulations that apply to private properties within the District, including additional discretionary review where lots contain or are adjacent to natural resources, such as waterways and open space.

The impact conclusions to biological resources would not change based upon the PAWS Report¹⁵. Section 4.4 (Biological Resources) of the EIR describes the types of wildlife and habitats that are found within the Plan Area, acknowledges that many wildlife species can be found in the Santa Monica Mountains within and adjacent to the Plan Area on page 4.4-7 of the EIR, and that the Santa Monica Mountains within and to the west of the Plan Area are part of a larger wildlife corridor encompassing the Santa Monica Mountain Range on pages 4.4-13 and 4.4-29 of the EIR.

D. Santa Monica Mountains Conservancy (SMMC) Resolution and SMMC’s Habitat Linkage Maps

On November 22, 2022, City Council passed a Resolution that recognized the Santa Monica Mountains Conservancy (SMMC) as a trustee agency, required consultation on the Eastern Santa Monica Mountains Natural Resource Protection Plan, and required a process for all future spatial habitat protection maps to ensure their protection and conservation. Since the SMMC is a trustee agency pursuant to CEQA, the City is required to notify and consult with SMMC at various points

¹⁴ https://planning.lacity.org/odocument/9dcd2a9c-f97e-4af6-b8e6-1cb8b3415c8d/2022_Wildlife_Ordinance_Staff_Report_Exhibits.pdf

¹⁵ Confirmed with Kat Superfisky, Certified Ecologist, Urban Ecologist with Los Angeles City Planning

in the CEQA review process on projects that may affect natural resources within the Santa Monica Mountains Zone, as defined in the Conservancy Act. The Resolution also officially recognized the Big Wild-Topanga State Park, Eastern Santa Monica Mountains, and Griffith Park Area Habitat Linkage Habitat Linkage Planning Maps as well as future spatial habitat protection maps prepared by SMMC to ensure the protection and conservation of sensitive habitat areas. As part of the resolution, the City Council also instructed that all necessary steps are taken to ensure that the Eastern Santa Monica Mountains Natural Resource Protection Plan prepared by the SMMC will be considered by the City in the CEQA process to ensure the protection and conservation of sensitive habitat areas.

For the Hollywood Community Plan EIR, DCP sent a Notice of Preparation (NOP) to the SMMC consistent with requirements for trustee agencies as noted in Section 15082 of the CEQA Guidelines. DCP sent a Notice of Availability (NOA) to the SMMC when the DEIR was published in November 2018, when the Partially Recirculated EIR was published in October 2019, and when the FEIR was published in August 2021. The SMMC did not submit comments during the EIR Scoping Period after the NOP was issued, nor did they submit comments on the DEIR or the Partially Recirculated EIR.

The Eastern Santa Monica Mountains Natural Resource Plan¹⁶, which was adopted by the SMMC in December 2021, includes the Eastern Santa Monica Mountains Habitat Linkage Planning Map (first adopted in January 2017, updated in 2020 and again in April 2021), and the Griffith Park Area Habitat Linkage Planning Map (adopted in December 2017). While the Hollywood Community Plan DEIR, Partially Recirculated DEIR, and the FEIR did not include the East Santa Monica Mountains Linkage Planning Map and the Griffith Park Area Habitat Linkage Planning Map, since City Council's Resolution officially recognized the Eastern Santa Monica Mountains and Griffith Park Area Habitat Linkage Planning Maps they are now reference here to provide additional information to support the City's certification of the EIR for the adoption of the Hollywood Community Plan Update¹⁷. Although wildlife movement is generally restricted in the hillside areas between US-101 and I-5, the portion of the Santa Monica Mountains that includes the Griffith Park Area and Eastern Santa Monica Mountains Habitat Linkage Planning Maps is viewed as an important connective island for the Santa Monica Mountains to the west of US-101, as well as the Verdugo Mountains and San Gabriel Mountains to the east.

Figure 4.4-1 (Significant Ecological Areas) in the DEIR¹⁸ shows an overlap between the Griffith Park Significant Ecological Area (SEA) and the Habitat Blocks (per Griffith Park Area Habitat Linkage Planning Map, adopted by the Santa Monica Mountains Conservancy 12/2017). The Habitat Blocks noted in the Griffith Park Area Habitat Linkage Planning Map that do not overlap

¹⁶ Santa Monica Mountain Conservancy, *Eastern Santa Monica Mountains Natural Resource Protection Plan*, <https://smmc.ca.gov/wp-content/uploads/2021/12/ESSM-NRPP.pdf>

¹⁷ Santa Monica Mountain Conservancy, *Eastern Santa Monica Mountains Natural Resource Protection Plan*, <https://smmc.ca.gov/wp-content/uploads/2021/12/ESSM-NRPP.pdf>

¹⁸ https://planning.lacity.org/eir/Hollywood_CPU/Deir/files/4.4%20Biological%20Resources.pdf

with the Griffith Park SEA, and Habitat Blocks noted in the Eastern Santa Monica Mountains Habitat Linkage Planning Map (adopted by the SMMC in 4/2021) are generally within undeveloped portions of the Santa Monica Mountains, which is where most of the wildlife can be found. Most of the Hollywood CPA is developed with urban uses and does not contain or provide habitat that supports special status species. Suitable habitat for wildlife is generally found in undeveloped natural open space areas, particularly in the undeveloped natural open space areas within and near the CPA located within the Santa Monica Mountains, primarily east of US-101. Species movement that can occur between the San Monica and San Gabriel Mountains via the Verdugo Mountains would pass through the Griffith Park Area and Eastern Santa Monica Mountains Habitat Linkage Planning Map areas.

The portions of the undeveloped open space areas of the Santa Monica Mountains within the Project Area have an Open Space land use designation. As noted in the DEIR, the Proposed Plan would not change the Open Space land use designation, including those Open Space-designated parcels within the Santa Monica Mountains. The Proposed Plan does not involve changes that would foreseeably induce new development in the Santa Monica Mountains portion of the Plan Area. The proposed changes in the Santa Monica Mountains portion of the Plan Area would reflect existing uses and would change the residential land use designations and zoning of parcels with undeveloped natural open space to an Open Space land use designation and zoning. The General Plan Land Use Map footnote (Administrative Note No.3) supports the redesignation of vacant land for the purpose of conservation to open Space as appropriate. The Open Space (OS) land use designation is premised on the ownership and use of the property by a government agency, nonprofit or conservation land trust for the primary purposes of public recreation use or open space conservation. The designation of the Open Space (OS) zone as a corresponding zone is based on the same premise. The Plan also intends that when a board or governing body of a government agency, nonprofit or conservation and trust officially determines that vacant land user their ownership is to be used as open space, the property may be redesignated and/or rezoned to Open Space (OS).

The impact conclusions to biological resources would not change with the inclusion of the Linkage Planning Maps¹⁹. Section 4.4 (Biological Resources) of the EIR describes the types of wildlife and habitats that are found within the Plan Area, acknowledges that many wildlife species can be found in the Santa Monica Mountains within and adjacent to the Plan Area on page 4.4-7 of the EIR, and that the Santa Monica Mountains within and to the west of the Plan Area are part of a larger wildlife corridor encompassing the Santa Monica Mountain Range on pages 4.4-13 and 4.4-29 of the EIR.

E. California Black Walnut Trees

California Black Walnut Woodlands are a type of vegetative community containing multiple Black Walnut trees and other vegetation. California Walnut Woodlands are included in California

¹⁹ Confirmed with Kat Superfisky, Certified Ecologist, Urban Ecologist with Los Angeles City Planning

Department of Fish and Wildlife's (CDFW) "California Sensitive Natural Communities" list, which is used to address CEQA Guidelines Appendix G for Biological Resources regarding any "sensitive natural community" that may be found within the project site. In addition to analyzing potential impacts of individual Black Walnut tree removals, the inclusion on this list means that the project's potential impact to any Walnut Woodlands as a vegetative community should be assessed as part of the environmental review. As noted in Section 4.4 (Biological Resources) of the DEIR, a sensitive natural community, including a sensitive plant community, is one that is considered rare within the region by regulatory agencies, supports sensitive species or serves as a wildlife corridor. Table 4.4-2 of the DEIR noted 4 sensitive plant communities that included the California Walnut Woodland plant community. Therefore, this plant community was identified in the analysis. Mitigation Measures BR-1 and BR-2 apply to discretionary projects that are in or within 200 feet of Griffith Park or are required to comply with the City's Baseline Hillside Ordinance, which include expansive areas on both sides of the US-101 within the Hollywood CPA.

F. Non-special Status Species

The Proposed Plan EIR analyzes impacts to wildlife throughout the plan area, including impacts to nesting birds and wildlife corridors. However, the EIR focused on special status species as called for in Appendix G. There is no basis to find the Proposed Plan would result in a significant impact to biological resources based on its impacts to non-special status species. As discussed in the Draft EIR, and the Final EIR (see 3-52) numerous non-special status species have adapted themselves to urban life, including raccoons, deer, and coyotes. These species would not be anticipated to be impacted by the Proposed Plan as they have shown to be well adapted to human activities and habitat disturbances, such as those resulting from reasonably foreseeable development from the Proposed Plan.

Other species, including special status and some non special status (including non special status such as the dusky-footed woodrat, sideblotched lizard, acorn woodpecker, California quail, western bluebird, bobcat, and gray fox), are sensitive to human activities and habitat disturbance. Temporary impacts, both direct and indirect from individual projects in the Project Area, include the removal or degradation (e.g., excessive noise, dust, or light) of habitat (both nesting and foraging) for various wildlife species. As noted in the Section 4.4, Biological Resources of the DEIR, improvements in the developed and undeveloped areas of the Santa Monica Mountains, as well as improvements in developed areas of the rest of the CPA could potentially involve the removal of natural habitat or lead to habitat degradation. This includes activities that could generate fugitive dust (such as through grading or excavation activities), increase noise or vibration, introduce new light sources, or increase the amount of people visiting an area. Additionally, trees removed would not only reduce the amount of nesting habitat but also available perches and food for foraging. However, due to the generally short-term nature of these impacts, the existing ongoing disturbances associated with urban development, these impacts to non special status species would be less than significant with the mitigation incorporated. This includes Mitigation Measures BR-1 through BR-6, as well as Mitigation Measure AQ-1 would reduce impacts from fugitive dust and Mitigation Measures N-1 through N-4 would reduce impacts

from construction noise to non special status species. There is no basis to find any loss in habitat or loss of individual non special status animals or plants would result in a threat to the species or would have any larger impacts to other species, habitat, or other aspects of the physical environment. Finally, as discussed in Master Response 9 (FEIR 3-68 to 3-76), nothing in the Proposed Plan is anticipated to cause new development and activities in the hillside areas. Not causing new development includes not inducing new development. The Plan does not make any changes to plans or zoning or any other regulation to put any new density in the hillsides and the only rezones in the hillsides area are to reflect existing uses or to downzone to open space. This would therefore not cause or induce development or growth in the hillsides. Therefore, any identified impacts to any wildlife species in the hillside identified in the DEIR from the Proposed Plan are generally highly conservative.

G. Biological Resources Mitigation Measures

As previously noted, the Hollywood Community Plan EIR identified several mitigation measures to reduce impacts to biological resources. Even with the incorporated mitigation measures, the EIR concluded that the Proposed Project would have significant and unavoidable impacts related to the following impact categories under biological resources: special status species, riparian habitat and other sensitive natural communities, wetlands, and on migratory wildlife. The EIR incorporated Mitigation Measures BR-1 through BR-6, but as noted in the DEIR, limited development could potentially occur within the Santa Monica Mountains and Los Angeles River during the lifetime of the Community Plan. Within these areas, potential development generally would be limited to improvements associated with low density residential uses and/or park and recreational uses, depending on the zoning and land use designation of the parcels. Disturbances to undeveloped open space areas within these areas during the lifetime of the Community Plan could still potentially impact special status species, riparian habitat and other sensitive natural community, wetlands, and migratory wildlife even with the Mitigation Measures.²⁰ Council may desire to adopt the following Environmental Protection Measure, developed for the Downtown Community Plan Update, as an additional environmental standard for nesting native and migratory birds in the Hollywood CPIO District. This following will be added to the Mitigation Monitoring Program and the implementing agency will be the applicant for the individual project, and the enforcement and monitoring agency will be the Los Angeles Department of Building and Safety.

BR-7 Nesting Native and Migratory Birds

Restriction of Ground Disturbance Activity

a. Applicability Threshold

Any Project for which an active bird nest has been discovered on-site.

²⁰ Again as discussed above and in MR 9 in the FEIR, the Proposed Plan is not anticipated to cause or induce that development.

b. Standard

If any active bird nest is found during a pre-construction nesting bird survey or is discovered inadvertently during earthwork or construction-related activities, a Qualified Biologist shall be retained by the Applicant or Owner to determine an appropriate avoidance buffer which shall be no less than is necessary to protect the nest, eggs and/or fledglings, from damage or disturbance in consideration of the following factors: the bird species, the availability of suitable habitat within the immediate area, the proposed work activity, and existing disturbances associated with surrounding land uses. The buffer shall be demarcated using bright orange construction fencing, flagging, construction lathe, or other means to mark the boundary of the buffer. All construction personnel shall be notified of the buffer zone and shall avoid entering the protected area. No Ground Disturbing Activities or vegetation removal shall occur within this buffer area until the Qualified Biologist has confirmed that breeding/nesting is complete and the young have fledged the nest and/or that the nest is no longer an Active Nest. The Qualified Biologist shall prepare a report prior to the issuance of any building permit detailing the results of the nesting bird survey and subsequent monitoring, which shall be maintained pursuant to the proof of compliance requirements as noted below.

Applicant and Owner shall comply with all of the following:

1. Imprint the applicable standard, as determined by the Applicant and/or Owner, on all plans that are reviewed and approved by LADBS. More specifically, if an Applicant submits construction or operational plans as part of the Project description for a land use application, the Applicant shall imprint the applicable standard on those plans.
2. Sign and submit a Statement of Compliance to LADBS, at Plan Check prior to the issuance of any grading, excavation, or building permit, in which the Applicant and Owner acknowledge the applicable standard and sign an affidavit of intent to comply.
3. Notify any contractor hired by the Applicant or Owner who is doing work subject to this standard of the requirement to comply with this standard: and collect a signed acknowledgement of the notice from the contractor.
4. Maintain a copy of this standard on the Project site at all times during construction.
5. Obtain a qualifications sheet or statement demonstrating proof of qualifications for any Qualified Expert who is required in this standard and retained for purposes of preparing a survey, study or report; performing site monitoring activities; or otherwise ensuring compliance with this standard.
6. Maintain a copy of all records documenting compliance with this standard for a minimum of five years after the Certificate of Occupancy is issued. Records of compliance include but are not limited to any reports, studies, certifications, or surveys required; the qualifications sheet or statement for any retained Qualified Expert; and any acknowledgment, notice, or Statement of Compliance as applicable.

7. Upon request of a City inspector or officer, produce records of compliance for inspection as follows: a. Immediately, while construction activities are ongoing at the site. b. At any other time, within 72 hours' notice.

IV. Framework Element Reconsideration and Supplemental Findings

1. Background

As provided in the Draft EIR:

The City previously approved a Hollywood Community Plan Update in substantially similar form as the Proposed Plan and certified EIR No. ENV-2005-2158-EIR, State Clearinghouse (SCH) No. 2002041009 (2012 EIR) on June 19, 2012 (2012 Approvals). On February 11, 2014, after a legal challenge to the 2012 Approvals, the Los Angeles Superior Court issued a Judgment directing the City to (1) rescind its 2012 Approvals and (2) prepare, circulate and certify, consistent with the requirements of CEQA, an adequate and valid EIR, which could include a supplemental, revised 2012 EIR or a new EIR. The City does not intend to certify, revise or prepare a supplement to the 2012 EIR. Rather, with this EIR, the City is electing to prepare a new EIR. (DEIR at 3-4.)

In the January 15, 2014, Statement of Decision, by the trial court, the court found that 2012 HCPU was not consistent with the Framework Element, including Policy 3.3.2, because the 2012 HCPU did not include monitoring of development activity. The court found that,

The fundamental inconsistency between the Framework and the HCPU on the failure of the HCPU monitoring policy is completely contrary to the Framework's essential component of continuous monitoring of development activity. There is a void in an essential aspect of the HCPU where instead there should be a discussion of the inter-plan/area impacts created by the HCPU. And, to the extent the City relies on the entirely discredited SCAG 2005 population estimate (with the substantial impact that has on many facets of the HCPU), there is a fatal inconsistency between the HCPU and the General Plan.

[Attachment 1 (Statement of Decision).] On April 14, 2014, at the same time that the City Council adopted an ordinance and resolution to rescind its 2012 Approvals and decertify the 2012 EIR, the City Council adopted a resolution to amend the Framework Element with the following language:

The monitoring policies and programs are intended to guide the City's process of updating other General Plan elements, including the City's 35 Community Plans. The Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs. Furthermore, the monitoring programs discussed in *Saunders v. City of Los Angeles* (Case No. B232415), i.e., Programs 42 and 43 are discretionary as the *Saunders* Court held.

(Attachment 3 [2014 FE Amendment Resolution]). [See CF 12-0303-S4 (Official Council Action.)]
The Staff Report on the 2014 FE Amendment described the purpose of the amendment as follows:

The amendment merely reaffirms that the Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs, that the Framework Element's monitoring programs are discretionary, and that they are contingent on the availability of resources and competing priorities, as the Court of Appeal held in *Saunders v. City of Los Angeles*, Case No. 8232415.

...

This amendment is intended to overrule and supersede the trial court's decision in *Fix the City, Inc. v. City of Los Angeles, et al.*, LASC Case No. BS138580, *La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.*, LASC Case No. BS 138369, and *SaveHollywood.Org, et al. v. City of Los Angeles, et al.*, LASC Case No. BS 138370. This amendment, however, does not change the City's historic interpretation or implementation of the monitoring policies or programs.

The amendment can be viewed in two parts for discussion purposes.

The monitoring policies and programs are intended to guide the City's process of updating other General Plan elements, including the City's 35 Community Plans. The Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs.

With respect to monitoring programs, monitoring is done at the citywide level to guide the prioritization of Plan updates. The City has interpreted and implemented the Framework Element as not requiring Community Plans themselves to contain the same monitoring policies and programs set forth in the Framework Element.

...

Furthermore, as discussed in Chapter 10 and held by the Court of Appeal in *Saunders v. City of Los Angeles* (Case No. 8232415), the Framework Element's monitoring programs are discretionary, not mandatory, and are contingent on the availability of resources and competing priorities.

As the Framework Element already makes clear (in the beginning of Chapter 10), implementation of plan policies and programs is contingent on a number of factors and "not all plan policies can be achieved." Limiting factors include adequate funding, the priorities of other government and funding agencies, and changing local conditions.

The Framework Element also clearly states that some goals may need to take precedence over others and that decision-makers have the discretion to decide

how to best implement the adopted policies. In approving the Plan, the City Council conferred authority upon the DCP on how to best prioritize implementation programs in the context of budget and resource limitations.

This understanding was affirmed in a different but closely related Appeals Court decision in *Saunders v. the City of Los Angeles* (2012). In *Saunders*, the Court upheld the City's discretion in deciding how to best implement its Framework programs. The two main programs at issue in the *Saunders* case were Programs 42 and 43. Program 42 is an implementation "program to monitor the status of development activity, capabilities of infrastructure and public services to provide adequate levels of service, and environmental impacts (e.g., air emissions), identifying critical constraints, deficiencies and planned improvements (where appropriate)." Program 43 is an implementation program intended to generate an "Annual Report on Growth and Infrastructure [Annual Report] that documents the results of the annual monitoring program." The Court held that "when the language of Programs 42 and 43 is read together and harmonized with other language of the Framework Element, including the clear and unambiguous introductory language to Chapter 10 governing the implementation of the programs established by the Framework Element, the implementation duties created by those programs emerge as discretionary."

[Attachment 2 (CF 12-0303-S4 [Staff Report]).] In the resolution adopting the 2014 FE Amendment, the Council found the following:

WHEREAS, the City has historically interpreted and implemented the Framework Element's monitoring policies and programs as being in place to guide the Community Plan update process;

WHEREAS, the City does not interpret the Framework Element to require Community Plans themselves to contain the same monitoring policies and programs;

WHEREAS, the Court of Appeal in *Saunders v. City of Los Angeles* (Case No. 8232415) held that the Framework Element's monitoring programs are discretionary, and dependent upon the availability of resources and competing priorities;

WHEREAS, the Los Angeles Superior Court's Final Statement of Decision and Judgment has created the need to clarify the role of the Framework Element's monitoring policies and programs; and

...

WHEREAS, the amendment is intended to overrule and supersede the trial court's interpretation of the General Plan Framework element's monitoring policies and programs in *Fix the City, Inc. v. City of Los Angeles, et al.*, LASC Case No. BS138580, *La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.*, LASC Case No. BS 138369, and *SaveHollywood.Org, et al. v. City of Los Angeles, et al.*, LASC Case No. BS 138370, and to reaffirm the Court

of Appeal's interpretation in *Saunders v. City of Los Angeles* (Case No. 8232415). This amendment, however, does not change the City's historical interpretation or implementation of the monitoring policies or programs.

[Attachment 3 CF 12-0303-S4 [2014 FE Amendment Resolution]].]

After rescinding the 2012 Approvals and adopting the 2014 FE Amendment, the City filed an interim return on the writ—i.e., a report to the Court on how it was complying with the Court order. Petitioners in the litigation filed various motions and objections to the 2014 FE Amendment on the basis that it violated the Court's order. The Court agreed, finding the City did not appeal its 2014 Judgment ordering the City to have monitoring programs to comply with the Framework Element. The court found that the City's amendment was adopted without consideration of Charter Section 554, 556 and 558, the City's prior interpretation of Charter Section 554 where it included monitoring programs in other City Community Plans, Public Resources Code Section 21081.6 requiring monitoring and reporting. The court found the City's compliance with the 2014 Judgement by adopting the 2014 FE Amendment was "too clever by half," on the basis that state law requires monitoring and Charter Section 554(b) requires the General Plan to comply with state law. The court stated,

By declaring that all Community Plans do not need to include monitoring and reporting elements, Respondents contradict the specific order of this Court that the Community Plan at issue in this proceeding -- that the HCPU must include monitoring policies or programs, and Respondents act in direct contradiction to state law, the Charter of the City of Los Angeles, and the Writ of Mandate issued by this Court.

[Attachment 4 (Ruling and Orders on Matters Submitted June 24, 2014, Attachment 4 at p.16).] The court ordered the City to reconsider the 2014 FE Amendment resolution in full before the City file its Final Return. The City filed an appeal of the Court's order to reconsider the 2014 FE Amendment. On March 24, 2015, the Court of Appeal dismissed the appeal as premature because the City had not yet filed a final return.

2. Reconsideration Analysis

As the City argued to the Court of Appeal in its premature appeal on the trial court's findings on the 2014 FE Amendment, the trial court was in error factually and legally. Charter Section 554(b) provides:

(b) **Content.** The General Plan shall include those elements required by state law and any other elements determined to be appropriate by the Council, by resolution, after considering the recommendation of the City Planning Commission.

"Elements" required in General Plans is a prescribed list in Government Code Section 65302. Specifically, a General Plan is required to have eight "elements": a land use element, a circulation

element, a housing element, a conservation element, an open space element, a noise element, a safety element, and an environmental justice element. The contents of each element is also prescribed in Section 65302. The City's 35 community plans constitute the City's land use element. Section 65302(a) describes that a land use element is required to designate the general distribution and general location and extent of uses of the land for housing, business, industry, open space, and other more specialized categories of land uses. It is also supposed to include a statement of the standards of population density and building intensity recommended for the various districts and other territories covered by the plan. There is no requirement in 65302(a) for the land use element to monitor growth and infrastructure. The only monitoring required is limited to annual reviews of those "areas covered by the plan that are subject to flooding identified in a flood plain mapping prepared by [FEMA]."

An interpretation that State Planning Law does not mandate a General Plan, including a Land Use Element, to include monitoring of growth and infrastructure is also consistent with the guidance of the expert state agency over land use planning. The Office of Planning and Research 2017 General Plan Guidelines, which provide comprehensive guidance on the State agency's interpretation of state planning laws and the preparation of General Plans, does not identify the need to include monitoring of growth and infrastructure in the Land Use element or any other General Plan Element.²¹ Based on this, there is no basis to find that state planning law requires monitoring for growth and infrastructure as described in FE Policy 3.3.2 and Programs 42 and 43 in any City community plan, or General Plan Element. As State law does not mandate such policies or programs or "elements", Charter Section 554 does not require monitoring for growth and infrastructure.

As to the Court's reference to Charter Sections 556 and 558 as a basis to find the 2014 FE Amendment is in conflict with City law, that too is in error. Section 556 and 558 do not regulate an amendment to the City's General Plan, they require other City legislation and approvals to be consistent with the General Plan. Therefore, Section 556 and 558 do not speak to an amendment to the Framework Element, including an amendment that speaks to the contents of the City's community plans, which as components of the land use element, also is not subject to 556 or 558 either.

The 2014 FE Amendment does not conflict with Public Resources Code (PRC) Section 21081.6. PRC Section 21081.6 provides:

(a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring

²¹ https://opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf

program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

The CEQA treatise, Practice Under the California Environmental Quality Act, Section 18.3.A, summarizes PRC Section 21081.6:

The mitigation monitoring or reporting requirement applies by definition to projects that include mitigation measures to reduce environmental impacts. Thus, the requirement may apply to projects that are approved based on an EIR or a mitigated negative declaration. For EIR projects, the requirement is triggered if the agency approving the project adopts findings (under Pub Res C §21081(a)(1)) that mitigation measures have been incorporated into the project or imposed as conditions of approval. Pub Res C §21081.6; 14 Cal Code Regs §15091(d).

Under Pub Res C §21081.6, a monitoring or reporting program is not necessarily required for every project for which an EIR is prepared. If an EIR concludes that the project has no potentially significant impacts, neither findings on mitigation (Pub Res C §21081(a)(1)) nor a monitoring or reporting program is required. As a

practical matter, however, most EIRs evaluate at least one or more environmental impacts that are found to be potentially significant, thus requiring mitigation.

As such, PRC Section 21081.6 does not mandate the contents of a general plan element. There is no basis in Section 21081.6 or CEQA elsewhere, and the trial court did not identify any, to find CEQA mandates the City's community plans need to include monitoring for growth and infrastructure. Moreover, as it has been transmitted to the Council file, the current HCPU EIR fully analyzed all impacts to public services and utilities and has proposed mitigation measures and a mitigation and monitoring program. The CEQA Findings adopted by the City Council for the adoption of the Framework Element EIR specifically found that the Framework Element was not intended to mandate any change to a community plan:

The Framework Element does not override or mandate changes to community plans or any specific plan. The Framework Element includes generalized policies and recommendations that will be used to guide the process of updating community plans and other General Plan elements.²²

While the Findings acknowledged that the Framework Element included a central objective to assess the status of supporting infrastructure and public services relative to growth and development activity, it is not elevated in the findings to a mitigation measure or a mandate and, specifically, there is no mitigation measure adopted in the FE that future community plans must include monitoring of growth and infrastructure.²³ Even if the court were to find that the FE Policy 3.3.2 or Program 42 or 43 are implementations of mitigation measures from the EIR, that mitigation measure was adopted as a policy, not a mandate, and nothing in the language of the FE supports that it was intended to mandate the contents of the community plans. The EIR Findings and MMP for the FE do not state anywhere that a mitigation measure was going to require community plans to include monitoring of growth and infrastructure. To the contrary, the FE explicitly states it is to guide community plans. By contrast, the plain language of the FE provided before the 2014 FE Amendment and still today the following related to the relationship of the FE to community plans in Chapter 1:

3. The General Plan Framework Element and its Relationship to Community Plans

Community plans apply the growth and development policies defined in the Framework Element and the other citywide elements as they relate to a smaller geographic area. Community plans are more detailed and specific than citywide elements and are necessary due to the size, complexity, and diversity of the City of Los Angeles. The community plans are tailored to local conditions and needs. Adoption of the Framework Element neither overrides nor mandates changes to

²² See Citywide General Plan Framework, An Element of the General Plan of the City of Los Angeles Final Environmental Impact Report, Revised Findings and Statement of Overriding Considerations at 4, found at , https://planning.lacity.org/odocument/6fb6d230-f24f-456e-af39-a6e0a2a123e0/GPF_RevFindings_SOC.pdf

²³ Id.

the community plans. The community plans reflect appropriate levels of development at the time of the General Plan Framework Element's adoption. As community plans are updated utilizing future population forecasts and employment goals, ***the Framework Element is to be used as a guide -- its generalized recommendations to be more precisely determined for the individual needs and opportunities of each community plan area.*** Nothing in the Framework Element suggests that during the Community Plan Update process, the areas depicted as districts, centers, or mixed-use boulevards in the community plan must be amended to the higher intensities or heights within the ranges described in the Framework Element. The final determination about what is appropriate locally will be made through the community plans -- and that determination may fall anywhere within the ranges described.

As the City evolves over time, it is expected that areas not now recommended as neighborhood districts, community and regional centers, and mixed-use boulevards may be in the future appropriately so designated; and areas now so designated may not be appropriate. Therefore, the Framework Element long-range diagram may be amended to reflect the final determination made through the Community Plan Update process should those determinations be different from the adopted Framework Element.²⁴

The FE even acknowledges that community plans should be used as the basis for zoning consistency with the General Plan, not the FE:

5. Zoning Approvals and Zoning Consistency

The community plans and their implementing zoning set forth how property may be used and form the basis for decisions on discretionary permits. The community plans are the primary point of reference for determining compliance with Government Code Section 65860 (d).

As to the relevant objective and policy in the FE related to monitoring of growth and infrastructure, cited by the court, they read as follows:

Objective 3.3

Accommodate projected population and employment growth within the City and each community plan area and plan for the provision of adequate supporting transportation and utility infrastructure and public services.

...

3.3.2

Monitor population, development, and infrastructure and service capacities within the City and each community plan area, or other pertinent service area. The results of this monitoring effort will be annually reported to the City Council and shall be used in part as a basis to:

²⁴ <https://planning.lacity.org/cwd/framwk/chapters/01/01.htm>

- a. Determine the need and establish programs for infrastructure and public service investments to accommodate development in areas in which economic development is desired and for which growth is focused by the General Plan Framework Element.
- b. Change or increase the development forecast within the City and/or community plan area as specified in [Table 2-2](#) (see Chapter 2: *Growth and Capacity*) when it can be demonstrated that (1) transportation improvements have been implemented or funded that increase capacity and maintain the level of service, (2) demand management or behavioral changes have reduced traffic volumes and maintained or improved levels of service, and (3) the community character will not be significantly impacted by such increases.

Such modifications shall be considered as amendments to [Table 2-2](#) and depicted on the community plans.

- c. Initiate a study to consider whether additional growth should be accommodated, when 75 percent of the forecast of any one or more category listed in [Table 2-2](#) (see Chapter 2: *Growth and Capacity*) is attained within a community plan area. If a study is necessary, determine the level of growth that should be accommodated and correlate that level with the capital, facility, or service improvements and/or transportation demand reduction programs that are necessary to accommodate that level.
- d. Consider regulating the type, location, and/or timing of development, when all of the preceding steps have been completed, additional infrastructure and services have been provided, and there remains inadequate public infrastructure or service to support land use development. ([P42](#), [P43](#))

Policy 3.3.2 is implemented by Programs 42 and 43²⁵, which read as follows:

²⁵ As provided in the FE, Chapter 3: “For the purpose of the Los Angeles City General Plan, a **goal** is a direction setter; an ideal future condition related to public health, safety or general welfare toward which planning implementation is measured. An **objective** is a specific end that is an achievable intermediate step toward achieving a goal. A **policy** is a statement that guides decision making, based on the plan's goals and objectives. **Programs** that implement these policies are found in the last chapter of this

P42

Establish a Monitoring Program to accomplish the following

- a. Assess the status of development activity and supporting infrastructure and public services within the City of Los Angeles. The data that are compiled can function as indicators of (a) the rate of population growth, development activity, and other factors that result in demands for transportation, infrastructure, and services; (b) location and type of infrastructure investments and improvements; and (c) changes to the citywide environmental conditions and impacts documented in the Framework Element environmental database and the Environmental Impact Report.
- b. Assess transportation conditions and determine the City's progress toward attainment of citywide transportation objectives.
- c. Determine the progress of the Los Angeles County Sanitation District 2010 Master Facilities Program and any other capital improvement projects which could affect their ability to collect City wastewater and provide full secondary treatment for that wastewater.
- d. Identify existing or potential constraints or deficiencies of other infrastructure in meeting existing and projected demand.
- e. Identify, based on consultation with the LAUSD, the surplus and/or deficit of classroom seats.

Responsibility: Department of City Planning, LADWP, Public Works, Fire and Police

Funding Source: General Fund, Power Revenue Fund, development fees, Sewer Construction/Maintenance (SCM), Federal funds and other funding sources

Schedule: Within one year of Framework Element adoption

P43

Prepare an Annual Report on Growth and Infrastructure based on the results of the Monitoring Program, which will be published at the end of each fiscal year and shall include information such as population estimates and an inventory of new development. This report is intended to provide City staff, the City Council, and service providers with information that can facilitate the programming and funding of capital improvements and services. Additionally, this report will inform the general plan amendment process. Information shall be documented by relevant geographic boundaries, such as service areas, Community Plan Areas, or City Council Districts.

Responsibility: Department of City Planning in consultation with City departments

Funding Source: General Fund and other appropriate sources

Schedule: At the end of the fiscal year

In *Saunders v. City of LA, Case No. B232415*, the Court of Appeal held that Programs 42 and 43 are not mandatory, but discretionary and contingent on availability of resources and competing priorities, based on the plain language of the FE. The FE reads as adopted, including prior to the 2014 FE Amendment:

An **implementation program** is an action, procedure, program, or technique that carries out general plan policy. However, not all plan policies can be achieved in any given action, and in relation to any decision, some goals may be more compelling than others. ***On a decision-by-decision basis, taking into consideration factual circumstances, it is up to the decision makers to decide how to best implement the adopted policies of the general plan*** in any way which best serves the public health, safety and general welfare.

...

Program implementation is contingent on the availability of adequate funding, which is likely to change over time due to economic conditions, the priorities of Federal and regional governments and funding agencies, and other conditions. The programs should be reviewed periodically and prioritized, where necessary, to reflect funding limitations and the City's objectives. In addition, amounts and sources of funding, initiation dates, responsible agencies and the detailed work scope of programs may be changed without requesting amendments to the General Plan Framework Element.²⁶

Based on all of the above, the FE Policy 3.3.2 and Program 42 and 43 were not intended to create mandates on the community plans, even if the court were to find the policies and programs implement a mitigation measure. To the extent that anyone argues that the FE failed to include mandatory mitigation measures from the FE EIR that require community plan updates to include monitoring of growth and infrastructure, the time for that CEQA challenge is long past.²⁷ There is no basis to find the 2014 FE Amendment violates PRC Section 21081.6.

The court also erred in finding monitoring policies or programs in other community plans as evidence the City interpreted Charter Section 554(b), State law, PRC Section 21081.6, or the FE to require monitoring in community plans. For all the reasons stated above, the fact that the City included such policies in other community plans was not required but was an exercise of discretion.

Finally, to the extent the court found the 2014 FE Amendment violated the 2014 Judgement and Order because the City did not appeal that decision, the City disagrees. While it is true the City

²⁶ <https://planning.lacity.org/cwd/framwk/chapters/10/10.htm>

²⁷ Such a lawsuit was timely brought in, *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, where a lawsuit was brought that the mitigation measures related to traffic impacts were not adequate as adopted.

does not have the power of an appellate court to overrule the trial court, the City Council has authority to amend the FE to ensure that its intentions about the FE language are clear for future community plan amendments, including an adoption of the currently proposed HCPU. The City Council found in the 2014 FE Amendment Resolution that the monitoring policies and programs in the FE were interpreted and implemented historically as discretionary guidance for community plan updates. While the City litigated at trial this position, the trial court found otherwise. The City determined it was more expedient and less wasteful of City resources to amend the FE, rather than file an appeal. The City's intention with the 2014 FE Amendment is to make it abundantly clear Policy 3.3.2 and Programs 42 and 43 do not mandate monitoring in community plans. Nothing in the 2014 Judgment and Order prohibited the City from amending the FE.

4. Recommended Supplemental Findings

If after reconsideration of the 2014 FE Amendment Resolution, the Council finds it does not desire to modify or rescind the 2014 FE Amendment or its adopting resolution, the Council may adopt the following findings:

Supplemental 2014 FE Findings

The City Council finds all of the following:

1. The City Council has reconsidered the 2014 FE Amendment and its adopting resolution in light of the trial court's January 15, 2014 Statement of Decision and the July 14, 2014 Ruling and Order on Matters submitted in *Fix the City v. City of Los Angeles, et al., La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles, et al.*, Case No. BS138580.
2. Based on the Framework Element and the entire administrative record, including the FE 2014 Framework Amendment Background in Exhibit 2, the 2014 Framework Amendment and its adopting resolution do not violate State planning law, including Government Code Section 65302, do not violate CEQA, including Public Resources Code Section 21081.6, and do not violate Los Angeles City Charter, including Sections 554, 556, or 558.
3. Los Angeles City Charter Section 554 does not mandate the General Plan, including Community Plans, as the City's land use element, to include a policy or program to monitor growth and infrastructure.
4. Los Angeles Charter Sections 556 and 558 do not mandate and are not relevant to the contents of the Framework Element or any Community Plan.
5. The City's General Plan, including its land use element, complies with State Planning law, including Section 65302, without including policies or programs to monitor growth and infrastructure as called for in Framework Element Policy 3.3.2 and Programs 42 and 43.
6. Policy 3.3.2 and Programs 42 and 43, along with all other policies and programs in the Framework Element, were intended to be discretionary when adopted into the Framework Element.

7. The Framework Element is intended to guide the adoption or update of the City's Community Plans and nothing in the Framework Element is intended to mandate any policies or programs in a community plan.
8. Policy 3.3.2 and Programs 42 and 42 were not intended to be read as mandatory, even and including to the extent they are ever found by a court to implement a FE EIR mitigation measures.
9. The 2014 FE Amendment as a statement of the City's historical interpretation of the FE, was intended to clarify, rather than change, the FE Amendment, however the City recognizes it cannot overrule a trial court decision as such and was not intending for the amendment to work retroactively.
10. The City intended and intends the 2014 FE Amendment in its application to be prospective from its adoption.
11. Any policy or program for monitoring of growth and infrastructure in any City community plan should not be construed as extrinsic evidence that the City interprets Charter Section 554, 556 or 558, or State Planning Law, or PRC Section 21081.6, or the Framework Element Policy 3.3.2 or Program 42 or 43, as requiring a community plan to have a program or policy to monitor growth or infrastructure, as it was not intended as such.
12. The proposed HCPU is internally consistent with the FE regardless that it does not include monitoring policies or programs as described in FE policy 3.3.2 and programs 42 and 43, for all of the other reasons described in the adopted Council findings for the proposed HCPU and because FE Policy 3.3.2 and Programs 42 and 43 are not mandatory.
13. The 2014 FE Amendment and its adopting resolution are legal and proper and the City Council finds it is not desirable or necessary to amend or rescind either. To the extent the trial court finds the City violated local or state law or its prior order, the City Council desires the City Attorney's Office take all necessary actions to uphold Council's adoption of the 2014 FE Amendment.

Sincerely,

VINCENT P. BERTONI, AICP

Director of Planning



Craig Weber

Principal City Planner

VPB:SB:CW:pm

Enclosures

c: Exhibit 1: Superior Court of the State of California, County of Los Angeles, West District. Final Statement of Decision, January 15, 2014

Exhibit 2: Council File 12-0303-S4, Department of City Planning Staff Recommendation Report, March 18, 2014

Exhibit 3: Council File 12-0303-S4, Final City Council Action (Resolutions), April 2, 2014

Exhibit 4: Superior Court of the State of California, County of Los Angeles, West District. Ruling and Order on Matters Submitted June 24, 2014

FILED
Superior Court of California
County of Los Angeles

JAN 15 2014

Sherri R. Carter, Executive Officer/Clerk

By Daria Sah Deputy
Darian Salisbury

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

FIX THE CITY, etc.,

Petitioner and Plaintiff,

vs.,

**CITY OF LOS ANGELES; LOS
ANGELES CITY COUNCIL; LOS
ANGELES DEPT. OF CITY PLANNING;
and DOES 1 through 100, inclusive,**

Respondents and Defendants.

**HOLLYWOOD CHAMBER OF
COMMERCE,**

Intervenor.

**LA MIRADA AVENUE
NEIGHBORHOOD ASSN. OF
HOLLYWOOD, etc.,**

Petitioner and Plaintiff,

vs.

**CITY OF LOS ANGELES; CITY
COUNCIL OF THE CITY OF LOS
ANGELES; and DOES 1 through 100,
inclusive,**

Respondents and Defendants.

CASE NO. BS138580

STATEMENT OF DECISION

CASE NO. BS138369

STATEMENT OF DECISION

1
2 **HOLLYWOOD CHAMBER OF**
3 **COMMERCE,**
4 **Intervenor.**

5
6 **SAVE HOLLYWOOD.ORG, aka**
7 **PEOPLE FOR LIVABLE**
8 **COMMUNITIES, etc., HOLLYWOOD-**
9 **ANS ENCOURAGING LOGICAL**
10 **PLANNING, etc.,**

11 **Petitioners/Plaintiffs,**

12 **vs.**

13 **THE CITY OF LOS ANGELES, CITY**
14 **COUNCIL OF THE CITY OF LOS**
15 **ANGELES, CITY ATTORNEY OFFICE**
16 **OF CITY OF LOS ANGELES, HERB**
17 **WESSON PRESIDENT OF CITY**
18 **COUNCIL, CARMEN TRUTANICH CITY**
19 **ATTORNEY, DOES 1 through 100,**
20 **inclusive,**

21 **Respondents/Defendants.**

22 **HOLLYWOOD CHAMBER OF**
23 **COMMERCE,**

24 **Intervenor.**

CASE NO. BS138370

STATEMENT OF DECISION

25 These matters having been tried on September 16 and 17, 2013, and having
26 been submitted for decision; the Court having issued its Tentative Decision and
27 Proposed Statement of Decision; the parties having filed comments thereon; and those
28 comments having been considered; the Court now issues this final Statement of
Decision.

/ / /

INTRODUCTION

The Hollywood Community Plan Update (HCPU) (and its corollary environmental impact report [EIR]), which is a principal subject of this litigation, is a comprehensive, visionary and voluminous planning document which thoughtfully analyzes the potential for the geographic area commonly referred to as Hollywood (as defined in its several hundred pages). The HCPU includes scores of pages of text, detailed maps and tables which together express the finest thoughts of dedicated city planners. The HCPU is intended to be *the* essential component of the General Plan Framework (the Framework) for the City of Los Angeles (the City) as the General Plan for the City (in all of its elements) is applicable to planning and potential growth in Hollywood.

This otherwise well-conceived plan is also fundamentally flawed, and fatally so in its present iteration. As petitioners have articulated, and as will be discussed below, the HCPU, and its accompanying EIR, contain errors of fact and of law that compel granting relief to the community groups which challenge adoption of the HCPU and its EIR in their present forms.

While one can appreciate the goal of finalizing adoption of the HCPU, its accompanying EIR and related documents, and doing so as close to “on schedule” as possible given the many years since the City began its staged revisions to its General Plan planning documents (culminating in adoption of the Framework),¹ forging ahead in the processing of the HCPU, EIR and related documents in this case based on fundamentally flawed factual premises has resulted in a failure to proceed in the manner required by law. This and other bases for the rulings now made are set out below.

1

The first draft of the Framework was circulated to the public almost twenty years ago, in July 1994. It was not finalized until eleven years later when review of the decision of the Court of Appeal of late 2004 upholding a revised version of the Framework was denied review by the California Supreme Court in February 2005. The attenuated history of adoption of the Framework is described in *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252 [*Federation I*] and *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2005) 126 Cal.App.4th 1180 [*Federation II*].

TRIAL PROCEEDINGS

The matter was tried to the Court on September 16 and 17, 2013. Prior thereto the parties filed extensive briefs, followed by their arguments at length at trial. Following the trial, the parties have filed requests for statement of decision (in addition to that provided for in Public Resources Code section 21005 (c) [requiring that a court specify all grounds on which a public agency has acted not in compliance with CEQA if it so finds]). While those statements have been filed, a controversy over the requests has been created. It is resolved in the accompanying footnote.²

Pursuant to Public Resources Code section 21005(c), Code of Civil Procedure section 632 and California Rules of Court 3.1590, this Tentative Decision is also the proposed Statement of Decision in these matters. If any party now renews its request for a statement of decision, it must timely and fully comply with Rule 3.1590. If not, then this document is also the Statement of Decision in these matters, and prevailing parties are to timely prepare, serve and lodge the appropriate peremptory writs and judgments.

Evidence

The Court admitted the Administrative Record in each case. (It is identical.)

Each party has sought judicial notice of certain items. With the consent of the parties, those items which are determined properly the subject of judicial notice in one case are admitted as to all cases.

Request for Judicial Notice by Fix the City

Fix the City (by Request for Judicial Notice filed August 21, 2013) seeks judicial

2

In addition to filing in each case a list of issues which it contends should be addressed in the statement of decision in each, City and intervenor filed in each case a lengthy set of objections and arguments as to why many of the requests made by each petitioner/plaintiff were erroneous. As no authority to support their editorial comments on the requests made by their adversaries was provided, and the Court is not aware of any authority to challenge another party's *request* for inclusion of any matter or issue in the statement of decision, the *objections* will not be considered *qua* objections: The Court is the final arbiter of the contents of its own statement of decision and does consider the parties' views with respect to its contents in connection with the Court's final document.

1 notice of sections 2.10 through 2.10.6 and 2.11 through 2.11.6 of the City's General
2 Plan Framework EIR (addressing Fire and Emergency Medical Services and Police
3 Services, respectively. These requests are granted pursuant to Evidence Code section
4 452(c).

5 Request for Judicial Notice by La Mirada

6 La Mirada seeks judicial notice of the meaning of the word "range" according to a
7 particular dictionary and of Los Angeles City Charter sections 554, 556 and 558. The
8 Court grants the second request in full and the first subject to the Court's own ability to
9 discern the appropriate and applicable meanings of words when used in particular
10 contexts.

11 La Mirada also sought to "supplement" the Administrative Record by its August
12 21, 2013 Notice of Lodging, to which City objected. The items are Chapter 2 of the
13 City's General Plan Framework and the text of a particular hyperlinked document. The
14 latter is already part of the record pursuant to the correct reading of *Consolidated*
15 *Irrigation District v. Superior Court* (2010) 205 Cal.App.4th 697, 724-725. City's reading
16 of this case is crabbed. City's objection to the Framework is frivolous as City itself both
17 seeks judicial notice of the document and cites it in its Opposition (City's Op. at 11:17-
18 21). La Mirada requests are granted, as is City's request for judicial notice of the
19 Framework.

20 Request for Judicial Notice by SaveHollywood.org et al.

21 There is no objection to Item 1, which is an opinion in a federal court case;
22 granted.

23 Nor is there any objection to item 2, which is a print out of a web page relating to
24 the census, but the Court sees nothing other than the printed page. That is not sufficient
25 basis for granting a request for judicial notice; this request is denied.

26 City objects to item 3, a SCAG document, but it is in the record at AR 21168.
27 And, under the authority of *Consolidated Irrigation District v. Superior Court, supra*, the
28 report at the hyperlinked cite was already also part of the record. The copy of that report

1 at that link (Exhibit 3 to the Cheng declaration, filed with the Request for Judicial Notice)
2 is merely another copy of the document which is already in the record. This request is
3 granted.

4 Request number 4 is not a part of the record and its contents indicate it is only
5 raw data in any event. It is neither timely nor appropriate for judicial notice; City's
6 objections to this item are sustained.

7 City's Request for Judicial Notice

8 The requests of City, et al. that the Court take judicial notice of several items
9 (identical in each case) are resolved as follows:

10 Granted as to Sections 555, 556 and 558 of the City Charter. (Exhibits F, G and
11 H.)

12 Granted as to the extracts of the City of Los Angeles General Plan Framework
13 attached to the Request for Judicial Notice as Exhibit B.

14 Granted as to the official opinion of the Court of Appeal in *Saunders v. City of Los*
15 *Angeles*, reserving determination as to the relevance and application of that opinion to
16 the circumstances of this action.

17 As no adverse party objected, the Court also grants the requests as to the
18 existence and filing of each of the Petitions for Writ of Mandate in *Federation of Hillside*
19 *Canyon Associations v. City of Los Angeles* (two cases) and *Saunders v. City of Los*
20 *Angeles*; and as to the excerpts of the EIR in the *Saunders v. City of Los Angeles*
21 (Exhibits C, D and E).

22 Without additional explanation, which was never provided, the Court finds
23 insufficient the proffer with respect to a single page of the 2013 update of the U.S.
24 Census. (Exhibit A.) Although the population of the HCPU area is a point of
25 considerable interest in and importance to this case, the document attached as Exhibit A
26 to this RJN, was apparently updated in 2013 -- in some unexplained manner -- and the
27 particular document attached has no indication of any particular relevance itself.

28 Nor will the Court accept City's apparently implied offer that the Court search the

1 U.S. Census itself. That would be both improper and inordinately time-consuming. City
2 had the obligation to explain the relevance of the document, and in this case to be clear
3 about the particular parts of the document to which it seeks the Court's attention.

4 Declarations

5 The declarations of MacNaughton and Kruse are not proper subjects of judicial
6 notice; nor is Exhibit 1 to the Reply Brief to which it is attached. City's objections to these
7 matters are sustained.

8 Other evidence

9 All other evidence, which is in the Administrative Record, is admitted.

10 Status of the three cases

11 With the stipulation that all evidence admitted in one case is admitted in all, and
12 based on the congruence of the subject matter of the cases, the Court issues this single
13 decision to address the issues presented in each of the three cases.

14 **Background; the Framework Element**

15 City has sought, and the Court has granted, City's request for judicial notice of a
16 portion of "The Citywide General Plan Framework - An Element of the City of Los
17 Angeles General Plan" ("the Framework Element" [the same document the Court
18 referenced *ante* and which was the subject of the cases cited in footnote 1, *ante*).

19 There is no explanation why this document was not originally included in the
20 Administrative Record in this case as it sets forth "a citywide comprehensive long-range
21 growth strategy" for the city and describes the role of community plans such as the
22 Hollywood Community Plan Update (HCPU) at issue in these proceedings.³ (City's RJN,
23 Exh. B, page 2) Thus: "While the Framework Element incorporates a diagram that
24 depicts the generalized distribution of centers, districts, and mixed-use boulevards
25 throughout the City, it does not convey or affect entitlements for any property. **Specific**

26
27 ³

28 The Court also granted Petitioner Fix the City's request that the Court take judicial
notice of segments of Chapter 2 of the same document.

1 | **land use designations are determined by the community plans.”** [Par.] In fulfillment
2 | of the State’s [planning] requirements [for general plans (Govt. Code secs. 65300, et
3 | seq.)], the City’s general plan contains citywide elements for all topics listed except Land
4 | Use for which community plans establish policy and standards for each of the 35
5 | geographic areas.” (*id.*, emphasis added.) The HCPU is or will be such a plan for
6 | Hollywood.

7 | The Framework also contains a statement of relevance with respect to the
8 | significance of population data:

9 | “In planning for the future, the City of Los Angeles is using population forecasts
10 | provided by the Southern California Association of Governments (SCAG). The
11 | Framework Element does not mandate or encourage growth. Because population
12 | forecasts are estimates about the future and not an exact science, it is possible
13 | that population growth as estimated may not occur; it may be less or it may be
14 | more. The City could be at the beginning of a long decline in population or at the
15 | beginning of a sharp increase.” [Par.] The Element is based on the population
16 | forecasts provided by SCAG. Should the City continue to grow, the Element
17 | provides a means for accommodating new population in a manner which
18 | enhances rather than degrades the environment. The City does not have the
19 | option of stopping growth and sending it elsewhere. It must prepare for it, should
20 | growth occur. In preparing the General Plan Framework Element, the City has
21 | answered the question “What would the City do if it had to accommodate this
22 | many more people?” In answer to that question there are two possibilities: 1)
23 | prepare a Plan to accommodate density equally among all City neighborhoods, or
24 | 2) prepare a plan to preserve the single-family neighborhoods and focus density
25 | — should it occur — in limited areas linked to infrastructure.” (*Id.*)

26 | The HCPU is thus the updated, basic planning document for the Hollywood
27 | community which “establish[es] policy and standards for [the Hollywood] geographic
28 | area[.].” (*Id.*)

1 As will be discussed, the HCPU, includes, *inter alia*, a plan to focus growth along
2 transit corridors and in specific areas of Hollywood. Whether the final environmental
3 impact report for the HCPU withstands scrutiny at this time is the focus of the differences
4 between these petitioners, on the one hand, and City and Intervenor, the Hollywood
5 Chamber of Commerce, on the other.

6 The fundamental dilemma is why and how "specific land use designations" are
7 properly determined based on population estimates which, it is argued and clearly
8 established, are substantially inaccurate.

9 PRELIMINARY PROCEDURAL ARGUMENTS

10 *Waiver?*

11 City and Intervenor contend that certain petitioners waived critical arguments by
12 not asserting them in the administrative proceedings or in the petition for writ of
13 mandate. This contention is an inaccurate statement of what occurred in the
14 administrative proceedings below. Contrary to the claims of City and of Intervenor, it is
15 well-established that whether a particular petitioner made a contention below is not the
16 test for asserting that claim in CEQA proceedings. The question is: Was the subject
17 matter of the claim made *by anyone* below with sufficient specificity?

18 As but two examples of the facts: (1) SaveHollywood raised the issue of the mis-
19 use of the 2005 SCAG population estimate multiple times in the administrative
20 proceeding, and (2) when the 2010 Census data was first incorporated into an official
21 document just days prior to the final action by the City Council, La Mirada wrote to the
22 body before which the issue was then being considered, the City Council, setting out in
23 more than ample detail its objections. *Cf., Endangered Habitats League v. State Water*
24 *Resources Control Board* (1999) 70 Cal.App.4th 482, 489-491 [exhaustion not required
25 when no opportunity to challenge provided]. Public Resource Code section 21177 is
26 simply not applied in the crabbed manner that City and Intervenor contend. Multiple
27 additional examples of timely stated objections to the points now adjudicated appear in
28 the record. Thus, on the facts, the issues now presented were all timely presented

1 below.

2 Next, there was considerable specificity in the objections made by petitioners (and
3 others) at the several stages of the administrative process, specificity that meets the
4 applicable test, even as discussed in the cases cited by Intervenor (e.g., *Resources*
5 *Defense Fund v. Local Agency Formation Commission* (1987) 191 Cal.App.3d 886,
6 894). Moreover, better reasoned cases such as *Citizens Assn. for Sensible*
7 *Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163, make
8 clear that the specificity prong of the Public Resources Code section 21177 requirement
9 was amply met -- and for all of the issues raised in this proceeding. As the *Sensible*
10 *Development* court states: " ... less specificity is required to preserve an issue for appeal
11 in an administrative proceeding than in a judicial proceeding. This is because "[i]n
12 administrative proceedings, [parties] generally are not represented by counsel. To hold
13 such parties to knowledge of the technical rules of evidence and to the penalty of waiver
14 for failure to make a timely and specific objection would be unfair to them." (Note (1964)
15 Hastings L.J. 369, 371.) It is no hardship, however, to require a layman to make known
16 what facts are contested." (*Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1970) 8 Cal.App.3d
17 1009, 1020 [87 Cal.Rptr. 908].)" *Id.*, at 163.⁴

18 *Claim Preclusion as to Fix the City?*

19 City and Intervenor advance two arguments as to claim preclusion of certain
20 contentions by petitioner Fix the City; neither is meritorious.

21 First, City mistakenly asserts (City's Op. at 28-29) that Fix the City's arguments
22 about mitigation measures are barred because it is "in privity with" with a party to
23 *Federation II* (*id.* at 23:12-27). City cites as its legal authority *Frommhagen v. Board of*
24 *Supervisors* (1987) 197 Cal.App.3d 1292, 1301. That case does not support the

25
26 ⁴

27 This last waiver contention is resolved based on the circumstance that the claims
28 which City claims to have been waived are simply elements of petitioner Fix the City's
Fourth Cause of Action. The cases City cites are inapposite. See Fix the City's Reply at
25:1-15.

1 argument made. At the cited page that court is addressing claims made by the same
2 party, not which party is in privity with whom. It is clear that in this case we have multiple
3 petitioning parties and that there is no sufficient evidence presented that Fix the City is in
4 legal privity with any other party to the earlier case. City's claim is without support.
5 *See, e.g., Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180
6 Cal.App.4th 210, 229-231.

7 Nor does Fix the City's participation in *Saunders v. City of Los Angeles*
8 (September 25, 2012) (2012 WL 4357444) support City's claim preclusion arguments.
9 As Fix the City points out, the issue presented in *Saunders* was whether City breached a
10 mandatory duty by failing to prepare annual reports on the City's infrastructure (Fix the
11 City's Reply at 22:19-27); it involved the Framework and not either this EIR or the
12 HCPU. It appears that City relies solely upon the circumstance that Fix the City was a
13 party to *Saunders* as barring its contentions here. That argument ignores the material
14 differences in the issues presented in the two cases. Nor were this HCPU and its EIR
15 considered in any respect in *Saunders*; indeed, there is no way either could then have
16 been subject to anyone's consideration as they had only been adopted and approved
17 after the *Saunders* trial court had issued its decision.⁵

18 PRINCIPAL ARGUMENTS AND ANALYSIS

19 Petitioners' contentions

20 Petitioners advance several arguments in support of their contentions that the
21
22
23

24 5

25 The Court, *sua sponte*, takes judicial notice of the entry of judgment in the trial court
26 in *Saunders* -- on March 2, 2011 -- a date prior to the public dissemination of the draft
27 EIR in the present case, making City's argument -- that of a party to *Saunders* and with
28 detailed knowledge of its proceedings -- more than difficult: There is no way in which the
claims now made concerning this, later issued EIR (and plan), could have been raised or
litigated in that case. *See, Planning & Conservation League v. Castaic Lake Water*
Agency (2009) 180 Cal.App.4th 210, 225-229 and *e.g., Federation II* at 1202.

1 HCPU and its EIR were not prepared in the manner required by law, etc.⁶

2 Population base

3 A fundamental contention of all petitioners is that the population data upon which
4 the EIR for the HCPU is formulated is fatally flawed, with the result that the EIR must be
5 revised and then recirculated with appropriate analysis of the corrected basic data.

6 Applicable facts

7 The first set of relevant facts is the timeline of significant actions for the items,
8 now listed.

- 9 ● April 28, 2005 * Notice of Preparation of Draft EIR published
- 10 ● March 3, 2011 * Draft EIR released
- 11 ● May 2011 * 2010 U.S. Census data released⁷
- 12 ● October 2011 * Final EIR released
- 13 ● December 11, 2011 * Planning Commission submits HCPU
14 with recommendation of approval of HCPU
- 15 ● May 8, 2012 * City Council Planning and Land Use
16 Management Committee (PLUM Com.) submits HCPU to Council
17 without recommendation
- 18 ● May 18, 2012 * First Revisions to EIR [contains response to SCAQMD]
- 19 ● June 14, 2012 * Second Revisions to EIR - [33 pages; contains references
20 to 2010 US Census data released in May 2011]
- 21 ● June 19, 2012 * City Council meeting at which EIR adopted
- 22 ● June 21, 2012 * Notice of Determination filed

23 The principal factual and legal dispute concerns City's reliance on population

24
25 ⁶

26 Certain petitioners also address claimed general plan defects. Because they are
analyzed according to a different standard, the Court addresses them separately, *post*.

27 ⁷

28 City cited a web address at which census data could be viewed. The Court declines
this entirely non-specific invitation as vague, overbroad and therefore insufficient.

1 data, which City obtained from the Southern California Association of Governments
2 (SCAG), as the base for analysis in the HCPU and its EIR. There is agreement that the
3 base used for analysis was the SCAG estimate of population in 2005 in the HCPU
4 defined area, and that this number was 224,426 persons. The EIR describes this
5 estimate as having been derived from the 2004 SCAG Regional Transport Plan. Neither
6 this 2004 Plan nor any other source data with respect to the 2005 population number
7 appear in the Administrative Record. (Limited background memoranda relevant to the
8 population statistics do appear in the Reference Library, but they do not provide the
9 missing data.) The Draft EIR (DEIR) uses a forecast of population for 2030 for the
10 HCPU area of 244,302; this was derived from the same 2004 study. The DEIR also sets
11 out a "revised" population estimate of 245,833.

12 Using these various data points, the DEIR analyzed what it referred to as a
13 "reasonable expected level of development for 249,062 people.

14 Petitioners argue that the fact that the results of the 2010 Census became
15 available just after the DEIR was released compelled revision of the DEIR to utilize that
16 data and that failure to do so was prejudicial error requiring preparation and recirculation
17 of a new DEIR which properly incorporates the 2010 Census population data. (While
18 the exact date of release of this data is a point of dispute among the parties, it is clear
19 that the official United States Government census data became available by May, 2011
20 — within 60 days of the release of the DEIR.)

21 This U.S. Census data is relevant to this litigation because it differs so significantly
22 from that used in the EIR process here. The 2010 Census shows that the population of
23 the HCP area was approximately 198,228 persons. The reason why this is given as an
24 approximation is that the relevant census tracts cover an area slightly different than the
25 boundaries of the HCPU area. This difference is known, however, to City's Planning
26 Department, and City did make some adjustments to its own data in its Second Addition
27 to Final EIR, dated June 14, 2012, five days before the City Council took final action on
28 the HCPU and its EIR, confirming its knowledge in this respect.

1 The following table summarizes key data and illustrates the petitioners' contention
2 that the base used by City in its planning constitutes error.⁸
3

4 1990 U.S. 5 CENSUS	2000 6 U.S. CENSUS	2004/2005 7 SCAG pop. est.	2010 8 U.S. CENSUS	2030 9 Forecast in DEIR	2030 10 CITY est.
213,912	210,824	224,426	198,228	244,302	249,062

8 Reference to this table produces some obvious questions including the following:

- 9 (1) Why was the population base which City used for analysis in the DEIR the
10 SCAG estimate of 224,426 when the Official Census data became available
11 within 60 days of release of the DEIR — and when that data shows a significantly
12 lower population (even in a somewhat larger geographic area)?⁹; and
13 (2) why was the 2030 population number used not further adjusted once the 2010
14 U.S. Census data was available?
15

16 The 2005 SCAG population estimate was a principal key to the analytical
17 foundation for the DEIR. From it flowed not only the 2030 population estimate used in
18 the DEIR, but, combined with other factors, estimates for water consumption, waste
19

20 ⁸

21 While City argues that it was not possible to estimate the population in the HCPU
22 area because of incongruity of census tracts with the HCPU area, the Administrative
23 Record reveals that petitioner La Mirada was able to estimate the population in the
24 HCPU area at 197,085 persons, and City itself made revisions to the EIR just 5 days
25 prior to its approval by the City Council to incorporate some of the data from the 2010
26 Census, as noted in the text.

24 ⁹

25 It is clear that City's Planning Department had the ability to adjust for the slight
26 differences between the HCP boundaries and the census tract data as the latter was
27 discussed in the 33 page June 14, 2012 Second Revision to EIR released just 5 days
28 prior to the City Council voting to approve the EIR -- and the census tracts themselves
had been extant for a considerable period of time. City advanced several contentions
based on the argued differences, claims that appear fully refuted by the actions taken by
its own Planning Department.

1 water, solid waste, and energy demand,¹⁰ as well as other elements of the EIR.

2 As Fix the City aptly describes the function of the EIR: "At the heart of the [DEIR
3 for the HCPU] and indeed the defining purpose of the Plan Update itself, is the
4 accommodation of projected population growth in the Plan area. The purpose of the
5 EIR is to evaluate the environmental impacts of accommodating this growth in the
6 manner and locations set forth in the Plan Update. In this regard, the magnitude of the
7 population increase accommodated by the Plan Update is a critical component of the
8 environmental analysis and [is] relied upon in numerous instances throughout the EIR."
9 (Fix the City's Opening Memo. at 6:5-21). Thus, it is critical to the EIR that the
10 population base be appropriate to the actual circumstances which exist in the area of the
11 HCPU and its EIR. In this case, it was not.

12 Standard of Review

13 The standard for review of the sufficiency of any EIR is prejudicial abuse of
14 discretion. Public Resources Code sections 21168 and 21168.5. "Abuse of discretion is
15 established if the agency has not proceeded in a manner required by law or if the
16 determination or decision is not supported by substantial evidence. *Laurel Heights*
17 [*Impr. Asn. v. Regents* (1988) 47 Cal.3d 376,] at 392. A prejudicial abuse of discretion
18 occurs if the failure to include relevant information precludes informed decision-making
19 and informed public participation, thereby thwarting the goals of the EIR process." *San*
20 *Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 653.
21 "... the existence of substantial evidence supporting the agency's ultimate decision on a
22 disputed issue is not relevant when one is assessing a violation of the information
23 disclosure provisions of CEQA. " *Association of Irrigated Residents v. County of Madera*
24 (2003) 107 Cal.App.4th 1383, 1392.¹¹ A clearly inadequate or unsupported study is

25 ¹⁰

26 The estimates for public safety services will be discussed, *post*.

27 ¹¹

28 The need to be alert for agency misconduct in CEQA matters is especially strong
where, as here, the agency is the project proponent. *Deltakepper v. Oakdale Irrigation*

1 entitled to no judicial deference. *Berkeley Keep Jets Over the Bay v. Board of Port*
2 *Commissioners* (2001) 91 Cal.App.4th 1344, 1355.

3 Here, a case cited by respondents also supports petitioners' contention.¹² In
4 *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136
5 Cal.App.4th 1, the court held that a lead agency cannot forego its own analysis of base
6 data and rely instead on such data provided by another agency. In the present matter,
7 one of City's principal counter-arguments is that it was entitled by law to rely on the
8 SCAG 2005 population estimate. That contention must be and is rejected upon the
9 authority of *Californians for Alternatives, supra*. See also, *Ebbits Pass Forest Watch v.*
10 *Calif. Department of Forestry* (2008) 43 Cal.4th 936, 956.

11 There are additional reasons why use of the SCAG population estimate is
12 improper in the context of this EIR. As petitioners explain, this EIR does not contain the
13 "analytical route" by which the lead agency reached the conclusions set out in such a
14 document. This requirement, that fundamental information be disclosed in the planning
15 documents, has been the law for decades. *E.g., Topanga Assn. for a Scenic*
16 *Community v. County of Los Angeles* (1974) 11 Cal.3d 506:

17 "We further conclude that implicit in section 1094.5 is a requirement that the
18 agency which renders the challenged decision must set forth findings to bridge the
19 analytic gap between the raw evidence and ultimate decision or order. If the
20 Legislature had desired otherwise, it could have declared as a possible basis for
21 issuing mandamus the absence of substantial evidence to support the
22 administrative agency's action. By focusing, instead, upon the relationships
23 between evidence and findings and between findings and ultimate action, the

24 _____
25 *Distr.* (2001) 94 Cal.App.4th 1092, 1109.

26 ¹²

27 Petitioner La Mirada clearly makes the argument that City did not proceed in the
28 manner required by law. Petitioner Fix the City appears to rely on the other basis to set
aside an EIR, viz., that there is no substantial evidence in its support — a claim joined by
SaveHollywood, as well as by La Mirada.

1 Legislature sought to direct the reviewing court's attention to the analytic route the
2 administrative agency traveled from evidence to action. In so doing, we believe
3 that the Legislature must have contemplated that the agency would reveal this
4 route. Reference, in section 1094.5, to the reviewing court's duty to compare the
5 evidence and ultimate decision to 'the findings' (emphasis added) we believe
6 leaves no room for the conclusion that the Legislature would have been content to
7 have a reviewing court speculate as to the administrative agency's basis for
8 decision." *Id.*, at 515.

9 City and Intervenor contend that City fully complied with EIR requirements, citing
10 Guidelines section 15125(a), which provides:

11 "An EIR must include a description of the physical environmental conditions in the
12 vicinity of the project, as they exist at the time the notice of preparation is
13 published This environmental setting will normally constitute the baseline
14 physical conditions by which a lead agency determines whether an impact is
15 significant."

16 In addition to using the SCAG 2005 estimate of a population of 224,426, the DEIR
17 forecast a population of 244,302 residents in 2030 for planning purposes. This data, as
18 noted previously, was derived from the 2004 SCAG transportation report.¹³ The EIR
19 then estimated the "reasonable expected level of development" utilizing a further
20 estimate of the population in the HCPU area in 2030 of 249,062.

21 Considering the *actual* population in 2010 as evidenced by the 2010 Census data,
22 the real population increase essential to analysis in the DEIR was 50,744 rather than the
23 24,636 persons number which was utilized by City. Thus, the analysis in the DEIR was

24 ¹³

25 As Petitioner SaveHollywood points out, the 2004 RPT was not included in the
26 Administrative Record; this is "a fatal error" as it is "a key rationale" for the HCPU and
27 "[b]y omitting purported relevant information from the record, the City deprived the public
28 of the ability to independently verify [City's] population assumptions and its
environmental assessments predicated thereon." SaveHollywood.org Opening Memo. at
8:16-21.

1 predicated upon a population increase — *well under half* — of what would occur if the
2 2030 estimate were to remain. And, if the population estimate for 2030 were to be
3 adjusted based on what the 2010 Census data had shown, then all of the several
4 analyses which are based on population would need to be adjusted, such as housing,
5 commercial building, traffic, water demand, waste produced — as well as all other
6 factors analyzed in these key planning documents.¹⁴

7 City's reliance on what is "normally" permissible as what is required is misplaced.
8 The very fact that Guideline section 15125(a) uses the word "normally" suggests that
9 there are circumstances in which such reliance is not appropriate. It is well-established
10 that, "[i]n some cases, conditions closer to the date the project is approved are more
11 relevant to a determination of whether the project's impacts will be significant. *Save Our*
12 *Peninsula Com. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99,
13 125. Thus, the Guideline in which City and Intervenor seek refuge instead recognizes,
14 and the cases support, the petitioners' contention that there are substantial reasons to
15 use a different (up-to-date) baseline when the circumstances warrant, as the
16 circumstance did, and do, in this case:

17 "Administrative agencies not only can, but should, make appropriate adjustments,
18 including to the baseline, as the environmental review process unfolds. *No*
19 *purpose would be served, for example, if an agency was required to remain*
20 *wedded to an erroneous course and could only make a correction on remand*
21 *after reversal on appeal.*" *Citizens for East Shore Parks v. California State Lands*

22
23 ¹⁴

24 As La Mirada points out in its Opening Brief at 7:19-22, just before the City Council
25 voted to approve the several documents in June 2012, City added its conclusion that it
26 was still reasonable to rely on the 2005 SCAG population base even with the 2010
27 Census data. That clearly is a post-hoc rationalization of City's failure to recognize
28 that the HCPU was unsupported by anything other than wishful thinking — and a
demonstration of an effort to avoid further analysis in key planning documents. Nor is
an agency's determination marked by changes such as those in evidence here, entitled
to any deference. *Yamaha Corp. v. State Board of Equalization* (2001) 19 Cal.4th 1,
14.

1 Comsn. (2011) 202 Cal.App.4th 549, 563. (Emphasis added.)

2 Even when the surrounding conditions are recognized close in time to the final
3 certification of the EIR, the baseline must be updated to reflect that new knowledge.
4 *E.g.*, *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357
5 (identification of additional wetlands made just prior to proposed certification of FEIR).
6 Here, the significant factual predicate for the critical analytical issues explicated in the
7 EIR was known far earlier in the EIR process than that in *Mira Monte*; here, just two
8 months after release of the initial DEIR and over a year prior to final action on the EIR —
9 yet no material adjustments were made. Multiple objections to the continued use of
10 these demonstrably incorrect SCAG population estimates repeatedly were made “for the
11 record” by several groups — and ignored by City until their limited [and inadequate] use,
12 just 5 days before final approvals in the Second Addition to Final EIR. This conduct was
13 itself a failure to proceed in the manner required by law. Public Resources Code section
14 21166; *Mira Monte*, *supra*, at 365-366.

15 When the new facts became known shortly after issuance of the DEIR, the
16 baseline used for analysis should have been adjusted -- in the summer of 2011 rather
17 than proceeding with a fundamentally flawed baseline. The failure to use accurate and
18 then-current data was a failure to proceed in the manner required by law . This is made
19 clear by cases such as *Save our Peninsula Committee v. Monterey County Board of*
20 *Supervisors* (2001) 87 Cal.App.4th 99: “If an EIR fails to include relevant information
21 and precludes informed decisionmaking and public participation, the goals of CEQA are
22 thwarted and a prejudicial abuse of discretion has occurred. (*Sierra Club v. State Bd. of*
23 *Forestry* (1994) 7 Cal.4th 1215, 1236 []; *Fall River Wild Trout Foundation v. County of*
24 *Shasta* (1999) 70 Cal.App.4th 482, 492 []; *County of Amador v. El Dorado County Water*
25 *Agency*, *supra*, 76 Cal.App.4th at p. 954; Pub. Resources Code, § 21005, subd. (a).)”
26 *Id.*, at 128.

27 While CEQA gives the lead agency flexibility in establishing baseline conditions,
28 as Fix the City argues, “that flexibility must be cabined by the rule that all CEQA

1 determinations must be supported by substantial evidence. (Fix the City, Opening
2 Memo. at 8:17-19). Citing Guideline 15384, which defines substantial evidence, Fix the
3 City points out (*id.*, at 9:5 et seq.) that substantial evidence must have a factual basis
4 which is “a serious deficiency of the 2005 estimate.” Decision makers cannot arrive at
5 the required reasoned judgment without it. *Concerned Citizens of Costa Mesa v. 32nd*
6 *Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

7 Intervenor errs in its claim that use of the incorrect baseline was not prejudicial.
8 (Intervenor’s Opposing Memo. at 17-18) Rather, as Fix the City argues, use of the
9 flawed baseline “fundamentally distorted the EIR.” (Fix the City’s Opening Memo. at
10 8:20). Also, the attempted remedy to the prior utilization of the wrong baseline data in
11 the DEIR resulted in City inserting an abbreviated analysis of the 2010 census data in its
12 June 2012 Second Addition to the EIR, which contained a merely truncated — and
13 insufficient — discussion of alternatives. As Fix the City notes: “Clearly, if one goal of
14 the plan is to accommodate projected population growth — setting aside entirely the
15 accuracy of the projection — and the City is advised that there is more capacity in the
16 current plan than it realized, its analysis of necessary future actions to accommodate a
17 projected increase would change.” (Fix the City’s Reply. at 9:1-4)

18 What is particularly flawed about the Second Addendum to the EIR is the failure
19 to adjust for the 50,744 new residents that are a direct consequence of City’s original
20 error (use of the 2005 overstatement of population by SCAG rather than the actual
21 number available from the 2010 Census). The Second Addendum is flawed because it
22 is premised on the unsupportable notion that accommodating 50,744 new residents will
23 have less impact than accommodating 24,636 new residents. The utilities, wastewater
24 and public safety discussions of this EIR are all without support and City has not
25 explained the “analytical route the ... agency traveled from evidence to action,” thus
26 rendering invalid its literally last minute attempt (*viz.*, 5 days prior to final approval) to
27 remedy its prior failures and refusals to accept as valid the many objections made to the
28 mistaken use of outdated and substantially wrong SCAG data. *See, Laurel Heights*

1 *Improvement Assn. v. Regents, supra*, (1988) 47 Cal.3d 376, 404. ^{15 16}

2
3 15

4 No party makes any note of the discussion in *Federation II* of a discussion of
5 projections based on SCAG and census data which appears at 126 Cal.App.4th
6 at 1206-1207. That discussion is not applicable in any event to this case; as may
7 be inferred by the parties omission of any reference to it.

8 At page 11 of its opening memorandum, City claims that a single sentence in the
9 Framework precludes use of up to date population figures, especially the 2010 Census
10 data. As La Mirada argues (Reply at 7:9-11) "Blind adherence to data [City] knows is
11 wrong is not the 'good faith effort at full disclosure' mandated by CEQA. Guideline
12 section 15151." See, *Citizens for East Shore Parks v. California State Lands Comsn.*
13 (2011) 202 Cal.App.4th 549, in which the State Lands Commission as lead agency
14 revisited its baseline during the environmental review process *and modified it as needed*.
15 This practice was specifically approved by the reviewing court of appeal:

16 "To begin with, plaintiffs cite no authority supporting the implied premise of their
17 argument—that the Lands Commission could not revisit the baseline during the
18 environmental review process and modify it as the Commission deemed
19 appropriate or necessary.^[fn omitted] Moreover, such a suggestion is unsound.
20 Administrative agencies not only can, but should, make appropriate adjustments,
21 including to the baseline, as the environmental review process unfolds. No
22 purpose would be served, for example, if an agency was required to remain
23 wedded to an erroneous course and could only make a correction on remand
24 after reversal on appeal. [Par.] The record also reveals a sound basis for the
25 Lands Commission's adjustment of the baseline. Chevron presented the
26 Commission with information about other baseline determinations being made for
27 proposed San Francisco Bay Area projects, and urged it to take the same
28 approach so there would be uniformity in the environmental review process. In
addition, the case law in the area was being developed through decisions such as
Fat, 97 Cal.App.4th at pages 1277–1281, 119 Cal.Rptr.2d 402, which endorsed
and followed *Riverwatch, supra*, 76 Cal.App.4th 1428, 91 Cal.Rptr.2d 322. Thus,
as the Lands Commission explained, its view of the appropriate baseline evolved
over time, ultimately leading to modification of the baseline in the 2003–2004
timeframe, some four years before it completed the environmental review
process. [Par.] in sum, the Lands Commission did not abuse its discretion in
defining the baseline used to assess environmental impacts of the proposed
marine terminal lease renewal. The baseline was not contrary to the law, and it
was based on substantial evidence." *Id.* at 563-564.

16

24 The claims that the petitioners were too late with their objections is devoid of merit.
25 As City only applied the 2010 Census data in the document dated June 14, 2012, five
26 days prior to the City Council vote on the project component documents, and as the
27 record is clear that some of the petitioners made their objections known even in that
28 short time frame, that was all any citizen might (or need) do — and it fully complies with
the standing requirements of CEQA under such a tight time frame. Public Resources
Code section 21167; e.g., *Endangered Habitats League v. State Water Resources
Control Board* (1997) 63 Cal.App.4th 227, 238-240.

Alternatives Analysis

Alternatives analysis is a core element of each EIR. *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162.¹⁷ An EIR must contain and analyze in depth a “range of reasonable alternatives.” *Citizens of Goleta Valley v. Board of Supervisors [Goleta II]* (1990) 52 Cal.3d 533, 566; Guidelines section 15126.6(c). The range must be sufficient “to permit a reasonable choice of alternatives so far as environmental aspects are concerned. *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-751. Each case must be evaluated on its own facts. *Goleta II, supra*, at p. 566. Among the usually included alternatives is one for “reduced density.” *Watsonville Pilots Assn. V. City of Watsonville* (2010) 183 Cal.App.4th 1059. The EIR must always include analysis of the No Project Alternative (Guidelines section 15126.6(e); *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 203) which must discuss what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. Guidelines section 15216.6(e). This alternative is not always the same as the baseline environmental setting, and the EIR’s analysis of the No Project Alternative should identify the practical consequences of disapproving the project when the environmental status quo will not necessarily be maintained. *Planning & Conservation League v. Dept. Of Water Resources* (2000) 83 Cal.App.4th 892.

In determining what constitutes a reasonable range of alternatives, there must be a set or group of such alternatives which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. Guidelines section 15126.6(a). The term feasible is defined in Public Resources Code section 21061.1 as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic,

¹⁷ The other core element is that of mitigation. *Id.*

1 environmental, social, and technological factors. See Guidelines section 15126.6(f)(1).
2 “The key issue is whether the range of alternatives discussed fosters informed decision
3 making and public participation. *Laurel Heights Improvement Assn. v. Regents*, supra,
4 47 Cal.3d 376, 404-405.

5 The EIR must identify the alternatives considered in, and those excluded from,
6 EIR analysis and should provide the reasons for their rejection. *Goleta II*, supra, at 569;
7 Guidelines section 15126.6(b). A brief explanation of such excluded alternatives is
8 sufficient; the entire administrative record may be considered in determining whether a
9 reasonable range of alternatives has been discussed. *Id.*, at 569.

10 “The selection of alternatives discussed will be upheld, unless the challenger
11 demonstrates that the alternatives are manifestly unreasonable and they do not
12 contribute to a reasonable range of alternatives.” *Calif. Native Plant Society v. City of*
13 *Santa Cruz* (2009) 177 Cal.App.4th 957, 988.

14 The EIR in this case contains analysis of three “alternatives”: (1) the current
15 (preexisting, 1988) plan, considered as the No Project Alternative, (2) the
16 current/proposed project, and (3) a plan based on the SCAG 2030 population forecast
17 (which is based on a one percent reduction in population from the proposed project).
18 However, under applicable regulations, there are only two alternatives — Public
19 Resources Code section 21100(b)(4) provides that the project itself cannot be an
20 alternative to itself, as La Mirada points out. La Mirada Opening Brief at 16:17-20.

21 There is a further problem in “counting” the alternatives analyzed: La Mirada
22 points out that Guidelines section 15126.6(e)(3)(A) when read in conjunction with
23 *Planning and Conservation League v. Dept. Of Water Resources* (2000) 83 Cal.App.4th
24 892, 917-918 suggests that the “No Project Alternative” is not an alternative for purposes
25 of CEQA. Instead, it is simply the continuation of the existing plan, policy or operation
26 into the future....[T]he projected impacts of the proposed plan or alternative plans would
27 be compared to the impacts that would occur under the existing plan.” La Mirada
28 Opening Memo. at 16:21-17:7.

1 However one counts the “alternatives,” the flawed environmental setting
2 presented in these EIR documents makes the analysis insufficient and inaccurate.
3 *Friends of the Eel River v. Sonoma County Water Agency* (1994) 27 Cal.App.4th 713,
4 738-739. “[W]ithout [an adequate baseline] description, analysis of impacts, mitigation
5 measures and alternatives becomes impossible.” *County of Amador v. El Dorado*
6 *County Water Agency* (1999) 76 Cal.App.4th 931, 953.

7 SaveHollywood and HELP contend that consideration of a down-sizing/down-
8 zoning (DS-DZ) alternative was both feasible and required based on the actual
9 population statistics and trends. These petitioners argue that notwithstanding multi-year
10 and multi-million dollar investments in infrastructure in the Hollywood community, there
11 has been a net outflow of population and an increase in vacancy rates in both
12 commercial and residential properties. Interestingly, they argue that, based on the
13 SCAG 2005 population estimate, the HCP area has lost over 26,100 people in the five
14 year period 2005-2010 (basing the 2010 population on the U.S. Census data) and there
15 have been massive financial losses connected to construction projects — the key
16 example being the difference between the construction cost and eventual sale price of
17 the Hollywood-Highland Project, of over \$420 million. SaveHollywood Opening Memo. at
18 14-19.

19 Fix the City argues that the EIR’s 10 page discussion of the three selected
20 alternatives is perfunctory and “[a]s a result of the deficient alternatives analysis, the EIR
21 fails to provide decision makers and the public with a genuine comparison of the
22 environmental consequences of different levels of development in Hollywood.” Fix the
23 City Opening Memo. at 15:9-11. Nor, in Fix the City’s view does the Second Addition to
24 the EIR (June 14, 2012) sufficiently address the otherwise insufficient range of
25 alternatives in the manner required by law. This petitioner points out that (1) these
26 environmental documents ignore the requirement that other alternatives be identified or,
27 consequentially, the reasons they were rejected be stated, and (2) that this defect was
28 raised throughout the environmental review process in numerous comment letters.

1 Instead, "The FEIR states that City Planning 'considered and rejected as infeasible an
2 alternative that would place a blanket moratorium on demolition permits and project
3 development.' ... Like the DEIR, the FEIR also fails to meet CEQA's disclosure
4 requirements...." Fix the City Opening Memo. at 16-17.

5 Focusing on the Second Addition document, Fix the City argues that the
6 discussion there of the no-growth and DS-DZ alternatives are infeasible, but neither the
7 EIR nor the Second Addition document contains "sufficient information ... to enable the
8 public or decision makers to adequately evaluate the City's conclusory statements
9 regarding the infeasibility of a downsizing alternative." *Id.* at 17

10 This argument has particular force when one considers the material discrepancy
11 in the population statistics discussed, *ante*, and the short 5 day window between the
12 release of the Second Addition and the vote by the City Council approving the several
13 documents at issue. The evidence in this record strongly supports petitioners'
14 contention that there has been an insufficiently-reasoned rush to completion of the EIR
15 process, and that the process was administered in a way that is clearly contrary to well-
16 established laws as interpreted by the appellate courts. As Fix the City argues: "The
17 Plan Update EIR ... lacks an analysis of sufficient ranges of alternatives and fails to
18 provide substantial evidence supporting its decisions to analyze only the narrowest
19 range of alternatives. [Par.] While it may be a reasonable policy decision for the City to
20 plan for the level of population growth accommodated in the Plan Update, the City
21 cannot make that decision without a genuine understanding of what the environmental
22 trade-offs are of accommodating this level of growth. The Plan Update EIR is the
23 document designed to inform both the decision makers and the public of the
24 environmental consequences of the Plan Update and of alternative approaches to the
25 critical task of planing the City's growth.... CEQA does not permit an agency to evade its
26 disclosure duties in this manner; the failure to analyze a reasonable range of alternatives
27 without any support of a finding of infeasibility is an abuse of discretion." Fix the City
28

1 Opening Memo. at 18:21-19:7.

2 One can only wonder how this planning process ran so far off the track when
3 consideration is given to the recent history of the Framework itself and the corrective
4 action it required.¹⁸

5 In response to these arguments, neither City nor Intervenor presents any
6 adequate counter-arguments. Both City and Intervenor ignore the cases, statutes and
7 Guidelines cited by the petitioners. City instead focuses, *inter alia*, on other claimed
8 defects in the petitioners' contentions, but these assertions do not respond to the
9 fundamental point that petitioners have established: City did not proceed in the manner
10 required by law with respect to ascertainment and discussion of these 'core components
11 of the EIR process' as alternatives analysis is defined by our Supreme Court. *In re Bay-*
12 *Delta Programmatic Environmental Impact Report Coordinated Proceedings, supra*, 43
13 Cal.4th 1143, 1162.

14 ***Public Services***

15 Fix the City contends, and City acknowledges, that the EIR's thresholds of
16 significance did require City to evaluate whether the significant capacity increase
17 permitted by the HCPU would require "unplanned upgrading or improvement of existing
18 fire protection equipment or infrastructure" or would "induce substantial growth or
19 concentration of population beyond the capacities of existing police personnel and
20 facilities; or whether the HCPU would "cause deterioration in the operating traffic
21 conditions that would adversely affect [police and fire] response times. City's Op. at 20.
22 As Fix the City points out, "[t]he EIR determined that in fact such thresholds of
23 significance would be exceeded for both police and fire services.... conclud[ing] that,
24 absent mitigation, degraded performance in the[se] critical services was likely." (Fix the
25 City's Reply at 13:4-14.) The issue was of substantial concern to many participants in
26 the environmental and plan review process, including then Council member Eric

27 ¹⁸ See footnote 1, *ante*.

1 Garcetti, who wrote a letter (dated March 23, 2012) highlighting the need for improved
2 response times by City's Fire Department (AR21362).

3 Delayed response times of emergency services may be a factor in determining
4 whether increased population concentration is significant. The focus of such analysis is
5 on the physical changes that may result from economic and social changes. Guidelines
6 section 15064(e) addresses this issue; e.g., population increases, as well as other
7 "economic and social effects of a physical change may be used to determine that the
8 physical change is a significant effect on the environment". See *also* Guidelines section
9 15131; and *Christward Ministry v. Superior Court* (1986) 184 Cal.App.4th 180.

10 For reasons explained throughout this decision, this EIR is fatally flawed. One of
11 the reasons is particularly applicable here, viz., the failure to use appropriate population
12 statistics leads to fatally flawed estimation of the impact on fire and police services —
13 and their impact on physical changes: "the effects of decreased response capacity,
14 including both physical effects and social/economic effects that lead to physical effects,
15 require [environmental] review." Fix the City's Reply at 15:12-13.

16 ***Prejudice***

17 For reasons discussed above in detail, petitioners have demonstrated prejudice
18 compelling the granting of relief. The facts and circumstances of the administrative
19 proceedings in this record clearly evidence as much of a rush to completion of the EIR
20 and HCPU as might be possible in a proceeding of this nature. As described, *ante*, the
21 2010 Census data became available within two months of release of the DEIR. As the
22 time line, *ante*, demonstrates, there was ample time to revisit the critical population
23 estimates and still have the documents [re]circulated, heard at public fora and submitted
24 to various City committees and to the Council by June of the year after issuance. When
25 community members and groups repeatedly wrote and spoke against key elements of
26 the documents now being reviewed — and clearly articulated many reasons why the
27 documents were flawed, there were two rushed efforts to supplement the relevant
28 documents, including the first attempt to address some of the consequences of the 2010

1 Census data — but that only 5 days before the matter was voted on by the City Council.
2 The result was a manifest failure to comply with statutory requirements.¹⁹

3 When a public agency does not comply with procedures required by law, its
4 decision must be set aside as presumptively prejudicial. *Sierra Club v. State Bd. of*
5 *Forestry* (1994) 7 Cal.4th 1215, 1236. “Noncompliance with substantive requirements of
6 CEQA or noncompliance with information disclosure provisions ‘which precludes
7 relevant information from being presented to the public agency ... may constitute
8 prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5,
9 regardless of whether a different outcome would have resulted if the public agency had
10 complied with those provisions.” (§ 21005, subd. (a).) In other words, when an agency
11 fails to proceed as required by CEQA, harmless error analysis is inapplicable. The
12 failure to comply with the law subverts the purposes of CEQA if it omits material
13 necessary to informed decisionmaking and informed public participation. Case law is
14 clear that, in such cases, the error is prejudicial. (*Sierra Club v. State Bd. of Forestry*
15 (1994) 7 Cal.4th 1215, 1236–1237[]; *Fall River Wild Trout Foundation v. County of*
16 *Shasta* (1999) 70 Cal.App.4th 482, 491–493 []; *Kings County Farm Bureau v. City of*
17 *Hanford* (1990) 221 Cal.App.3d 692, 712[]; *East Peninsula Ed. Council, Inc. v. Palos*
18 *Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174 []; *Rural*
19 *Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021–1023 [].)” *County*
20 *of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

21 That is what occurred here to the legal prejudice of petitioners, mandating relief.

22 Failure to recirculate

23 Guidelines section 15088.5(a) mandates that a DEIR be recirculated when
24 “significant new information is added....” Here, it is clear that the significant new
25 information begins with the 2010 Census data, but it cannot stop there. It is also evident
26

27 ¹⁹

28 City's claim that the Framework mandated that SCAG estimates be used is without support for reasons discussed in the text, *ante*.

1 that that information must be given full consideration; this will in turn affect much of the
2 analysis in key documents.

3 City's failure to incorporate and update the DEIR to reflect the significant different
4 population statistics, and all that flows from them, necessarily means that the EIR is
5 fatally flawed. As in *Mountain Lion Coalition v. Fish & Game Comsn.* (1988) 214
6 Cal.App.4th 1043, this DEIR is fundamentally inadequate, even with the Second
7 Supplement, issued 5 days before City Council action — meaningful public review was
8 thwarted by City's pyrrhic rush to final approvals. This hasty action constitutes an
9 additional failure to proceed in the manner required by law, which is legally prejudicial.

10 GENERAL PLAN ISSUES

11 Contentions of Fix the City

12 Fix the City's opening brief sets the argument for this aspect of petitioners'
13 contentions.²⁰ "California law and the Los Angeles City Charter require consistency
14 between the policies set forth in the General Plan and land use ordinances adopted by
15 the City," citing Government Code section 65300.5 and Los Angeles City Charter section
16 556.

17 This petitioner's principal contentions are that the HCPU is "fatally inconsistent"
18 with the Framework because it fails to require policies that will ensure that the timing and
19 location of development are consistent with City's ability to provide adequate
20 infrastructure for additional development.

21 The findings made in support of the HCPU explain, correctly, that the Framework
22 "establishes the standards, goals, policies, objectives, programs, terms, definitions, and
23 direction to guide the update of citywide elements and the community plans."

24 Community plans, such as the HCPU, apply the elements of the Framework
25 regarding growth and development in specific areas of the city, here of Hollywood. The

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27 ²⁰

28 La Mirada makes a similar contention. SaveHollywood.com, *et al.* do not address this
issue.

1 Findings made for the HCPU discuss consistency with Framework Element Objective
2 3.3: "Accommodate projected population and employment growth within the City and
3 each community plan and plan for the provision of adequate supporting transportation
4 and utility infrastructure and public services."

5 The reasoning for the Finding was that the HCPU was consistent with Objective
6 3.3 because it includes a recommended pattern of land use that directs future growth to
7 areas of Hollywood where new development can be supported by transportation
8 infrastructure and different types of land uses can be intermingled to reduce the length
9 and number of vehicle trips.

10 Fix the City places emphasis on this finding because "it focuses exclusively on
11 transportation infrastructure and not [on] other types of infrastructure and public services
12 that are required to support increased population or commercial development; the
13 Finding therefore does not demonstrate consistency with Objective 3.3." Fix the City
14 Opening Brief 29:2-5.

15 Fix the City further focuses on what it contends is City's ignoring significant
16 policies included in the Framework that, it argues, are designed to enable City to meet
17 Objective 3.3. "Most significantly, the City's findings ignore the policies designed to
18 ensure a continual monitoring of population growth *and* the ability of infrastructure to
19 support the pace of growth.... Specifically, the Framework Element requires the use of a
20 monitoring program to assess the status of development activity and supporting
21 infrastructure and public services and '[i]dentify existing or potential constraints or
22 deficiencies of other infrastructure in meeting existing and projected demand.' The
23 [HCPU] is inconsistent with the Framework Element because it does not include any
24 mechanism to ensure that the state of infrastructure will be assessed or to provide for
25 controls for controls on development in the event that infrastructure is insufficient to
26 support the level of development permitted by the [HCPU]..... The City's approach to the
27 Framework Element is focused entirely on the aspects that encourage growth, with no
28 attention to those policies that require period[ic] assessment of the capacity for

1 additional growth. Without inclusion of similar policies in the [HCPU], which is part of the
2 Land Use Element of the General Plan, the City's General Plan is fatally inconsistent.
3 The [HCPU], while permitting increased density and growth in key parts of Hollywood,
4 fails to provide a mechanism to continually assess whether the infrastructure has the
5 ability to support the increased development and therefore frustrates the policies in the
6 Framework Element that are designed to ensure provision of adequate public services.
7 The Framework Element permits only the appropriate amount of growth in light of the
8 City's infrastructure; the [HCPU] omits the necessary mitigation measures to require
9 controls on development where the infrastructure is threatened. (Emphasis in original.)
10 Fix the City's Opening Memo. at 29-30.

11 Fix the City next contends that City Charter section 558 mandates a finding that
12 any plan adopted by City will not have an adverse effect on the General Plan or any
13 other plans. And, this petitioner contends that, although City adopted such a finding, the
14 Findings do not demonstrate actual compliance with this requirement. The Findings rely
15 on the concept of concentrating growth in particular sectors, near public transport such
16 as the new metro system, and the protection of existing single-family neighborhoods
17 from denser development. Yet, Fix the City argues, "[t]he Finding is notable for what it
18 lacks: any substantive discussion of the potential [inter]-plan effects of the [HCPU]. Fix
19 the City next poses the question: "How can the decision makers conclude that the
20 [HCPU] will not have an adverse effect on other community plan areas without
21 considering if the increased growth facilitated by the [HCPU] will harm other areas?"
22 (Fix the City Opening Memo. at 30:16-18).

23 Fix the City concludes as follows: "Because this analysis [that of inter-plan/area
24 impact] is not in the EIR or in the record before the Council, substantial evidence does
25 not support this finding. Indeed, the record before the City showed that public services
26 are stretched thin throughout the City. On this record, the City cannot find that the
27 [HCPU] will not adversely affect other areas of the City; the finding must be overturned."
28 (*Id.*, at 30:18-22.)

La Mirada's Contentions

La Mirada also contends that the HCPU is not consistent with the General Plan for the City of Los Angeles, but focuses on different aspects. This petitioner's view is that, while the Framework is "growth neutral," the HCPU is not. Instead, La Mirada argues first, that the HCPU is "growth inducing," and contends that the reason the 2005 SCAG population estimate was used was to lower the population increase for which planning was required in the HCPU to just over 24,000 -- rather than the more accurate number of 50,000 — that would need to be planned for for 2030.²¹ Using the true population data results in a plan that is growth inducing according to La Mirada, which it argues "provides for a significant amount of excess capacity, a growth inducing effect." La Mirada's Opening Memo. at 23:3-23.

Second argues La Mirada, the objective of growth neutrality was dropped in the final EIR and HCPU. Thus it notes that the final version of the HCPU accommodates "more than double the natural amount of growth through 2030, dropp[ing] all pretense of growth neutrality, further showing an inconsistency with the ... Framework. [Par.] The result is an internally inconsistent General Plan. Is it growth accelerating and inducing, as provided for in the Land Use Element via the HCP, or is it growth accommodating and neutral, as required by the Framework.... Because of this inconsistency, the City cannot make the necessary findings required by Section 556." (La Mirada, Opening Memo. at 24:10-16).

City's Contentions

City advances several counter-arguments in defense of its actions.

On the key issue of whether the General Plan and Specific Plans must be consistent -- and how that requirement is achieved here -- City first acknowledges that a general plan must be "internally consistent and correlative" (City's Op. Memo. at 25:24-

²¹

Whether that was the reason to use the higher baseline, or not, the result is the same — a substantial error in the population baseline and in all planning aspects that rely on it for other impacts.

1 27), and then points out that City has broad discretion to balance the many competing
2 policies expressed in the general plan — and that balance “does not require
3 equivalence, but rather a weighing of pros and cons to achieve an acceptable mix”
4 (citing *Friends of Lagoon Valley v. City of Vacaville* [2007] 154 Cal.App.4th 807, 822
5 [quotations and citations omitted]). After noting the many factors and interests described
6 in the findings made in this case, City notes the role of a court reviewing such
7 arguments: “A reviewing court’s role is simply to decide whether the city officials
8 considered the applicable policies and the extent to which the proposed project
9 conforms with those policies. (*Id.*, at 816 [internal citations omitted]).

10 Specifically in response to Fix the City’s contentions,²² City argues that there was
11 no need to make a specific finding that the HCPU was consistent with Framework
12 Objective Element 3.3. (City’s Op. Memo. at 27:14-22). City’s argument is that the
13 HCPU is an amendment to a previous plan, the Hollywood Community Plan, which is
14 itself a part of the General Plan, and that the adoption or amendment of a general plan
15 is a legislative act -- and, pursuant to state law, “a city need not make explicit findings to
16 support its action.” *South Orange County Wastewater Auth. v. City of Dana Point* (2011)
17 196 Cal.App.4th 1604, 1619.

18 Further, City argues that General Plan amendments are governed by Charter
19 Section 555 rather than section 556, which does not require any specific findings. And,
20 to the extent that Section 556 applies, the findings it requires only need to show “that
21 the action is in substantial conformance with the purposes, intent and provisions of the
22 General Plan; it does not require a separate specific finding of consistency for each of
23 the thousands of policies and objectives contained in the General Plan.... The City’s 16
24 pages of General Plan consistency findings would easily satisfy any requirements
25 Section 556 would impose, if applied to the HCPU.” (City’s Op. Memo. at 27:28-28:7)

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27 ²²

28 City’s collateral estoppel arguments as to Fix the City were discussed and found
invalid, *ante*.

Applicable Law

1. Consistency

“[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.’ (*Citizens of Goleta Valley v. Board of Supervisors* [1990] 52 Cal.3d 553, 570, 276 Cal.Rptr. 410, 801 P.2d 1161.) ‘The consistency doctrine has been described as ‘the linchpin of California’s land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law.’ *Corona – Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994, 21 Cal.Rptr.2d 803.) ‘A project is consistent with the general plan ‘if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.” ’ “A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be ‘compatible with’ the objectives, policies, general land uses and programs specified in the general plan.” *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 [emphasis added].

“The general plan and its parts must be “an integrated, internally consistent and compatible statement of policies for the adopting agency.” (Govt.C. 65300.5; see *Karlson v. Camarillo* (1980) 100 C.A.3d 789, 161 C.R. 260; *deBottari v. Norco* (1985) 171 C.A.3d 1204, 1210, 217 C.R. 790, *infra*, §1029 [referendum inconsistent with general plan is invalid]; *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado* (1998) 62 C.A.4th 1332, 1336, 1341, 74 C.R.2d 1 [although given project need not be in perfect conformity with each and every general plan policy, it must be compatible with objectives, policies, general land uses, and programs specified in general plan; some general plans are more specific than others, leaving less room for discretion].)

“If a general plan is to fulfill its function as a ‘constitution’ guiding ‘an effective planning process,’ a general plan must be reasonably consistent and integrated on its

1 face. A document that, on its face, displays substantial contradictions and
2 inconsistencies cannot serve as an effective plan because those subject to the plan
3 cannot tell what it says should happen or not happen. When the court rules a facially
4 inconsistent plan unlawful and requires a local agency to adopt a consistent plan, the
5 court is not evaluating the merits of the plan; rather, the court is simply directing the local
6 agency to state with reasonable clarity what its plan is." *Concerned Citizens of Calaveras*
7 *County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97.

8 The court in *Garat v. Riverside* (1991) 2 Cal.App.4th 259, *overruled on other*
9 *grounds in Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11
10 (discussed on this point in *Napa Citizens for Honest Government v. Napa County Bd. of*
11 *Supervisors* (2001) 91 Cal.App.4th 342, 388 [*Napa Citizens*], confirmed the application
12 of the consistency requirement to charter cities such as Los Angeles, explaining that
13 under Govt. Code sec. 65700(a), a charter city's general plan must contain the
14 mandatory elements required by Govt. Code sections 65300 et seq. and section 65700,
15 which construed together require not only that a charter city's general plan have the
16 mandatory elements of Govt. Code sec. 65302, but also that these elements be internally
17 consistent as required by Govt. Code sec. 65300.5. *Id.*, at 285, 287. See *Irvine v. Irvine*
18 *Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 875, 876, 879 [Govt.C.
19 65860(a) prohibition of inconsistent zoning ordinances applied to charter city that had
20 enacted ordinance requiring zoning and general plan consistency; hence, proposed
21 referendum inconsistent with general plan was properly declared invalid]. As colorfully
22 explained in *Napa Citizens, supra*, a "zoning ordinance that is inconsistent with the
23 general plan is invalid when passed [citations] and one that was originally consistent but
24 has become inconsistent must be brought into conformity with the general plan.
25 [Citation.] The Planning and Zoning Law does not contemplate that general plans will be
26 amended to conform to zoning ordinances. The tail does not wag the dog. The general
27 plan is the charter to which the ordinance must conform." *Id.*, at p. 389.

28 2. Standard for review of general plan/specific plan consistency issues

1 General plan consistency issues such as those presented by these parties are
2 reviewed under a particularly deferential standard. While a city has broad discretion to
3 weigh and balance competing interests in formulating development policies (*Federation*
4 *II, supra*, at p. 1196), a charter city's²³ general plan must be internally consistent.

5 The case upon which City relies sets out the standard to be applied here: "The
6 adoption or amendment of a general plan is a legislative act. [Citation.] A legislative act
7 is presumed valid, and a city need not make explicit findings to support its action.
8 [Citations.] A court cannot inquire into the wisdom of a legislative act or review the
9 merits of a local government's policy decisions. [Citation.] Judicial review of a legislative
10 act under Code of Civil Procedure section 1985²⁴ is limited to determining whether the
11 public agency's action was arbitrary, capricious, entirely without evidentiary support, or
12 procedurally unfair. [Citations.] A court therefore cannot disturb a general plan based on
13 violation of the internal consistency and correlation requirements unless, based on the
14 evidence before the city council, a reasonable person could not conclude that the plan is
15 internally consistent or correlative. [Citation.]" (*Federation of Hillside & Canyon Assns. v.*
16 *City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195, 24 Cal.Rptr.3d 543.) SOCWA
17 has the burden of proof to demonstrate that the amendment to the general plan
18 rendered the plan internally inconsistent. (See *Garat v. City of Riverside* (1991) 2
19 Cal.App.4th 259, 293, 3 Cal.Rptr.2d 504, disapproved on other grounds in *Morehart v.*
20 *County of Santa Barbara* (1994) 7 Cal.4th 725, 29 Cal.Rptr.2d 804, 872 P.2d 143.)"
21 *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196
22 Cal.App.4th 1604, 1618-1619 [*South Orange County*].

23 On the other hand, it is also true that direct conflict is not the litmus test for
24 general plan consistency. All three petitioners cite *Napa Citizens*, a leading case on this

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27 There is no dispute about Los Angeles' status as a charter city.

28 ²⁴

Clearly a typographical error in the opinion; the citation should be to section 1085.

1 issue. And, City does not either rely on or seek to distinguish the holding of *Napa*
2 *Citizens* when discussing the consistency arguments made by petitioners.

3 In *Napa Citizens*, the court of appeal specifically addresses the consistency issue
4 in a way that the court in *South Orange County* does not. The *Napa Citizens* court
5 explains:

6 “We are of the opinion that the consistency doctrine requires more than that the
7 Updated Specific Plan recite goals and policies that are consistent with those set
8 forth in the County's General Plan. We also are of the opinion that cases such as
9 *FUTURE v. Board of Supervisors, supra*, 62 Cal.App.4th 1332, do not require an
10 outright conflict between provisions before they can be found to be inconsistent.
11 The proper question is whether development of the Project Area under the
12 Updated Specific Plan is compatible with and will not frustrate the General Plan's
13 goals and policies. If the Updated Specific Plan will frustrate the General Plan's
14 goals and policies, it is inconsistent with the County's General Plan unless it also
15 includes definite affirmative commitments to mitigate the adverse effect or
16 effects.” *Id.*, at 379.

17 By contrast with *Napa Citizens*, the facts and procedural setting discussed in
18 *South Orange County* lead to the conclusion that it is of limited value; indeed it is readily
19 distinguishable from the present case. There, the issue of consistency with the general
20 plan was not presented to the trial court; and the question of conflict was far more limited
21 -- there, only whether a single zoning change was appropriate in the context of that
22 general plan — rather than the massive, multi-faceted set of issues addressed in the
23 HCPU. Further, the court of appeals there noted that no change could occur without
24 further action, including review by the Coastal Commission. *Id.*, at 1609.

26 Analysis

27 Applying these principles to the present case, City's opening argument in its
28 opposition, that it was not required to make findings in support of the HCPU, although

1 literally true, nevertheless lacks merit.²⁵

2 While Charter section 555 contains no requirement that findings be made, this
3 does not obviate the need for consistency. The consistency doctrine is, as noted, “the
4 linchpin of California’s land use and development laws.” *E.g., Families Unafraid, etc. v.*
5 *County Board of Supervisors, supra*, 62 Cal.App.4th at 1336.

6 Fix the City points to what it contends is a fundamental inconsistency between the
7 Framework and the HCPU, viz., City’s failure to address the absence from the HCPU of
8 “policies that require monitoring of infrastructure to determine whether the growth
9 permitted in the Plan Update should continue at a given time. The City’s Revised
10 Findings reveal how the Plan Update twists the monitoring requirements in Framework
11 Policy 3.3.2 (the infrastructure monitoring policy)..... The City’s position is that the Plan
12 Update sufficiently addressed the infrastructure capacity of the area such that *no further*
13 *monitoring is required during implemental of the Plan Update. This hands-off policy is*
14 *completely contrary to the Framework Element’s objective of continuous monitoring of*
15 *development activity.* By asserting that the Plan Update conclusively establishes the
16 ability of the infrastructure to absorb the level of development planned, the City thwarts
17 the Framework Element’s policy of limiting development when capacity becomes
18 threatened. The failure to include a monitoring requirement makes the Plan Update
19 inconsistent with the Framework Element.” Fix the City’s Reply at 24:8-26 [first
20 emphasis in original; second emphasis added].

21 La Mirada’s reply to City’s arguments is multi-faceted.

22 (1) City’s reliance on SCAG estimates is faulty and there is no substantial
23 evidence to support the validity of that 2005 SCAG estimate;

24 (2) there is internal inconsistency with the Framework’s focus on “growth
25 neutrality” as the true data reveal that the HCPU is in actuality a plan to more than
26

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28 It also is inconsistent as City concedes it was required to make findings in support of
the zoning changes called for by the HCPU, which it did.

1 double the population in Hollywood;

2 (3) City's plan to focus growth close to transit stations elevates one policy over
3 others, creating an inconsistency; and

4 (4) the 16 pages of findings used by City to justify its actions start from a false
5 premise — the misleading population data used by City which is "less than half what the
6 [HCPU actually] provides..... Accordingly, there is no evidence on which to base the
7 findings, and abuse of discretion is established. Code of Civil Proced. Sec. 1094.5(b)." (La Mirada Reply 17:26-18:3.)²⁶

9 City's reliance on the holding of *Napa Citizens, supra*, that "a governing body's
10 conclusion that a particular project is consistent with the relevant general plan carries a
11 strong presumption of regularity that can be overcome only by a showing of an abuse of
12 discretion" (id., at 357) is correct (City's Opposition Memo. at 8:15-19) — but on these
13 facts, circumstances and record — not sufficient. Petitioners' arguments on lack of
14 consistency, particularly those of Fix the City, on balance, overcome the presumption of
15 regularity and explain why adoption of the HCPU on this record constituted an abuse of
16 discretion.

17 The Court also concludes that the actions of City do constitute an abuse of
18 discretion. Fix the City, in particular, cogently sets forth the reasons (summarized
19 above). The fundamental inconsistency between the Framework and the HCPU on the
20 failure of the HCPU monitoring policy is completely contrary to the Framework's
21 essential component of continuous monitoring of development activity. There is a void
22 in an essential aspect of the HCPU where instead there should be a discussion of the
23 inter-plan/area impacts created by the HCPU. And, to the extent City relies on the

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25 Citation of this statute is inapposite; perhaps an inadvertence comparable to the
26 typographical error noted in footnote 24, *ante*. General Plan adoption issues are
27 legislative acts reviewed by ordinary mandamus under Code of Civil Procedure section
28 1085. Govt. Code section 65301.5; *Yost v. Thomas* (1984) 36 Cal.3d 561, 570-571;
Federation II, supra, at 1195; see, generally, Miller & Starr, Calif. Real Estate Law, 3rd
Ed. Ch. 25:9 at p. 25-39 and fn. 32.

1 entirely discredited SCAG 2005 population estimate (with the substantial impact that has
2 on many facets of the HCPU), there is a fatal inconsistency between the HCPU and the
3 General Plan.

4 The HCPU cannot survive in its present form and substance in the face of these
5 very substantial inconsistencies. The HCPU is fatally flawed as a planning document as
6 it presently stands.

7 **City's Contentions Regarding the Tentative Decision**

8 City filed two sets of comments concerning the Tentative Decision, to which the
9 other parties responded. City's citation of *Neighbors for Smart Rail v. Exposition Metro*
10 *Line Construction Authority* (2013) 57 Cal.4th 439 is inapposite as this Court has
11 concluded that, in the particular circumstances of the present case, reliance on the
12 erroneous baseline was in fact prejudicial. Also, inapposite is City's contention
13 regarding newly enacted Government Code section 65755(c).

14 To be clear, this Court has not ruled on Fix the City's challenge to the use of the
15 Transportation Improvement and Mitigation Program (TIMP) as this Court finds that the
16 overall impact analysis to be factually flawed and legally inadequate.

18 **CONCLUSION²⁷**

19 For the reasons stated, petitioners are entitled to relief as follows:

20
21 (1) to a peremptory writ of mandate ordering respondents and defendants City
22 and City Council to (a) rescind, vacate and set aside all actions approving the HCPU and
23 certifying the EIR adopted in connection therewith and all related approvals issued in
24 furtherance of the HCPU, including but not limited to the text and maps associated with
25 the HCPU, the Resolution amending the Hollywood Community Plan, the adoption of
26

27 ²⁷

28 The relief set out below is the full relief to be awarded in the three cases. Any
argument made and not addresses is deemed rejected.

1 rezoning actions taken to reflect zoning changes contained in the HCPU, all
2 amendments to the General Plan Transportation and Framework Elements made to
3 reflect changes in the HCPU, adopting the Statement of Overriding Considerations,
4 adopting the Mitigation and Monitoring Program, and adopting Findings in support of the
5 foregoing; provided, however, that the phrase "all related approvals" refers only to those
6 quasi-legislative actions necessary to carry out the HCPU and the related CEQA
7 documents, and provided further, that the provisions hereof are not intended to order
8 that respondents rescind those adjudicatory approvals not challenged which City may
9 have made under the HCPU after its adoption by City; and (b) should City exercise its
10 discretion to amend the HCP, City is to do so in a manner that conforms to the policies
11 and objectives of the General Plan and the requirements of CEQA;

12
13 (2) to an injunction that respondents and defendants City and City Council, their
14 officers, employees, agents, boards, commissions and other subdivisions shall not grant
15 any authority, permits or entitlements which derive from the HCPU or its EIR until an
16 adequate and valid EIR is prepared, circulated and certified as complete and is
17 consistent with CEQA, CEQA Guidelines, and all other applicable laws, and until legally
18 adequate findings of consistence are made as required pursuant to the Charter of the
19 City of Los Angeles and other applicable laws;

20
21 (3) attorneys fees and costs as may hereafter be determined.

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23
24 DATED: January 15, 2014

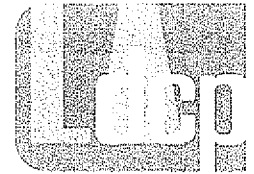
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ALLAN J. GOODMAN
JUDGE OF THE SUPERIOR COURT



DEPARTMENT OF CITY PLANNING

RECOMMENDATION REPORT



City Planning Commission

Date: March 13, 2014
Time: After 8:30 a.m.
Place: City Hall
 200 N. Spring Street, Room 350
 Los Angeles, CA 90012

Case No.: CPC-2014-669-CPU
CEQA No.: ENV-2014-670-SE
Incidental Cases: None
Related Cases: None
Council No.: All
Plan Area: Citywide

Public Hearing: Public Hearing Required.
Appeal Status: Not applicable

Applicant: City of Los Angeles

PROPOSED PROJECT:

- 1) Rescind, vacate and set aside all actions approving the 2012 Hollywood Community Plan Update (HCPU) and certifying the EIR adopted in connection therewith, and all related approvals issued in furtherance of the HCPU, and thereby revive by operation of law the General Plan elements and zoning regulations that were in place immediately before the City's adoption of the HCPU; 2) Adopt an amendment to the General Plan Framework Element that reaffirms the City's historic interpretation and implementation that the Framework Element's monitoring policies and programs are intended to guide the community plan update process, that the Framework Element does not require, and was not intended to require, the community plans themselves to contain the same monitoring policies and programs set forth in the Framework Element, and that the monitoring programs are discretionary, and dependent upon the availability of resources and competing priorities as the Court of Appeal previously held in *Saunders v. City of L.A.*, Case No. B232415.

REQUESTED ACTIONS:

- 1) **Approve and Recommend** that the City Council **Adopt** the attached Resolution (Exhibit A) to rescind, vacate, and set aside the General Plan Amendment to the Hollywood Community Plan, and all related actions to the Transportation Element and Framework Element, as part of the General Plan of the City of Los Angeles, as set forth in CF 12-0303 and thereby revive by operation of law the General Plan elements that were in place immediately prior to the City's adoption of the HCPU.
- 2) **Approve and Recommend** that the City Council **Adopt** the attached Ordinance (Exhibit B) to rescind, vacate, and set aside Ordinance Number 182,173 and thereby revive by operation of law the zoning ordinances and regulations in place immediately prior to the City Council's adoption of Ordinance 182,173.
- 3) **Approve and Recommend** that the Mayor **Recommend** to City Council **Adopt** the attached Resolution for the General Plan Framework Element amendment (Exhibit C) reaffirming the City's historic interpretation and implementation of the Framework Element's monitoring policies and programs.
- 4) **Consider** the environmental analysis contained in the Initial Study (Exhibit D).
- 5) **Recommend** that the City Council **Determine** that the actions are exempt under the California Environmental Quality Act, for the reasons set forth in the CEQA draft Notice of Exemption and Narrative attached hereto (Exhibit E).
- 6) **Recommend** that the City Council **Direct** that the Department of City Planning file the final Notice of Exemption with the County Clerk immediately after the ordinance is approved and passed in final by the City Council.
- 7) **Authorize** the Director of Planning to **present** the Resolution (Exhibit A) and General Plan Amendment (Exhibit B) to the Mayor and City Council, in accordance with Sections 555 and 558 of the City Charter.

CITY OF LOS ANGELES
CALIFORNIA

HOLLY L. WOLCOTT
Interim City Clerk



ERIC GARCETTI
MAYOR

Office of the
CITY CLERK

Council and Public Services
Room 395, City Hall
Los Angeles, CA 90012
General Information - (213) 978-1133
Fax: (213) 978-1040

SHANNON HOPPE
Council and Public Services
Division

www.cityclerk.lacity.org

When making inquiries relative to
this matter, please refer to the
Council File No.

April 8, 2014

To All Interested Parties:

The City Council adopted the action(s), as attached, under Council File No. 12-0303-S4, at its meeting held April 2, 2014.

City Clerk
io

TIME LIMIT FILES
ORDINANCES

FORTHWITH

OFFICE Mayor's Time Stamp
2014 APR -3 AM 9:50
CITY OF LOS ANGELES

CITY CLERK'S TIME Stamp
2014 APR -3 AM 9:47
CITY CLERK
BY _____
DEPUTY

COUNCIL FILE NUMBER 12-0303-S4 COUNCIL DISTRICT _____

COUNCIL APPROVAL DATE APRIL 2, 2014 LAST DAY FOR MAYOR TO ACT APR 14 2014

ORDINANCE TYPE: Ord of Intent ☒ Zoning Personnel General

Improvement LAMC LAAC CU or Var Appeals - CPC No.

SUBJECT MATTER: REPEALING THE ZONE AND HEIGHT DISTRICT CHANGES FOR THE HOLLYWOOD COMMUNITY PLAN UPDATE AND AMENDING THE GENERAL PLAN FRAMEWORK ELEMENT

	APPROVED	DISAPPROVED	BY	RECEIVED
PLANNING COMMISSION	<u>X</u>	_____	CITY CLERK	2014 APR -4 PM 2:44
DIRECTOR OF PLANNING	<u>X</u>	_____	DEPUTY	CITY CLERK'S OFFICE
CITY ATTORNEY	<u>X</u>	_____		
CITY ADMINISTRATIVE OFFICER	_____	_____		
OTHER	_____	_____		

APR 04 2014

DATE OF MAYOR APPROVAL, DEEMED APPROVED OR *VETO _____
(*VETOED ORDINANCES MUST BE ACCOMPANIED WITH OBJECTIONS IN WRITING PURSUANT TO CHARTER SEC. 250(b) (c))

(CITY CLERK USE ONLY PLEASE DO NOT WRITE BELOW THIS LINE)

DATE RECEIVED FROM MAYOR APR - 4 2014 ORDINANCE NO. 182960
DATE PUBLISHED APR - 8 2014 DATE POSTED _____ EFFECTIVE DATE APR - 8 2014
ORD OF INTENT: HEARING DATE _____ ASSESSMENT CONFIRMATION _____
ORDINANCE FOR DISTRIBUTION: YES _____ NO _____

4/2/14

File No. 12-0303-S4

STATUTORY EXEMPTION, PLANNING AND LAND USE MANAGEMENT COMMITTEE REPORT, RESOLUTIONS and ORDINANCE FIRST CONSIDERATION relative to repealing the zone and height district changes for the Hollywood Community Plan Update and amending the General Plan Framework Element.

Recommendations for Council action, SUBJECT TO THE APPROVAL OF THE MAYOR:

1. DETERMINE that the actions are exempt from California Environmental Quality Act (CEQA) pursuant to the reasons set forth in the CEQA draft Notice of Exemption and Narrative, attached to the Council file.
2. ADOPT the FINDINGS of the Los Angeles City Planning Commission (LACPC) as the Findings of the Council.
3. PRESENT and ADOPT the accompanying ORDINANCE to repeal Ordinance No. 182173, adopted on June 19, 2012, for zone and height district changes in furtherance of the Hollywood Community Plan Update (HCPU).
4. ADOPT the accompanying RESOLUTION as recommended by the Mayor, the Director of Planning and the LACPC to rescind, vacate and set aside all actions approving the 2012 HCPU and certifying the Environmental Impact Report adopted in connection therewith, and all related approvals issued in furtherance of the HCPU, and thereby, by operation of law revert to the General Plan elements and zoning regulations that were in place immediately before the City's adoption of the HCPU.
5. ADOPT the accompanying RESOLUTION as recommended by the Mayor, the Director of Planning and the LACPC to amend the General Plan Framework Element that reaffirms the City's historical interpretation and implementation that the Framework Element's monitoring policies and programs are intended to guide the community plan update process, that the Framework Element does not require, and was not intended to require, the community plans themselves to contain the same monitoring policies and programs set forth in the Framework Element, and furthermore, that the monitoring programs discussed in Saunders v. City of Los Angeles (Case No. B232415), i.e., Programs 42 and 43 are discretionary as the Saunders Court held.
6. INSTRUCT the Department of City Planning to:
 - a. Undertake the technical work to revert to the Hollywood Community Plan Map, the Highways and Freeways Map of the Transportation Element, and the Long-Range Land Use Diagram of the Citywide Framework Element, and update the appropriate zoning maps in accordance with this action.
 - b. File the final Notice of Exemption with the County Clerk immediately after the ordinance is approved and passed in final by the City Council.

Fiscal Impact Statement: None submitted by the LACPC. Neither the City Administrative Officer nor the Chief Legislative Analyst has completed a financial analysis on this report.

Community Impact Statement: None submitted.

TIME LIMIT FILE - JUNE 2, 2014

(LAST DAY FOR COUNCIL ACTION - MAY 30, 2014)

(The Council may recess to Closed Session, pursuant to Government Code Section 54956.9(d)(1), to confer with its legal counsel relative to the cases entitled Fix the City, Inc. v. City of Los Angeles, et al., Los Angeles Superior Court (LASC) Case No. BS 138580; La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al., Los Angeles Superior Court (LASC) Case No. BS 138369, Save Hollywood.org, et al. v. City of Los Angeles, et al., LASC Case No. BS 138370. (These cases involve challenges to the City Council's June 19, 2012 adoption of the Hollywood Community Plan Update and its Environmental Impact Report).

Summary

At the public hearing held on March 25, 2014, the Planning and Land Use Management Committee considered reports from the Mayor and LACPC relative to repealing the zone and height district changes for the Hollywood Community Plan Update and amending the General Plan Framework Element. Staff from the Department of City Planning gave the Committee background information on the matter. After an opportunity for public comment, the Committee recommended that Council approve the recommendations contained in the Mayor and LACPC reports and adopt the Resolutions and Ordinance. This matter is now forwarded to the Council for its consideration.

Respectfully Submitted,

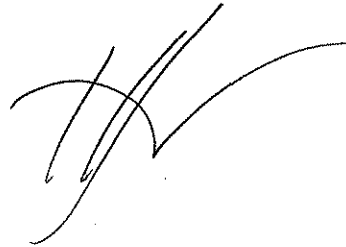
PLANNING AND LAND USE MANAGEMENT COMMITTEE

<u>MEMBER</u>	<u>VOTE</u>
HUIZAR:	YES
CEDILLO:	YES
ENGLANDER:	YES

ADOPTED

APR 2 2014

**LOS ANGELES CITY COUNCIL
TO THE MAYOR FORTHWITH**



SG
12-0303-S4_rpt_plum_3-25-14
3/26/14

-NOT OFFICIAL UNTIL COUNCIL ACTS-

RESOLUTION

WHEREAS, the City Council unanimously adopted the Hollywood Community Plan Update (HCPU) on June 19, 2012, amending the General Plan of the City of Los Angeles through amendments to the Hollywood Community Plan, Transportation Element, and Framework Element; and

WHEREAS, in amending the Hollywood Community Plan in 2012, the City did not repeal the 1988 Hollywood Community Plan; and

WHEREAS, on February 11, 2014, the Los Angeles Superior Court issued a Judgment ordering the City to "rescind, vacate and set aside all actions approving the [HCPU] and all actions certifying [the EIR] adopted in connection therewith, as well as all related approvals issued in furtherance of the HCPU," as described in the trial court's Judgment;

NOW, THEREFORE, BE IT RESOLVED, that all actions approving the HCPU, all actions certifying the EIR adopted in connection therewith, and all related approvals issued in furtherance of the HCPU, including but not limited to the text and maps associated with the HCPU, the Resolution amending the Hollywood Community Plan, all amendments to the General Plan Transportation and Framework Elements made to reflect changes in the HCPU, the adoption of the Statement of Overriding Considerations, the adoption of the Mitigation and Monitoring Program, and the adoption of Findings in support of the foregoing are hereby rescinded, vacated, and set aside. The phrase "all related approvals," however, refers only to those quasi-legislative actions that were necessary to carry out the HCPU and the related California Environmental Quality Act ("CEQA") documents and that the provisions hereof do not rescind those adjudicatory approvals the City made after the HCPU was adopted.

BE IT FURTHER RESOLVED that it is the City's intent that by rescinding, vacating, and setting aside all actions approving the HCPU, the City will, by operation of law, revert to the Hollywood Community Plan, and other General Plan elements that were in place immediately prior to the City's adoption of the HCPU.

I CERTIFY THAT THE FOREGOING
RESOLUTION WAS ADOPTED BY THE
COUNCIL OF THE CITY OF LOS ANGELES
AT ITS MEETING OF APR 2 2014
BY A MAJORITY OF ALL ITS MEMBERS.



HOLLY L. WOLCOTT
INTERIM CITY CLERK

BY _____
DEPUTY

RESOLUTION

WHEREAS, in 1996 and 2001, the City adopted the Framework element of the General Plan, which guides the update of other General Plan elements and is based on planning principles to encourage development close to transit infrastructure, protect neighborhoods, and improve air quality;

WHEREAS, the City initiates updates to the various elements of the General Plan, including the City's 35 Community Plans, in part, based on monitoring policies and programs described in the Framework Element;

WHEREAS, on June 19, 2012, the City adopted the Hollywood Community Plan Update (HCPU) directing future growth to areas of Hollywood where new development could be supported by transportation infrastructure;

WHEREAS, on January 15, 2014, following three separate legal challenges to the HCPU, the Los Angeles County Superior Court issued a Final Statement of Decision and on February 11, 2014, issued a Judgment concluding that the adoption of the HCPU rendered the City's General Plan internally inconsistent because the HCPU did not contain the same monitoring policies and programs that are set forth in the Framework Element;

WHEREAS, the City has historically interpreted and implemented the Framework Element's monitoring policies and programs as being in place to guide the Community Plan update process;

WHEREAS, the City does not interpret the Framework Element to require Community Plans themselves to contain the same monitoring policies and programs;

WHEREAS, the Court of Appeal in *Saunders v. City of Los Angeles* (Case No. B232415) held that the Framework Element's monitoring programs are discretionary, and dependent upon the availability of resources and competing priorities;

WHEREAS, the Los Angeles Superior Court's Final Statement of Decision and Judgment has created the need to clarify the role of the Framework Element's monitoring policies and programs; and

WHEREAS, pursuant to the provisions of the Los Angeles City Charter, the Mayor and the City Planning Commission have transmitted their recommendations on the amendment.

WHEREAS, the amendment is intended to overrule and supersede the trial court's interpretation of the General Plan Framework element's monitoring policies and programs in *Fix the City, Inc. v. City of Los Angeles, et al.*, LASC Case No. BS138580, *La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.*, LASC Case No. BS

138369, and SaveHollywood.Org, et al. v. City of Los Angeles, et al., LASC Case No. BS 138370, and to reaffirm the Court of Appeal's interpretation in *Saunders v. City of Los Angeles* (Case No. B232415). This amendment, however, does not change the City's historical interpretation or implementation of the monitoring policies or programs.

NOW, THEREFORE, BE IT RESOLVED, that the Framework Element is hereby amended to add the following language, (as shown in underline below), on page 1-6 of Chapter 1 of the Framework Element, immediately following the first paragraph under the Monitoring and Reporting section:

MONITORING AND REPORTING

The Department of City Planning will develop and implement a growth Monitoring System and annually prepare a Report on Growth and Infrastructure to the Mayor, City Council, and the City Planning Commission. The Annual Report on Growth and Infrastructure will include policy and program recommendations and summary information generated by the Monitoring System on the City's changing circumstances, needs, and trends.

The monitoring policies and programs are intended to guide the City's process of updating other General Plan elements, including the City's 35 Community Plans. The Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs. Furthermore, the monitoring programs discussed in *Saunders v. City of Los Angeles* (Case No. B232415), i.e., Programs 42 and 43 are discretionary as the *Saunders* Court held.

I CERTIFY THAT THE FOREGOING
RESOLUTION WAS ADOPTED BY THE
COUNCIL OF THE CITY OF LOS ANGELES
AT ITS MEETING OF APR 2 2014
BY A MAJORITY OF ALL ITS MEMBERS.



HOLLY L. WOLCOTT
INTERIM CITY CLERK

BY [Signature]
DEPUTY

RECOMMENDED ACTIONS:

- 1) **Conduct** a public hearing on the proposed actions, as presented in this staff report.
- 2) **Approve** the Staff Report as the Commission Report.
- 3) **Approve** and act on the Requested Actions as listed in Actions 1- 7 above.

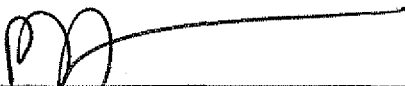
MICHAEL J. LOGRANDE
Director of Planning



Alan Bell, AICP
Deputy Director of Planning



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Principal City Planner



Patricia Diefenderfer, AICP
Sr. City Planner
Telephone: (213) 978.1170



Conni Pallini-Tipton, AICP
City Planner



Matthew Glesne
City Planning Associate



Melissa Watson
Planning Assistant

TABLE OF CONTENTS

Project Analysis.....A-1

Project Summary.....	A-1
Background.....	A-1
Discussion of Key Issues.....	A-2

Findings..... F-1

General Plan/Charter Findings.....	F-1
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Exhibits (Attached):

- A. Draft Resolution to Rescind the HCPU and all Related Approvals
- B. Draft Ordinance to Rescind the HCPU and all Related Approvals
- C. Draft Resolution for the General Plan Amendment to the General Plan Framework Element
- D. Draft Government Code 65759 Environmental Initial Study
- E. Draft Notice of Exemption and Narrative
- F. Council Motion CF-12-0303- S3
- G. HCPU Statement of Decision and Final Court Judgment

PROJECT ANALYSIS

Project Summary

The Department of City Planning (DCP) proposes two separate but related actions in response to the recent Los Angeles County Superior Court Judgment affecting the 2012 Hollywood Community Plan Update (HCPU). Pursuant to the Court's Order, the first action officially rescinds, vacates and sets aside the 2012 Hollywood Community Plan Update (HCPU), its EIR and all related actions approving the Hollywood Community Plan Update. The second is an amendment to the Framework Element of the General Plan to reaffirm the City's historic interpretation and implementation of the Framework Element's monitoring policies and programs. Notably, the amendment will not change the Framework Element's monitoring policies and programs as the City interpreted and implemented them prior to the Judgment.

Background

The City Council unanimously adopted the HCPU on June 19, 2012, amending the General Plan of the City of Los Angeles through amendments to the Hollywood Community Plan, Transportation Element, and Framework Element. The General Plan amendments were effective as of that date. The Council also adopted Ordinance Number 182,173, making zone and height district changes that took effect on August 6, 2012.

The pattern of land use recommended by the HCPU directed future growth to areas of Hollywood where new development could be supported by transportation infrastructure. The plan sought to encourage mixing of different types of land uses to reduce the length and number of vehicle trips (thus reducing greenhouse gas emissions in accordance with SB 375). The HCPU contained policies and programs to protect the character of Hollywood's low-scale residential neighborhoods and legacy of historically and culturally significant buildings and places. It directed growth away from environmentally sensitive areas, and contained new protections against inappropriate hillside development. It also protected existing street patterns, reducing unnecessary road widening to preserve historic resources and support pedestrian activity and bicycle and transit use.

Although the plan garnered widespread community support, developed over almost a decade of community outreach and more than 150 public meetings, three lawsuits were filed challenging the Hollywood Community Plan Update. The challenges were premised on several issues including the CEQA analysis and general plan consistency.

The final Statement of Decision by the Los Angeles Superior Court in the case of *Fix the City, etc. v. the City of Los Angeles, et al.* (Case No. BS138580) ruled in favor of the petitioners. On February 11, 2014, the trial court Judgment was issued, instructing the City to "rescind, vacate and set aside all actions approving the [HCPU] and all actions certifying [the EIR] adopted in connection therewith, as well as all related approvals issued in furtherance of the HCPU." The trial court Judgment stated the City "shall not grant any authority, permits or entitlements which derive from the Hollywood Community Plan Update (HCPU) or its Environmental Impact Report (EIR)."

The Court decision rests on two primary points:

- 1) The EIR for the HCPU did not comply with CEQA, among other reasons, because the EIR relied upon flawed and outdated population, household and employment projection data for Hollywood.
- 2) Adoption of the HCPU rendered the General Plan internally inconsistent because the HCPU does not contain the same monitoring policies and programs set forth in the General Plan's Framework Element.

The Court's decision could significantly impact future development projects in Hollywood. Economic development, the creation of new housing stock and increasing employment opportunities are put at significant risk if clarity is not brought to the City's planning and land use policies.

In order to comply with the Judgment and create greater clarity for projects affected by this litigation, the City Council on February 18, 2004 approved a motion (O'Farrell/Parks, CF 12-0303-S3, Exhibit F) that directs DCP to prepare the resolutions and ordinances necessary to rescind, vacate and set aside all actions approving the HCPU and all actions certifying the EIR adopted in connection therewith, as well as all related approvals issued in furtherance of the HCPU. The motion directs DCP to initiate the process of amending the General Plan's Framework element to make clear that the Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs, and that the Framework Element's monitoring programs are discretionary and contingent on the availability of resources and competing priorities as the Court of Appeal held in *Saunders v. City of L.A.*, Case No. B232415. As follow up, the motion also directs DCP to initiate the process of revising the Environmental Impact Report for the HCPU.

Therefore the two actions recommended by DCP in this report to respond to the Court Judgment include: rescindment of the HCPU and the associated EIR; and amendment of the Framework Element.

Discussion of Key Issues

1. Hollywood Community Plan Update

As a result of the Court's Judgment, the City is required to repeal the 2012 General Plan Amendment to the Hollywood Community Plan, related amendments to the Transportation Element, and Framework Element and corresponding zone change ordinance. In responding to this Court Order, and by this action, it is intended that vacating the quasi-legislative acts above shall, by operation of law, revive the General Plan elements and the zoning ordinances and regulations that existed immediately prior to the adoption of the HCPU.

2. General Plan Framework Element

The second part of the Court's decision addresses the issue of general plan consistency, in particular the relationship between the City's General Plan Framework and Land Use Elements, as expressed in the HCPU. In order to understand the proposed Framework

amendment, it is necessary to first provide some background on general plans in the State of California and the notion of general plan consistency in State law.

California State law requires each city and county to adopt a general plan so that physical development is bound to its long range planning. General plans are required to have at least seven required elements and must consist of a statement of development policies as well as diagrams and text setting forth objectives, principles, standards, and plan proposals. Policies and objectives expressed in the general plan should form the rational basis for the distribution of future land uses and therefore physical development.

Consistency within and between elements of a general plan is an important tenet of California's land use law. California Government Code Section 65300.5 requires that general plan elements comprise "an integrated, internally consistent and compatible statement of policies for the adopting agency." Since there is equal status amongst different general plan elements, consistency ensures that the city's policies and objectives are clearly understood by the public and decision makers.

The State Office of Planning and Research has elaborated on the meaning of general plan consistency in its 2003 General Plan Guidelines. It defines consistency as "free from significant variation or contradiction." In practice, courts have held that all the diagrams, text, goals, policies and programs in various plans need to be in agreement and harmonious with each other.

No changes are being proposed to the Framework Element that would alter its relationship to other parts of the General Plan. The amendment merely reaffirms that the Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs, that the Framework Element's monitoring programs are discretionary, and that they are contingent on the availability of resources and competing priorities, as the Court of Appeal held in *Saunders v. City of Los Angeles*, Case No. B232415.

Los Angeles General Plan Framework Element and Land Use Element

In 1996, the City adopted an optional Framework Element (Framework Element) as part of its General Plan. The Framework Element is the City's strategy for long-term growth and sets a citywide context to guide the update of the community plans and other citywide elements, including the Hollywood Community Plan Update.

The Land Use Element of the General Plan designates the proposed distribution, location and extent (or intensity) of different categories of land use. In Los Angeles, due to the City's large size, the DCP updates the land use element through individual updates to the City's 35 Community Plans. Community Plans provide a long-term vision for the diverse geographies of the City and also guide development through their land use designations, policies and implementation programs.

Monitoring Program and Annual Report on Growth and Infrastructure

The DCP initiates updates to the General Plan to address changing land uses and emerging concerns based, in part, on monitoring policies and programs described in the Framework Element. The monitoring program (Program 42) is described in Chapter 2 of the Framework Element as follows:

After the Framework Element is adopted, the City will establish a growth monitoring program that will provide important information regarding the accuracy of future growth estimates and the distribution of that new development by community plan area. This monitoring program will annually document what has actually happened to the City's population levels, housing construction, employment levels, and the availability of public infrastructure and public services.

A closely related program (43) is the Annual Report on Growth and Infrastructure. The Annual Report documents the results of the annual monitoring program. A major purpose of the Annual Report is to review the need to update the General Plan elements, including the community plans.

Proposed Framework Element Amendment

The State's 2003 General Plan Guidelines state that each local planning department should regularly review its general plan and revise the document as necessary. In addition, they advise that general plans "should achieve harmony among the elements through clear language and overall consistency."

The intent of the proposed amendment is to reaffirm the Framework's monitoring and reporting policies on growth and infrastructure, particularly as they relate to other elements such as Community Plans. The following amendment is proposed to be inserted into Chapter 1 of the Framework Element, on page 1-6, following the first paragraph under the Monitoring and Reporting section. It would read:

MONITORING AND REPORTING

The Department of City Planning will develop and implement a growth Monitoring System and annually prepare a Report on Growth and Infrastructure to the Mayor, City Council, and the City Planning Commission. The Annual Report on Growth and Infrastructure will include policy and program recommendations and summary information generated by the Monitoring System on the City's changing circumstances, needs, and trends.

The monitoring policies and programs are intended to guide the City's process of updating other General Plan elements, including the City's 35 Community Plans. The Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs. Furthermore, as discussed in Chapter 10 and held by the Court of Appeal in *Saunders v. City of Los Angeles* (Case No. B232415), the Framework Element's monitoring programs are discretionary, not mandatory, and are contingent on the availability of resources and competing priorities.

This amendment is intended to overrule and supersede the trial court's decision in *Fix the City, Inc. v. City of Los Angeles, et al.*, LASC Case No. BS138580, *La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.*, LASC Case No. BS 138369, and *SaveHollywood.Org, et al. v. City of Los Angeles, et al.*, LASC Case No. BS 138370. This amendment, however, does not change the City's historic interpretation or implementation of the monitoring policies or programs.

The amendment can be viewed in two parts for discussion purposes.

The monitoring policies and programs are intended to guide the City's process of updating other General Plan elements, including the City's 35 Community Plans. The Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs.

With respect to monitoring programs, monitoring is done at the citywide level to guide the prioritization of Plan updates. The City has interpreted and implemented the Framework Element as not requiring Community Plans themselves to contain the same monitoring policies and programs set forth in the Framework Element.

The City's historic interpretation and implementation are supported by the State Office of Planning and Research 2003 General Plan Guidelines, which were adopted to guide local jurisdictions in their development of general plans. With regard to the overlapping of statutory requirements, the Guidelines make clear that "conciseness is a virtue" and that "a concise general plan avoids repetitive discussions of topics by consolidating the statutory requirements" (page 48).

Given the nature of the general plan elements, there is often a great deal of overlap between issues covered in individual elements of the general plan. For example, housing issues are relevant to both the Housing Element as well as the 35 community plans that make up the Land Use Element. Given the overlap, the urge often exists to repeat and restate existing general plan discussions and policies when updating other plan elements. Although the City has, on occasion, repeated and restated some general plan discussions and policies in the past, doing so is neither required, nor encouraged.

Indeed, the State of California places an emphasis on clarity and conciseness over repetition. The main reason stated in state law (Section 65000.5 of the CA Government Code) is to promote "an integrated, internally consistent and compatible statement of policies" between plan elements.

Furthermore, as discussed in Chapter 10 and held by the Court of Appeal in *Saunders v. City of Los Angeles* (Case No. B232415), the Framework Element's monitoring programs are discretionary, not mandatory, and are contingent on the availability of resources and competing priorities.

As the Framework Element already makes clear (in the beginning of Chapter 10), implementation of plan policies and programs is contingent on a number of factors and "not all plan policies can be achieved." Limiting factors include adequate funding, the priorities of other government and funding agencies, and changing local conditions.

The Framework also clearly states that some goals may need to take precedence over others and that decision-makers have the discretion to decide how to best implement the adopted policies. In approving the Plan, the City Council conferred authority upon the DCP on how to best prioritize implementation programs in the context of budget and resource limitations.

This understanding was affirmed in a different but closely related Appeals Court decision in *Saunders v. the City of Los Angeles* (2012). In *Saunders*, the Court upheld the City's discretion in deciding how to best implement its Framework programs. The two main

programs at issue in the *Saunders* case were Programs 42 and 43. Program 42 is an implementation "program to monitor the status of development activity, capabilities of infrastructure and public services to provide adequate levels of service, and environmental impacts (e.g., air emissions), identifying critical constraints, deficiencies and planned improvements (where appropriate)." Program 43 is an implementation program intended to generate an "Annual Report on Growth and Infrastructure [Annual Report] that documents the results of the annual monitoring program." The Court held that "when the language of Programs 42 and 43 is read together and harmonized with other language of the Framework Element, including the clear and unambiguous introductory language to Chapter 10 governing the implementation of the programs established by the Framework Element, the implementation duties created by those programs emerge as discretionary."

Environmental Review

The requested actions are exempt from CEQA pursuant to CEQA Guidelines 15060(c)(1), Government Code 65759(a), and CEQA Guidelines 15060(c)(3) and 15378. See CEQA Notice of Exemption and Narrative (Exhibit E).

Conclusion

The DCP recommends that the City Council take the requested actions in response to the *Fix the City, et al.*, Judgment. The actions will return certainty to the development process in Hollywood and promote economic development.

In particular, DCP recommends adopting the Resolution and Ordinance repealing the 2012 HCPU, as well as all related associated actions described in the trial court's February 11, 2014 Judgment. This action will revive, by operation of law, the Community Plan Elements, and zoning ordinances and regulations in place immediately prior to the City's adoption of the HCPU. In reference to the attached motion CF 12-0303 S3, DCP will report back on resources necessary to follow up on the revision of the EIR for the 2012 HCPU.

In addition, DCP recommends adopting the proposed Framework Element amendment, which affirms the City's historic interpretation and implementation of the growth and infrastructure monitoring policies. There is no functional change to the General Plan Framework Element's monitoring policies or programs as a result of the amendment.

FINDINGS

1. General Plan/Charter Findings

- A. In accordance with the Los Angeles City Charter 558, the proposed Ordinance to repeal Ordinance No. 182,173 is initiated in order to comply with a Court Order and conforms to the purposes, intent, and provisions of the General Plan. By operation of law the prior zoning (zoning ordinances in place prior to August 6, 2012) will be re-instituted, as will the General Plan elements that were in place immediately prior to the City's adoption of the HCPU. Consequently, the prior zoning and prior plan elements will be in conformance with each other, in accordance with state law, as the City found when it originally adopted the prior plan elements and the prior zoning regulations. Those original findings are incorporated herein by reference. An urgency clause is included in the ordinance as the delay of this ordinance's implementation is likely to result in arrested development as investment decisions are impacted by unclear planning and land use policies. The urgency clause is required in response to the *Fix the City et al.*, Judgment. The Court's decision could significantly impact future development projects in Hollywood without immediate action. Economic development, the creation of new housing stock and increasing employment opportunities are put at significant risk if clarity is not brought to the City's planning and land use policies. The actions in the ordinance will return certainty to the development process in Hollywood and help to sustain economic development by reinstating clear land use policies and regulations.
- B. In accordance with Charter Section 558 (b)(2), the Ordinance to repeal Ordinance No. 182,173 conforms with the public necessity, convenience, and general welfare as stated in Finding 1.A.

RESOLUTION

WHEREAS, the City Council unanimously adopted the Hollywood Community Plan Update (HCPU) on June 19, 2012, amending the General Plan of the City of Los Angeles through amendments to the Hollywood Community Plan, Transportation Element, and Framework Element.

WHEREAS, on February 11, 2014, the Los Angeles Superior Court issued a Judgment ordering the City to "rescind, vacate and set aside all actions approving the [HCPU] and all actions certifying [the EIR] adopted in connection therewith, as well as all related approvals issued in furtherance of the HCPU," as described in the trial court's Judgment;

NOW, THEREFORE, BE IT RESOLVED, that all actions approving the HCPU, all actions certifying the EIR adopted in connection therewith, and all related approvals issued in furtherance of the HCPU, including but not limited to the text and maps associated with the HCPU, the Resolution amending the Hollywood Community Plan, all amendments to the General Plan Transportation and Framework Elements made to reflect changes in the HCPU, the adoption of the Statement of Overriding Considerations, the adoption of the Mitigation and Monitoring Program, and the adoption of Findings in support of the foregoing are hereby rescinded, vacated, and set aside. The phrase "all related approvals," however, refers only to those quasi-legislative actions that were necessary to carry out the HCPU and the related California Environmental Quality Act ("CEQA") documents and that the provisions hereof do not rescind those adjudicatory approvals the City made after the HCPU was adopted.

BE IT FURTHER RESOLVED that it is the City's intent that rescinding, vacating, and setting aside all actions approving the HCPU will, by operation of law, revive the Hollywood Community Plan, and other General Plan elements that were in place immediately prior to the City's adoption of the HCPU.

ORDINANCE NO. _____

An ordinance to repeal Ordinance No. 182,173, adopted on June 19, 2012, for zone and height district changes in furtherance of the Hollywood Community Plan Update (HCPU).

WHEREAS, the City Council unanimously adopted the HCPU on June 19, 2012, amending the General Plan of the City of Los Angeles through amendments to the Hollywood Community Plan, Transportation Element, and Framework Element, and the Council also adopted Ordinance No. 182,173, effecting changes of zone and height districts which became effective on August 6, 2012; and

WHEREAS, on February 11, 2014, a trial court judgment was issued instructing the City to "rescind, vacate and set aside all actions approving the [HCPU] and all actions certifying [the EIR] adopted in connection therewith, as well as all related approvals issued in furtherance of the HCPU," as described in the trial court's judgment; and

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Ordinance No. 182,173, which constitutes the rezoning action the City took to reflect zoning changes contained in the HCPU, is hereby rescinded, vacated, and set aside.

Sec. 2. It is the City Council's intent that rescinding, vacating, and setting aside Ordinance No. 182,173 will, by operation of law, revive the zone and height district designations and other zoning regulations that existed for the geographic areas covered by Ordinance No. 182,173 immediately prior to the City Council's adoption of Ordinance No. 182,173.

Sec. 3. **URGENCY CLAUSE.** The City finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: The urgency clause is required in response to the *Fix the City et al.*, Judgment. The actions in the ordinance will return certainty to the development process in Hollywood and help to sustain economic development by reinstating clear land use policies and regulations. The Court's decision could significantly impact future development projects in Hollywood without immediate action. Economic development, the creation of new housing stock and increasing employment opportunities are put at significant risk if clarity is not brought to the City's planning and land use policies. Delaying the implementation of this ordinance is likely to result in arrested development as investment decisions are impacted by unclear planning and land use policies. For all

of these reasons, this ordinance shall become effective upon publication pursuant to Section 253 of the Los Angeles City Charter, thereby reviving by operation of law the General Plan elements and zoning regulations that were in place immediately before the City's adoption of the HCPU.

Sec 4. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with City Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

HOLLY L. WOLCOTT, Interim City Clerk

Approved _____

By

Deputy

Mayor

RESOLUTION

WHEREAS, in 1996 and 2001, the City adopted the Framework element of the General Plan, which guides the update of other General Plan elements and is based on planning principles to encourage development close to transit infrastructure, protect neighborhoods, and improve air quality;

WHEREAS, the City initiates updates to the various elements of the General Plan, including the City's 35 Community Plans, in part, based on monitoring policies and programs described in the Framework Element;

WHEREAS, on June 19, 2012, the City adopted the Hollywood Community Plan Update (HCPU) directing future growth to areas of Hollywood where new development could be supported by transportation infrastructure;

WHEREAS, on January 15, 2014, following three separate legal challenges to the HCPU, the Los Angeles County Superior Court issued a Final Statement of Decision and on February 11, 2014, issued a Judgment concluding that the adoption of the HCPU rendered the City's General Plan internally inconsistent because the HCPU did not contain the same monitoring policies and programs that are set forth in the Framework Element;

WHEREAS, the City has historically interpreted and implemented the Framework Element's monitoring policies and programs as being in place to guide the Community Plan update process;

WHEREAS, the City does not interpret the Framework Element to require Community Plans themselves to contain the same monitoring policies and programs;

WHEREAS, the Court of Appeal in *Saunders v. City of Los Angeles* (Case No. B232415) held that the Framework Element's monitoring programs are discretionary, and dependent upon the availability of resources and competing priorities;

WHEREAS, the Los Angeles Superior Court's Final Statement of Decision and Judgment has created the need to clarify the role of the Framework Element's monitoring policies and programs; and

WHEREAS, pursuant to the provisions of the Los Angeles City Charter, the Mayor and the City Planning Commission have transmitted their recommendations on the amendment.

WHEREAS, the amendment is intended to overrule and supersede the trial court's decision in *Fix the City, Inc. v. City of Los Angeles, et al.*, LASC Case No. BS138580, *La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles, et al.*, LASC Case No. BS 138369, and *SaveHollywood.Org, et al. v. City of Los Angeles, et al.*, LASC Case No. BS

138370. This amendment, however, does not change the City's historical interpretation or implementation of the monitoring policies or programs.

NOW, THEREFORE, BE IT RESOLVED, that the Framework Element is hereby amended to add the following language, (as shown in underline below), on page 1-6 of Chapter 1 of the Framework Element, immediately following the first paragraph under the Monitoring and Reporting section:

MONITORING AND REPORTING

The Department of City Planning will develop and implement a growth Monitoring System and annually prepare a Report on Growth and Infrastructure to the Mayor, City Council, and the City Planning Commission. The Annual Report on Growth and Infrastructure will include policy and program recommendations and summary information generated by the Monitoring System on the City's changing circumstances, needs, and trends.

The monitoring policies and programs are intended to guide the City's process of updating other General Plan elements, including the City's 35 Community Plans. The Framework Element does not require, and was not intended to require, Community Plans themselves to contain monitoring policies or programs. Furthermore, as discussed in Chapter 10 and held by the Court of Appeal in *Saunders v. City of Los Angeles* (Case No. B232415), the Framework Element's monitoring programs are discretionary, not mandatory, and are contingent on the availability of resources and competing priorities.

Appendix G

Environmental Checklist Form

1. Project title:
Hollywood Community Plan Update - Repeal and General Plan Amendment
2. Lead agency name and address:
Department of City Planning, Policy Planning and Historic Resources Division
200 N. Spring Street, Room 667
Los Angeles, CA 90012
3. Contact person and phone number:
Patricia Diefenderfer (213) 978-1170
4. Project location:
Citywide
5. Project sponsor's name and address:
Department of City Planning
(address same as above)
6. General plan designation: N/A 7. Zoning: N/A
8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)
A General Plan Amendment to the Framework Element to reaffirm implementation of the
Framework's monitoring and reporting policies, as set forth in the March 13, 2014, Department of
City Planning Recommendation Report to the City Council.
9. Surrounding land uses and setting: Briefly describe the project's surroundings:
N/A
10. Other public agencies whose approval is required (e.g., permits, financing approval, or

participation agreement.)

N/A

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.


- | | | |
|--|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology/Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology/Water Quality | <input type="checkbox"/> Land Use/Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population/Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation/Traffic |
| <input type="checkbox"/> Utilities/Service Systems | <input type="checkbox"/> Mandatory Findings of Significance | |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- ☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.


Signature

February 25, 2014
Date

Matthew Glesne
Printed Name

Dept. of City Planning
For

EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR

or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

- a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
 - 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
 - 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
 - 9) The explanation of each issue should identify:
 - a) the significance criteria or threshold, if any, used to evaluate each question; and
 - b) the mitigation measure identified, if any, to reduce the impact to less than significance

Please note: A narrative explanation of the "No Impact" determinations can be found in the Notice of Exemption Exhibit E of the Staff Recommendation Report associated with the subject case no. CPC-2014-669-CPU.

SAMPLE QUESTION

Issues:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS – Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:</p>				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>IV. BIOLOGICAL RESOURCES -- Would the project:</p>				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal,	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
filling, hydrological interruption, or other means?				
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
V. CULTURAL RESOURCES -- Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VI. GEOLOGY AND SOILS -- Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VII. HAZARDS AND HAZARDOUS MATERIALS – Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VIII. HYDROLOGY AND WATER QUALITY - - Would the project:				
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
river, in a manner which would result in substantial erosion or siltation on- or off-site?				
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IX. LAND USE AND PLANNING - Would the project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
X. MINERAL RESOURCES – Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XI. NOISE -- Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XII. POPULATION AND HOUSING – Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XIII. PUBLIC SERVICES				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XIV. RECREATION				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XV. TRANSPORTATION/TRAFFIC -- Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XVI. UTILITIES AND SERVICE SYSTEMS -- Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XVII. MANDATORY FINDINGS OF SIGNIFICANCE				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?				
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21083, 21083.3, 21093, 21094, 21151, Public Resources Code; Sundstrom v. County of Mendocino, 202 Cal.App.3d 296 (1988); Leonoff v. Monterey Board of Supervisors, 222 Cal.App.3d 1337 (1990).

COUNTY CLERK'S USE

CITY OF LOS ANGELES

CITY CLERK'S USE

OFFICE OF THE CITY CLERK
200 NORTH SPRING STREET, ROOM 360
LOS ANGELES, CALIFORNIA 90012

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOTICE OF EXEMPTION

(California Environmental Quality Act Section 15062)

Filing of this form is optional. If filed, the form shall be filed with the County Clerk, 12400 E. Imperial Highway, Norwalk, CA 90650, pursuant to Public Resources Code Section 21152 (b). Pursuant to Public Resources Code Section 21167 (d), the filing of this notice starts a 35-day statute of limitations on court challenges to the approval of the project. Failure to file this notice with the County Clerk results in the statute of limitations being extended to 180 days.

LEAD CITY AGENCY City of Los Angeles Department of City Planning	COUNCIL DISTRICT All
--	--------------------------------

PROJECT TITLE *Hollywood Community Plan Update -- Repeal and General Plan Amendment	LOG REFERENCE ENV
---	-----------------------------

PROJECT LOCATION *Citywide

DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES OF PROJECT:
☐ Rescind all actions approving the Hollywood Community Plan Update (HCPU) and certifying the EIR adopted in connection with the HCPU, as set forth in CF 12-0303. A General Plan Amendment to the General Plan Framework Element to reaffirm implementation of the Framework's monitoring and reporting policies.

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT, IF OTHER THAN LEAD CITY AGENCY: *
--

CONTACT PERSON *Patricia Diefenderfer	AREA CODE * (213)	TELEPHONE NUMBER * 978-1170	EXT.
---	-----------------------------	---------------------------------------	----------

EXEMPT STATUS: (Check One)			
	STATE CEQA GUIDELINES	CITY CEQA GUIDELINES	
<input type="checkbox"/> MINISTERIAL	Sec. 15268	Art. II, Sec. 2b	
<input type="checkbox"/> DECLARED EMERGENCY	Sec. 15269	Art. II, Sec. 2a (1)	
<input type="checkbox"/> EMERGENCY PROJECT	Sec. 15269 (b) & (c)	Art. II, Sec. 2a (2) & (3)	
<input type="checkbox"/> CATEGORICAL EXEMPTION	Sec. 15300 <i>et seq.</i>	Art. III, Sec. 1	
Class _____ Category _____ (City CEQA Guidelines)			
<input checked="" type="checkbox"/> OTHER (See Public Resources Code Sec. 21080 (b) and set forth state and City guideline provision.)			

JUSTIFICATION FOR PROJECT EXEMPTION: (See attached Narrative for a more complete explanation)


Repeal of Hollywood Community Plan:
Pursuant to CEQA Guidelines 15060(c)(1), the repeal of the Hollywood Community Plan Update is an activity that does not involve the exercise of discretionary powers as it directly complies with the court order.

General Plan Framework Element Amendment:
(a) Pursuant to Government Code section 65759(a), the Amendment is an action necessary to bring the general plan or relevant mandatory elements of the plan into compliance with the court order; and
(b) Pursuant to CEQA Guidelines sections 15060(c)(3) and 15378, the Amendment would not result in a direct or indirect physical change because the same actions the City was taking before the Amendment (with respect to monitoring) will be the same actions we are taking after the Amendment. No General Plan Framework policies or programs will be materially affected.

IF FILED BY APPLICANT, ATTACH CERTIFIED DOCUMENT ISSUED BY THE CITY PLANNING DEPARTMENT STATING THAT THE DEPARTMENT HAS FOUND THE PROJECT TO BE EXEMPT.

SIGNATURE	TITLE	DATE February 25, 2014
FEE:	RECEIPT NO.	REC'D. BY
		DATE

IF FILED BY THE APPLICANT:

*Patricia Diefenderfer NAME (PRINTED)	 SIGNATURE	* 2.25.14 DATE	*February 25, 2014
---	--	--------------------------	---------------------------

Notice of Exemption Narrative

CPC-2014-669-CPU
ENV-2014-670-SE

The requested actions (the repeal of the HCPU and the General Plan Amendment) are subject to different environmental review criteria under state law. Pursuant to CEQA Guidelines Section 15060, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

- (1) The activity does not involve the exercise of discretionary powers by a public agency;
- (2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or
- (3) The activity is not a project as defined in Section 15378.

The first requested action, the repeal of the 2012 Hollywood Community Plan and associated approvals (including the associated zoning ordinance), is subject to the first criterion above (Section 15060 (c)(1)) in that it is explicitly mandated by the court and therefore does not involve the exercise of discretionary powers by the public agency.

The second requested action, the General Plan Framework Element amendment, is subject to a separate state statute that deals with local actions necessary to bring the general plan or relevant mandatory elements of the plan into compliance with court orders or judgments. The statute sets forth a 120 day requirement for jurisdictions to come into compliance and contains its own environmental review standard, outside of the regular California Environmental Quality Act requirements. The statute (Section 65759 of the CA Government Code) requires that an Initial Study be prepared to determine the environmental effects of the proposed action necessary to comply with the court order. The Initial Study shall contain substantially similar information as a standard Initial Study under CEQA. If the Initial Study finds potentially significant impacts a separate environmental assessment is required.

An Initial Study (Exhibit D) was prepared by the Department of City Planning (DCP) according to Section 65759 in order to ascertain the environmental effects of the General Plan Framework Element Amendment. The study found no impact on the environment as a result of the amendment since the amendment would not result in any direct or indirect physical changes in the environment. The amendment does not alter any existing City goal, policy or program in the Framework Element, nor would it change any current City practice. Additionally, the amendment would only reinforce what is currently city practice around growth and monitoring, as described in the record of the *Saunders v. City of Los Angeles* case. The amended text repeats language found in another section of the Framework and affirms principles that are well established in general plan law, including case law. The amendments do not alter or weaken the City's monitoring policies or programs.

In addition, if the Amendment were not part of an effort to re-assert general plan consistency as a result of a court judgment and therefore subject to normal CEQA procedures, the action would not be subject to CEQA because it does not constitute a project, according to CEQA Guidelines Section 15378, in that does not meet the definition of a project. This is due to the same factors described above, in that it would not change

any current City practice or result in any direct or indirect physical changes in the environment. General Plan Amendments are only projects under CEQA when they would result "in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."

On the basis of the whole of the record, staff recommends that the City Council determines that the project is exempt from CEQA for the above reasons. The attached Initial Study (Exhibit D) and draft Notice of Exemption and Narrative (Exhibit E) reflects the above analysis.

12-0303-53

TO CITY CLERK FOR PLACEMENT ON NEXT
REGULAR COUNCIL AGENDA TO BE POSTED

#52

MOTION

TUESDAY

EXHIBIT F

PLANNING & LAND USE MANAGEMENT

Rule 16

On June 19, 2012, the City Council unanimously adopted the Hollywood Community Plan Update (the HCPU), as well as its policies, regulations, and vision. The HCPU embodies sustainable planning principals and policies and is an effective document that responsibly plans for the future. Consideration and ultimate adoption of the HCPU was preceded by extensive public outreach and as a result, the HCPU garnered wide-spread support from community stakeholders.

Despite this wide-spread support, on December 10, 2013, the Los Angeles County Superior Court issued a tentative decision ordering the City to set aside the HCPU and its associated Environmental Impact Report (the EIR) (Council File No. 12-0303-S2). The tentative decision was made final on January 15, 2013. The City will have sixty days after receiving notice of entry of judgment to decide whether to appeal the trial court decision.

The trial court's decision will significantly impact future development projects in Hollywood regardless of whether or not the City decides to appeal. Economic development, the creation of new housing stock and increasing employment opportunities are the City's primary objectives and clear land use policies are essential to enable this activity.

While the Council is considering the various legal challenges relative to the adoption of the HCPU and its associated Environmental Impact Report, some immediate land use policy actions are necessary to provide certainty for development in the Hollywood community and Citywide.

I THEREFORE MOVE that the Council instruct the Planning Department, in consultation with the City Attorney's Office, to initiate the process of amending the General Plan's Framework Element to make clear that the Framework Element does not require, and was never intended to require, Community Plans themselves to contain monitoring policies or programs, and that the Framework Element's monitoring programs are discretionary, not mandatory, and that they are contingent on the availability of resources and competing priorities, as the Court of Appeal held in *Saunders v. City of L.A.*, Case No. B232415.

I FURTHER MOVE that the Council instruct the Planning Department, in consultation with the City Attorney's Office, to prepare the resolutions and ordinances necessary to "rescind, vacate and set aside all actions approving the [HCPU] and all actions certifying [the EIR] adopted in connection therewith, as well as all related approvals issued in furtherance of the HCPU," as described in the trial court's February 11, 2014 Judgment. As stated in the Judgment, the phrase "all related approvals" refers only to those "quasi-legislative actions necessary to carry out the HCPU and the related California Environmental Quality Act ("CEQA") documents" and does not refer to "those adjudicatory approvals not challenged which the City may have made under the HCPU after its adoption by the City."

I FURTHER MOVE that the resolutions and ordinance described in the paragraph above contain a provision stating that it is the City Council's intent that vacating the quasi-legislative acts above shall, by operation of law, revive the Hollywood Community Plan and the zoning ordinances that existed immediately prior to adoption of the HCPU.

I FURTHER MOVE that the Council instruct the Planning Department, in consultation with the City Attorney's Office, to initiate the process of revising the Environmental Impact Report for the HCPU; and that the Council instruct the Planning Department, with the assistance of the City Administrative Officer, to report back to the Council within 30 days on any necessary budgetary resources, work scopes, and timelines for these policy actions.

PRESENTED BY:

MITCH O'FARRELL

Councilmember, 13th District

SECONDED BY:

February 14, 2014

mm

ORIGINAL

AMENDING MOTION

I HEREBY MOVE that Council AMEND Motion (O'Farrell – Parks) (Item No. 19, Council file No. 12-0303-S3) to INSTRUCT the Planning Department to report to Council in 30 days on the impact on the existing work program for the other Community Plan Updates.

PRESENTED BY _____
JOSE HUIZAR
Councilmember, 14th District

SECONDED BY _____
MITCH O'FARRELL
Councilmember, 13th District

February 18, 2014

CF 12-0303-S3

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

FIX THE CITY, etc.,

Petitioner and Plaintiff,

vs.

**CITY OF LOS ANGELES; LOS
ANGELES CITY COUNCIL; LOS
ANGELES DEPT. OF CITY PLANNING;
and DOES 1 through 100, inclusive,**

Respondents and Defendants.

**HOLLYWOOD CHAMBER OF
COMMERCE,**

Intervenor.

**LA MIRADA AVENUE
NEIGHBORHOOD ASSN. OF
HOLLYWOOD, etc.,**

Petitioner and Plaintiff,

vs.

**CITY OF LOS ANGELES; CITY
COUNCIL OF THE CITY OF LOS
ANGELES; and DOES 1 through 100,
inclusive,**

Respondents and Defendants.

CASE NO. BS138580

**TENTATIVE DECISION
AND PROPOSED
STATEMENT OF DECISION**

CASE NO. BS138369

**TENTATIVE DECISION
AND PROPOSED
STATEMENT OF DECISION**

**HOLLYWOOD CHAMBER OF
COMMERCE,
Intervenor.**

**SAVE HOLLYWOOD.ORG, aka
PEOPLE FOR LIVABLE
COMMUNITIES, etc., HOLLYWOOD-
IANS ENCOURAGING LOGICAL
PLANNING, etc.,**

Petitioners/Plaintiffs,

vs.

**THE CITY OF LOS ANGELES, CITY
COUNCIL OF THE CITY OF LOS
ANGELES, CITY ATTORNEY OFFICE
OF CITY OF LOS ANGELES, HERB
WESSON PRESIDENT OF CITY
COUNCIL, CARMEN TRUTANICH CITY
ATTORNEY, DOES 1 through 100,
inclusive,**

Respondents/Defendants.

**HOLLYWOOD CHAMBER OF
COMMERCE,**

Intervenor.

CASE NO. BS138370

**TENTATIVE DECISION
AND PROPOSED
STATEMENT OF DECISION**

These matters having been tried on September 16 and 17, 2013, and having been submitted for decision, the Court now rules as follows.

INTRODUCTION

The Hollywood Community Plan Update (HCPU) (and its corollary environmental impact report [EIR]), which is a principal subject of this litigation, is a comprehensive, visionary and voluminous planning document which thoughtfully analyzes the potential for the geographic area commonly referred to as Hollywood (as defined in its several

1 hundred pages). The HCPU includes scores of pages of text, detailed maps and tables
2 which together express the finest thoughts of dedicated city planners. The HCPU is
3 intended to be *the* essential component of the General Plan Framework (the
4 Framework) for the City of Los Angeles (the City) as the General Plan for the City (in all
5 of its elements) is applicable to planning and potential growth in Hollywood.

6 This otherwise well-conceived plan is also fundamentally flawed, and fatally so in
7 its present iteration. As petitioners have articulated, and as will be discussed below, the
8 HCPU, and its accompanying EIR, contain errors of fact and of law that compel granting
9 relief to the community groups which challenge adoption of the HCPU and its EIR in
10 their present forms.

11 While one can appreciate the goal of finalizing adoption of the HCPU, its
12 accompanying EIR and related documents, and doing so as close to "on schedule" as
13 possible given the many years since the City began its staged revisions to its General
14 Plan planning documents (culminating in adoption of the Framework),¹ forging ahead in
15 the processing of the HCPU, EIR and related documents in this case based on
16 fundamentally flawed factual premises has resulted in a failure to proceed in the manner
17 required by law. This and other bases for the rulings now made are set out below.

18 TRIAL PROCEEDINGS

19 The matter was tried to the Court on September 16 and 17, 2013. Prior thereto
20 the parties filed extensive briefs, followed by their arguments at length at trial. Following
21 the trial, the parties have filed requests for statement of decision (in addition to that
22 provided for in Public Resources Code section 21005 (c) [requiring that a court specify

23
24 ¹

25 The first draft of the Framework was circulated to the public almost twenty years
26 ago, in July 1994. It was not finalized until eleven years later when review of the
27 decision of the Court of Appeal of late 2004 upholding a revised version of the
28 Framework was denied review by the California Supreme Court in February 2005. The
attenuated history of adoption of the Framework is described in *Federation of Hillside
and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252 [*Federation
I*] and *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2005) 126
Cal.App.4th 1180 [*Federation II*].

1 all grounds on which a public agency has acted not in compliance with CEQA if it so
2 finds]). While those statements have been filed, a controversy over the requests has
3 been created. It is resolved in the accompanying footnote.²

4 Pursuant to Public Resources Code section 21005(c), Code of Civil Procedure
5 section 632 and California Rules of Court 3.1590, this Tentative Decision is also the
6 proposed Statement of Decision in these matters. If any party now renews its request
7 for a statement of decision, it must timely and fully comply with Rule 3.1590. If not, then
8 this document is also the Statement of Decision in these matters, and prevailing parties
9 are to timely prepare, serve and lodge the appropriate peremptory writs and judgments.

10 ***Evidence***

11 The Court admitted the Administrative Record in each case. (It is identical.)

12 Each party has sought judicial notice of certain items. With the consent of the
13 parties, those items which are determined properly the subject of judicial notice in one
14 case are admitted as to all cases.

15 Request for Judicial Notice by Fix the City

16 Fix the City (by Request for Judicial Notice filed August 21, 2013) seeks judicial
17 notice of sections 2.10 through 2.10.6 and 2.11 through 2.11.6 of the City's General
18 Plan Framework EIR (addressing Fire and Emergency Medical Services and Police
19 Services, respectively. These requests are granted pursuant to Evidence Code section
20 452(c).

21 Request for Judicial Notice by La Mirada

22

²

23 In addition to filing in each case a list of issues which it contends should be
24 addressed in the statement of decision in each, City and intervenor filed in each case a
25 lengthy set of objections and arguments as to why many of the requests made by each
26 petitioner/plaintiff were erroneous. As no authority to support their editorial comments
27 on the requests made by their adversaries was provided, and the Court is not aware of
28 any authority to challenge another party's *request* for inclusion of any matter or issue in
the statement of decision, the *objections* will not be considered *qua* objections: The
Court is the final arbiter of the contents of its own statement of decision and does
consider the parties' views with respect to its contents in connection with the Court's final
document.

1 La Mirada seeks judicial notice of the meaning of the word "range" according to a
2 particular dictionary and of Los Angeles City Charter sections 554, 556 and 558. The
3 Court grants the second request in full and the first subject to the Court's own ability to
4 discern the appropriate and applicable meanings of words when used in particular
5 contexts.

6 La Mirada also sought to "supplement" the Administrative Record by its August
7 21, 2013 Notice of Lodging, to which City objected. The items are Chapter 2 of the
8 City's General Plan Framework and the text of a particular hyperlinked document. The
9 latter is already part of the record pursuant to the correct reading of *Consolidated*
10 *Irrigation District v. Superior Court* (2010) 205 Cal.App.4th 697, 724-725. City's reading
11 of this case is crabbed. City's objection to the Framework is frivolous as City itself both
12 seeks judicial notice of the document and cites it in its Opposition (City's Op. at 11:17-
13 21). La Mirada requests are granted, as is City's request for judicial notice of the
14 Framework.

15 Request for Judicial Notice by SaveHollywood.org et al.

16 There is no objection to Item 1, which is an opinion in a federal court case;
17 granted.

18 Nor is there any objection to item 2, which is a print out of a web page relating to
19 the census, but the Court sees nothing other than the printed page. That is not sufficient
20 basis for granting a request for judicial notice; this request is denied.

21 City objects to item 3, a SCAG document, but it is in the record at AR 21168.
22 And, under the authority of *Consolidated Irrigation District v. Superior Court, supra*, the
23 report at the hyperlinked cite was already also part of the record. The copy of that report
24 at that link (Exhibit 3 to the Cheng declaration, filed with the Request for Judicial Notice)
25 is merely another copy of the document which is already in the record. This request is
26 granted.

27 Request number 4 is not a part of the record and its contents indicate it is only
28 raw data in any event. It is neither timely nor appropriate for judicial notice; City's

1 objections to this item are sustained.

2 City's Request for Judicial Notice

3 The requests of City, et al. that the Court take judicial notice of several items
4 (identical in each case) are resolved as follows:

5 Granted as to Sections 555, 556 and 558 of the City Charter. (Exhibits F, G and
6 H.)

7 Granted as to the extracts of the City of Los Angeles General Plan Framework
8 attached to the Request for Judicial Notice as Exhibit B.

9 Granted as to the official opinion of the Court of Appeal in *Saunders v. City of Los*
10 *Angeles*, reserving determination as to the relevance and application of that opinion to
11 the circumstances of this action.

12 As no adverse party objected, the Court also grants the requests as to the
13 existence and filing of each of the Petitions for Writ of Mandate in *Federation of Hillside*
14 *Canyon Associations v. City of Los Angeles* (two cases) and *Saunders v. City of Los*
15 *Angeles*; and as to the excerpts of the EIR in the *Saunders v. City of Los Angeles*
16 (Exhibits C, D and E).

17 Without additional explanation, which was never provided, the Court finds
18 insufficient the proffer with respect to a single page of the 2013 update of the U.S.
19 Census. (Exhibit A.) Although the population of the HCPU area is a point of
20 considerable interest in and importance to this case, the document attached as Exhibit A
21 to this RJN, was apparently updated in 2013 — in some unexplained manner — and the
22 particular document attached has no indication of any particular relevance itself.

23 Nor will the Court accept City's apparently implied offer that the Court search the
24 U.S. Census itself. That would be both improper and inordinately time-consuming. City
25 had the obligation to explain the relevance of the document, and in this case to be clear
26 about the particular parts of the document to which it seeks the Court's attention.

27 Declarations

28 The declarations of MacNaughton and Kruse are not proper subjects of judicial

1 notice; nor is Exhibit 1 to the Reply Brief to which it is attached. City's objections to these
2 matters are sustained.

3 Other evidence

4 All other evidence, which is in the Administrative Record, is admitted.

5 Status of the three cases

6 With the stipulation that all evidence admitted in one case is admitted in all, and
7 based on the congruence of the subject matter of the cases, the Court issues this single
8 decision to address the issues presented in each of the three cases.

9 **Background; the Framework Element**

10 City has sought, and the Court has granted, City's request for judicial notice of a
11 portion of "The Citywide General Plan Framework - An Element of the City of Los
12 Angeles General Plan" ("the Framework Element" [the same document the Court
13 referenced *ante* and which was the subject of the cases cited in footnote 1, *ante*).

14 There is no explanation why this document was not originally included in the
15 Administrative Record in this case as it sets forth "a citywide comprehensive long-range
16 growth strategy" for the city and describes the role of community plans such as the
17 Hollywood Community Plan Update (HCPU) at issue in these proceedings.³ (City's RJN,
18 Exh. B, page 2) Thus: "While the Framework Element incorporates a diagram that
19 depicts the generalized distribution of centers, districts, and mixed-use boulevards
20 throughout the City, it does not convey or affect entitlements for any property. **Specific**
21 **land use designations are determined by the community plans.**" [Par.] In fulfillment
22 of the State's [planning] requirements [for general plans (Govt. Code secs. 65300, et
23 seq.)], the City's general plan contains citywide elements for all topics listed except Land
24 Use for which community plans establish policy and standards for each of the 35
25 geographic areas." (*id.*, emphasis added.) The HCPU is or will be such a plan for
26

27 ³

28 The Court also granted Petitioner Fix the City's request that the Court take judicial
notice of segments of Chapter 2 of the same document.

1 Hollywood.

2 The Framework also contains a statement of relevance with respect to the
3 significance of population data:

4 "In planning for the future, the City of Los Angeles is using population forecasts
5 provided by the Southern California Association of Governments (SCAG). The
6 Framework Element does not mandate or encourage growth. Because population
7 forecasts are estimates about the future and not an exact science, it is possible
8 that population growth as estimated may not occur; it may be less or it may be
9 more. The City could be at the beginning of a long decline in population or at the
10 beginning of a sharp increase." [Par.] The Element is based on the population
11 forecasts provided by SCAG. Should the City continue to grow, the Element
12 provides a means for accommodating new population in a manner which
13 enhances rather than degrades the environment. The City does not have the
14 option of stopping growth and sending it elsewhere. It must prepare for it, should
15 growth occur. In preparing the General Plan Framework Element, the City has
16 answered the question "What would the City do if it had to accommodate this
17 many more people?" In answer to that question there are two possibilities: 1)
18 prepare a Plan to accommodate density equally among all City neighborhoods, or
19 2) prepare a plan to preserve the single-family neighborhoods and focus density
20 — should it occur — in limited areas linked to infrastructure." (*Id.*)

21 The HCPU is thus the updated, basic planning document for the Hollywood
22 community which "establish[es] policy and standards for [the Hollywood] geographic
23 area[.]. (*Id.*)

24 As will be discussed, the HCPU, includes, *inter alia*, a plan to focus growth along
25 transit corridors and in specific areas of Hollywood. Whether the final environmental
26 impact report for the HCPU withstands scrutiny at this time is the focus of the differences
27 between these petitioners, on the one hand, and City and Intervenor, the Hollywood
28 Chamber of Commerce, on the other.

1 The fundamental dilemma is why and how "specific land use designations" are
2 properly determined based on population estimates which, it is argued and clearly
3 established, are substantially inaccurate.

4 PRELIMINARY PROCEDURAL ARGUMENTS

5 *Waiver?*

6 City and Intervenor contend that certain petitioners waived critical arguments by
7 not asserting them in the administrative proceedings or in the petition for writ of
8 mandate. This contention is an inaccurate statement of what occurred in the
9 administrative proceedings below. Contrary to the claims of City and of Intervenor, it is
10 well-established that whether a particular petitioner made a contention below is not the
11 test for asserting that claim in CEQA proceedings. The question is: Was the subject
12 matter of the claim made *by anyone* below with sufficient specificity?

13 As but two examples of the facts: (1) SaveHollywood raised the issue of the mis-
14 use of the 2005 SCAG population estimate multiple times in the administrative
15 proceeding, and (2) when the 2010 Census data was first incorporated into an official
16 document just days prior to the final action by the City Council, La Mirada wrote to the
17 body before which the issue was then being considered, the City Council, setting out in
18 more than ample detail its objections. *Cf., Endangered Habitats League v. State Water*
19 *Resources Control Board* (1999) 70 Cal.App.4th 482, 489-491 [exhaustion not required
20 when no opportunity to challenge provided]. Public Resource Code section 21177 is
21 simply not applied in the crabbed manner that City and Intervenor contend. Multiple
22 additional examples of timely stated objections to the points now adjudicated appear in
23 the record. Thus, on the facts, the issues now presented were all timely presented
24 below.

25 Next, there was considerable specificity in the objections made by petitioners (and
26 others) at the several stages of the administrative process, specificity that meets the
27 applicable test, even as discussed in the cases cited by Intervenor (*e.g., Resources*
28 *Defense Fund v. Local Agency Formation Commission* (1987) 191 Cal.App.3d 886,

1 894). Moreover, better reasoned cases such as *Citizens Assn. for Sensible*
2 *Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163, make
3 clear that the specificity prong of the Public Resources Code section 21177 requirement
4 was amply met -- and for all of the issues raised in this proceeding. As the *Sensible*
5 *Development* court states: "... less specificity is required to preserve an issue for appeal
6 in an administrative proceeding than in a judicial proceeding. This is because "[i]n
7 administrative proceedings, [parties] generally are not represented by counsel. To hold
8 such parties to knowledge of the technical rules of evidence and to the penalty of waiver
9 for failure to make a timely and specific objection would be unfair to them." (Note (1964)
10 Hastings L.J. 369, 371.) It is no hardship, however, to require a layman to make known
11 what facts are contested." (*Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1970) 8 Cal.App.3d
12 1009, 1020 [87 Cal.Rptr. 908].)" *Id.*, at 163.⁴

13 *Claim Preclusion as to Fix the City?*

14 City and Intervenor advance two arguments as to claim preclusion of certain
15 contentions by petitioner Fix the City; neither is meritorious.

16 First, City mistakenly asserts (City's Op. at 28-29) that Fix the City's arguments
17 about mitigation measures are barred because it is "in privity with" with a party to
18 *Federation II* (*id.* at 23:12-27). City cites as its legal authority *Frommhagen v. Board of*
19 *Supervisors* (1987) 197 Cal.App.3d 1292, 1301. That case does not support the
20 argument made. At the cited page that court is addressing claims made by the same
21 party, not which party is in privity with whom. It is clear that in this case we have multiple
22 petitioning parties and that there is no sufficient evidence presented that Fix the City is in
23 legal privity with any other party to the earlier case. City's claim is without support.
24 See, e.g., *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180

25
26 ⁴

27 This last waiver contention is resolved based on the circumstance that the claims
28 which City claims to have been waived are simply elements of petitioner Fix the City's
Fourth Cause of Action. The cases City cites are inapposite. See Fix the City's Reply at
25:1-15.

1 Cal.App.4th 210, 229-231.

2 Nor does Fix the City's participation in *Saunders v. City of Los Angeles*
3 (September 25, 2012) (2012 WL 4357444) support City's claim-preclusion arguments.

4 As Fix the City points out, the issue presented in *Saunders* was whether City breached a
5 mandatory duty by failing to prepare annual reports on the City's infrastructure (Fix the
6 City's Reply at 22:19-27); it involved the Framework and not either this EIR or the
7 HCPU. It appears that City relies solely upon the circumstance that Fix the City was a
8 party to *Saunders* as barring its contentions here. That argument ignores the material
9 differences in the issues presented in the two cases. Nor were this HCPU and its EIR
10 considered in any respect in *Saunders*; indeed, there is no way either could then have
11 been subject to anyone's consideration as they had only been adopted and approved
12 after the *Saunders* trial court had issued its decision.⁵

13 PRINCIPAL ARGUMENTS AND ANALYSIS

14 Petitioners' contentions

15 Petitioners advance several arguments in support of their contentions that the
16 HCPU and its EIR were not prepared in the manner required by law, etc.⁶

17 Population base

18 A fundamental contention of all petitioners is that the population data upon which
19 the EIR for the HCPU is formulated is fatally flawed, with the result that the EIR must be
20 revised and then recirculated with appropriate analysis of the corrected basic data.

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22 5

23 The Court, *sua sponte*, takes judicial notice of the entry of judgment in the trial court
24 in *Saunders* -- on March 2, 2011 -- a date prior to the public dissemination of the draft
25 EIR in the present case, making City's argument -- that of a party to *Saunders* and with
26 detailed knowledge of its proceedings -- more than difficult: There is no way in which the
claims now made concerning this, later issued EIR (and plan), could have been raised or
litigated in that case. See, *Planning & Conservation League v. Castaic Lake Water*
Agency (2009) 180 Cal.App.4th 210, 225-229 and e.g., *Federation II* at 1202.

27 6

28 Certain petitioners also address claimed general plan defects. Because they are
analyzed according to a different standard, the Court addresses them separately, *post*.

1 Applicable facts

2 The first set of relevant facts is the timeline of significant actions for the items,
3 now listed.

- 4 • April 28, 2005 * Notice of Preparation of Draft EIR published
- 5 • March 3, 2011 * Draft EIR released
- 6 • May 2011 * 2010 U.S. Census data released⁷
- 7 • October 2011 * Final EIR released
- 8 • December 11, 2011 * Planning Commission submits HCPU
9 with recommendation of approval of HCPU
- 10 • May 8, 2012 * City Council Planning and Land Use
11 Management Committee (PLUM Com.) submits HCPU to Council
12 without recommendation
- 13 • May 18, 2012 * First Revisions to EIR [contains response to SCAQMD]
- 14 • June 14, 2012 * Second Revisions to EIR - [33 pages; contains references
15 to 2010 US Census data released in May 2011]
- 16 • June 19, 2012 * City Council meeting at which EIR adopted
- 17 • June 21, 2012 * Notice of Determination filed

18 The principal factual and legal dispute concerns City's reliance on population
19 data, which City obtained from the Southern California Association of Governments
20 (SCAG), as the base for analysis in the HCPU and its EIR. There is agreement that the
21 base used for analysis was the SCAG estimate of population in 2005 in the HCPU
22 defined area, and that this number was 224,426 persons. The EIR describes this
23 estimate as having been derived from the 2004 SCAG Regional Transport Plan. Neither
24 this 2004 Plan nor any other source data with respect to the 2005 population number
25 appear in the Administrative Record. (Limited background memoranda relevant to the
26

27 ⁷

28 City cited a web address at which census data could be viewed. The Court declines
this entirely non-specific invitation as vague, overbroad and therefore insufficient.

1 population statistics do appear in the Reference Library, but they do not provide the
2 missing data.) The Draft EIR (DEIR) uses a forecast of population for 2030 for the
3 HCPU area of 244,302; this was derived from the same 2004 study. The DEIR also sets
4 out a "revised" population estimate of 245,833.

5 Using these various data points, the DEIR analyzed what it referred to as a
6 "reasonable expected level of development for 249,062 people.

7 Petitioners argue that the fact that the results of the 2010 Census became
8 available just after the DEIR was released compelled revision of the DEIR to utilize that
9 data and that failure to do so was prejudicial error requiring preparation and recirculation
10 of a new DEIR which properly incorporates the 2010 Census population data. (While
11 the exact date of release of this data is a point of dispute among the parties, it is clear
12 that the official United States Government census data became available by May, 2011
13 — within 60 days of the release of the DEIR.)

14 This U.S. Census data is relevant to this litigation because it differs so significantly
15 from that used in the EIR process here. The 2010 Census shows that the population of
16 the HCP area was approximately 198,228 persons. The reason why this is given as an
17 approximation is that the relevant census tracts cover an area slightly different than the
18 boundaries of the HCPU area. This difference is known, however, to City's Planning
19 Department, and City did make some adjustments to its own data in its Second Addition
20 to Final EIR, dated June 14, 2012, five days before the City Council took final action on
21 the HCPU and its EIR, confirming its knowledge in this respect.

22 The following table summarizes key data and illustrates the petitioners' contention
23 that the base used by City in its planning constitutes error.⁸

24
25 ⁸

26 While City argues that it was not possible to estimate the population in the HCPU
27 area because of incongruity of census tracts with the HCPU area, the Administrative
28 Record reveals that petitioner La Mirada was able to estimate the population in the
HCPU area at 197,085 persons, and City itself made revisions to the EIR just 5 days
prior to its approval by the City Council to incorporate some of the data from the 2010
Census, as noted in the text.

1990 U.S. CENSUS	2000 U.S. CENSUS	2004/2005 SCAG pop. est.	2010 U.S. CENSUS	2030 Forecast in DEIR	2030 CITY est.
213,912	210,824	224,426	198,228	244,302	249,062

Reference to this table produces some obvious questions including the following:

- (1) Why was the population base which City used for analysis in the DEIR the SCAG estimate of 224,426 when the Official Census data became available within 60 days of release of the DEIR — and when that data shows a significantly lower population (even in a somewhat larger geographic area)?⁹; and
- (2) why was the 2030 population number used not further adjusted once the 2010 U.S. Census data was available?

The 2005 SCAG population estimate was a principal key to the analytical foundation for the DEIR. From it flowed not only the 2030 population estimate used in the DEIR, but, combined with other factors, estimates for water consumption, waste water, solid waste, and energy demand,¹⁰ as well as other elements of the EIR.

As Fix the City aptly describes the function of the EIR: "At the heart of the [DEIR for the HCPU] and indeed the defining purpose of the Plan Update itself, is the accommodation of projected population growth in the Plan area. The purpose of the EIR is to evaluate the environmental impacts of accommodating this growth in the manner and locations set forth in the Plan Update. In this regard, the magnitude of the

⁹

It is clear that City's Planning Department had the ability to adjust for the slight differences between the HCP boundaries and the census tract data as the latter was discussed in the 33 page June 14, 2012 Second Revision to EIR released just 5 days prior to the City Council voting to approve the EIR -- and the census tracts themselves had been extant for a considerable period of time. City advanced several contentions based on the argued differences, claims that appear fully refuted by the actions taken by its own Planning Department.

¹⁰

The estimates for public safety services will be discussed, *post*.

1 population increase accommodated by the Plan Update is a critical component of the
2 environmental analysis and [is] relied upon in numerous instances throughout the EIR."
3 (Fix the City's Opening Memo. at 6:5-21). Thus, it is critical to the EIR that the
4 population base be appropriate to the actual circumstances which exist in the area of the
5 HCPU and its EIR. In this case, it was not.

6 Standard of Review

7 The standard for review of the sufficiency of any EIR is prejudicial abuse of
8 discretion. Public Resources Code sections 21168 and 21168.5. "Abuse of discretion is
9 established if the agency has not proceeded in a manner required by law or if the
10 determination or decision is not supported by substantial evidence. *Laurel Heights*
11 [*Impr. Asn. v. Regents* (1988) 47 Cal.3d 376,] at 392. A prejudicial abuse of discretion
12 occurs if the failure to include relevant information precludes informed decision-making
13 and informed public participation, thereby thwarting the goals of the EIR process." *San*
14 *Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 653.
15 "... the existence of substantial evidence supporting the agency's ultimate decision on a
16 disputed issue is not relevant when one is assessing a violation of the information
17 disclosure provisions of CEQA. " *Association of Irrigated Residents v. County of Madera*
18 (2003) 107 Cal.App.4th 1383, 1392.¹¹ A clearly inadequate or unsupported study is
19 entitled to no judicial deference. *Berkeley Keep Jets Over the Bay v. Board of Port*
20 *Commissioners* (2001) 91 Cal.App.4th 1344, 1355.

21 Here, a case cited by respondents also supports petitioners' contention.¹² In
22 *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136

23 ¹¹

24 The need to be alert for agency misconduct in CEQA matters is especially strong
25 where, as here, the agency is the project proponent. *Deltakepper v. Oakdale Irrigation*
Distr. (2001) 94 Cal.App.4th 1092, 1109.

26 ¹²

27 Petitioner La Mirada clearly makes the argument that City did not proceed in the
28 manner required by law. Petitioner Fix the City appears to rely on the other basis to set
aside an EIR, viz., that there is no substantial evidence in its support — a claim joined by
SaveHollywood, as well as by La Mirada.

1 Cal.App.4th 1, the court held that a lead agency cannot forego its own analysis of base
2 data and rely instead on such data provided by another agency. In the present matter,
3 one of City's principal counter-arguments is that it was entitled by law to rely on the
4 SCAG 2005 population estimate. That contention must be and is rejected upon the
5 authority of *Californians for Alternatives, supra*. See also, *Ebbits Pass Forest Watch v.*
6 *Calif. Department of Forestry* (2008) 43 Cal.4th 936, 956.

7 There are additional reasons why use of the SCAG population estimate is
8 improper in the context of this EIR. As petitioners explain, this EIR does not contain the
9 "analytical route" by which the lead agency reached the conclusions set out in such a
10 document. This requirement, that fundamental information be disclosed in the planning
11 documents, has been the law for decades. *E.g., Topanga Assn. for a Scenic*
12 *Community v. County of Los Angeles* (1974) 11 Cal.3d 506:

13 "We further conclude that implicit in section 1094.5 is a requirement that the
14 agency which renders the challenged decision must set forth findings to bridge the
15 analytic gap between the raw evidence and ultimate decision or order. If the
16 Legislature had desired otherwise, it could have declared as a possible basis for
17 issuing mandamus the absence of substantial evidence to support the
18 administrative agency's action. By focusing, instead, upon the relationships
19 between evidence and findings and between findings and ultimate action, the
20 Legislature sought to direct the reviewing court's attention to the analytic route the
21 administrative agency traveled from evidence to action. In so doing, we believe
22 that the Legislature must have contemplated that the agency would reveal this
23 route. Reference, in section 1094.5, to the reviewing court's duty to compare the
24 evidence and ultimate decision to 'the findings' (emphasis added) we believe
25 leaves no room for the conclusion that the Legislature would have been content to
26 have a reviewing court speculate as to the administrative agency's basis for
27 decision." *Id.*, at 515.

28 City and Intervenor contend that City fully complied with EIR requirements, citing

1 Guidelines section 15125(a), which provides:

2 "An EIR must include a description of the physical environmental conditions in the
3 vicinity of the project, as they exist at the time the notice of preparation is
4 published This environmental setting will normally constitute the baseline
5 physical conditions by which a lead agency determines whether an impact is
6 significant."

7 In addition to using the SCAG 2005 estimate of a population of 224,426, the DEIR
8 forecast a population of 244,302 residents in 2030 for planning purposes. This data, as
9 noted previously, was derived from the 2004 SCAG transportation report.¹³ The EIR
10 then estimated the "reasonable expected level of development" utilizing a further
11 estimate of the population in the HCPU area in 2030 of 249,062.

12 Considering the *actual* population in 2010 as evidenced by the 2010 Census data,
13 the real population increase essential to analysis in the DEIR was 50,744 rather than the
14 24,636 persons number which was utilized by City. Thus, the analysis in the DEIR was
15 predicated upon a population increase — *well under half* — of what would occur if the
16 2030 estimate were to remain. And, if the population estimate for 2030 were to be
17 adjusted based on what the 2010 Census data had shown, then all of the several
18 analyses which are based on population would need to be adjusted, such as housing,
19 commercial building, traffic, water demand, waste produced — as well as all other
20 factors analyzed in these key planning documents.¹⁴

21

¹³

22 As Petitioner SaveHollywood points out, the 2004 RPT was not included in the
23 Administrative Record; this is "a fatal error" as it is "a key rationale" for the HCPU and
24 "[b]y omitting purported relevant information from the record, the City deprived the public
25 of the ability to independently verify [City's] population assumptions and its
environmental assessments predicated thereon." SaveHollywood.org Opening Memo. at
8:16-21.

26 ¹⁴

27 As La Mirada points out in its Opening Brief at 7:19-22, just before the City Council
28 voted to approve the several documents in June 2012, City added its conclusion that it
was still reasonable to rely on the 2005 SCAG population base even with the 2010
Census data. That clearly is a post-hoc rationalization of City's failure to recognize

1 City's reliance on what is "normally" permissible as what is required is misplaced.
2 The very fact that Guideline section 15125(a) uses the word "normally" suggests that
3 there are circumstances in which such reliance is not appropriate. It is well-established
4 that, "[i]n some cases, conditions closer to the date the project is approved are more
5 relevant to a determination of whether the project's impacts will be significant. *Save Our*
6 *Peninsula Com. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99,
7 125. Thus, the Guideline in which City and Intervenor seek refuge instead recognizes,
8 and the cases support, the petitioners' contention that there are substantial reasons to
9 use a different (up-to-date) baseline when the circumstances warrant, as the
10 circumstance did, and do, in this case:

11 "Administrative agencies not only can, but should, make appropriate adjustments,
12 including to the baseline, as the environmental review process unfolds. *No*
13 *purpose would be served, for example, if an agency was required to remain*
14 *wedded to an erroneous course and could only make a correction on remand*
15 *after reversal on appeal."* *Citizens for East Shore Parks v. California State Lands*
16 *Comsn.* (2011) 202 Cal.App.4th 549, 563. (Emphasis added.)

17 Even when the surrounding conditions are recognized close in time to the final
18 certification of the EIR, the baseline must be updated to reflect that new knowledge.
19 *E.g., Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357
20 (identification of additional wetlands made just prior to proposed certification of FEIR).
21 Here, the significant factual predicate for the critical analytical issues explicated in the
22 EIR was known far earlier in the EIR process than that in *Mira Monte*; here, just two
23 months after release of the initial DEIR and over a year prior to final action on the EIR —
24 yet no material adjustments were made. Multiple objections to the continued use of

25 _____
26 that the HCPU was unsupported by anything other than wishful thinking — and a
27 demonstration of an effort to avoid further analysis in key planning documents. Nor is
28 an agency's determination marked by changes such as those in evidence here, entitled
to any deference. *Yamaha Corp. v. State Board of Equalization* (2001) 19 Cal.4th 1,
14.

1 these demonstrably incorrect SCAG population estimates repeatedly were made "for the
2 record" by several groups — and ignored by City until their limited [and inadequate] use,
3 just 5 days before final approvals in the Second Addition to Final EIR. This conduct was
4 itself a failure to proceed in the manner required by law. Public Resources Code section
5 21166; *Mira Monte, supra*, at 365-366.

6 When the new facts became known shortly after issuance of the DEIR, the
7 baseline used for analysis should have been adjusted — in the summer of 2011 rather
8 than proceeding with a fundamentally flawed baseline. The failure to use accurate and
9 then-current data was a failure to proceed in the manner required by law . This is made
10 clear by cases such as *Save our Peninsula Committee v. Monterey County Board of*
11 *Supervisors* (2001) 87 Cal.App.4th 99: "If an EIR fails to include relevant information
12 and precludes informed decisionmaking and public participation, the goals of CEQA are
13 thwarted and a prejudicial abuse of discretion has occurred. (*Sierra Club v. State Bd. of*
14 *Forestry* (1994) 7 Cal.4th 1215, 1236 []; *Fall River Wild Trout Foundation v. County of*
15 *Shasta* (1999) 70 Cal.App.4th 482, 492 []; *County of Amador v. El Dorado County Water*
16 *Agency, supra*, 76 Cal.App.4th at p. 954; Pub. Resources Code, § 21005, subd. (a).)"
17 *Id.*, at 128.

18 While CEQA gives the lead agency flexibility in establishing baseline conditions,
19 as Fix the City argues, "that flexibility must be cabined by the rule that all CEQA
20 determinations must be supported by substantial evidence. (Fix the City, Opening
21 Memo. at 8:17-19). Citing Guideline 15384, which defines substantial evidence, Fix the
22 City points out (*id.* at 9:5 et seq.) that substantial evidence must have a factual basis
23 which is "a serious deficiency of the 2005 estimate." Decision makers cannot arrive at
24 the required reasoned judgment without it. *Concerned Citizens of Costa Mesa v. 32nd*
25 *Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

26 Intervenor errs in its claim that use of the incorrect baseline was not prejudicial.
27 (Intervenor's Opposing Memo. at 17-18) Rather, as Fix the City argues, use of the
28 flawed baseline "fundamentally distorted the EIR." (Fix the City's Opening Memo. at

1 8:20). Also, the attempted remedy to the prior utilization of the wrong baseline data in
2 the DEIR resulted in City inserting an abbreviated analysis of the 2010 census data in its
3 June 2012 Second Addition to the EIR, which contained a merely truncated — and
4 insufficient — discussion of alternatives. As Fix the City notes: "Clearly, if one goal of
5 the plan is to accommodate projected population growth — setting aside entirely the
6 accuracy of the projection — and the City is advised that there is more capacity in the
7 current plan than it realized, its analysis of necessary future actions to accommodate a
8 projected increase would change." (Fix the City's Reply. at 9:1-4)

9 What is particularly flawed about the Second Addendum to the EIR is the failure
10 to adjust for the 50,744 new residents that are a direct consequence of City's original
11 error (use of the 2005 overstatement of population by SCAG rather than the actual
12 number available from the 2010 Census). The Second Addendum is flawed because it
13 is premised on the unsupportable notion that accommodating 50,744 new residents will
14 have less impact than accommodating 24,636 new residents. The utilities, wastewater
15 and public safety discussions of this EIR are all without support and City has not
16 explained the "analytical route the ... agency traveled from evidence to action," thus
17 rendering invalid its literally last minute attempt (viz., 5 days prior to final approval) to
18 remedy its prior failures and refusals to accept as valid the many objections made to the
19 mistaken use of outdated and substantially wrong SCAG data. See, *Laurel Heights*
20 *Improvement Assn. v. Regents, supra*, (1988) 47 Cal.3d 376, 404. ^{15 16}

21 _____
22 15

23 No party makes any note of the discussion in *Federation II* of a discussion of
24 projections based on SCAG and census data which appears at 126 Cal.App.4th
25 at 1206-1207. That discussion is not applicable in any event to this case; as may
26 be inferred by the parties omission of any reference to it.

27 At page 11 of its opening memorandum, City claims that a single sentence in the
28 Framework precludes use of up to date population figures, especially the 2010 Census
data. As La Mirada argues (Reply at 7:9-11) "Blind adherence to data [City] knows is
wrong is not the 'good faith effort at full disclosure' mandated by CEQA. Guideline
section 15151." See, *Citizens for East Shore Parks v. California State Lands Comsn.*
(2011) 202 Cal.App.4th 549, in which the State Lands Commission as lead agency
revisited its baseline during the environmental review process and modified it as needed.

Alternatives Analysis

Alternatives analysis is a core element of each EIR. *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162.¹⁷ An EIR must contain and analyze in depth a "range of reasonable alternatives." *Citizens of Goleta Valley v. Board of Supervisors [Goleta II]* (1990) 52 Cal.3d 533, 566; Guidelines section 15126.6(c). The range must be sufficient "to permit

This practice was specifically approved by the reviewing court of appeal:

"To begin with, plaintiffs cite no authority supporting the implied premise of their argument—that the Lands Commission could not revisit the baseline during the environmental review process and modify it as the Commission deemed appropriate or necessary.^[in omitted] Moreover, such a suggestion is unsound. Administrative agencies not only can, but should, make appropriate adjustments, including to the baseline, as the environmental review process unfolds. No purpose would be served, for example, if an agency was required to remain wedded to an erroneous course and could only make a correction on remand after reversal on appeal. [Par.] The record also reveals a sound basis for the Lands Commission's adjustment of the baseline. Chevron presented the Commission with information about other baseline determinations being made for proposed San Francisco Bay Area projects, and urged it to take the same approach so there would be uniformity in the environmental review process. In addition, the case law in the area was being developed through decisions such as *Fat*, 97 Cal.App.4th at pages 1277–1281, 119 Cal.Rptr.2d 402, which endorsed and followed *Riverwatch*, *supra*, 76 Cal.App.4th 1428, 91 Cal.Rptr.2d 322. Thus, as the Lands Commission explained, its view of the appropriate baseline evolved over time, ultimately leading to modification of the baseline in the 2003–2004 timeframe, some four years before it completed the environmental review process. [Par.] in sum, the Lands Commission did not abuse its discretion in defining the baseline used to assess environmental impacts of the proposed marine terminal lease renewal. The baseline was not contrary to the law, and it was based on substantial evidence." *Id.* at 563–564.

¹⁶

The claims that the petitioners were too late with their objections is devoid of merit. As City only applied the 2010 Census data in the document dated June 14, 2012, five days prior to the City Council vote on the project component documents, and as the record is clear that some of the petitioners made their objections known even in that short time frame, that was all any citizen might (or need) do — and it fully complies with the standing requirements of CEQA under such a tight time frame. Public Resources Code section 21167; e.g., *Endangered Habitats League v. State Water Resources Control Board* (1997) 63 Cal.App.4th 227, 238–240.

¹⁷ The other core element is that of mitigation. *Id.*

1 a reasonable choice of alternatives so far as environmental aspects are concerned. *San*
2 *Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d
3 738, 750-751. Each case must be evaluated on its own facts. *Goleta II, supra*, at p.
4 566. Among the usually included alternatives is one for "reduced density." *Watsonville*
5 *Pilots Assn. V. City of Watsonville* (2010) 183 Cal.App.4th 1059. The EIR must always
6 include analysis of the No Project Alternative (Guidelines section 15126.6(e); *County of*
7 *Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 203) which must discuss what
8 would reasonably be expected to occur in the foreseeable future if the project were not
9 approved, based on current plans and consistent with available infrastructure and
10 community services. Guidelines section 15216.6(e). This alternative is not always the
11 same as the baseline environmental setting, and the EIR's analysis of the No Project
12 Alternative should identify the practical consequences of disapproving the project when
13 the environmental status quo will not necessarily be maintained. *Planning &*
14 *Conservation League v. Dept. Of Water Resources* (2000) 83 Cal.App.4th 892.

15 In determining what constitutes a reasonable range of alternatives, there must be
16 a set or group of such alternatives which would feasibly attain most of the basic
17 objectives of the project but would avoid or substantially lessen any of the significant
18 effects of the project. Guidelines section 15126.6(a). The term feasible is defined in
19 Public Resources Code section 21061.1 as "capable of being accomplished in a
20 successful manner within a reasonable period of time, taking into account economic,
21 environmental, social, and technological factors. See Guidelines section 15126.6(f)(1).
22 "The key issue is whether the range of alternatives discussed fosters informed decision
23 making and public participation. *Laurel Heights Improvement Assn. v. Regents, supra*,
24 47 Cal.3d 376, 404-405.

25 The EIR must identify the alternatives considered in, and those excluded from,
26 EIR analysis and should provide the reasons for their rejection. *Goleta II, supra*, at 569;
27 Guidelines section 15126.6(b). A brief explanation of such excluded alternatives is
28 sufficient; the entire administrative record may be considered in determining whether a

1 reasonable range of alternatives has been discussed. *Id.*, at 569.

2 "The selection of alternatives discussed will be upheld, unless the challenger
3 demonstrates that the alternatives are manifestly unreasonable and they do not
4 contribute to a reasonable range of alternatives." *Calif. Native Plant Society v. City of*
5 *Santa Cruz* (2009) 177 Cal.App.4th 957, 988.

6 The EIR in this case contains analysis of three "alternatives": (1) the current
7 (preexisting, 1988) plan, considered as the No Project Alternative, (2) the
8 current/proposed project, and (3) a plan based on the SCAG 2030 population forecast
9 (which is based on a one percent reduction in population from the proposed project).

10 However, under applicable regulations, there are only two alternatives — Public
11 Resources Code section 21100(b)(4) provides that the project itself cannot be an
12 alternative to itself, as La Mirada points out. La Mirada Opening Brief at 16:17-20.

13 There is a further problem in "counting" the alternatives analyzed: La Mirada
14 points out that Guidelines section 15126.6(e)(3)(A) when read in conjunction with
15 *Planning and Conservation League v. Dept. Of Water Resources* (2000) 83 Cal.App.4th
16 892, 917-918 suggests that the "No Project Alternative" is not an alternative for purposes
17 of CEQA. Instead, it is simply the continuation of the existing plan, policy or operation
18 into the future....[T]he projected impacts of the proposed plan or alternative plans would
19 be compared to the impacts that would occur under the existing plan." La Mirada
20 Opening Memo. at 16:21-17:7.

21 However one counts the "alternatives," the flawed environmental setting
22 presented in these EIR documents makes the analysis insufficient and inaccurate.
23 *Friends of the Eel River v. Sonoma County Water Agency* (1994) 27 Cal.App.4th 713,
24 738-739. "[W]ithout [an adequate baseline] description, analysis of impacts, mitigation
25 measures and alternatives becomes impossible." *County of Amador v. El Dorado*
26 *County Water Agency* (1999) 76 Cal.App.4th 931, 953.

27 SaveHollywood and HELP contend that consideration of a down-sizing/down-
28 zoning (DS-DZ) alternative was both feasible and required based on the actual

1 population statistics and trends. These petitioners argue that notwithstanding multi-year
2 and multi-million dollar investments in infrastructure in the Hollywood community, there
3 has been a net outflow of population and an increase in vacancy rates in both
4 commercial and residential properties. Interestingly, they argue that, based on the
5 SCAG 2005 population estimate, the HCP area has lost over 26,100 people in the five
6 year period 2005-2010 (basing the 2010 population on the U.S. Census data) and there
7 have been massive financial losses connected to construction projects — the key
8 example being the difference between the construction cost and eventual sale price of
9 the Hollywood-Highland Project, of over \$420 million. SaveHollywood Opening Memo. at
10 14-19.

11 Fix the City argues that the EIR's 10 page discussion of the three selected
12 alternatives is perfunctory and "[a]s a result of the deficient alternatives analysis, the EIR
13 fails to provide decision makers and the public with a genuine comparison of the
14 environmental consequences of different levels of development in Hollywood." Fix the
15 City Opening Memo. at 15:9-11. Nor, in Fix the City's view does the Second Addition to
16 the EIR (June 14, 2012) sufficiently address the otherwise insufficient range of
17 alternatives in the manner required by law. This petitioner points out that (1) these
18 environmental documents ignore the requirement that other alternatives be identified or,
19 consequentially, the reasons they were rejected be stated, and (2) that this defect was
20 raised throughout the environmental review process in numerous comment letters.
21 Instead, "The FEIR states that City Planning 'considered and rejected as infeasible an
22 alternative that would place a blanket moratorium on demolition permits and project
23 development.' ... Like the DEIR, the FEIR also fails to meet CEQA's disclosure
24 requirements...." Fix the City Opening Memo. at 16-17.

25 Focusing on the Second Addition document, Fix the City argues that the
26 discussion there of the no-growth and DS-DZ alternatives are infeasible, but neither the
27 EIR nor the Second Addition document contains "sufficient information ... to enable the
28 public or decision makers to adequately evaluate the City's conclusory statements

1 regarding the infeasibility of a downsizing alternative." *Id.* at 17

2 This argument has particular force when one considers the material discrepancy
3 in the population statistics discussed, *ante*, and the short 5-day window between the
4 release of the Second Addition and the vote by the City Council approving the several
5 documents at issue. The evidence in this record strongly supports petitioners'
6 contention that there has been an insufficiently-reasoned rush to completion of the EIR
7 process, and that the process was administered in a way that is clearly contrary to well-
8 established laws as interpreted by the appellate courts. As Fix the City argues: "The
9 Plan Update EIR ... lacks an analysis of sufficient ranges of alternatives and fails to
10 provide substantial evidence supporting its decisions to analyze only the narrowest
11 range of alternatives. [Par.] While it may be a reasonable policy decision for the City to
12 plan for the level of population growth accommodated in the Plan Update, the City
13 cannot make that decision without a genuine understanding of what the environmental
14 trade-offs are of accommodating this level of growth. The Plan Update EIR is the
15 document designed to inform both the decision makers and the public of the
16 environmental consequences of the Plan Update and of alternative approaches to the
17 critical task of planning the City's growth.... CEQA does not permit an agency to evade its
18 disclosure duties in this manner; the failure to analyze a reasonable range of alternatives
19 without any support of a finding of infeasibility is an abuse of discretion." Fix the City
20 Opening Memo. at 18:21-19:7.

21 One can only wonder how this planning process ran so far off the track when
22 consideration is given to the recent history of the Framework itself and the corrective
23 action it required.¹⁸

24 In response to these arguments, neither City nor Intervenor presents any
25 adequate counter-arguments. Both City and Intervenor ignore the cases, statutes and
26 Guidelines cited by the petitioners. City instead focuses, *inter alia*, on other claimed

27 ¹⁸ See footnote 1, *ante*.
28

1 defects in the petitioners' contentions, but these assertions do not respond to the
2 fundamental point that petitioners have established: City did not proceed in the manner
3 required by law with respect to ascertainment and discussion of these 'core components
4 of the EIR process' as alternatives analysis is defined by our Supreme Court. *In re Bay-*
5 *Delta Programmatic Environmental Impact Report Coordinated Proceedings, supra*, 43
6 Cal.4th 1143, 1162.

7 **Public Services**

8 Fix the City contends, and City acknowledges, that the EIR's thresholds of
9 significance did require City to evaluate whether the significant capacity increase
10 permitted by the HCPU would require "unplanned upgrading or improvement of existing
11 fire protection equipment or infrastructure" or would "induce substantial growth or
12 concentration of population beyond the capacities of existing police personnel and
13 facilities; or whether the HCPU would "cause deterioration in the operating traffic
14 conditions that would adversely affect [police and fire] response times. City's Op at 20.
15 As Fix the City points out, "[t]he EIR determined that in fact such thresholds of
16 significance would be exceeded for both police and fire services.... conclud[ing] that,
17 absent mitigation, degraded performance in the[se] critical services was likely." (Fix the
18 City's Reply at 13:4-14.) The issue was of substantial concern to many participants in
19 the environmental and plan review process, including then Council member Eric
20 Garcetti, who wrote a letter (dated March 23, 2012) highlighting the need for improved
21 response times by City's Fire Department (AR21362).

22 Delayed response times of emergency services may be a factor in determining
23 whether increased population concentration is significant. The focus of such analysis is
24 on the physical changes that may result from economic and social changes. Guidelines
25 section 15064(e) addresses this issue; e.g., population increases, as well as other
26 "economic and social effects of a physical change may be used to determine that the
27 physical change is a significant effect on the environment". See also Guidelines section
28

1 15131; and *Christward Ministry v. Superior Court* (1986) 184 Cal.App.4th 180.

2 For reasons explained throughout this decision, this EIR is fatally flawed. One of
3 the reasons is particularly applicable here, *viz.*, the failure to use appropriate population
4 statistics leads to fatally flawed estimation of the impact on fire and police services —
5 and their impact on physical changes: “the effects of decreased response capacity,
6 including both physical effects and social/economic effects that lead to physical effects,
7 require [environmental] review.” Fix the City’s Reply at 15:12-13.

8 ***Prejudice***

9 For reasons discussed above in detail, petitioners have demonstrated prejudice
10 compelling the granting of relief. The facts and circumstances of the administrative
11 proceedings in this record clearly evidence as much of a rush to completion of the EIR
12 and HCPU as might be possible in a proceeding of this nature. As described, *ante*, the
13 2010 Census data became available within two months of release of the DEIR. As the
14 time line, *ante*, demonstrates, there was ample time to revisit the critical population
15 estimates and still have the documents [re]circulated, heard at public fora and submitted
16 to various City committees and to the Council by June of the year after issuance. When
17 community members and groups repeatedly wrote and spoke against key elements of
18 the documents now being reviewed — and clearly articulated many reasons why the
19 documents were flawed, there were two rushed efforts to supplement the relevant
20 documents, including the first attempt to address some of the consequences of the 2010
21 Census data — but that only 5 days before the matter was voted on by the City Council.
22 The result was a manifest failure to comply with statutory requirements.¹⁹

23 When a public agency does not comply with procedures required by law, its
24 decision must be set aside as presumptively prejudicial. *Sierra Club v. State Bd. of*
25 *Forestry* (1994) 7 Cal.4th 1215, 1236. “Noncompliance with substantive requirements of

26 ¹⁹

27 City’s claim that the Framework mandated that SCAG estimates be used is without
28 support for reasons discussed in the text, *ante*.

1 CEQA or noncompliance with information disclosure provisions 'which precludes
2 relevant information from being presented to the public agency ... may constitute
3 prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5,
4 regardless of whether a different outcome would have resulted if the public agency had
5 complied with those provisions." (§ 21005, subd. (a).) In other words, when an agency
6 fails to proceed as required by CEQA, harmless error analysis is inapplicable. The
7 failure to comply with the law subverts the purposes of CEQA if it omits material
8 necessary to informed decisionmaking and informed public participation. Case law is
9 clear that, in such cases, the error is prejudicial. (*Sierra Club v. State Bd. of Forestry*
10 (1994) 7 Cal.4th 1215, 1236–1237[]; *Fall River Wild Trout Foundation v. County of*
11 *Shasta* (1999) 70 Cal.App.4th 482, 491–493 []; *Kings County Farm Bureau v. City of*
12 *Hanford* (1990) 221 Cal.App.3d 692, 712[]; *East Peninsula Ed. Council, Inc. v. Palos*
13 *Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174 []; *Rural*
14 *Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021–1023 [])." *County*
15 *of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

16 That is what occurred here to the legal prejudice of petitioners, mandating relief.

17 **Failure to recirculate**

18 Guidelines section 15088.5(a) mandates that a DEIR be recirculated when
19 "significant new information is added...." Here, it is clear that the significant new
20 information begins with the 2010 Census data, but it cannot stop there. It is also evident
21 that that information must be given full consideration; this will in turn affect much of the
22 analysis in key documents.

23 City's failure to incorporate and update the DEIR to reflect the significant different
24 population statistics, and all that flows from them, necessarily means that the EIR is
25 fatally flawed. As in *Mountain Lion Coalition v. Fish & Game Comsn.* (1988) 214
26 Cal.App.4th 1043, this DEIR is fundamentally inadequate, even with the Second
27 Supplement, issued 5 days before City Council action — meaningful public review was
28 thwarted by City's pyrrhic rush to final approvals. This hasty action constitutes an

1 additional failure to proceed in the manner required by law, which is legally prejudicial.

2 **GENERAL PLAN ISSUES**

3 **Contentions of Fix the City**

4 Fix the City's opening brief sets the argument for this aspect of petitioners'
5 contentions.²⁰ "California law and the Los Angeles City Charter require consistency
6 between the policies set forth in the General Plan and land use ordinances adopted by
7 the City," citing Government Code section 65300.5 and Los Angeles City Charter section
8 556.

9 This petitioner's principal contentions are that the HCPU is "fatally inconsistent"
10 with the Framework because it fails to require policies that will ensure that the timing and
11 location of development are consistent with City's ability to provide adequate
12 infrastructure for additional development.

13 The findings made in support of the HCPU explain, correctly, that the Framework
14 "establishes the standards, goals, policies, objectives, programs, terms, definitions, and
15 direction to guide the update of citywide elements and the community plans."

16 Community plans, such as the HCPU, apply the elements of the Framework
17 regarding growth and development in specific areas of the city, here of Hollywood. The
18 Findings made for the HCPU discuss consistency with Framework Element Objective
19 3.3: "Accommodate projected population and employment growth within the City and
20 each community plan and plan for the provision of adequate supporting transportation
21 and utility infrastructure and public services."

22 The reasoning for the Finding was that the HCPU was consistent with Objective
23 3.3 because it includes a recommended pattern of land use that directs future growth to
24 areas of Hollywood where new development can be supported by transportation
25 infrastructure and different types of land uses can be intermingled to reduce the length

26 ²⁰

27 La Mirada makes a similar contention. SaveHollywood.com, *et al.* do not address this
28 issue.

1 and number of vehicle trips.

2 Fix the City places emphasis on this finding because "it focuses exclusively on
3 transportation infrastructure and not [on] other types of infrastructure and public services
4 that are required to support increased population or commercial development; the
5 Finding therefore does not demonstrate consistency with Objective 3.3." Fix the City
6 Opening Brief 29:2-5.

7 Fix the City further focuses on what it contends is City's ignoring significant
8 policies included in the Framework that, it argues, are designed to enable City to meet
9 Objective 3.3. "Most significantly, the City's findings ignore the policies designed to
10 ensure a continual monitoring of population growth *and* the ability of infrastructure to
11 support the pace of growth.... Specifically, the Framework Element requires the use of a
12 monitoring program to assess the status of development activity and supporting
13 infrastructure and public services and '[i]dentify existing or potential constraints or
14 deficiencies of other infrastructure in meeting existing and projected demand.' The
15 [HCPU] is inconsistent with the Framework Element because it does not include any
16 mechanism to ensure that the state of infrastructure will be assessed or to provide for
17 controls for controls on development in the event that infrastructure is insufficient to
18 support the level of development permitted by the [HCPU]..... The City's approach to the
19 Framework Element is focused entirely on the aspects that encourage growth, with no
20 attention to those policies that require periodic assessment of the capacity for
21 additional growth. Without inclusion of similar policies in the [HCPU], which is part of the
22 Land Use Element of the General Plan, the City's General Plan is fatally inconsistent.
23 The [HCPU], while permitting increased density and growth in key parts of Hollywood,
24 fails to provide a mechanism to continually assess whether the infrastructure has the
25 ability to support the increased development and therefore frustrates the policies in the
26 Framework Element that are designed to ensure provision of adequate public services.
27 The Framework Element permits only the appropriate amount of growth in light of the
28 City's infrastructure; the [HCPU] omits the necessary mitigation measures to require

1 controls on development where the infrastructure is threatened. (Emphasis in original.)

2 Fix the City's Opening Memo. at 29-30.

3 Fix the City next contends that City Charter section 558 mandates a finding that
4 any plan adopted by City will not have an adverse effect on the General Plan or any
5 other plans. And, this petitioner contends that, although City adopted such a finding, the
6 Findings do not demonstrate actual compliance with this requirement. The Findings rely
7 on the concept of concentrating growth in particular sectors, near public transport such
8 as the new metro system, and the protection of existing single-family neighborhoods
9 from denser development. Yet, Fix the City argues, "[t]he Finding is notable for what it
10 lacks: any substantive discussion of the potential [inter]-plan effects of the [HCPU]. Fix
11 the City next poses the question: "How can the decision makers conclude that the
12 [HCPU] will not have an adverse effect on other community plan areas without
13 considering if the increased growth facilitated by the [HCPU] will harm other areas?"
14 (Fix the City Opening Memo. at 30:16-18).

15 Fix the City concludes as follows: "Because this analysis [that of inter-plan/area
16 impact] is not in the EIR or in the record before the Council, substantial evidence does
17 not support this finding. Indeed, the record before the City showed that public services
18 are stretched thin throughout the City. On this record, the City cannot find that the
19 [HCPU] will not adversely affect other areas of the City; the finding must be overturned."
20 (*Id.*, at 30:18-22.)

21 **La Mirada's Contentions**

22 La Mirada also contends that the HCPU is not consistent with the General Plan
23 for the City of Los Angeles, but focuses on different aspects. This petitioner's view is
24 that, while the Framework is "growth neutral," the HCPU is not. Instead, La Mirada
25 argues first, that the HCPU is "growth inducing," and contends that the reason the 2005
26 SCAG population estimate was used was to lower the population increase for which
27 planning was required in the HCPU to just over 24,000 -- rather than the more accurate
28

1 number of 50,000 — that would need to be planned for for 2030.²¹ Using the true
2 population data results in a plan that is growth inducing according to La Mirada, which it
3 argues “provides for a significant amount of excess capacity, a growth inducing effect.”
4 La Mirada’s Opening Memo. at 23:3-23.

5 Second argues La Mirada, the objective of growth neutrality was dropped in the
6 final EIR and HCPU. Thus it notes that the final version of the HCPU accommodates
7 “more than double the natural amount of growth through 2030, dropp[ing] all pretense of
8 growth neutrality, further showing an inconsistency with the ... Framework. [Par.] The
9 result is an internally inconsistent General Plan. Is it growth accelerating and inducing,
10 as provided for in the Land Use Element via the HCP, or is it growth accommodating
11 and neutral, as required by the Framework.... Because of this inconsistency, the City
12 cannot make the necessary findings required by Section 556.” (La Mirada, Opening
13 Memo. at 24:10-16).

14 City’s Contentions

15 City advances several counter-arguments in defense of its actions.

16 On the key issue of whether the General Plan and Specific Plans must be
17 consistent — and how that requirement is achieved here — City first acknowledges that a
18 general plan must be “internally consistent and correlative” (City’s Op. Memo. at 25:24-
19 27), and then points out that City has broad discretion to balance the many competing
20 policies expressed in the general plan — and that balance “does not require
21 equivalence, but rather a weighing of pros and cons to achieve an acceptable mix”
22 (citing *Friends of Lagoon Valley v. City of Vacaville* [2007] 154 Cal.App.4th 807, 822
23 [quotations and citations omitted]). After noting the many factors and interests described
24 in the findings made in this case, City notes the role of a court reviewing such

25
26 ²¹

27 Whether that was the reason to use the higher baseline, or not, the result is the same
28 — a substantial error in the population baseline and in all planning aspects that rely on it
for other impacts.

1 arguments: "A reviewing court's role is simply to decide whether the city officials
2 considered the applicable policies and the extent to which the proposed project
3 conforms with those policies. (*Id.*, at 816 [internal citations omitted]).

4 Specifically in response to Fix the City's contentions,²² City argues that there was
5 no need to make a specific finding that the HCPU was consistent with Framework
6 Objective Element 3.3. (City's Op. Memo. at 27:14-22). City's argument is that the
7 HCPU is an amendment to a previous plan, the Hollywood Community Plan, which is
8 itself a part of the General Plan, and that the adoption or amendment of a general plan
9 is a legislative act – and, pursuant to state law, "a city need not make explicit findings to
10 support its action." *South Orange County Wastewater Auth. v. City of Dana Point* (2011)
11 196 Cal.App.4th 1604, 1619.

12 Further, City argues that General Plan amendments are governed by Charter
13 Section 555 rather than section 556, which does not require any specific findings. And,
14 to the extent that Section 556 applies, the findings it requires only need to show "that
15 the action is in substantial conformance with the purposes, intent and provisions of the
16 General Plan; it does not require a separate specific finding of consistency for each of
17 the thousands of policies and objectives contained in the General Plan.... The City's 16
18 pages of General Plan consistency findings would easily satisfy any requirements
19 Section 556 would impose, if applied to the HCPU." (City's Op. Memo. at 27:28-28:7)

20 **Applicable Law**

21 **1. Consistency**

22 "[T]he propriety of virtually any local decision affecting land use and development
23 depends upon consistency with the applicable general plan and its elements.' (*Citizens
24 of Goleta Valley v. Board of Supervisors* [1990] 52 Cal.3d 553, 570, 276 Cal.Rptr. 410,
25 801 P.2d 1161.) 'The consistency doctrine has been described as 'the linchpin of

26 ²²

27 City's collateral estoppel arguments as to Fix the City were discussed and found
28 invalid, *ante*.

1 California's land use and development laws; it is the principle which infuse[s] the concept
2 of planned growth with the force of law.' *Corona – Norco Unified School Dist. v. City of*
3 *Corona* (1993) 17 Cal.App.4th 985, 994, 21 Cal.Rptr.2d 803.) 'A project is consistent
4 with the general plan ' "if, considering all its aspects, it will further the objectives and
5 policies of the general plan and not obstruct their attainment." ' "A given project need
6 not be in perfect conformity with each and every general plan policy. [Citation.] To be
7 consistent, a subdivision development must be 'compatible with' the objectives, policies,
8 general land uses and programs specified in the general plan.'" *Families Unafraid to*
9 *Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336
10 [emphasis added].

11 "The general plan and its parts must be "an integrated, internally consistent and
12 compatible statement of policies for the adopting agency." (Govt.C. 65300.5; see
13 *Karlson v. Camarillo* (1980) 100 C.A.3d 789, 161 C.R. 260; *deBottari v. Norco* (1985)
14 171 C.A.3d 1204, 1210, 217 C.R. 790, *infra*, §1029 [referendum inconsistent with
15 general plan is invalid]; *Families Unafraid to Uphold Rural El Dorado County v. Board of*
16 *Supervisors of El Dorado* (1998) 62 C.A.4th 1332, 1336, 1341, 74 C.R.2d 1 [although
17 given project need not be in perfect conformity with each and every general plan policy,
18 it must be compatible with objectives, policies, general land uses, and programs
19 specified in general plan; some general plans are more specific than others, leaving less
20 room for discretion].)

21 "If a general plan is to fulfill its function as a 'constitution' guiding 'an effective
22 planning process,' a general plan must be reasonably consistent and integrated on its
23 face. A document that, on its face, displays substantial contradictions and
24 inconsistencies cannot serve as an effective plan because those subject to the plan
25 cannot tell what it says should happen or not happen. When the court rules a facially
26 inconsistent plan unlawful and requires a local agency to adopt a consistent plan, the
27 court is not evaluating the merits of the plan; rather, the court is simply directing the local
28

1 agency to state with reasonable clarity what its plan is." *Concerned Citizens of Calaveras*
2 *County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97.

3 The court in *Garat v. Riverside* (1991) 2 Cal.App.4th 259, *overruled on other*
4 *grounds in Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11
5 (discussed on this point in *Napa Citizens for Honest Government v. Napa County Bd. of*
6 *Supervisors* (2001) 91 Cal.App.4th 342, 388 [*Napa Citizens*], confirmed the application
7 of the consistency requirement to charter cities such as Los Angeles, explaining that
8 under Govt. Code sec. 65700(a), a charter city's general plan must contain the
9 mandatory elements required by Govt. Code sections 65300 et seq. and section 65700,
10 which construed together require not only that a charter city's general plan have the
11 mandatory elements of Govt. Code sec. 65302, but also that these elements be internally
12 consistent as required by Govt. Code sec. 65300.5. *Id.*, at 285, 287. See *Irvine v. Irvine*
13 *Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 875, 876, 879 [Govt.C.
14 65860(a) prohibition of inconsistent zoning ordinances applied to charter city that had
15 enacted ordinance requiring zoning and general plan consistency; hence, proposed
16 referendum inconsistent with general plan was properly declared invalid]. As colorfully
17 explained in *Napa Citizens, supra*, a "zoning ordinance that is inconsistent with the
18 general plan is invalid when passed [citations] and one that was originally consistent but
19 has become inconsistent must be brought into conformity with the general plan.
20 [Citation.] The Planning and Zoning Law does not contemplate that general plans will be
21 amended to conform to zoning ordinances. The tail does not wag the dog. The general
22 plan is the charter to which the ordinance must conform." *Id.*, at p. 389.

23 2. Standard for review of general plan/specific plan consistency issues

24 General plan consistency issues such as those presented by these parties are
25 reviewed under a particularly deferential standard. While a city has broad discretion to
26 weigh and balance competing interests in formulating development policies (*Federation*
27
28

1 *II, supra*, at p. 1196), a charter city's²³ general plan must be internally consistent.

2 The case upon which City relies sets out the standard to be applied here: "The
3 adoption or amendment of a general plan is a legislative act. [Citation.] A legislative act
4 is presumed valid, and a city need not make explicit findings to support its action.
5 [Citations.] A court cannot inquire into the wisdom of a legislative act or review the
6 merits of a local government's policy decisions. [Citation.] Judicial review of a legislative
7 act under Code of Civil Procedure section 1985²⁴ is limited to determining whether the
8 public agency's action was arbitrary, capricious, entirely without evidentiary support, or
9 procedurally unfair. [Citations.] A court therefore cannot disturb a general plan based on
10 violation of the internal consistency and correlation requirements unless, based on the
11 evidence before the city council, a reasonable person could not conclude that the plan is
12 internally consistent or correlative. [Citation.]" (*Federation of Hillside & Canyon Assns. v.*
13 *City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195, 24 Cal.Rptr.3d 543.) SOCWA
14 has the burden of proof to demonstrate that the amendment to the general plan
15 rendered the plan internally inconsistent. (See *Garai v. City of Riverside* (1991) 2
16 Cal.App.4th 259, 293, 3 Cal.Rptr.2d 504, disapproved on other grounds in *Morehart v.*
17 *County of Santa Barbara* (1994) 7 Cal.4th 725, 29 Cal.Rptr.2d 804, 872 P.2d 143.)"
18 *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196
19 Cal.App.4th 1604, 1618-1619 [*South Orange County*].

20 On the other hand, it is also true that direct conflict is not the litmus test for
21 general plan consistency. All three petitioners cite *Napa Citizens*, a leading case on this
22 issue. And, City does not either rely on or seek to distinguish the holding of *Napa*
23 *Citizens* when discussing the consistency arguments made by petitioners.

24 In *Napa Citizens*, the court of appeal specifically addresses the consistency issue

25 ²³

26 There is no dispute about Los Angeles' status as a charter city.

27 ²⁴

28 Clearly a typographical error in the opinion; the citation should be to section 1085.

1 in a way that the court in *South Orange County* does not. The *Napa Citizens* court
2 explains:

3 "We are of the opinion that the consistency doctrine requires more than that the
4 Updated Specific Plan recite goals and policies that are consistent with those set
5 forth in the County's General Plan. We also are of the opinion that cases such as
6 *FUTURE v. Board of Supervisors, supra*, 62 Cal.App.4th 1332, do not require an
7 outright conflict between provisions before they can be found to be inconsistent.
8 The proper question is whether development of the Project Area under the
9 Updated Specific Plan is compatible with and will not frustrate the General Plan's
10 goals and policies. If the Updated Specific Plan will frustrate the General Plan's
11 goals and policies, it is inconsistent with the County's General Plan unless it also
12 includes definite affirmative commitments to mitigate the adverse effect or
13 effects." *Id.*, at 379.

14 By contrast with *Napa Citizens*, the facts and procedural setting discussed in
15 *South Orange County* lead to the conclusion that it is of limited value; indeed it is readily
16 distinguishable from the present case. There, the issue of consistency with the general
17 plan was not presented to the trial court; and the question of conflict was far more limited
18 — there, only whether a single zoning change was appropriate in the context of that
19 general plan — rather than the massive, multi-faceted set of issues addressed in the
20 HCPU. Further, the court of appeals there noted that no change could occur without
21 further action, including review by the Coastal Commission. *Id.*, at 1609.

22 Analysis

23 Applying these principles to the present case, City's opening argument in its
24 opposition, that it was not required to make findings in support of the HCPU, although
25 literally true, nevertheless lacks merit.²⁵

26 ²⁵

27 It also is inconsistent as City concedes it was required to make findings in support of
28 the zoning changes called for by the HCPU, which it did.

1 While Charter section 555 contains no requirement that findings be made, this
2 does not obviate the need for consistency. The consistency doctrine is, as noted, "the
3 linchpin of California's land use and development laws." *E.g., Families Unafraid, etc. v.*
4 *County Board of Supervisors, supra*, 62 Cal.App.4th at 1336.

5 Fix the City points to what it contends is a fundamental inconsistency between the
6 Framework and the HCPU, viz., City's failure to address the absence from the HCPU of
7 "policies that require monitoring of infrastructure to determine whether the growth
8 permitted in the Plan Update should continue at a given time. The City's Revised
9 Findings reveal how the Plan Update twists the monitoring requirements in Framework
10 Policy 3.3.2 (the infrastructure monitoring policy)..... The City's position is that the Plan
11 Update sufficiently addressed the infrastructure capacity of the area such that *no further*
12 *monitoring is required during implemental of the Plan Update. This hands-off policy is*
13 *completely contrary to the Framework Element's objective of continuous monitoring of*
14 *development activity.* By asserting that the Plan Update conclusively establishes the
15 ability of the infrastructure to absorb the level of development planned, the City thwarts
16 the Framework Element's policy of limiting development when capacity becomes
17 threatened. The failure to include a monitoring requirement makes the Plan Update
18 inconsistent with the Framework Element." Fix the City's Reply at 24:8-26 [first
19 emphasis in original; second emphasis added].

20 La Mirada's reply to City's arguments is multi-faceted.

21 (1) City's reliance on SCAG estimates is faulty and there is no substantial
22 evidence to support the validity of that 2005 SCAG estimate;

23 (2) there is internal inconsistency with the Framework's focus on "growth
24 neutrality" as the true data reveal that the HCPU is in actuality a plan to more than
25 double the population in Hollywood;

26 (3) City's plan to focus growth close to transit stations elevates one policy over
27 others, creating an inconsistency; and

28 (4) the 16 pages of findings used by City to justify its actions start from a false

1 premise — the misleading population data used by City which is "less than half what the
2 [HCPU actually] provides..... Accordingly, there is no evidence on which to base the
3 findings, and abuse of discretion is established. Code of Civil Proced. Sec. 1094.5(b)."
4 (La Mirada Reply 17:26-18:3.)²⁶

5 City's reliance on the holding of *Napa Citizens, supra*, that "a governing body's
6 conclusion that a particular project is consistent with the relevant general plan carries a
7 strong presumption of regularity that can be overcome only by a showing of an abuse of
8 discretion" (id., at 357) is correct (City's Opposition Memo. at 8:15-19) — but on these
9 facts, circumstances and record — not sufficient. Petitioners' arguments on lack of
10 consistency, particularly those of Fix the City, on balance, overcome the presumption of
11 regularity and explain why adoption of the HCPU on this record constituted an abuse of
12 discretion.

13 The Court also concludes that the actions of City do constitute an abuse of
14 discretion. Fix the City, in particular, cogently sets forth the reasons (summarized
15 above). The fundamental inconsistency between the Framework and the HCPU on the
16 failure of the HCPU monitoring policy is completely contrary to the Framework's
17 essential component of continuous monitoring of development activity. There is a void
18 in an essential aspect of the HCPU where instead there should be a discussion of the
19 inter-plan/area impacts created by the HCPU. And, to the extent City relies on the
20 entirely discredited SCAG 2005 population estimate (with the substantial impact that has
21 on many facets of the HCPU), there is a fatal inconsistency between the HCPU and the
22 General Plan.

23
24 _____
25 .26

25 Citation of this statute is inapposite; perhaps an inadvertence comparable to the
26 typographical error noted in footnote 24, *ante*. General Plan adoption issues are
27 legislative acts reviewed by ordinary mandamus under Code of Civil Procedure section
28 1085. Govt. Code section 65301.5; *Yost v. Thomas* (1984) 36 Cal.3d 561, 570-571;
Federation II, supra, at 1195; see, generally, Miller & Starr, Calif. Real Estate Law, 3rd
Ed. Ch. 25:9 at p. 25-39 and fn. 32.

1 The HCPU cannot survive in its present form and substance in the face of these
2 very substantial inconsistencies. The HCPU is fatally flawed as a planning document as
3 it presently stands.

4 5 **CONCLUSION²⁷**

6 For the reasons stated, petitioners are entitled to relief as follows:

7
8 (1) to a peremptory writ of mandate ordering respondents and defendants City
9 and City Council to (a) rescind, vacate and set aside all actions approving the HCPU and
10 certifying the EIR adopted in connection therewith and all related approvals issued in
11 furtherance of the HCPU, including but not limited to the text and maps associated with
12 the HCPU, the Resolution amending the Hollywood Community Plan, the adoption of
13 rezoning actions taken to reflect zoning changes contained in the HCPU, all
14 amendments to the General Plan Transportation and Framework Elements made to
15 reflect changes in the HCPU, adopting the Statement of Overriding Considerations,
16 adopting the Mitigation and Monitoring Program, and adopting Findings in support of the
17 foregoing; and (b) initiate the process of amending the HCP in a manner that conforms
18 to the policies and objectives of the General Plan and the requirements of CEQA;

19
20 (2) an injunction that respondents and defendants City and City Council, their
21 officers, employees, agents, boards, commissions and other subdivisions shall not grant
22 any authority, permits or entitlements which derive from the HCPU or its EIR until an
23 adequate and valid EIR is prepared, circulated and certified as complete and is
24 consistent with CEQA, CEQA Guidelines, and all other applicable laws, and until legally
25 adequate findings of consistence are made as required pursuant to the Charter of the

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27 ²⁷

28 The relief set out below is the full relief to be awarded in the three cases. Any
argument made and not addresses is deemed rejected.

1 City of Los Angeles and other applicable laws;

2
3 (3) attorneys fees and costs as may hereafter be determined.

4
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6 DATED: December 10, 2013

7 ALLAN J. GOODMAN
8 JUDGE OF THE SUPERIOR COURT
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/11/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. HALL, CSL/CT ASST.

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am BS138580

Plaintiff

Counsel

FIX THE CITY, INC.

NO APPEARANCES

VS

Defendant

CITY OF LOS ANGELES, ET. AL.

Counsel

RELATED TO BS138369 AND BS13837

NATURE OF PROCEEDINGS:

MINUTE ORDER RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE;

After reviewing the objections by respondents and the responses thereto by each petitioner, the Court today slightly modified and signed and filed the judgement in this case and the judgments in the related cases. The Clerk has also executed the Writ in this case and in each of the related cases.

The initial return date is 90 days from today. Any objections to the return are to be filed 40 days after the date of service of the Return.

The Court has calendared the matter for a non-appearance case review 140 days hence, viz., for June 20, 2014.

Each prevailing party is to give notice of entry of judgment.

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/11/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. HALL, CSL/CT ASST.

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am BS138580

Plaintiff

Counsel

FIX THE CITY, INC.

NO APPEARANCES

VS

Defendant

Counsel

CITY OF LOS ANGELES, ET AL.

RELATED TO BS138369 AND BS13837

NATURE OF PROCEEDINGS:

date I served the notice of entry of judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Santa Monica, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.


Dated: February 11, 2014

Sherri R. Carter, Executive Officer/Clerk

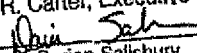
By: D. Salisbury

Beverly Grossman Palmer
10940 Wilshire Blvd., Suite 2000
Los Angeles, CA. 90024

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 **FILED**
Superior Court of California
County of Los Angeles

FEB 11 2014

Sherri R. Carter, Executive Officer/Clerk
By  Deputy
Darian Salisbury

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FIX THE CITY, INC., a California nonprofit
corporation,

Petitioner and Plaintiff,

v.

CITY OF LOS ANGELES; LOS ANGELES
CITY COUNCIL; LOS ANGELES
DEPARTMENT OF CITY PLANNING; and
DOES 1 through 100, inclusive,

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervener.

Case No. BS138580

JUDGMENT GRANTING
PEREMPTORY WRIT OF MANDATE

Dept: West P
Judge: Hon. Allan J. Goodman

1 On September 16 and 17, 2013, this Court heard argument on Petitioner Fix the
2 City's ("Petitioner") First Amended Verified Petition for Writ of Mandate and Complaint
3 for Declaratory and Injunctive Relief ("Petition"). Beverly Grossman Palmer appeared
4 on behalf of Petitioner. Siegmund Shyu and Michael Bostrom appeared on behalf of
5 Respondents and Defendants City of Los Angeles, Los Angeles City Council, and Los
6 Angeles Department of City Planning ("Respondents"). Arthur Friedman appeared on
7 behalf of Intervener Hollywood Chamber of Commerce ("Intervener"). Concurrently,
8 related cases *La Mirada Neighborhood Association v. City of Los Angeles* (BS138369)
9 and *SaveHollywood.org v. City of Los Angeles* (BS138370) came for hearing before the
10 Court.

11 Following review and consideration of the pleadings and papers timely filed in
12 support of and in opposition to the Petition, as well as the pleadings and briefs filed in
13 support and opposition to the related cases and the certified administrative record lodged
14 for all related cases, and after hearing arguments of the parties, and the matter having
15 been submitted, the Court issued a Tentative Decision and Proposed Statement of
16 Decision on December 10, 2013. After reviewing the parties' objections and responses to
17 the Tentative Decision and Proposed Statement of Decision, on January 15, 2014 the
18 Court issued its final Statement of Decision ("Decision"), granting the relief as stated in
19 the Decision. The Statement of Decision is hereby incorporated in this judgment. This
20 judgment addresses all matters in controversy.

21 Accordingly,

22 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that a peremptory
23 writ of mandate shall issue, ordering RESPONDENTS AND DEFENDANTS CITY OF
24 LOS ANGELES, LOS ANGELES CITY COUNCIL, and LOS ANGELES
25 DEPARTMENT OF CITY PLANNING, together with their officers, employees agents,
26 boards, commission, other subdivisions, representatives and successors, to immediately
27 upon receipt of the writ, to rescind, vacate, and set aside all actions approving the
28 Hollywood Community Plan Update ("HCPU") and all actions certifying the

1 Environmental Impact Report ("EIR") adopted in connection therewith, and all related
2 approvals issued in furtherance of the HCPU, including but not limited to the text and
3 maps associated with the HCPU, the Resolution amending the Hollywood Community
4 Plan, the adoption of rezoning actions taken to reflect zoning changes contained in the
5 HCPU, all amendments to the General Plan Transportation and Framework Elements
6 made to reflect changes in the HCPU, the adoption of the Statement of Overriding
7 Consideration, the adoptions of the Mitigation and Monitoring Program, and the adoption
8 of Findings in support of the foregoing; provided that the phrase "all related approvals"
9 refers only to those quasi-legislative actions necessary to carry out the HCPU and the
10 related California Environmental Quality Act ("CEQA") documents and that the
11 provisions hereof are not intended to order that Respondents rescind those adjudicatory
12 approvals not challenged which the City may have made under the HCPU after its
13 adoption by the City.

14 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, in the
15 event that the RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES and
16 LOS ANGELES CITY COUNCIL exercise their discretion to amend the Hollywood
17 Community Plan, they do so in a manner that conforms to the policies and objectives of
18 the General Plan of the City of Los Angeles and the requirements of the CEQA.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
20 RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES AND LOS
21 ANGELES CITY COUNCIL, together with their officers, employees, agents, boards,
22 commissions, and other subdivisions, representatives and successors, be and are enjoined
23 from granting any authority, permits or entitlements which derive from the HCPU or its
24 EIR until an adequate and valid EIR is prepared, circulated, and certified as complete,
25 and such EIR is consistent with CEQA, applicable CEQA Guidelines, and all other
26 applicable laws, and until legally adequate findings of consistency are made as required
27 pursuant to the Charter of the City of Los Angeles and other applicable laws;
28

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
2 peremptory writ of mandate shall be served on Respondents by personally delivering the
3 writ to Respondents, Attn: City Clerk, City of Los Angeles, 200 N. Spring Street, Room
4 360, Los Angeles, CA 90012, during regular business hours.


5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that
6 Respondents shall make an initial return to the peremptory writ of mandate under oath
7 specifying what Respondents have done or are doing to comply with the writ, and to file
8 that return with the Court, and serve that return by hand or facsimile upon Petitioner's
9 counsel of record in this proceeding, no later than 90 days after issuance of the writ and
10 service on Respondents. Any objections to said Return shall be filed no later than 40
11 days after the service date of the Return.

12 Respondents shall file a supplemental return after taking all actions to comply with
13 the peremptory writ of mandate.

14 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Petitioner
15 may seek an award of attorney fees against Respondents and Intervener, which award of
16 attorney fees shall be determined by the Court based upon noticed motion and hearing
17 thereon, and shall be awarded costs in the amount of \$ _____ as the prevailing
18 party in this proceeding.

19 The Court reserves jurisdiction in this action until there has been full compliance
20 with the writ as provided in Code of Civil Procedure Section 1097.
21

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24 Dated: February 11, 2014



Honorable Allan J. Goodman
Judge of the Superior Court

[Handwritten signature]

FILED
Superior Court of California
County of Los Angeles

FEB 11 2014

Sherri R. Carter, Executive Officer/Clerk
By *[Signature]* Deputy
Darian Salisbury

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FIX THE CITY, a California nonprofit
corporation,

Petitioner,

vs.

CITY OF LOS ANGELES; LOS ANGELES
CITY COUNCIL; LOS ANGELES
DEPARTMENT OF CITY PLANNING; and
DOES 1 through 100, inclusive,

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervener.

Case No. BS138580

PEREMPTORY WRIT OF MANDATE

Writ Hearing: September 16-17, 2013

[Hon. Allan J. Goodman, Dept. West-P]

1 THE PEOPLE OF THE STATE OF CALIFORNIA:
2 TO RESPONDENTS CITY OF LOS ANGELES, CITY COUNCIL OF THE
3 CITY OF LOS ANGELES, LOS ANGELES DEPARTMENT OF CITY PLANNING,
4 AND TO ALL PERSONS ACTING ON THEIR BEHALF:

5 Judgment having been entered in the above-captioned case, ordering that a
6 peremptory writ of mandate issue from this Court,

7 IT IS ORDERED THAT:

8 RESPONDENTS CITY OF LOS ANGELES, LOS ANGELES CITY COUNCIL,
9 and LOS ANGELES DEPARTMENT OF CITY PLANNING, together with their officers,
10 employees, agents, boards, commissions, other subdivisions, representatives, and
11 successors, shall, immediately upon receipt of this Writ, rescind, vacate, and set aside all
12 actions approving the Hollywood Community Plan Update ("HCPU") and all actions
13 certifying the EIR adopted in connection therewith, as well as all related approvals issued
14 in furtherance of the HCPU, including but not limited to the text and maps associated with
15 the HCPU, the Resolution amending the Hollywood Community Plan, the adoption of
16 rezoning actions taken to reflect zoning changes contained in the HCPU, all amendments to
17 the General Plan Transportation and Framework Elements made to reflect changes in the
18 HCPU, the adoption of the Statement of Overriding Considerations, the adoptions of the
19 Mitigation and Monitoring Program, and the adoption of Findings in support of the
20 foregoing; provided that the phrase "all related approvals" refers only to those quasi-
21 legislative actions necessary to carry out the HCPU and the related California
22 Environmental Quality Act ("CEQA") documents, and that the provisions hereof are not
23 intended to order that respondents rescind those adjudicatory approvals not challenged
24 which the City may have made under the HCPU after its adoption by the City.

25 In the event that the RESPONDENTS CITY OF LOS ANGELES and LOS
26 ANGELES CITY COUNCIL exercise their discretion to amend the Hollywood
27 Community Plan, they shall do so in a manner that conforms to the policies and objectives
28 of the General Plan of the City of Los Angeles and the requirements of CEQA.

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

1 RESPONDENTS CITY OF LOS ANGELES and LOS ANGELES CITY
2 COUNCIL, their officers , employees, agents, boards, commissions and other
3 subdivisions, shall be and are enjoined from granting any authority, permits or
4 entitlements which derive from the HCPU or its EIR until an adequate and valid EIR is
5 prepared, circulated, and certified as complete, and such EIR is consistent with CEQA,
6 applicable CEQA Guidelines, and all other applicable laws, and until legally adequate
7 findings of consistency are made as required pursuant to the Charter of the City of Los
8 Angeles and other applicable laws.

9 RESPONDENTS ARE FURTHER COMMANDED to make an initial return to
10 this Peremptory Writ of Mandate under oath specifying what Respondents have done or are
11 doing to comply with the writ, and to file that return with the Court, and serve that return
12 by hand or facsimile upon Petitioner's counsel of record in this proceeding, no later than 90
13 days after issuance of this Writ and its service on Respondents. Any objections to said
14 Return shall be filed no later than 40 days after the date of service of the Return.

15 Respondents shall file a supplemental return after taking all actions to comply with
16 this Writ.

17 The Court reserves jurisdiction in this action until there has been full compliance
18 with this Writ as provided in Code of Civil Procedure Section 1097.

21 SHERRRI R. CARTER,
22 CLERK OF THE SUPERIOR COURT

24 DATED: February 11, 2014

By: 

Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/11/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. HALL, CSL/CT.ASST.

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am BS138369

Plaintiff

Counsel

NO APPEARANCES

LA MIRADA AVE. NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD
VS
CITY OF LOS ANGELES

Defendant

Counsel

RELATED TO BS138370 AND BS13858

NATURE OF PROCEEDINGS:

MINUTE ORDER RE JUDGMENT AND PEREMPTORY WRIT OF
MANDATE;

After reviewing the objections by respondents and
the responses thereto by each petitioner, the Court
today slightly modified and signed and filed the
judgement in this case and the judgments in the
related cases. The Clerk has also executed the Writ
in this case and in each of the related cases.

The initial return date is 90 days from today. Any
objections to the return are to be filed 40 days
after the date of service of the Return.

The Court has calendared the matter for a
non-appearance case review 140 days hence, viz., for
June 20, 2014.

Each prevailing party is to give notice of entry of
judgment.

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the
above-entitled court, do hereby certify that I am
not a party to the cause herein, and that on this

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/11/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. HALL, CSL/CT ASST.

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am

BS138369

Plaintiff

Counsel

LA MIRADA AVE. NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD

NO APPEARANCES

VS

Defendant

Counsel

CITY OF LOS ANGELES

RELATED TO BS138370 AND BS13858

NATURE OF PROCEEDINGS:

date I served the notice of entry of judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Santa Monica, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: February 11, 2014

Sherri R. Carter, Executive Officer/Clerk

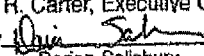
By: D. Salisbury

Robert P. Silverstein
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

 **FILED**
Superior Court of California
County of Los Angeles

FEB 11 2014

Sherri R. Carter, Executive Officer/Clerk
By  Deputy
Darian Salisbury

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LA MIRADA AVENUE NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD, a
California unincorporated association,

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal
corporation; CITY COUNCIL OF THE
CITY OF LOS ANGELES, and DOES 1
through 20, inclusive,

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervenor.

Case No. BS138369

[Related to Case Nos. BS138580 and
BS138370]

**JUDGMENT GRANTING
PEREMPTORY WRIT OF MANDATE**

Writ Hearing: September 16-17, 2013

[Hon. Allan J. Goodman, Dept. West-P]

1 On September 16 and 17, 2013, this Court heard argument on Petitioner La Mirada
2 Avenue Neighborhood Association of Hollywood's ("Petitioner") First Amended Verified
3 Petition for Writ of Mandate and Complaint ("Petition"). Bradley S. Torgan appeared on
4 behalf of Petitioner. Siegmund Shyu and Michael Bostrom appeared on behalf of
5 Respondents and Defendants City of Los Angeles and Los Angeles City Council
6 ("Respondents"). Arthur Friedman appeared on behalf of Intervenor Hollywood Chamber
7 of Commerce ("Intervenor"). Concurrently, related cases Fix the City, Inc. v. City of Los
8 Angeles (BS138580) and SaveHollywood.org, et al. v. City of Los Angeles (BS138370)
9 came on for hearing before the Court.

10 Following review and consideration of the pleadings and papers timely filed in
11 support of and in opposition to the Petition, as well as the pleadings and briefs filed in
12 support and opposition to the related cases and the certified administrative record lodged
13 for all related cases, and after hearing arguments of the parties, and the matter having been
14 submitted, the Court issued a Tentative Decision and Proposed Statement of Decision on
15 December 10, 2013. After reviewing the parties' objections and responses to the Tentative
16 Decision and Proposed Statement of Decision, on January 15, 2014 the Court issued its
17 final Statement of Decision ("Decision"), granting the relief as stated in the Decision. The
18 Statement of Decision is hereby incorporated in this judgment. This judgment addresses all
19 matters in controversy.

20 Accordingly,

21 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that a peremptory
22 writ of mandate shall issue, ordering RESPONDENTS AND DEFENDANTS CITY OF
23 LOS ANGELES and LOS ANGELES CITY COUNCIL, together with their officers,
24 employees, agents, boards, commissions, other subdivisions, representatives, and
25 successors, to, immediately upon receipt of the said writ, to rescind, vacate, and set aside
26 all actions approving the Hollywood Community Plan Update ("HCPU") and all actions
27 certifying the Environmental Impact Report ("EIR") adopted in connection therewith, as
28 well as all related approvals issued in furtherance of the HCPU, including but not limited to

1 the text and maps associated with the HCPU, the Resolution amending the Hollywood
2 Community Plan, the adoption of rezoning actions taken to reflect zoning changes
3 contained in the HCPU, and all amendments to the General Plan Transportation and
4 Framework Elements made to reflect changes in the HCPU, the adoption of the Statement
5 of Overriding Consideration, the adoptions of the Mitigation and Monitoring Program, and
6 the adoption of Findings in support of the foregoing; provided that the phrase "all related
7 approvals" refers only to those quasi-legislative actions necessary to carry out the HCPU
8 and the related California Environmental Quality Act ("CEQA") documents, and that the
9 provisions hereof are not intended to order that respondents rescind those adjudicatory
10 approvals not challenged which the City may have made under the HCPU after its adoption
11 by the City.

12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, in the event
13 that the RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES and LOS
14 ANGELES CITY COUNCIL exercise their discretion to amend the Hollywood
15 Community Plan, they shall do so in a manner that conforms to the policies and objectives
16 of the General Plan of the City of Los Angeles and the requirements of CEQA.

17 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
18 RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES and LOS ANGELES
19 CITY COUNCIL, together with their officers, employees, agents, boards, commissions,
20 and other subdivisions, representatives and successors, be and are enjoined from granting
21 any authority, permits or entitlements which derive from the HCPU or its EIR until an
22 adequate and valid EIR is prepared, circulated, and certified as complete, and such EIR is
23 consistent with CEQA, applicable CEQA Guidelines, and all other applicable laws, and
24 until legally adequate findings of consistency are made as required pursuant to the Charter
25 of the City of Los Angeles and other applicable laws;

26 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Fourth
27 Cause of Action of the First Amended Verified Petition is dismissed without prejudice.
28

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
2 peremptory writ of mandate shall be served on Respondents by personally delivering the
3 writ to Respondents, Attn: City Clerk, City of Los Angeles, 200 N. Spring Street, Room
4 360, Los Angeles, CA 90012, during regular business hours.


5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Respondents
6 shall make an initial return to the Peremptory Writ of Mandate under oath specifying what
7 Respondents have done or are doing to comply with the Writ, and to file that return with
8 the Court, and serve that return by hand or facsimile upon Petitioner's counsel of record in
9 this proceeding, no later than 90 days after issuance of the Writ and its service on
10 Respondents. Any objections to said Return shall be filed no later than 40 days after the
11 date of service of the Return.

12 Respondents shall file a supplemental return after taking all actions to comply with
13 the peremptory writ of mandate.

14 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Petitioner
15 may seek an award of attorney fees against Respondents and Intervenor, which award of
16 attorney fees shall be determined by the Court on noticed motion and hearing thereon, and
17 shall be awarded costs as the prevailing party in this proceeding.

18 The Court reserves jurisdiction in this action until there has been full compliance
19 with the writ as provided in Code of Civil Procedure Section 1097.

20
21 DATED: February 11, 2014



Honorable Allan J. Goodman
Judge of the Superior Court

[Handwritten mark]

FILED
Superior Court of California
County of Los Angeles

FEB 11 2014

Sherri R. Carter, Executive Officer/Clerk
By *[Signature]* Deputy
Darian Salisbury

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LA MIRADA AVENUE NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD, a
California unincorporated association,

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal
corporation; CITY COUNCIL OF THE
CITY OF LOS ANGELES, and DOES 1
through 20, inclusive,

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervenor.

Case No. BS138369

[Related to Case Nos. BS138580 and
BS138370]

PEREMPTORY WRIT OF MANDATE

Writ Hearing: September 16-17, 2013

Hon. Allan J. Goodman, Dept. West-P

1 THE PEOPLE OF THE STATE OF CALIFORNIA:
2 TO RESPONDENTS CITY OF LOS ANGELES and CITY COUNCIL OF THE
3 CITY OF LOS ANGELES, AND TO ALL PERSONS ACTING ON THEIR BEHALF:

4 Judgment having been entered in the above-captioned case, ordering that a
5 peremptory writ of mandate issue from this Court,

6 IT IS ORDERED THAT:

7 RESPONDENTS CITY OF LOS ANGELES and LOS ANGELES CITY
8 COUNCIL, together with their officers, employees, agents, boards, commissions, other
9 subdivisions, representatives, and successors, shall, immediately upon receipt of this Writ,
10 rescind, vacate, and set aside all actions approving the Hollywood Community Plan Update
11 ("HCPU") and all actions certifying the EIR adopted in connection therewith, as well as all
12 related approvals issued in furtherance of the HCPU, including but not limited to the text
13 and maps associated with the HCPU, the Resolution amending the Hollywood Community
14 Plan, the adoption of rezoning actions taken to reflect zoning changes contained in the
15 HCPU, all amendments to the General Plan Transportation and Framework Elements made
16 to reflect changes in the HCPU, the adoption of the Statement of Overriding
17 Considerations, the adoptions of the Mitigation and Monitoring Program, and the adoption
18 of Findings in support of the foregoing; provided that the phrase "all related approvals"
19 refers only to those quasi-legislative actions necessary to carry out the HCPU and the
20 related California Environmental Quality Act ("CEQA") documents, and that the
21 provisions hereof are not intended to order that respondents rescind those adjudicatory
22 approvals not challenged which the City may have made under the HCPU after its adoption
23 by the City.

24 In the event that the RESPONDENTS CITY OF LOS ANGELES and LOS
25 ANGELES CITY COUNCIL exercise their discretion to amend the Hollywood
26 Community Plan, they shall do so in a manner that conforms to the policies and objectives
27 of the General Plan of the City of Los Angeles and the requirements of CEQA.

28 RESPONDENTS CITY OF LOS ANGELES and LOS ANGELES CITY

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

1 COUNCIL, their officers , employees, agents, boards, commissions and other
2 subdivisions, shall be and are enjoined from granting any authority, permits or
3 entitlements which derive from the HCPU or its EIR until an adequate and valid EIR is
4 prepared, circulated, and certified as complete, and such EIR is consistent with CEQA,
5 applicable CEQA Guidelines, and all other applicable laws, and until legally adequate
6 findings of consistency are made as required pursuant to the Charter of the City of Los
7 Angeles and other applicable laws.

8 RESPONDENTS ARE FURTHER COMMANDED to make an initial return to
9 this Peremptory Writ of Mandate under oath specifying what Respondents have done or are
10 doing to comply with the writ, and to file that return with the Court, and serve that return
11 by hand or facsimile upon Petitioner's counsel of record in this proceeding, no later than 90
12 days after issuance of this Writ and its service on Respondents. Any objections to said
13 Return shall be filed no later than 40 days after the date of service of the Return.

14 Respondents shall file a supplemental return after taking all actions to comply with
15 this Writ.

16 The Court reserves jurisdiction in this action until there has been full compliance
17 with this Writ as provided in Code of Civil Procedure Section 1097.

18
19
20 SHERRRI R. CARTER,
21 CLERK OF THE SUPERIOR COURT

22
23 DATED: February 11, 2014

By: 

24 Deputy Clerk
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE 02/11/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. HALL, CSI/CT ASST

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am BS138370

Plaintiff

Counsel

SAVE HOLLYWOOD.ORG

NO APPEARANCES

VS

Defendant

THE CITY OF LOS ANGELES, ET. AL

Counsel

RELATED TO BS138369 AND BS13858

NATURE OF PROCEEDINGS:

MINUTE ORDER RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE;

After reviewing the objections by respondents and the responses thereto by each petitioner, the Court today slightly modified and signed and filed the judgement in this case and the judgments in the related cases. The Clerk has also executed the Writ in this case and in each of the related cases.

The initial return date is 90 days from today. Any objections to the return are to be filed 40 days after the date of service of the Return.

The Court has calendared the matter for a non-appearance case review 140 days hence, viz., for June 20, 2014.

Each prevailing party is to give notice of entry of judgment.

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/11/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

B. HALL, CSL/CT. ASST.

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am BS138370

Plaintiff

Counsel

SAVE HOLLYWOOD.ORG

NO APPEARANCES

VS

Defendant

THE CITY OF LOS ANGELES, ET. AL

Counsel

RELATED TO BS138369 AND BS13858

NATURE OF PROCEEDINGS:

date I served the notice of entry of judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Santa Monica, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: February 11, 2014


Sherri R. Carter, Executive Officer/Clerk

By: D. Salisbury

Richard S. MacNaughton
9170 Wilshire Blvd., Suite 700
Beverly Hills, CA. 90210

Angel Law
Frank P. Angel
2601 Ocean Park Blvd., Suite 205
Santa Monica, CA. 90405

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 **FILED**
Superior Court of California
County of Los Angeles

FEB 11 2014

Sherri R. Carter, Executive Officer/Clerk
By Dan Salisbary Deputy
Darian Salisbary

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SAVEHOLLYWOOD.ORG aka PEOPLE
FOR LIVABLE COMMUNITIES and
HOLLYWOODIANS ENCOURAGING
LOGICAL PLANNING, an association,

Petitioners/Plaintiffs,

v.

THE CITY OF LOS ANGELES et al.,

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervenor.

Case No. BS138370

JUDGMENT GRANTING
PEREMPTORY WRIT OF MANDATE

Dept: West P
Writ Trial: Sept. 16-17, 2013
Judge: Hon. Allan J. Goodman

1 and maps associated with the HCPU, the Resolution amending the Hollywood
2 Community Plan, the adoption of rezoning actions taken to reflect zoning changes
3 contained in the HCPU, all amendments to the General Plan Transportation and
4 Framework Elements made to reflect changes in the HCPU, the adoption of the Statement
5 of Overriding Consideration, the adoptions of the Mitigation and Monitoring Program,
6 and the adoption of Findings in support of the foregoing; provided that the phrase "all
7 related approvals" refers only to those quasi-legislative actions necessary to carry out the
8 HCPU and the related California Environmental Quality Act ("CEQA") documents and
9 that the provisions hereof are not intended to order that Respondents rescind those
10 adjudicatory approvals not challenged which the City may have made under the HCPU
11 after its adoption by the City.

12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, in the
13 event that the Respondents exercise their discretion to amend the Hollywood Community
14 Plan, they do so in a manner that conforms to the policies and objectives of the General
15 Plan of the City of Los Angeles and the requirements of the CEQA.

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
17 Respondents, together with their officers, employees, agents, boards, commissions, and
18 other subdivisions, representatives and successors, be and are enjoined from granting any
19 authority, permits or entitlements which derive from the HCPU or its EIR until an
20 adequate and valid EIR is prepared, circulated, and certified as complete, and such EIR is
21 consistent with CEQA, applicable CEQA Guidelines, and all other applicable laws, and
22 until legally adequate findings of consistency are made as required pursuant to the
23 Charter of the City of Los Angeles and other applicable laws;

24 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
25 peremptory writ of mandate shall be served on Respondents by personally delivering the
26 writ to Respondents, Attn: City Clerk, City of Los Angeles, 200 N. Spring Street, Room
27 360, Los Angeles, CA 90012, during regular business hours.

28 / / /


1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that
2 Respondents shall make an initial return to the peremptory writ of mandate under oath
3 specifying what Respondents have done or are doing to comply with the writ, and to file
4 that return with the Court, and serve that return by hand or facsimile upon Petitioner's
5 counsel of record in this proceeding, no later than 90 days after issuance of the writ and
6 service on Respondents. Any objections to said Return shall be filed no later than 40
7 days after the service date of the Return.

8 Respondents shall file a supplemental return after taking all actions to comply with
9 the peremptory writ of mandate.

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Petitioner
11 may seek an award of attorney fees against Respondents and Intervener, which award of
12 attorney fees shall be determined by the Court based upon noticed motion and hearing
13 thereon, and shall be awarded costs in the amount of \$_____ as the prevailing
14 party in this proceeding.

15 The Court reserves jurisdiction in this action until there has been full compliance
16 with the writ as provided in Code of Civil Procedure Section 1097.

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20 Dated: February 11, 2014



Honorable Allan J. Goodman
Judge of the Superior Court

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FILED
Superior Court of California
County of Los Angeles

FEB 11 2014

Sherri R. Carter, Executive Officer/Clerk
By Darian Salisbury Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SAVEHOLLYWOOD.ORG aka PEOPLE
FOR LIVABLE COMMUNITIES and
HOLLYWOODIANS ENCOURAGING
LOGICAL PLANNING, an association,

Petitioners/Plaintiffs,

vs.

THE CITY OF LOS ANGELES, et al.,

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervenor.

Case No. BS138370

PEREMPTORY WRIT OF MANDATE

Writ Hearing: September 16-17, 2013

Hon. Allan J. Goodman, Dept. West-P

1 THE PEOPLE OF THE STATE OF CALIFORNIA:
2 TO RESPONDENT CITY OF LOS ANGELES AND TO ALL PERSONS
3 ACTING ON ITS BEHALF:

4 Judgment having been entered in the above-captioned case, ordering that a
5 peremptory writ of mandate issue from this Court,

6 IT IS ORDERED THAT:

7 RESPONDENT CITY OF LOS ANGELES, together with its officers, employees,
8 agents, boards, commissions, other subdivisions, representatives, and successors, shall,
9 immediately upon receipt of this Writ, rescind, vacate, and set aside all actions approving
10 the Hollywood Community Plan Update ("HCPU") and all actions certifying the EIR
11 adopted in connection therewith, as well as all related approvals issued in furtherance of the
12 HCPU, including but not limited to the text and maps associated with the HCPU, the
13 Resolution amending the Hollywood Community Plan, the adoption of rezoning actions
14 taken to reflect zoning changes contained in the HCPU, all amendments to the General
15 Plan Transportation and Framework Elements made to reflect changes in the HCPU, the
16 adoption of the Statement of Overriding Considerations, the adoptions of the Mitigation
17 and Monitoring Program, and the adoption of Findings in support of the foregoing;
18 provided that the phrase "all related approvals" refers only to those quasi-legislative actions
19 necessary to carry out the HCPU and the related California Environmental Quality Act
20 ("CEQA") documents, and that the provisions hereof are not intended to order that
21 respondents rescind those adjudicatory approvals not challenged which the City may have
22 made under the HCPU after its adoption by the City.

23 In the event that the RESPONDENT CITY OF LOS ANGELES exercises its
24 discretion to amend the Hollywood Community Plan, its shall do so in a manner that
25 conforms to the policies and objectives of the General Plan of the City of Los Angeles and
26 the requirements of CEQA.

27 RESPONDENT CITY OF LOS ANGELES, its officers , employees, agents,
28 boards, commissions and other subdivisions, shall be and are enjoined from granting any

1 authority, permits or entitlements which derive from the HCPU or its EIR until an
2 adequate and valid EIR is prepared, circulated, and certified as complete, and such EIR is
3 consistent with CEQA, applicable CEQA Guidelines, and all other applicable laws, and
4 until legally adequate findings of consistency are made as required pursuant to the Charter
5 of the City of Los Angeles and other applicable laws.

6 RESPONDENT IS FURTHER COMMANDED to make an initial return to this
7 Peremptory Writ of Mandate under oath specifying what Respondent has done or is doing
8 to comply with the writ, and to file that return with the Court, and serve that return by hand
9 or facsimile upon Petitioners' counsel of record in this proceeding, no later than 90 days
10 after issuance of this Writ and its service on Respondent. Any objections to said Return
11 shall be filed no later than 40 days after the date of service of the Return.

12 Respondent shall file a supplemental return after taking all actions to comply with
13 this Writ.

14 The Court reserves jurisdiction in this action until there has been full compliance
15 with this Writ as provided in Code of Civil Procedure Section 1097.

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18 SHERRRI R. CARTER,
19 CLERK OF THE SUPERIOR COURT

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21 DATED: February 11, 2014

By: 

22 Deputy Clerk
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CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 14 2014

Sherri R. Carter, Executive Officer/Clerk

By Darian Salisbury, Deputy

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

**FIX THE CITY, etc.,
Petitioner and Plaintiff,**

vs.

**CITY OF LOS ANGELES; LOS
ANGELES CITY COUNCIL; LOS
ANGELES DEPT. OF CITY PLANNING;
and DOES 1 through 100, inclusive,
Respondents and Defendants.**

**HOLLYWOOD CHAMBER OF
COMMERCE,
Intervenor.**

**LA MIRADA AVENUE
NEIGHBORHOOD ASSN. OF
HOLLYWOOD, etc.,
Petitioner and Plaintiff,**

vs.

**CITY OF LOS ANGELES; CITY
COUNCIL OF THE CITY OF LOS
ANGELES; and DOES 1 through 100,
inclusive,
Respondents and Defendants.**

**HOLLYWOOD CHAMBER OF
COMMERCE,
Intervenor.**

CASE NO. BS138580

**RULING AND ORDER ON
MATTERS SUBMITTED
JUNE 24, 2014**

CASE NO. BS138369

**RULING AND ORDERS ON
MATTERS SUBMITTED
JUNE 20, 2014**

1 On February 11, 2014, this Court filed its Judgment and issued its Writs of
2 Mandate in each of these related matters (and on a third petition filed by
3 SaveHollywood.org¹), having previously (on January 15, 2014) filed its Statement of
4 Decision in these matters, thus resolving all issues then presented. The Writ issued in
5 each case ordered respondents City of Los Angeles, its City Council and its Department
6 of City Planning (Respondents) to rescind, vacate and set aside all actions approving the
7 Hollywood Community Plan (HCPU) and all related approvals and, inter alia, to exercise
8 their discretion to amend the Hollywood Community Plan "in a manner that conforms to
9 the policies and objectives of the General Plan of the City of Los Angeles and the
10 requirements of CEQA." In addition, the Court enjoined Respondents from taking
11 specified actions "until an adequate and valid EIR is ... certified as complete, and such
12 EIR is consistent with CEQA, ... and until legally adequate findings of consistency are
13 made as required...."

14 The Court ordered that Respondents make an initial Return to the Writ within 90
15 days, and allowed any objections to be filed within 40 days of service of the Return.
16 Respondents have made two returns (on February 19 and April 10, 2014), each of which
17 they describe as an "Initial Return."

18 It is in response to the second of these Initial Returns to which, on May 19, 2014,
19 Petitioner La Mirada filed its Notice of Motion and Motion for Orders: (1) Maintaining Writ
20 of Mandate in Full Force Until Fully Complied With; (2) Compelling City to Reconsider Its
21 Return to The Writ Issued and to File an Additional Return to the Writ; (3) To Make
22 Further Orders Necessary to the Writ; and (4) For the Court to Impose a Fine of up to
23 \$1,000 Against the City of Los Angeles per CCP section 1096."

24 Petitioner Fix the City has filed two separate motions. On May 6, 2014 it filed its
25 Verified Supplemental Petition for Writ of Mandate and Complaint for Declaratory and
26 Injunctive Relief; and on May 29, 2014, it filed its Notice of Motion and Motion for Leave

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28 No objection to either Initial Return has been filed by SaveHollywood.org.

1 to File Supplemental Petition Nunc Pro Tunc, etc. The latter filing was preceded by
2 Respondents filing two days earlier (on May 27) of their Notice of Motion and Motion to
3 Strike Fix the City's Supplemental Petition and Complaint. Respondents' opposition to
4 Fix the City's motions and their own motion are premised on the arguments that Fix the
5 City filed its May 6 Verified Supplemental Petition too late and cannot correct that "error"
6 by an order nunc pro tunc.

7 After all supporting and opposing memoranda were filed, these matters were
8 argued on June 20, 2014 and submitted. Having considered the memoranda of points
9 and authorities and other documents filed by, and the arguments of, the parties, the
10 Court now rules as follows.

11 In making these rulings and as requested by one or more parties, the Court takes
12 judicial notice of the 1988 Hollywood Community Plan (requested by City, and by
13 petitioner La Mirada in its Exhibit 31) and of Exhibits 17 through 34 to the Declaration of
14 Bradly Torgan (requested by La Mirada). On its own motion, the Court takes judicial
15 notice of a Resolution of the City Council adopted April 2, 2014, as it is central to the
16 arguments advanced by City and is repeatedly referenced in City's memoranda (it is also
17 relied on and analyzed in petitioners' filings); of Sections 554, 556 and 558 of the
18 Charter of the City of Los Angeles; and of those statutes of the state of California
19 identified below.

20 Underlying the matters before the Court is a fundamental procedural error on the
21 part of Respondents. Once a court has issued its writ of mandate, the entire matter
22 remains subject to the jurisdiction of that court until the court finally reviews and rules on
23 the actions taken by the respondent to comply with the writ. Code of Civil Procedure
24 section 128(a)(4). This power is further illustrated by reference to long-established
25 procedures in supervising compliance with writs of mandate issued in CEQA matters.²

26 2

27 As will be discussed in more detail in the text below, a peremptory writ of mandate
28 in a CEQA proceeding orders the respondent to file a return by a date certain informing
the court of the respondent's actions in compliance with the writ. (*Endangered Habitats*

1 Review of documents revised, or prepared anew, following issuance of writs of
2 mandate whether based, e.g., on inadequate original CEQA documents, is plenary,
3 subject only to the scope of review principles then to be applied. Further, such
4 subsequent review of revised or new documents, whether EIRs or revised planning
5 documents (such as the HCPU here at issue) adopted in response to such writs, is not
6 controlled by the otherwise applicable statutes of limitations, whether set out in the
7 Public Resources Code or elsewhere. There is a clear policy reason why this is so: To
8 apply those limitations to such EIR or other determinations would have the potential of
9 depriving the court at whose order the action was taken of the very jurisdiction it has
10 exercised, and of its continuing jurisdiction -- and obligation -- to ensure that its orders
11 are *properly* carried out. While a court does not tell an agency how to exercise its
12 discretion, it has the obligation to assure that what is done in response to its writ is lawful
13 and within that discretion.³ This review is the *sine qua non* of assuring compliance with

14
15 *League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 244; see
16 2 Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont.Ed.Bar 2d
ed. 2011) § 23.121, p. 1265).

17 ³

18 The Court of Appeal, quoting from a leading treatise on the subject, describes the
purpose and function of the return as follows:

19 “CEQA “requires that, after issuing a writ, the trial court must retain jurisdiction
20 over the matter until it has determined that the agency has adequately complied with
21 CEQA.” (Remy et al., *Guide to the Cal. Environmental Quality Act*, *supra*, Jud. Review,
22 p. 428, col. a, citations omitted.) The treatise points out that the best-known example of
23 such continuing jurisdiction is the trial court's efforts (concluded in 1997) to obtain
24 compliance (from parties including some of these same Respondents) with a 1973 writ
25 controlling Owens Valley groundwater. “A peremptory writ of mandate does not
26 necessarily exhaust the court's authority; where it does not provide complete relief, the
27 court may continue the lawsuit *and make such interim orders as the case may require*.
28 [Citation.] In the absence of a final judgment we retain jurisdiction over the parties and
subject matter, as well as ancillary jurisdiction to award costs.” (*County of Inyo v. City of
Los Angeles* (1978) 78 Cal.App.3d 82, 85 [144 Cal.Rptr. 71]; see also Bass et al., *CEQA
Deskbook* (1996) CEQA Litigation, p. 129.) A writ of mandate is a piece of paper. If its
purpose is to declare the rights of parties, its existence suffices. If its purpose is to
compel someone to *do* something, its existence does not suffice. The proper way to
ensure compliance is to require a return on the writ, which commands a party to do
something and report to the court that the act has been done. (See Cal. Administrative
Mandamus (Cont.Ed.Bar 1989) *Procedures After Trial*, §§ 13.10-13.11, pp. 411-414

1 the writ previously issued. Code Civ. Proc., § 128, subd. (a)(4)); *Ballona Wetlands Land*
2 *Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 479-480; (*City of*
3 *Carmel-by-the-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 971; *County of*
4 *Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 205.

5 Once a court has made an order that a respondent in an action pending before
6 that court must reconsider, e.g., its community plan and the related EIR, the
7 respondent[s] in such case must submit to that court as part of the Final Return any new
8 community plan and EIR which are prepared. It is not required that a petitioner file a
9 new action to test the adequacy of such a final return; it may present any issues that it
10 considers unresolved or erroneously resolved in the documents submitted in the Final
11 Return within the time allowed for the filing of objections to the Final Return. (If a
12 petitioner wishes, it may also proceed by way of supplemental petition [on proper
13 motion]). Of course, this does not foreclose other interested persons from filing their
14 own challenges to the actions then proposed by respondents.⁴ Those “new” documents
15 prepared and submitted in expected compliance with the writ of mandate issued are not
16 effective until that court has “approved” them; the provisions of the Public Resources
17 Code or other statutes regarding time limitations for a party to file an action do not apply
18 anew -- those filing limitations were already applied and any challenges to timeliness
19 would have already been ruled on. In this case, these timing issues are long-ago
20 resolved.

21 Any suggestion in this case that Respondents here can immunize any of the
22 actions they have now taken or may take relating to matters addressed in the Writs of
23 Mandate or Judgments filed herein (as explained in the Statements of Decision issued in
24

25 [providing form for this purpose].) *Endangered Habitats League, Inc. v. State Water*
26 *Resources Control Bd.* (1997) 63 Cal.App.4th 227, 243-244. [Italics added.]

27 ⁴

28 This may explain why the third petitioner herein, Save Hollywood.org has not filed any
objection prior to Respondents filing their Final Return.

1 these cases) in the event a petitioner does not file a separate challenge to such action
2 within a time other than that specified in the Writ issued by this Court, is erroneous. The
3 ultimate decision on whether Respondents have complied with those Court Orders is
4 made by the court that issued the Writ and Judgment -- this Court -- once the Final
5 Return has been filed. Any petitioner has the right to then bring to the attention of the
6 Court those issues it considers unresolved or not in compliance with the Writ, and to do
7 so according to the time schedule provided in the Writ.

8 Accordingly, Fix the City's present motion is not late; it is early. Thus, Fix the
9 City's request that relief be granted nunc pro tunc is unnecessary. Respondents, by
10 their own designation, have filed only initial returns to the Writ. The matter is not ripe for
11 general review until all of the documents needed to be revised or newly prepared in
12 response to the orders of this Court have been completed and are submitted as part of
13 the Final Return and until they are determined by this Court to meet the requirements of
14 applicable law.

15 The Writs issued in this case ordered two returns; the first to be filed within 90
16 days and the second to be filed "after [Respondents have taken] all actions to comply
17 with this Writ." No one claims the final documents have been prepared.⁵

18 Further, this Court specifically "reserve[d] jurisdiction in this action until there has
19 been full compliance with this Writ as provided in Code of Civil Procedure section 1097."
20 (Final sentence of each Writ.)

21 Here, these Respondents have elected to take what they contend to be
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26 Traditionally, an initial return advises the court which issued its writ of mandate
27 whether the respondent is going to appeal, or what steps the respondent plans to take to
28 comply. See, e.g., *City of Carmel-By-the-Sea v. Board of Supervisors*, *supra*, at 970-
971. Respondents omitted to mention in either "Initial Return" filed in this case that they
did not appeal; nor have they set out a timetable for their compliance with the Writ of
Mandate issued.

1 appropriate interim actions, and have twice reported on matters in that regard.⁶ Using
2 “interim returns” to keep the Court generally apprised of what steps Respondents are
3 taking is not subject to serious criticism as a *procedural device*. Any steps taken are,
4 however, subject to *substantive* scrutiny as necessary -- and that is what Fix the City
5 (and La Mirada) has (have) done by filing the motions now considered. That scrutiny will
6 occur at the appropriate time, whether now or once the Final Return has been filed.

7 Because no Final Return has been filed Fix the City’s Supplemental Petition and
8 its Motion for Leave to File ... Nunc Pro Tunc ... are early rather than late, as noted
9 above. However, as there has not yet been presented any authority to substantiate the
10 filing of the Supplemental Petition without first obtaining leave of court, Respondents’
11 Motion to Strike Fix the City’s Supplemental Petition is granted without prejudice to a
12 hearing on Fix the City’s Motion for Leave to File that Petition which remains to be heard
13 (albeit the relief would not be to grant it nunc pro tunc).

14 If Fix the City wishes to have its motion heard with the understanding that it would
15 not be granted nunc pro tunc (as there is no need to do so), or if it wishes to file a new
16 motion seeking permission to file a Supplemental Petition, the Court will set it for hearing
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19 ⁶

20 In its first Initial Return, Respondents advised the Court that they have issued a
21 Zoning Information (ZI), and then state: “If for any reason the Court determines that the
22 ZI does not comply with the Court’s orders, the City will take steps immediately to modify
23 its practices.” (Initial Return 1:5-12.)

24 Respondents appear to be soliciting the very “micro-management” to which they
25 otherwise object. Respondents have (correctly) argued that a court reviewing matters
26 such as these does not direct specific actions, but instead reviews them for overall
27 compliance.

28 Until the entirety of the elements of compliance with the Writs and Judgments in
these cases are prepared, and are submitted, and are reviewed, the Court will not know
the full scope of the issues which it will review and adjudicate or have the full context in
which to evaluate compliance with the Writs. It is a misallocation of judicial -- and party -
resources to make decisions piecemeal. Indeed, in cases as complex as these, doing
so may result in errors -- or the objectionable micro-management referred to above.
Therefore, the Court defers any comment or action on the “ZIs” until it considers the
Final Return.

1 on September 18, 2014 at 8:30 a.m.⁷ and the parties may file opposition and reply briefs
2 according to Code. If Fix the City wishes to wait until the Final Return is filed and then
3 consider its next steps, it may do so.

4 In either event, Fix the City must file a clear notice of its intentions (e.g., a revised
5 motion for leave to file its supplemental petition, or a notice that it is withdrawing its
6 motion for the present) by August 15, 2014 so that Respondents will have time to
7 prepare, serve and file any opposition in advance of the September (or other) hearing
8 date. In the event Fix the City's motion goes forward, it will need to advise whether the
9 Supplemental Petition previously filed will be the operative pleading in the event its
10 motion is granted.⁸

11
12 La Mirada seeks orders "(1) Maintaining Writ of Mandate in Full Force Until Fully
13 Complied With; (2) Compelling City to Reconsider Its Return to The Writ Issued and to
14 File an Additional Return to the Writ; (3) To Make Further Orders Necessary to the Writ;
15 and (4) For the Court to Impose a Fine of up to \$1,000 Against the City of Los Angeles
16 per CCP section 1096."

17 Respondents make several arguments in opposition to La Mirada's motions (and

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19 ⁷

20 The Court selected this date as there was recently filed another motion in the related
21 *SaveHollywood.com* case, to be heard that date. Another date can be selected, using
22 the new on-line motion reservation system. If an appropriate date is not available
through the on-line system, because CEQA actions entitled to priority, counsel should
appear ex parte to obtain another, earlier date.

23 ⁸

24 For purposes of the present decision, the documents filed by Fix the City and its
25 arguments made on June 20 are considered as Fix the City's preliminary position
26 statement on the matters at issue based on Respondents' two Initial Returns, as raising
27 issues which in Fix the City's view the Court may address as part of its continuing
28 jurisdiction to assure obedience to its orders in this case. Courts do not have their own
"eyes and ears" but rely on the parties to present issues and facts to them for
consideration and decision, of course.

29 The Court is not soliciting piecemeal adjudications; however, if any party is of the
view that some action must be reviewed prior to Respondents' full submissions with the
Final Return, then it may seek Court intervention as it believes necessary.

1 implicitly to some overlapping arguments advanced by Fix the City).

2 In considering La Mirada's requests for interim relief, the Court is guided in part by
3 the Respondents' concern that "piecemeal adjudications" are to be avoided.

4 La Mirada's first request, that the Court maintain the Writ of Mandate in force until
5 it is fully complied with, and not discharge the Writ against Respondents until it is fully
6 satisfied, viz., until the Final Return is filed and ruled on (citing *County of Inyo v. City of*
7 *Los Angeles* (1977) 71 Cal.App.3d 185, 205) is axiomatic. As discussed above, that is
8 the law and the practice, and that is the scope and extent of any court's jurisdiction over
9 compliance with writs of mandate it has issued, as confirmed by numerous cases,
10 *County of Inyo v. County of Los Angeles, supra*, among them.

11 This request is unopposed. It is clear beyond any doubt that a court has the
12 obligation to see that its orders are enforced. The issues raised and considered below
13 are good indication and reason that the motion should be granted; and this motion by La
14 Mirada is granted.⁹

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17 This set of controversies highlights that there is good cause to specify that there are
18 to be no more "initial returns," but only a single Final Return and that any petitioner may
19 file its objections to the Final Return hereafter filed by City within a specified time
20 thereafter. Because the Final Return is expected to include extensive documentation,
21 the time for filing any objections to it needs to be set accordingly. The Court will
22 therefore issue an Amended Writ of Mandate with provisions for a single further and
23 Final Return, also specifying that any party may file its objections to -- or agreements
24 with -- that single Final Return within 60 days of the date of filing of such Final Return by
25 Respondents. In addition, a provision will be added to allow any petitioner to apply to
26 the Court for an extension of time in which to file objections (or agreements) by giving ex
27 parte notice that such relief is being sought, provided that such notice shall be given at
28 least 72 hours prior to the date for the hearing of that request and that the text of any
such ex parte application to extend time be delivered to each other party at least 24
hours prior to the hearing thereon. (Even though SaveHollywood.com did not file any
objection to either Return filed to date, the same order will be made in that matter for the
same reasons.)

26 In the event Respondents believe they have need to file multiple "final" returns, or
27 any other "initial returns" they may apply ex parte to do so using the same notice and
28 hearing provisions set out above, but may not file any further interim returns without first
seeking leave of court as just noted. The Court cautions however that it will need to be
persuaded that there will be merit in any such further "piecemeal" adjudications.

1 La Mirada's second request is to order Respondents to "reconsider further" the
2 actions which they took on April 2, 2014 and on which they report in their second "Initial
3 Return" to the writ issued in this case, citing *Carmel-By-The-Sea v. Board of Supervisors*
4 (1982) 137 Cal.App.3d 964, 971, "including by ordering the City to rescind a General
5 Plan amendment adopted in furtherance of its return to the writ, and to file an additional
6 return to the writ showing actual compliance with the Court's judgment and writ."

7 There are inter-related aspects to this request. First, one must understand the
8 nature of the actions taken as set out in the April 2, 2014 Resolution adopted by
9 Respondent City Council. Second, it must be determined whether the issues raised are
10 ripe for determination at this time. If so, then third, it must be determined whether in
11 adopting that resolution Respondents acted contrary to the Writ.¹⁰

12 Respondents also contend that La Mirada is barred procedurally from raising any
13 of its contentions "because no pleading in this action" presents those claims.¹¹

14
15 ¹⁰

16 At this stage the Court need not address the argument that the April 2, 2014
17 resolution discussed in the text violates the separation of powers. The underlying matter
18 will be resolved without the need for analysis of constitutional issues. However, the
19 context in which the resolution was adopted -- its expressly stated intent to "overrule and
20 supercede" this Court's decision in this case -- is remarkable and will be noted below as
21 that stated intent gives context to the meaning of the paragraph added to the Framework
22 Element of the General Plan, and it ignores the consequences of Respondents' failure to
23 appeal from the Judgment issued in this case.

24
25 ¹¹

26 Respondents additionally argue that both La Mirada and Fix the City are barred by the
27 decision in *Saunders, et al. v. City of Los Angeles* (B232415, filed September 25, 2012)
28 from raising these and other claims as each of these petitioners was a co-petitioner in
Saunders. Respondents further argue that the holding of the Court of Appeal in
Saunders that Programs 42 and 43 of the Framework Element of the City's General Plan
are not mandatory precludes this Court from acting on the objections now raised by La
Mirada. Respondents err. The issues presented here arose after *Saunders* was
decided. Nor are the petitioners' contentions in this action barred by that decision, for
reasons discussed in the Statement of Decision issued in this case.

Further, Respondents miss the crucial point: The issue in this case is not what
may be in the Framework, but what **MUST** be in the HCPU and its EIR and related
documents. Those were not at issue in *Saunders*; among other circumstances, they did
not exist at the time *Saunders* was decided. (This was discussed in the Statement of
Decision in this case.) And, La Mirada, as a petitioner in this case, is specifically

1 This contention lacks any legal basis. Respondents elected to file "Interim
2 Returns" and any petitioner may file an objection thereto, or a motion that brings to the
3 attention of the Court any aspect of (non)compliance with the Writ for review by the
4 Court. It is the Writ which authorized both the "Interim Return" and the objection filed by
5 La Mirada. It defies logic (and law) for Respondents to exercise their obligation under
6 the Writ issued by this Court to file a return and then to object when a petitioner seeks to
7 exercise its right under the same Writ to have the Court -- which has plenary jurisdiction
8 over the matter in any event -- determine whether the action which Respondents
9 reported on in that Return violates the orders made by the same court.

10 With respect to the merits of this set of contentions, viz., to the substantive effect
11 of the actions taken by Respondent City Council, there is no dispute that on April 2,
12 2014, the City Council adopted a resolution which adds a paragraph to the Monitoring
13 and Reporting section of the Framework Element of City's General Plan which reads as
14 follows:

15
16 "The monitoring policies and programs are intended to guide the City's process of
17 updating other General Plan elements, including the City's 35 Community Plans.
18 The Framework Element does not require, and was not intended to require,
19 Community Plans themselves to contain monitoring policies or programs.
20 Furthermore, the monitoring programs discussed in *Saunders v. City of Los*
21 *Angeles* ..., i.e., Programs 42 and 43 [,] are discretionary as the *Saunders* court
22 held."

23
24
25 *empowered by the Writ of Mandate to file a response to each Return which*
26 *Respondents file, as is petitioner Fix the City, just as this Court has the statutory and*
27 *inherent authority and obligation to compel compliance to its lawful orders -- orders from*
28 *which Respondents did not appeal. See, e.g., City of Carmel-By-The-Sea v. Board of*
Supervisors, supra, 137 Cal.App.3d 964, 970 -971 (failure to appeal constitutes waiver
under most circumstances).

1 Program 42 is described in the *Saunders* opinion as an “implementation program
2 to monitor the status of development activity, capabilities of infrastructure and public
3 services to provide adequate levels of service, environmental impacts (e.g., air
4 emissions). Program 43 is described as “specifically direct[ing] the City’s Planning
5 Department to ‘[p]repare an Annual Report on Growth and Infrastructure based on the
6 results of the Monitoring Program, which will be published at the end of each fiscal year
7 and shall include information such as population estimates and an inventory of new
8 development....” (*Saunders, supra*, 2012 WL 4357444 at *2.)

9 To the extent Respondents claim that they have a right to amend the Framework
10 Element of its General Plan to make clear that Programs 42 and 43 are not mandatory,
11 they are allowed to do so by *Saunders*. It is axiomatic that, in so doing, they must act
12 lawfully. And, in so doing, Respondents must not lose sight of what the Charter of the
13 City of Los Angeles and the several applicable state laws (including but not limited to the
14 mandatory provisions of the Public Resources Code) compel Respondents to do to
15 prepare and have certified a valid HCPU and EIR, etc.

16 Focusing on the questioned April 2 action by Respondent City Council, the
17 second sentence of the quoted paragraph asserts that “The Framework Element does
18 not require, and was not intended to require, Community Plans themselves to contain
19 monitoring policies or programs.”

20 La Mirada has brought to the attention of this Court (Exhibits 17 through 34 for
21 Judicial Notice), however, that numerous Community Plans adopted by City have
22 monitoring provisions -- and that, notwithstanding Respondent City Council’s April 2,
23 2014 action¹² declaring or confirming that certain aspects of its General Plan are
24 discretionary, it had earlier adopted these individual Community Plans, each of which
25 contains a provision for monitoring and reporting. From this and other circumstances,

26 ¹²

27 Why City waited until approximately a year and half and until after issuance of the
28 Writ in this case to do what the court in *Saunders* told it on September 25, 2012 it might
do, is not directly before this Court at this time.

1 La Mirada argues that the April 2 Resolution creates a conflict within Respondents' own
2 planning laws.

3 A "whereas" clause preceding this addition makes clear that Respondents
4 expressly and unequivocally adopted the change to "overrule and supercede" this
5 Court's Judgment and Writ. In addition to ignoring that Respondents failed to appeal
6 from the Judgment in this action filed on February 11, 2014, Respondents appear also
7 to have omitted from their consideration in adopting this questioned resolution certain
8 provisions of the Charter of the City of Los Angeles, requirements of state law -- as well
9 as Respondents' long-standing practice of including monitoring elements in other
10 community plans.

11 Among the City Charter provisions that are relevant is Charter section 554 which
12 provides:

13
14 "General Plan – Purpose and Contents.

15 "The General Plan shall be a comprehensive declaration of goals, objectives,
16 policies and programs for the development of the City and shall include, where
17 applicable, diagrams, maps and text setting forth those and other features.

18 (a) Purposes. The General Plan shall serve as a guide for:

19 (1) the physical development of the City;

20 (2) the development, correlation and coordination of official regulations, controls,
21 programs and services; and

22 (3) the coordination of planning and administration by all agencies of the City
23 government, other governmental bodies and private organizations and individuals
24 involved in the development of the City.
25

26
27 **(b) Content. The General Plan shall include those elements required by**
28 **state law and any other elements determined to be appropriate by the**

1 **Council, by resolution, after considering the recommendation of the City**
2 **Planning Commission.”** (Emphasis added.)
3

4 Focusing on section (b) of this Charter provision, the first question is: How does
5 the April 2 resolution meet this City Charter mandate to “include those elements required
6 by state law...,” particularly when the prior construction of the General Plan element
7 being amended by this resolution repeatedly has been interpreted by Respondents to
8 require inclusion in Community Plans of exactly the elements the April 2 resolution
9 declares to be not required? Second, in what way does this resolution recognize the
10 mandate of Public Resources Code section 21081.6 regarding inclusion of monitoring or
11 reporting elements? Third, how is this change a mere continuance of the status quo as
12 Respondents assert?

13 At the argument on the motions, when the Court pointed out the requirements of
14 the Public Resources Code and that the *Saunders* opinion did not address the
15 application of the cited provisions of that Code, Respondents’ reply was that
16 Respondents had the right to enact the April 2 Resolution. That assertion is
17 unpersuasive for several reasons.

18 The Framework Element of Respondent City’s General Plan is intended to set
19 forth certain planning *objectives*. Those objectives are to be carried out in the individual
20 Community Plans. The Los Angeles City Charter and other previously adopted
21 community plans so provide and establish. City Charter sections 554, 556 and 558,
22 statutes -- and the several Community Plans adopted heretofore -- are among the
23 fundamental predicates for concluding that Respondents’ adoption of the new language
24 is contrary to law and to the Writ.

25 Even if the City Charter did not expressly command compliance with state law,
26 Respondents are bound to comply with the Public Resources Code, including but not
27 limited to its section 21081.6, which generally mandates exactly the elements which the
28 April 2 Resolution erroneously claims are not required. Respondents’ long-standing

1 course of conduct in including monitoring and reporting provisions in the several
2 Community Plans provides further refutation of their "status quo" claim.

3 Notwithstanding its status as a party to *Saunders*, La Mirada has the right to
4 report this new issue to this Court.

5 Respondents additionally argue that what they have done in so carefully wording
6 the April 2 Resolution is to comply with *Saunders* while not violating the Writ issued in
7 this case. That position is fraught with the concerns expressed by petitioners -- and the
8 contradictions discussed. Respondents' contention that they comply with the Writ by
9 stating that "[t]he Framework Element does not require, and was not intended to require,
10 Community Plans themselves to contain monitoring programs... (April 2 Resolution) --
11 which appears following the "whereas" clause in which Respondents declare their intent
12 to "overrule and supercede" this Court's Judgment and Writ is "too clever by half." La
13 Mirada correctly (and generously) characterizes City's action as a "semantic sleight of
14 hand," citing *Endangered Habitats League, Inc. v. County of Orange* (2005) 131
15 Cal.App.4th 777, 784. Indeed, how is City Charter section 554(b) to be understood
16 other than to *require* that the General Plan implement state law as well as any other
17 elements determined to be appropriate? It is *state law* that establishes the requirement
18 for monitoring; the City Charter requires "substantial conformance...." with state law (City
19 Charter section 556). Respondents actions of April 2 comply with neither.

20 To be clear, while it is literally true that the Framework Element need not
21 expressly mandate compliance with state law or Responent City's own Charter (as both
22 are required anyway), some planning document **MUST**. Respondents' actions in
23 previously approving the dozen or more Community Plans that contain monitoring and
24 reporting requirements are unequivocal evidence that the April 2 Resolution is ill-
25 conceived and contrary to City's long-standing acknowledgment -- and implementation --
26 of state laws. What Respondents have done is to create an inconsistency within their
27 principal planning documents, and in so doing apparently to ignore both City Charter
28 mandates and applicable state law. Respondents' argument that it is "no harm no foul"

1 because the HCPU is not specifically mentioned is devoid of merit. Respondents' stated
2 intention to "overrule and supercede" the Writ and Judgment of this Court could hardly
3 be clearer.

4 The Court elects to address this matter at this time because Respondents' actions
5 strongly indicate their view that they do not intend to comply with state law or the Orders
6 issued by this Court; and that the documents ordered to be revised in this case will be
7 materially flawed, further delaying resolution of this matter. By declaring that all
8 Community Plans do not need to include monitoring and reporting elements,
9 Respondents contradict the specific order of this Court that the Community Plan at issue
10 in this proceeding -- that the HCPU must include monitoring policies or programs, and
11 Respondents act in direct contraction to state law, the Charter of the City of Los
12 Angeles, and the Writ of Mandate issued by this Court.

13 The Court holds that that portion of the April 2 Resolution which states or implies
14 that the to-be-revised HCPU (and EIR, etc.) need not comply with the City Charter or
15 state law, including but not limited to Public Resources Code section 21081.6, is
16 contrary to law and to the Judgment and Writ issued by this Court on February 11, 2014.
17 The resolution of Respondents adopted on April 2, 2014 is demonstrably arbitrary,
18 capricious and without basis in law for these reasons and to this extent. Further, no
19 reasonable person could conclude that adoption of the April 2 Resolution made the
20 General Plan of the City of Los Angeles internally consistent; indeed the contrary is the
21 case for the reasons stated.¹³ Because the offending part of the Resolution cannot be

22 ¹³

23 Having first argued that they can do what they did in adopting the April 2
24 Resolution, Respondents then acknowledge that their actions "do[] not prevent the
25 Planning Department from also complying with a more specific reporting provision
26 contained in any individual community plan." (Opposition at 13:11-13.) Yet, the April 2
27 Resolution specifically -- and in contradiction -- states that "[t]he Framework Element
28 does not require, and was not intended to require, Community Plans themselves to
contain monitoring policies or programs." Respondents never specifically acknowledge
that they must comply with the Public Resources Code; and certainly appeared to
denied that obligation at argument. Nor do they accept their own prior and long-standing
practices. Even more telling, and as noted in the text above, is the introductory

1 severed from the balance, Respondents are therefore ordered to reconsider the April 2
2 Resolution in full.

3 To summarize: Respondents' compliance will ultimately be determined once they
4 have filed the Final Return. At this stage in this litigation it does appear, however, that
5 Respondent City Council's adoption of the April 2 resolution errs, inter alia, by
6 suggesting that it need not redraft the HCPU, its EIR and related documents to provide
7 appropriate monitoring or reporting programs; and Respondents' actions constitute a
8 misstatement and misapplication of the City Charter, state law and the February 11,
9 2014 Judgment.

10 The Court of Appeal's discussion in *County of Inyo v. City of Los Angeles* (1977)
11 71 Cal.App.3d 185, is particularly cogent in this circumstance:

12
13 "A public agency need not and should not await the compulsion of judicial decrees
14 before fulfilling the demands of CEQA. In a related context a federal court has
15 declared: 'To make faithful execution of this duty contingent upon the vigilance
16 and diligence of particular environmental plaintiffs would encourage attempts by
17 agencies to evade their important responsibilities. It is up to the agency, not the
18 public, to insure compliance with (the environmental control statute) in the first
19 instance.' (*City of Davis v. Coleman* (9th Cir. 1975) 521 F.2d 661, 678.) We indulge
20 in this deliberate dictum for two reasons: first, to avoid any implication that
21 compliance with our writ of mandate is the full measure of the Department's
22 CEQA-imposed obligations, and second, to express this court's willingness to
23 review legal sufficiency of the City's environmental report on groundwater
24 extractions even though it is included within an EIR of larger scope.

25
26 _____
27 language to the Resolution, that it is intended to "overrule and supercede" the decision
28 of this Court. Having failed to appeal this Court's decision, that course is foreclosed, at
least pending the resolution of issues that may arise on consideration of the Final
Return.

1 "We hold that the City's return to the writ of mandate issued as a result of our
2 June 1973 decision fails to comply with the writ. This court has continuing
3 jurisdiction to enforce the writ until it is fully satisfied. (Code Civ.Proc. sec. 1097;
4 *County of Inyo v. City of Los Angeles, supra*, 61 Cal.App.3d at p. 95, 132
5 Cal.Rptr. 167.) The writ is not discharged but remains in force; the City of Los
6 Angeles and its Department of Water and Power are directed to take reasonably
7 expeditious action to comply with it." *Id.*, at 204-205.

8
9 The April 2 Resolution starts Respondents off on the wrong foot. It is best to act
10 now to prevent further misallocation of resources and further, unnecessary delay.

11 Respondents may adopt any resolution they wish so long as it does not violate the
12 Writ of Mandate issued in this case, its own Charter, or state law. Respondents should
13 make operative the advice given to them by the court of appeal in *County of Inyo v. City*
14 *of Los Angeles, supra*: "A public agency need not and should not await the compulsion
15 of judicial decrees before fulfilling the demands of CEQA." *Id.*, at 204-205. It was good
16 advice when the Court of Appeal recommended it to the City of Los Angeles in *County of*
17 *Inyo*; it is equally good advice today.

18
19 Other issues. The matter has been resolved without the need to address other
20 issues presented by the parties. These include La Mirada's objection to Respondents'
21 reliance on a Notice of Exemption (that Notice is set out at Exhibit 33 to the Torgan
22 Declaration) as the means to comply with CEQA in connection with its April 2 action on
23 the Resolution of that date,¹⁴ and La Mirada's contention that Respondents err in their

24 ¹⁴

25 Respondents also err when they argue La Mirada cannot raise this issue because it
26 has not alleged a violation of this statute in its petition. This proceeding now concerns
27 the Return[s] to the Writ of Mandate issued by this Court; it is the right of any party to
28 such a proceeding to raise issues of compliance in that context. City knows this well as
 it has been the subject of such compliance examinations in the past. The examples are
 numerous, resulting in multiple published decisions of appellate courts over time in the

1 interpretation and application of Government Code section 65759.¹⁵

2 Neither petitioner is deemed to have waived any of its arguments; whether they
3 will need to be raised in connection with the Final Return is clearly unknowable at
4 present.

5 La Mirada also moves to have the Court impose the statutory fine of \$1,000 on
6 Respondents as authorized by Code of Civil Procedure section 1097. The assessment is
7 not mandatory and the Court declines to do so at this time.

8 9 **SUMMARY OF ORDERS**

10 Respondents elected not to appeal and to comply with the Judgment and Writ of
11 Mandate issued by this Court on February 11, 2014. The actions Respondents have
12 taken do not comply for the reasons set forth above.

13 The orders made above are *summarized* as follows:

14 1. Petitioner Fix the City's motion for leave to file its supplemental petition for writ
15 of mandate is early and its request to file nunc pro tunc is unnecessary. This petitioner
16 is to determine whether and how it wishes to proceed on its motion and give appropriate
17 notice by August 15, 2014. If it proceeds, the hearing is now set on September 18, 2014
18 at 8:30 a.m.

19 2. As there has not yet been presented any authority to substantiate the filing of
20 the Supplemental Petition without first obtaining leave of Court, Respondents' Motion to
21 Strike Fix the City's Supplemental Petition is granted, without prejudice. The documents

22
23 same matters, including but not limited to a matter involving Respondents and the
24 County of Inyo: *County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1; *County*
25 *of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82; *County of Inyo v. City of Los*
Angeles (1977) 71 Cal.App.3d 185; *County of Inyo v. City of Los Angeles* (1976) 61
26 Cal.App.3d 91; *County of Inyo v. Yorty* (1973), 32 Cal.App.3d 795.

27 ¹⁵

28 Thus, the Court need not resolve Respondents' claim that La Mirada filed its
challenge to the Notice of Exemption after the expiration of the 35 day statute of
limitations under Public Resources Code section 21167 and whether that statute applies
in the context of proceedings to determine compliance to a Writ of Mandate.

1 filed by Fix the City nevertheless constitute notice to the Court of certain issues requiring
2 consideration at the appropriate times to aid in determining Respondents's compliance
3 with the Writ of Mandate and Judgment.

4 3. Petitioner La Mirada's Notice of Motion and Motion for Orders: (1) Maintaining
5 Writ of Mandate in Full Force Until Fully Complied With; (2) Compelling City to
6 Reconsider Its Return to The Writ Issued and to File an Additional Return to the Writ; (3)
7 To Make Further Orders Necessary to the Writ; and (4) For the Court to Impose a Fine
8 of up to \$1,000 Against the City of Los Angeles per CCP section 1096 are ruled on as
9 follows: (1) Granted, (2) Granted, (3) Denied without prejudice and (4) Denied without
10 prejudice.

11 4. Each Writ of Mandate will be amended to clarify the timing of filing of the Final
12 Return and of objections to it, and to specify additional procedures.

13 The complete text of these orders is set forth in the body of this Ruling.

14
15 **ALLAN J. GOODMAN**
16 **JUDGE**

17 DATED: JULY 14, 2014

18 ALLAN GOODMAN
19 JUDGE OF THE SUPERIOR COURT
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