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La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles
BS 137262

Tentative decision on petition for writ of mandamus: granted

Petitioner La Mirada Avenue Neighborhood Association of Hollywood ("La Mirada") seeks administrative and traditional mandamus with respect to the approval by the City of Los Angeles ("City") of the development project commonly known as the Sunset Gordon Project (the "Project") by Real Party-in-Interest 5929 Sunset (Hollywood), LLC ("Developer"). Respondent City and Real Party Developer separately move to augment the administrative record.

The court has read and considered the moving papers, oppositions, and replies, and renders the following tentative decision.

A. Statement of the Case

Petitioner La Mirada commenced this proceeding on May 17, 2012. Petitioner filed a First Amended Petition ("FAP") on October 4, 2012 and filed the Second Amended Petition ("SAP"), the operative pleading, on May 19, 2014.

The SAP challenges the actions of Respondent City with respect to issuance of a demolition permit for the 1924 Peerless Motor Company Building at 5939 Sunset Boulevard, and issuance of other building and related permits for the Project, allegedly in violation of the CEQA and the LAMC. The SAP also challenges the failure of CRA/LA, successor to the City's former Community Redevelopment Agency.

The SAP alleges in pertinent part as follows. The Project is a proposed 23-story, 260-foot-tall, mixed-use development with approximately 305 residential units, approximately 40,000 square feet of office space, and approximately 13,500 square feet of retail space on an approximately 72,000-square-foot site in Hollywood, located at or near 5929-5945 Sunset Boulevard and 1512-1540 North Gordon Street (the "'Property"). The Property was formerly the site of the 1924 Peerless Motor Company Building, alternatively known as the Old Spaghetti Factory building ("OSF").

Preservation, rehabilitation and restoration of the OSF façade was a condition of the City's entitlements for the Project. Similarly, the Project's environmental impact report ("EIR") included conditions requiring Developer's predecessor to "retain and restore the exterior façade and various interior treatments to memorialize the social significance of this building as it relates to the development of the Hollywood area."

As part of the entitlements, Developer's predecessor requested variances to allow reductions in City parking requirements. The City's grant and the eventual judicial affirmance of these variances was based upon the "special circumstances" and "undue hardship" allegedly imposed on Developer's predecessor by its having to preserve the OSF's historic façade, exterior walls, and foundation. Notwithstanding the mandatory requirement to preserve, rehabilitate and retain the original OSF façade as part of the Project, and the multiple administrative and judicial admissions against interest concerning same, Real Party Developer began a campaign to ignore and disregard this condition of approval for the Project. Developer conducted private meetings with a private group and certain Developer staff seeking to avoid the Project condition of preserving the OSF's façade in place, and instead to completely demolish it, with a subsequent

re-creation of a faux façade. Complete demolition coupled with fabrication of an imitation façade was not analyzed in the Project EIR.

Real Party Developer applied for and obtained a full demolition permit. Commencing on or about February 21, 2012, and in violation of City law and the entitlements for the Project, Developer demolished the OSF, including its historic façade.

After Petitioner filed this lawsuit, the court denied a preliminary injunction in favor of exhaustion of administrative review of the permitting process. Petitioner then sought to comply with that requirement. Although Petitioner filed a fully-documented request for demolition/building permit review and revocation of all permits on March 27, 2013, staff of the Los Angeles Department of Building and Safety ("LADBS") spent 123 days refusing to inform counsel of the appeal fee needed. Finally, LADBS issued a determination that (1) Petitioner's papers were not filed until August 2, 2013 (when they were filed on March 27, 2013), and (2) LADBS did not err or abuse its discretion in issuing the permits because other City officials had signed off on the permit clearances. LADBS made no factual inquiry into the substantive allegations concerning issuance of the demolition/building permits.

Subsequent reviews by the City Zoning Administrator ("ZA") and the Central Area Planning Commission ("APC") resulted in an illogical, inconsistent determination. Although both the ZA and the APC found that Developer's plan check plans failed to conform with the plot plan dated March 13, 2008, and therefore the issuance of the full demolition permit was improper, the ZA and the APC failed and refused to carry out their ministerial duty to order revocation of all permits for the Project. Although the City now admits that Developer violated City ordinances and project conditions imposed on the Project, City officials persist in their unwarranted refusal under LAMC 11.02 to immediately revoke all demolition/building permits issued, and treating them as null and void.

City officials met with Real Party representatives on March 6, 2014 and informed Developer that it must now apply for three new discretionary decisions by the APC and City Council, supported by an appropriate environmental analysis, in order to develop the Project. Missing from the City's March 21, 2014 letter discussing this meeting was any action to revoke the building permits for the Project, whether pending new entitlements and environmental review process or not. In defiance of the City's laws that mandate revocation of all permits obtained as a result of non-compliant Plan Check plans, City officials on April 1, 2014 issued a supplemental building permit regarding the building's curtain wall, and on April 11, 2014 issued a supplemental building permit regarding the fourth floor office component's balcony guardrails.

The SAP's first cause of action, against the City, seeks a traditional writ of mandate voiding the demolition permits and all building and related permits issued for the Project, and suspending and halting all construction activities at the Project site, as required by LAMC section 11.02..

The second cause of action, against the City and CRA/LA, seeks a writ of mandate finding that CRA/LA's clearance of a site plan review permitting demolition of the facade constituted a substantial change to the Project after the Final EIR, necessitating further environmental review of land use impacts based on the requirements of City Ordinance No. 180,094 and other entitlements requiring preservation of the OSF facade. Petitioner seeks to set aside the building permits and an injunction to prohibit all approvals and construction on the

Project.

The third cause of action, against the City, seeks a writ of mandate under CEQA, contending that the City's action in issuing a demolition permit for the OSF facade constituted a failure to proceed in the manner required by law in that new discretionary decisions were required after further environmental review. Petitioner seeks to set aside the building permits and an injunction against the Project absent further review under CEQA.

The fourth cause of action, against CRA/LA, seeks a declaration that the Project is no longer an "enforceable obligation" under the Health and Safety Code, thus requiring Respondent CRA/LA and its Oversight Board to recover and/or withhold approximately $10.2 million from Developer and the Project.

The fifth cause of action, against the City, seeks declaratory and injunctive relief for the City's pattern and practice of failing to verify and enforce project conditions of approval before issuing permits.[1]

The sixth cause of action, against the City, seeks administrative mandamus as an alternative to the traditional mandate claim in the first cause of action.[2]

B. Standard of Review

1. The Sixth Cause of Action

The SAP's sixth cause of action is for administrative mandamus under CCP section 1094.5. *See* Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceed without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP §1094.5(c).

CCP section 1094.5 does not in its face specify which cases are subject to independent review of evidentiary findings. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Instead, that issue was left to the courts. In cases other than those requiring the court to exercise its independent judgment, the substantial evidence test applies. CCP §1094.5(c). "Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

The agency's decision at the hearing must be based on the evidence. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only

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[1]This cause of action has been stayed and will be transferred to an independent calendar court upon completion of the court's decision on causes of action two through four and six.

[2]In ruling on demurrer, the court determined that Petitioner's mandamus claim would be reviewed as administrative mandamus. The first cause of action is therefore moot.

required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Id.

An agency is presumed to have regularly performed its official duties (Ev. Code §664), and the petitioner seeking administrative mandamus therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137; Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691 ("[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion).

An administrative record is required for administrative mandamus.

2. The Other Causes of Action

The SAP's second and third causes of action allege that the CRA/LA and City, respectively, failed to proceed in accordance with law by conducting environmental review of new discretionary decisions. Where an agency acts without conducting CEQA review or providing for a public hearing in connection with approvals, Pub. Res. Code section 21168.5, which concerns any action attacking a decision of an agency for non-compliance with CEQA other than administrative mandamus under Pub.Res. Code section 21168, governs the review through traditional mandamus.

Traditional mandamus is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, (1991) 1 Cal.App.4th 495, 501-02. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

Where a duty is not ministerial and the agency has discretion, mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. A agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. In applying this very deferential test, a court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection

between those factors, the choice made, and the purposes of the enabling statute." Western States Petroleum Assn v. Superior Court, (1995) 9 Cal.4th 559, 577. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

No administrative record is required for traditional mandamus to compel performance of a ministerial duty.

C. The Motion to Augment

Developer separately moves to augment the administrative record with (1) the City Planning Department's March 21, 2014 letter to Developer stating that City Planning approval with associated environmental review of three entitlements -- Clarification of Q Condition, Tentative Tract Map Modification, and Zone Variance Plan Approval -- would be required for approval of the Project and that an application should be filed for these entitlements; (2) Developer's July 9, 2014 entitlement application; and (3) Developer's July 9, 2014 proposed Addendum to the Final EIR. The City does not oppose the motion, but Petitioner does.

The documents at issue meet the requirement of CCP section 1094.5(e) as newly developed evidence that could not with due diligence have been presented in the administrative review process. *See* Windigo Mills v. Unemployment Insurance Appeals Board, (1979) 92 Cal.App.3d 586, 596-97.

However, extra-record documents must also be relevant. Petitioner's opposition demonstrates that the record exists only for the SAP's administrative mandamus claim (sixth cause of action), and the scope of the administrative hearing concerned only the legality of the demolition and building permits for the Project. No supporting CEQA material was required because the Planning Commission did not make a discretionary project approval; it only reviewed whether the permits were lawfully issued. As a result, the Planning Commission made no CEQA findings. Subsequently, the City Attorney insisted that the record was not prepared for the CEQA claims, and only for the permit issue.

Thus, the motion to augment the record must be denied with respect to the CEQA claims, which have no administrative record. Developer does not disagree. Reply at 2. However, that fact does not mean Developer's documents, which are authenticated by declaration, should not be added to the administrative record for the permit claim, and should not otherwise be received in evidence on the CEQA claims.

Petitioner argues that none of the documents are relevant to the Planning Commission's final decision, and none are sufficient to moot the case because the City has not acted upon them. This argument may undermine the evidence, but does not make it irrelevant. The court must consider the evidence in order to decide mootness. The March 21 letter is part of Petitioner's case and Developer's attempted compliance with the letter is relevant to the material issues of whether the permits should be ordered revoked and whether CEQA compliance is required. The evidence also is relevant to any potential remedy.

The motion to augment is granted as to the administrative record for the sixth cause of action, and the evidence will be separately considered for the CEQA claims. The court will not, of course, evaluate the adequacy of any portion of the entitlement application or the Addendum.

D. Statement of Facts[3]

The facts in this case are essentially undisputed. Therefore, the court will rely on the facts set forth in its decision on the preliminary injunction without need for citation, as supplemented by the evidence from the administrative hearing.

1. The Parties

Petitioner La Mirada is an association of property owners who advocate for residential issues in Hollywood.

CRA/LA is the successor-in-interest to the City's Community Redevelopment Agency ("CRA").

Developer is the successor-in-interest to the Project's original developer, Sunset & Gordon Investors, LLC ("Sunset & Gordon"). In July 2011, Developer assumed all of Sunset & Gordon's rights and obligations under an Owner Participation Agreement which Sunset entered into with the CRA in 2007.

2. The CRA Approval

On October 18, 2007, the CRA approved the Project, including certification of the Final EIR as the lead agency under CEQA, subject to City Council approval.[4]

The Final EIR identified the Project as including "the demolition of the existing uses and the development of an 18-floor residential tower above a five-level above-grade podium structure with three to four levels of subterranean parking. The Project also "proposes a partial structural treatment plan to retain and incorporate a portion of the existing [OSF building] as a prominent design element at the corner of Sunset Boulevard and Gordon Street."

The Final EIR stated in the Project Description: "The Proposed Project included demolition of the existing uses ...." The Final EIR Cultural Resources section also stated in analyzing the impact on historic resources: "The Proposed Project includes the demolition of all existing uses on the project site..."[5]

The Final EIR noted that the OSF building is not historically significant. It also stated that "[Sunset] is exploring options to retain and restore the exterior facade and various interior

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[3]The City asks the court to judicially notice two temporary certificates of occupancy issued on September 12, 2014. The requests are granted. Ev. Code §452(c). CRA/LA asks the court to judicially notice AB 1484 and a February 17, 2012 publication from the Legislative Analyst's Office. The requests are granted. Ev. Code §452(b), (c). Petitioner's objections are overruled.

In reply, Petitioner asks the court to judicially notice various provisions of LAMC, a version of AB 1484 before enrollment and signature, and the codified Dissolution Law cited in its briefs. The requests are granted. Ev. Code §452(b).

[4]The City Council apparently approved the CRA's recommendation.

[5]The City's Vesting Map Findings further stated: "The proposed project includes the demolition of the existing uses..."

treatments of the [OSF building] or alternatively may seek other methods that would not require retention and/or restoration but would memorialize the social significance of this building as it relates to the development of the Hollywood area. Since none of the buildings located on the Project Site were deemed historically or culturally significant, demolition and/or remodel of these structures would not significantly impact any historic or cultural resource."

The Project impacts section of the Final EIR stated: "The Proposed Project would incorporate the original restaurant building facade into the new development as a beneficial design feature, preserving that portion of the building to retain its distinctive qualities and preserve local neighborhood character.

The Visual Character portion of the Final EIR stated that aesthetic impacts would be less than significant after mitigation, and the visual impacts would include a "vibrant pedestrian environment" where retail storefronts would line Sunset Boulevard and the residential character of a side street, Gordon Street, will be reinforced by the residential entry lobby to the tower on that street. "The façade of the existing [OSF building] is proposed to be retained and incorporated into the architecture of the Proposed Project."

The Final EIR did not impose any mitigation measures requiring preservation of the OSF building. However, preservation of the 1924 OSF facade avoided or mitigated a potentially significant land use impact under CEQA by making the Project consistent with the Hollywood Redevelopment Plan. See AR 1221, 1285-87.

The Final EIR's discussion of alternatives to the Proposed Project stated that Sunset & Gordon is exploring options to retain and restore the exterior facade and various interior treatments to memorialize the social significance of the OSF building. It added that "the potential exists for this retention plan to not be implemented" due to the need for an architectural solution and the need for CRA approval of a site plan. Accordingly, the alternatives section analyzed the complete demolition of the OSF building and construction of a modern architectural design for the facade. The Final EIR concluded that this alternative (the "North-South Alignment Alternative", would "generally result in the same environmental impacts as the Proposed Project for all environmental issue areas except for shade and shadow and view."

The CRA's October 26, 2007 Notice of Determination for the Project identified "demolition of three residential properties and 12,252 square feet of restaurant space [the OSF building]...." The Notice of Determination imposed no requirement to retain or preserve the OSF building facade.

4. <u>The OPA</u>

The CRA and Sunset & Gordon entered into the Owner Participation Agreement ("OPA"), which committed approximately $9.9 million of CRA funds to the $199 million Project. AR 1621. One of the six cited . " . . . .purposes for entering into the OPA was to rehabilitate elements of the 1924 building. AR 1148.

The OPA in section 4.8 required that all applications for City entitlements, "including demolition and Building permits,""shall be consistent with the [CRA] approved Project Documents." AR 1149.

OPA section 5.3.1 mandated that "The Project shall be constructed by Developer in accordance with the Scope of Development substantially in accordance with the approved Final

Construction Drawings, and in accordance with the terms and conditions of all City and other governmental approvals." AR 1150.

OPA section 5.5 required that "Developer shall cause all work performed in connection with construction of the Project to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments. . . ." AR 1150.

5. The Entitlements

Sunset & Gordon secured Project entitlements from the City, stating in testimony before the City Planning Commission that the OSF building was built for the Peerless Automotive Company as a new-car showroom in the 1920's, and the Project would "save key architectural features of the Old Spahgetti Factory building." Before the City Council, Sunset & Gordon's representatives stated "[w]e're keeping the facade structure of the Old Spaghetti Factory, so we can't remove that entire structure." In response to a question whether the variance and other exemptions were necessary in order to keep the facade, the representative answered: "Correct."

City entitlements contained this preservation and rehabilitation as a Project condition, including a general plan amendment in Ordinance No. 180094 (the "Ordinance"), which implemented a zone density change for the Project subject to Q Conditions of Approval (AR 1219, 27-28), and a Vesting Tentative Tract Map. AR 1312. The City also granted several variances for the Project, including, *inter alia*, variances for reduced residential parking ratios to one space per bedroom, reduced clear space, increased compact car spaces, and reduced open space. PAR 5443.

The Ordinance removed the density requirements for the zone from 600 square feet of lot area per unit to 400 square feet. The amended Q Condition No.7 provides:

> ""Site Plan. The use and development of the property shall be in substantial conformance with the plot plan submitted with the application and marked Exhibit B 1, dated March 13, 2008, and attached to the subject City Plan Case file. Prior to the issuance of building permits, revised, detailed development plans that show compliance with all conditions of approval.. . shall be submitted to the satisfaction of the Planning Department." AR 1228.

The Plot Plan contains plan notations stating: "Portion of Existing Building to Remain." The Demo Plan notes that large portions of the OSF walls were to be removed and demolished, and brackets pointing to the exterior OSF walls specify the "Extent Of Existing Building Façade To Be Maintained And Refurbished."

The Planning Commission upheld the Advisory Agency's approval of the Vesting Tentative Tract Map for the Project. The Advisory Agency's approval describes "the Proposed Project [as including] a partial structural treatment plan to retain and incorporate a portion of the existing 5939 Sunset Boulevard Building as a prominent design element at the corner of Sunset Boulevard and Gordon Street." In a Statement of Overriding Considerations, the Advisory Agency found that "the Project will result in significant unavoidable impacts which mitigations

and alternatives would not reduce to insignificant levels, but these impacts are overridden by "substantial community benefits" which include that the Project "promotes rehabilitation and restoration by preserving key elements of the Peerless Auto Showroom/Old Spaghetti Factory, a vintage 1924 building."

The Vesting Tentative Tract Map notes state:

> "EXISTING STRUCTURE OF OLD SPAGHETTI FACTORY BUILDING IS TO REMAIN AND BE INCORPORATED INTO NEW DEVELOPMENT (CORNER OF SUNSET AND GORDON). ALL OTHER EXISTING STRUCTURES TO THE NORTH (AT GORDON STREET) TO BE REMOVED FOR NEW DEVELOPMENT." AR 1320-21 (upper case in original).

6. La Mirada I

On August 12, 2008, Petitioner La Mirada filed a lawsuit against the City and Sunset, La Mirada I. The petition alleged the City's violation of CEQA, improper granting of variances for the Project, and improper grant of residential parking reductions. Petitioner lost.

In arguing for the parking variances at the February 4, 2009 trial of La Mirada I,, counsel for Sunset & Gordon stated that the CRA wanted the common open space to be a public park, which meant it had to be at ground level with nothing above it. Coupled with the dimensions of the site, which is only 142 feet wide, this meant that the underground parking was limited to the northern portion of the site because "we can't go all the way down to Sunset Boulevard on the side because that's where that OSF building is that they have to retain. . . ."

In their joint Respondents' brief before the court of appeals, the City and Sunset & Gordon stated: "The CRA required Sunset to retain and incorporate portions of this vintage building into the Project to fulfill Hollywood Redevelopment Plan policies that recognize, promote and support the retention, restoration and appropriate use of existing buildings having significant architectural value."

In an unpublished affirmance of the trial court's denial of the petition, the court of appeals noted that the LAMC section 12.27 sets forth the criteria for approving a variance. With respect to the variances at issue, one LAMC section 12.27 requirement is that there are special circumstances that apply to the property which do not apply to other property in the same zone or vicinity. The City found that a special circumstance existed for the Project due to the "requirement to maintain the OSF building and to incorporate it into the Project." "One illustration of the unique aspects of the Project is that maintenance of the OSF building prevents the construction of underground parking underneath this building. It was found that these circumstances are not replicated in other property in the same zone." "Other developments in the area that, unlike the Project, are not burdened with...the maintenance of a historic building and a high water table can enjoy parking facilities that comply with the norm."

7. Demolition of the OSF Building

On or about February 19, 2008, Sunset & Gordon applied for a permit for a partial demolition of the OSF. On a LADBS clearance summary worksheet, the work description was: "Partial demo of existing 15,262 square foot bldg. Walls to remain to be braced per engineering

plans and to be made part of proposed building...."

After taking over the Project from Sunset & Gordon in July 2011, Developer conducted a field report assessing the damage and deterioration of the OSF building. An engineer retained by Developer's architect opined that the OSF building's walls were extremely thick, had been seismically retrofitted, were "more prone to structural damage," vibrations due to heavy construction on the Project may damage the wall, and though the walls could be braced during construction, working around the bracing "would increase the risk of injury to construction personnel." Developer's architect then opined that the OSF building retained few of its original character-defining features, and "the preservation of the existing exterior is no longer feasible given the extent of destruction and deterioration that has occurred...due to vacancy, vandalism and exposure to weather."[6]

Developer met with a private entity, "Hollywood Heritage, Inc., a historic resources consultant, and CRA staff, resulting in an agreement that Developer would demolish the existing facade and reconstruct them in the 1920's style. Developer then submitted a December 9, 2011 request to CRA staff that it no longer be required to preserve, retain and rehabilitate the original OSF facade as required by the City and CRA entitlements. Instead, it would remove and store four large wood trusses and a fireplace mantel, demolish and reconstruct the facade in 1920's style, and return the trusses and mantel to the ground floor retail portion of the building in their approximate existing locations. The reconstructed OSF building would occupy the same footprint and be of the exact size as the original 1920's Peerless Auto building that eventually became the OSF building.

A City Planning Department ("City Planning") worker issued a clearance on December 16, 2011 for "partial demo of existing walls."

The CRA approved the full demolition on December 20, 2011. A December 22, 2011 plot plan ("December Plot Plan") states that a demolition permit was "ready to issue" with the removal of "existing interior and exterior building walls. The December Plot Plan had been prepared by Developer's architect in September 2011.

Developer's permit expediter processed a permit through LADBS described as a "supplemental to permit," with a change in the work description to included complete demolition. A LADBS clearance summary worksheet describes Developer's application for a demolition permit as "SUPPLEMENTAL TO PERMIT #08016-30000-00311 TO DEMO THE ENTIRE BUILDING - CLEAR THE LOT." No clearance from City Planning was obtained.

Developer received a partial demolition permit for the OSF building on January 18, 2012. On January 30, 2012, Developer received a full demolition permit from LADBS for the entire OSF building.

In mid-February 2011, Developer's permit expediter was informed by LADBS that clearances from City Planning must be obtained for the supplemental permit. The expediter explained to City Planning that the December 2011 Plan showed full demolition of the OSF

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[6]In September 2011, two permit applications for full demolition for the Project at the property's side street address (Gordon Street) were submitted and voided as generated in error by LADBS's plan checker. In connection with these applications, Developer's architect prepared a plot plan in September 2011 showing full demolition of the OSF building.

building walls, and CRA staff also had cleared full demolition. On February 22, 2012, Developer obtained a cleared full demolition permit.[7]

Petitioner La Mirada learned of the application for the full demolition permit on or about February 20, 2012. The following morning, La Mirada's attorney sent a letter to various City personnel objecting to issuance of a full demolition permit.

On February 21, 2012, the trusses and mantel from the OSF building were salvaged, removed, and stored off-site. Developer began demolition on the morning of February 21, 2012 and continued until 9:45 p.m. Demolition began again and was completed on the morning of February 22, 2012. The entire OSF building, including its façade, was demolished.

8. The Rescission of, and Final Clearance for, Demolition

There had been no supplemental CEQA review of the full demolition. Nor had the City or CRA entitlements been amended to eliminate retention and rehabilitation of the façade.

On the morning of February 22, 2012, after demolition had occurred, a LADBS job site inspector overseeing the Project informed Petitioner La Mirada that no permit for complete demolition had been cleared. The inspector said that Developer could not demolish the OSF building, and that he was "on top of it."

After Petitioner complained, in early March 2012 City Planning and CRA/LA rescinded their clearances of the full demolition permit pending internal review of its validity. Developer's permit expediter explained that the December Plot Plan showed full demolition of OSF building, but the work description for the permit did not show full demolition. On April 25, 2012, after the demolition was complete, City Planning and CRA/LA cleared the demolition permit.

9. The Bell Memo

In July 2012, a Deputy City Planning Director authored a memo (the "Bell memo") regarding the issuance of building permit clearances for the Project. AR 3905-06. The memo noted that the Project was designed with a two-level podium atop the OSF building, set back from the existing facade by 20 feet so as not to obscure or overwhelm it. The residential tower was designed to be on top of the podium set back a total of 55 feet from the facade. The memo noted that the entitlements for the Project included Condition No. 7, which required that "the use and development of the property shall be in substantial conformance with the plot plan submitted with the application and marked Exhibit B1." Exhibit B1 shows a notation that reads: "Portion of Existing Building to Remain." The memo concluded that the plot plan contains no clear indication as to what portion should remain. As the Project as cleared involves preservation of the "salvageable" portions of the building, "detailed analysis" showed the building had deteriorated, and the facade will be reconstructed, the memo concluded that the demolition substantially conforms to the approved plot plan.

There remained the issue of whether variances were issued in reliance on preservation of the facade. The memo concluded that reconstruction of the OSF building presents the same set of unique circumstances and individual hardship as did retention of the facade. The arrangement

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[7]A LADBS property activity report shows no clearance from City Planning at the time of the demolition.

of a podium, tower, and facade all render subterranean area obsolete for purposes of parking, and these structural issues exist regardless of preservation versus reconstruction. The variances related to parking remain necessary.

10. The Preliminary Injunction Motion

Petitioner La Mirada filed this lawsuit and the court heard Petitioner's motion for preliminary injunction on January 17, 2013.

The court found that preservation of the OSF facade was a Project condition of approval and that "when Developer submitted non-conforming plans providing for the full demolition of the OSF building, the CRA and City Planning staff had a ministerial duty to reject the plans so as to enforce the plain language of the conditions of approval." The court did not accept the argument in the July 2012 Bell memo that Exhibit B1 contained no clear indication as to what portion of the facade should remain. The court agreed with La Mirada that the plan notations on the vesting tentative tract map and Exhibit B1 were plain and unambiguous. The court must "presume the Legislature meant what it said, and the plain meaning of the statute controls." Committee for Green Foothills v. Santa Clara County Bd. of Supervisors, (2010) 48 Cal.4th 32, 45. These notations showed that the existing facade would be retained. If there were any question, City Planning could have consulted the notes attached to the plot plan.

The court also did not accept the conclusion in the Bell memo that full demolition substantially complied with the approved plot plan. As La Mirada argued, there is a material difference between restoration and reconstruction. Reconstruction does not constitute substantial compliance with the requirement that the OSF building facade be retained. Nor did the court agree with the Bell memo that Developer presented a "detailed analysis" showing the building had deteriorated. The analysis consisted of self-serving opinions such as that of Developer's architect, and its engineer's concern that workers would be at risk of injury from bracing the wall. These opinions were created after Developer decided it wanted to demolish the wall, and appeared mere bootstrapping efforts to obtain that result.

Based on the evidence presented, La Mirada showed a reasonable probability of success on that portion of its first cause of action asserting that preservation and retention of the OSF building facade was a condition of approval, and that demolition of the OSF building facade constituted a "violation of [a] valid condition imposed" by the City. Thus, when Developer submitted non-conforming plans providing for the full demolition of the OSF building, the CRA and City Planning staff had a ministerial duty to reject the plans so as to enforce the plain language of the conditions of approval. *See* Terminal Plaza Corp. v. City and County of San Francisco, ("Terminal Plaza") (1986) 186 Cal.App.3d 814, 834-35 (San Francisco staff had no authority to ignore the unambiguous wording of development project conditions).

The court nonetheless denied the preliminary injunction, in part based on Petitioner's failure to exhaust the administrative review of the permitting process.[8]

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[8]LADBS has the power to enforce all ordinances and laws relating to the construction, alteration, repair and demolition, or removal of buildings in the City. LAMC §98.0403(a).1. An aggrieved person may appeal to LADBS from any action or failure concerning its enforcement power. LAMC §98.0403.2(a). If the aggrieved person is not satisfied with LADBS's

11. The Administrative Appeal

Petitioner followed the court's direction and filed its administrative challenge to the issuance of all permits for the Project on March 28, 2013. AR 1041-60. After four months, LADBS issued its determination letter on August 9, 2013 denying the appeal on the basis that it did not err because CRA and City Planning issued the permit sign-offs. AR 954-58.

Petitioner requested further review to the Planning Director. The review was heard by a Zoning Administrator ("ZA"), as designee of the Planning Director, in a public hearing on October 8, 2013.

The ZA' s November 15, 2013 determination letter found that LADBS had erred or abused its discretion in issuing the full demolition permits, and overturned the Deputy Director's finding of substantial conformance. The ZA invalidated the full demolition permits because they did not substantially comply with the approved site plan to preserve the OSF facade. AR 1765. The site plan clearly called for retention of the facade, not replacement, and Developer did not do so. AR 1765. Developer had a procedure available to it to demolish the structure and replace the facade, which was to apply for Clarification of the Q Classification, and never made use of this procedure. AR 1766-67.

The ZA found, however, that the building permits and the partial demolition permit were valid because the constructed aspects of the Project were built in conformance with the approved plans, which call for a replacement facade. AR 1767.[9] The development is in substantial conformance with the approved plans as discussed in the Bell memo and the filing and approval of a Clarification of Q Conditions will remedy the error of granting a full demolition permit on the Project and correct the Plot Plan's reference to retention of the former facade. Ibid.

Petitioner then appealed the ZA determination to the Central Area Planning Commission ("Area Planning Commission"). AR 2454-72. After hearings on January 14 and February 11, 2014, the Area Planning Commission upheld the ZA determination. The Area Planning Commission found that LADBS had erred or abused its discretion in issuing the Full Demo Permits, and upheld the ZA determination that building permits were validly issued. AR 3888-89.

12. Post-Administrative Decision Developments

The ZA also found, and the Area Planning Commission agreed, that additional discretionary approvals would be needed for the underlying approvals regarding retention of the OSF façade. To that end, Developer met with City Planning on March 6, 2014 to discuss what specific applications to prepare. By letter dated March 21, 2014, City Planning instructed

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determination, it may appeal to the Director of City Planning. LAMC §12.26(K). An aggrieved person may appeal the Director's decision to the City Planning Commission on a matter of City-wide impact, and to the Area Planning Commission on all other matters. LAMC §12.26(K)(6). The matter must be set for hearing and evidence taken. LAMC §12.26(K)(7).

[9]The ZA performed a field check of the Project site, inspected and compared the construction to the Approved Site Plan and found that "[t]he proposed project plans were fully complied with except for the demolition of the façade of the existing structure." AR 1767.

Developer to prepare and file the following materials: (a) Clarification of Q Condition to revise zone change conditions regarding retention of the OSF façade; (b) Tract Map Modification to revise map references regarding retention of the OSF façade; (c) Plan Approval to previously-issued variances; and (d) Environmental Clearance. Comer Decl., Ex. B, §1.

Recently, Developer filed with the City the required applications and a proposed Addendum to the previously-certified Final EIR addressing the potential CEQA impacts of demolishing the OSF façade and reconstructing the 1920's PMB in its place. Id., Ex.B, §7.

On July 17, 2012, building permits were issued for the Project. Construction commenced and construction proceeded regularly until completed. On September 12, 2014, the City issued Temporary Certificates of Occupancy for the public park and the tower and parking structure. RJN, Exs. A, B.

E. Analysis

Petitioner La Mirada seeks mandamus to compel the City to revoke the building permits and enjoin Developer from conducting any further construction activities on the Project due to alleged violations of CEQA and City law in the demolition of the OSF building, including its facade. Petitioner also seeks to compel CRA/LA to terminate the OPA and recover all funds transferred to the Project for the benefit of the taxing entities and public. Mot. at 22.

1. Mootness

The City and Real Party Developer (collectively, "Respondents") note that the Project is completed and temporary certificates of occupancy have been issued, and argue any claims challenging the approvals or CEQA compliance for the Project are moot. "A project's completion also moots requests to set aside or rescind resolutions authorizing the project. Roscoe v. Goodale, (1951) 105 Cal.App.2d 271, 273 (completion of improvements to sewage and water system rendered moot petitioner's request to rescind city council resolution under which work was carried out). *See* Santa Monica Baykeeper v. City of Malibu (2011)193 Cal.App.4th 1538, 1550 (construction impacts were moot after the construction phase ended). Project completion also moots an action seeking to require preparation of an EIR for a particular project. *See* Nixon v. County of Los Angeles, (1974) 38 Cal.App.3d 370, 378-379 (cutting down of trees for first phase of project rendered moot request for writ of mandate to compel preparation of EIR for that phase). Resp. Opp. at 13-14.

A case is moot when any ruling by a court can have no practical impact or provide effectual relief. Woodward Park Homeowners Assn. v. Garreks, Inc., ("Woodward Park") (2000) 77 Cal.App.4th 880, 888 (citation omitted). As Respondents acknowledge (Resp. Opp. at 14), a case will not be considered moot where a writ of mandate compelling preparation of an EIR could result in project revisions or the removal of the project altogether. Woodward Park Homeowners Assn. v. Garreks, Inc., ("Woodward Park") (2000) 77 Cal.App.4th 880, 888.

Respondents note that Woodward Park concerned an entire car wash project approved and built without CEQA review and the environmental impacts of the entire structure, its construction, and operation were at-issue. In contrast, Petitioner La Mirada has never alleged that any portion or component of the constructed 22-story Project, other than the reconstructed facade, violates any ordinance or condition of approval, or is a substantial change from the

previously-certified EIR. Nor has La Mirada asserted that operational impacts of the completed Project require CEQA review. Resp. Opp. at 14.

In this circumstance, Respondents contend the case is moot. They note that the court cannot order restoration of the demolished OSF façade, a court ruling invalidating the Full Demo Permits is of no utility because the City already has done so, and a court ruling invalidating the building permits would have not provide effectual relief because the building is complete and temporary certificates of occupancy issued. Finally, a court order to comply with CEQA by addressing the environmental impacts from demolition of the OSF façade and the potential impacts (if any) of recreating the 1920's facade in its place would have no practical impact because the City is already doing so. Resp. Opp. at 14.

The case is not moot. As Petitioner argues (Reply at 9-10), construction for the Project is complete, but the Project itself is not. The City is requiring amendments to the Project entitlements and additional environmental review. Temporary occupancy permits have been issued, but not a final certificate of occupancy. Nullification of the building permits would prevent or require revocation of a final certificate of occupancy.

Just as in Woodward Park, where the developer made a calculated business decision to continue construction on the project in the face of a CEQA challenge, Developer continued construction of the Project at its own peril after Petitioner La Mirada filed the lawsuit. The entitlements for the Project, particularly the variances, were issued because they were necessary in order to maintain the facade. Without the facade, the variances may no longer be warranted or may be modified. If the permits are voided, Developer might have to modify the Project, or even remove some portion of the improvements. This is the consequence of its business decision to continue construction. Environmental review also could result in modification of the project to mitigate adverse impacts from lack of parking. The City has required this environmental review, but a determination that the building permits are void has meaning.

Despite completion of the construction and issuance of temporary occupancy permits, none of Petitioner's claims are moot.

2. The Plan Required Retention of the Facade

The Project is an 18-story residential tower above a five-level podium with a portion of the OSF building as a prominent design. The OSF building was not an historic resource, but preservation of the facade avoided or mitigated a potentially significant land use impact under CEQA by making the Project consistent with the Hollywood Redevelopment Plan.

Both Sunset and the City initially were unsure whether the building facade would be kept and restored. The plan was to incorporate the original facade into the new development, with the existing facade *proposed* to be retained. The Final EIR makes plain that demolition of the entire OSF building was a real possibility, and that Sunset was exploring options of either retaining and restoring the facade or of otherwise memorializing the building's social significance.

Although the parties were unsure whether the facade would be retained when preparing the Final EIR, Sunset & Gordon chose to do so. Sunset & Gordon's representative stated to the Planning Commission that the existing facade would be kept, and that the variances and other exemptions were necessary in order to do so. The entitlements included a Vesting Tentative Tract Map with notes requiring preservation and retention of the OSF building façade, as did the

Ordinance amending the zoning map of the City to permit the Project conditioned on compliance with Q Condition No. 7, which stated that the site plan had to conform substantially to Exhibit B1. In turn, Exhibit B1 stated that the original facade of the OSF would be preserved in place.

Subsequently, Sunset & Gordon and the City both represented to the court of appeals in the La Mirada I litigation that the OSF building's facade would be maintained in order to promote the Hollywood Redevelopment Plan policy of retaining and restoring existing buildings with significant architectural value. The appellate court relied on this argument in concluding that the Project's variances were supported under LAMC section 12.27.

Once Developer acquired Sunset & Gordon's rights and obligations for the Project, it relatively quickly decided that it did not want to preserve the OSF building facade. In a weak and unsupported opinion, Developer's architect concluded that retention of the facade was not feasible. Developer then worked with the City and a private Hollywood historical heritage entity to demolish the entire facade and rebuild it as part of the construction. A demolition permit was issued for that task only after considerable confusion by LADBS. Ultimately, after-the-fact clearance for the demolition was obtained from City Planning.

Petitioner argues that counsel's comments at the La Mirada I trial judicially estop the City and Developer from claiming that preservation of the OSF facade was not required, the City and Developer are collaterally estopped by the ZA and Area Planning Commission decisions from contending that the demolition permits were invalid as not supported by Plan Check plans conforming with the plot plan, and the City's March 21, 2014 letter admits that further discretionary approvals supported by new environmental review are required. Mot. at 11-14; Reply at 2-3, 11.

Estoppel in any form is not required because these facts are undisputed. The plan notations on the Vesting Tentative Tract Map (AR 1312-18, 1320-21) and Exhibit B1 (AR 1242-46) requiring preservation of the facade are plain and unambiguous. Respondents admit that the Approved Site Plan required Developer to retain the OSF facade and the demolition violated the Ordinance and the Vesting Tentative Tract Map. Respondents properly contend that the issue is one of remedy: whether the failure necessitates revoking every permit for the Project and nullifying the OPA. Resp. Opp. at 15.

3. The Permits Are Void

Given that the demolition permit violated the Ordinance, the issue becomes whether issuance of the building permits also violated the Ordinance. This requires interpretation and application of Ordinance Q Condition No. 7 and LAMC sections 11.02 and 12.29.

The Area Planning Commission upheld the ZA's determination, concluding that the permits authorizing full demolition of the OSF were improperly granted, but that LADBS did not err or abuse its discretion in issuing the partial demolition permit (AR 3888), the main building permit (AR 3888), and all other ancillary permits (AR 3888) in conjunction with construction and use of the Project. AR 3888 (Determination 4(b). The Area Planning Commission found that partial demolition was a condition of approval of the Project. AR 3904. As to the main building permit, it found that "the proposed project plans were fully complied with except for the demolition of the facade of the [OSF]." AR 3907. With respect to the many ancillary building permits, the Area Planning Commission concluded they were not issued in error because "these

permits have no bearing on the demolition of the Old Spaghetti Factory Building." AR 3888 (Determination 4(a)).

Q Condition No.7 provides that "[t]he use and development of the property shall be in substantial conformance" with the plot plan and Exhibit B1, and compliance with all conditions of approval shall occur "[p]rior to the issuance of building permits." AR 1228 (emphasis added).

LAMC section 11.02 provides in pertinent part:

> "Notwithstanding any other provisions of this Code or any other ordinance of the City of Los Angeles, no permit or license shall be issued in violation of any provisions of this Code or any other ordinance of the City of Los Angeles; if any permit or license is issued in violation of any provision of this Code or any other ordinance of the City of Los Angeles the same shall be void. Any permit or license issued, which purports to authorize the doing of any act prohibited by any other provision of this Code or any other ordinance of the City of Los Angeles, shall be void."
> AR 2474 (emphasis added).

LAMC section 12.29 provides:

> "A variance, conditional use, adjustment, public benefit or other quasi-judicial approval, or any conditional approval granted by the Director, pursuant to the authority of this chapter shall become effective upon utilization of any portion of the privilege, and the owner and applicant shall immediately comply with its conditions. The violation of any valid condition imposed by the Director, Zoning Administrator, Area Planning Commission, City Planning Commission or City Council in connection with the granting of any action taken pursuant to the authority of this chapter, shall constitute a violation of this chapter and shall be subject to the same penalties as any other violation of this Code."
> AR 2474 (emphasis added).

Thus, Q Condition No. 7 required Developer to substantially conform to the plot plan and Exhibit B1 in order to obtain any building permit, whether for demolition, construction, or occupancy. The failure to substantially conform with Exhibit B1 is a violation of a condition imposed by the City Council in the Ordinance and under LAMC section 12.29. Any permit issued in violation of the Ordinance and LAMC section 12.29 is void under section 11.02.

Petitioner calls the Area Planning Commission's decision that the full demolition permit is void but the building and other permits are not -- improper piecemealing of the demolition permit from the remaining permits (Reply at 5), and the court agrees. Q Condition No.7 required substantial compliance with Exhibit B1 in order for Developer to obtain any building permits, not just a full demolition permit. The undisputed facts show that Developer did not do so, and

the City violated the conditions of approval by issuing a demolition permit for the entire OSF building and subsequent building and temporary occupancy permits. The Area Planning Commission had no authority to ignore the Project conditions of approval enacted in the Ordinance and incorporated into the Vesting Tentative Tract Map. Once the Area Planning Commission found that the Plan Check plans failed to conform with Exhibit B1, the plain language of Q Condition 7 -- "[p]rior to the issuance of building permits...detailed development plans that show compliance with all conditions of approval...shall be submitted to the satisfaction of the Planning Department" -- required revocation of all permits.

Terminal Plaza is directly on point in holding that San Francisco city staff had no authority to ignore the unambiguous wording of development project conditions and the agency's interpretation contrary to the words used in the condition was entitled to no deference:

> "There is no room for the Zoning Administrator to interpret the resolution contrary to its express terms, and we do not read [code sections that grant general enforcement authority] so broadly as to grant the Zoning Administrator this remarkable authority. That the administrator may choose among various enforcement mechanisms to secure compliance with the Code, does not grant him authority to ignore the express requirement of the condition adopted by the Commission. This particularly is the case where the condition is for the public benefit." 186 Cal.App.3d at 834.[10]

Similar to the city staff in Terminal Plaza, the Area Planning Commission had no discretion to evade the Project conditions of approval. The Planning Commission was required to revoke all permits in accordance with Q Condition No. 7. No permit could properly issue until Developer applied for the new discretionary decisions to modify the Project, and if the City and CRA/LA approved those new discretionary entitlements along with associated CEQA review. *See* Mot. at 14-15.

Respondents make three arguments in opposition: (1) the Ordinance's Q Condition No. 7 grants the City discretion to decide whether a permit is in substantial conformance with the Approved Site Plan; (2) the City properly exercised this discretion to conclude that the building permits do not violate Q Condition 7; and (3) the City has discretion to implement the chosen remedies.

a. The Planning Commission Improperly Exercised Its Discretion Under Q Condition No. 7

Respondents argue that Q Condition No. 7 has two requirements: 1) that the property be developed in substantial conformance with the Approved Site Plan (Exhibit B1); and 2) that prior to the issuance of building permits, revised plans must be submitted that show compliance with all conditions of approval... "to the satisfaction of the Planning Department." Respondents note that LAMC section 11.02 only applies if a permit issued for the project fails to "substantially

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[10]The City and Sunset & Gordon have admitted that the facade served a public benefit of architectural preservation.

conform" to all conditions. LAMC section 12.29 requires compliance with the conditions imposed by the Director of Planning in any quasi-judicial approval. The only condition of approval relevant to LAMC section 12.29 is Q Condition No. 7; Petitioner does not show that the Vesting Tentative Tract Map is within the scope of LAMC section 12.29.

According to Respondents, "substantial conformance" is an ambiguous term and is not defined in the City's codes, ordinances, or policies. The plain meaning of "substantial" is "being largely but not wholly that which is specified." Merriam Webster's Collegiate Dictionary, 10th ed. Thus, conformance with the Approved Site Plan (Exhibit B1) need not be whole or complete conformance, but only largely conforming. The very nature of a substantial conformance determination in the context of Q Condition No. 7 requires some exercise of discretion by the decision-maker to determine whether the permit in question is largely in conformance with the Approved Site Plan. The Approved Site Plan covers half a city block, reaches 23 stories in the sky, comprises approximately 334,432 square feet, involves multiple land uses, and includes a notation stating "portions of existing building to remain" and pointing to the façade of the ground floor of an 8,500 square-foot building, which is itself of no historic importance. Q Condition No. 7 is merely one of multiple conditions in the Ordinance. Consequently, the determination whether a given permit substantially conforms to the Approved Site Plan is an exercise of discretion involving the interpretation of the City's own ordinances and considering the totality of the circumstances to which the City should be given deference. Resp. Opp. at 6-7.[11]

The court agrees that Q Condition No. 7 requires only substantial conformance with the plot plan (Exhibit B1), that the Area Planning Commission has discretion in concluding whether there was substantial conformance with Exhibit B1, and that this determination may be made based on the totality of circumstances. However, that does not mean that the Area Planning Commission can ignore preservation of the facade, which Sunset & Gordon repeatedly relied on as necessary to obtain variances for the Project, including reduced residential parking ratios to one space per bedroom, reduced clear space, increased compact car spaces, and reduced open space.

The term "substantial conformance" is not defined in the LAMC, and no party's brief cites pertinent case law on the phrase. Nonetheless, "substantial compliance" is a well-defined concept which requires some compliance with every element of a legally-imposed requirement.[12] Q Condition No. 7 required compliance with Exhibit B1, and facade preservation was a material requirement in Exhibit B1. Yet, Developer wholly failed to comply with Exhibit B1's statement that the original facade of the OSF would be preserved in place. The argument of substantial

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[11]According to Respondents, Terminal Plaza is not directly on point but is instructive because the city and county resolution for the developer to build a pedestrianway to accommodate increased foot traffic was clear, while Q Condition No. 7 is ambiguous on whether any given permit is in substantial conformance with the Project's site plan. Resp. Opp. at 7-8.

[12]In contract law, "substantial performance" means performance such that the promisee gets practically what the contract calls for. 1 Witkin, Summary of California Law, (10th ed.) §818, p.908.

compliance only could be made if there were some, but incomplete, efforts at preservation. The doctrine does not apply where there was none.

The scope of the Project does not affect this conclusion. It is true that the 23 story, 334,432 square foot Project is large, and the façade, which was itself not of historic importance, was just a piece. But this is not a situation where a piece of construction substantially conforms with the overall construction plan. This is a circumstance where a material portion of the Project relied upon to obtain variances was not performed.

b. The Planning Commission Improperly Exercised its Discretion

Respondents also argue that LAMC section 11.02 did not mandate that the Area Planning Commission nullify and revoke the building permits because it acted within its discretion to treat the Full Demo Permits differently from the building permits. *See* Adams Point Preservation Society v. City of Oakland, (1987) 192 Cal.App.3d 203, 207-08 (demolition of existing dwelling was separte project from anticipated construction of another building under CEQA). The Full Demo Permits concerned only demolition of the OSF façade, while the other building permits concern construction of the 22-story, mixed-use tower, the excavation of a subterranean parking garage, and the construction of a public park. The Area Planning Commission properly exercised its discretion to separate treatment of the permits because it found that the constructed elements of the Project were in full conformance with the applicable portions of the Approved Site Plan. Resp. Opp. at 8-9.

The problem with Respondents' argument is that the Area Planning Commission had no discretion to ignore preservation of the facade as a condition of approval as stated *supra*. As it had no discretion to fail to require some compliance with facade preservation, all permits are void.

c. The City's Discretion on the Remedies Imposed

Respondents argue that the City has chosen a remedy for the violation. A municipality has full authority to fashion a reasonable and equitable remedy to correct errors and protect the rights of a permit-holder when the municipality inadvertently acts contrary to its regulation. Riggs v. City of Oxnard (1984) 154 CaLApp.3d 526. Municipalities have wide discretion regarding the manner in which they enforce their zoning code, and mandamus will not issue to compel that discretion be exercised in a particular way. Id. at 530.

La Mirada's petition asks the court to order the City to revoke all permits for an alleged violation of City ordinance where the alleged violation is not serious. The issue is not a prohibited land use, but instead is a requirement to retain a portion of a non-historical façade printed on the Approved Site Plan attached to a Project-specific zone change ordinance set of conditions. The City has the discretionary power to fashion an equitable land use remedy for this violation.

City Planning determined that the appropriate remedy is to require that the Project approvals be modified with accompanying CEQA Review. Comer Decl., Ex.A. Developer has filing the requisite applications and submitting a proposed Addendum to the previously-certified Final EIR. Comer Decl., Ex.B. Thus, the City did enforce the applicable ordinances and prescribed a remedy for that error, and its discretion exercise should not be overturned. Resp.

Opp. at 11.

Again, the court agrees that the City has discretion with respect to remedy. No one, not even Petitioner, is contending that the Project must be torn down. But as stated *supra*, the entitlements for the Project, particularly the variances, were issued because they were necessary in order to maintain the facade. Without the facade, the variances may no longer be warranted or may be modified. With the permits voided, the City has discretion as to what to require from Developer, which might have to modify the Project or provide parking alternatives.

4. Violation of CEQA

Petitioner's CEQA claims (second and third causes of action) argue that CRA/LA, and the City as responsible agency, violated CEQA when they and/or their staff concurred in Developer's change to the Project in a way that triggered potentially significant new environmental impacts that were not disclosed, studied or mitigated in a subsequent EIR. A subsequent EIR is required under CEQA Guideline section 15162(c) when there are substantial changes in a project. According to Petitioner, when Developer proposed demolishing the OSF building facade, City staff was required to prepare a subsequent EIR examining the new impacts, potential mitigation, and project alternatives that would have then become feasible.

In its preliminary injunction ruling, the court stated that the problem with La Mirada's CEQA argument is that the Final EIR considered both the Project, which would retain the OSF building facade, and the alternative of full demolition and replacement of the facade. The Final EIR's project description expressly contemplated the possibility of facade "memorialization" in lieu of retention. More important, the Final EIR considered the alternative of demolishing the building facade as part of the North/South configuration, and concluded that the alternative would have the same environmental impacts as retaining the facade (absent impacts of shade, shadow, and view peculiar to the North-South alignment). As the Final EIR considered the environmental impacts from demolition of the OSF building facade, no further environmental impact analysis may be performed. *See* American Canyon Community United for Responsible Growth v. City of American Canyon, (2006) 145 Cal. App. 4th 1062, 1072 (agencies are prohibited from requiring further environmental review unless the conditions stated in Pub. Res. section 21166 are met).

Petitioner's moving papers that the preliminary injunction ruling is not accurate because the Final EIR referred to full demolition of the facade only in connection with an alternative to the Project. By definition, an alternatives analysis is less detailed than for a proposed project. *See* Guidelines §15126.6(d) ("If an alternative would cause one or more significant effects in addition to those caused by the project as proposed, the significant . . .effects of the alternative shall be discussed, but in less detail that the significant effects of the project as proposed"). Nor did the Final EIR properly analyze land use conflicts that demolition of the facade could cause with respect to policies of the Hollywood Redevelopment Plan, which include "Preservation, Rehabilitation and Retention of Properties." *See, e.g.*, Pocket Protectors v. City of Sacramento, ("Pocket Protectors") (2004) 124 Cal.App.4th 903, 929 (finding "potential significant effects on the environment as to City land use policies and regulations"). Mot. at 15-16.

According to Petitioner, the Final EIR's discussion of the North/South configuration, including full removal of the facade with a completely modern architectural design without

re-creation of the facade. PAR 4030-31. Thus, neither the adopted Project nor any of the alternatives analyzed the impacts and mitigation options available if Developer no longer had the "hardship" of being unable to excavate beneath the OSF site to provide the LAMC-required parking. The Final EIR imposed no mitigation measures requiring retention of the facade, and mitigation measures found not feasible in the Final EIR might now be so, including measures concerning the significant parking impacts from the Project. PAR 3624, 3962. This is particularly true in light of Sunset & Gordon's contention that preservation of the facade prevented construction of underground parking and compelled the need for a parking variance.

These are persuasive arguments that the Final EIR's analysis of the alternative of facade demolition was inadequate with respect to inconsistency with the Hollywood Redevelopment plan's policies of preservation, as well as land use impacts and potential mitigations without the facade. Nonetheless, the Final EIR contemplated this demolition and inadequate or not, may not be challenged now absent substantial changes to the Project or the circumstances under which the Project is undertaken. Pub. Res. Code §21166; Guidelines §15162(a).

Petitioner argues that Developer created just such a substantial change to the Project by demolishing the facade in violation of the Ordinance and Q Condition No. 7, which the City Council found in part was necessary "to prevent or mitigate the potential adverse environmental effects of the subject recommendation action." AR 1219. In other words, demolition of the facade may have been considered in the Final EIR, but a violation of Q Condition No. 7 was not. Because demolition of the facade conflicted with the Ordinance, which was adopted in part to mitigate environmental effects, new environmental review is required. *See* Pocket Protectors, *supra*, 124 Cal.App.4th at 929-36 (evidence of violation of regulation adopted to mitigate environmental impacts required preparation of EIR). To change the Project, the City and CRA/LA were required to prepare subsequent environmental review and go through a public discretionary approval process before permitting the changes.

The court agrees, and the City does not disagree, as reflected in its March 21, 2014 letter. The City acknowledges that further environmental review is required and has directed Developer to prepare an "Environmental Clearance." In response, Developer filed with the City a proposed Addendum to the Final EIR addressing the potential CEQA impacts of demolishing the OSF façade and reconstructing the 1920's PMB in its place.

The second and third causes of action are granted; new environmental review is required. Is the proposed Addendum adequate? A subsequent EIR is required if the substantial changes require major revisions to the Final EIR. Guidelines §15162(a). A supplement to an EIR is permitted where only minor changes are necessary to make the previous EIR adequate. Guidelines §15163. An addendum is permitted if some changes are necessary, but there has been no substantial change in circumstance as described in Guidelines section 15162. Guidelines §15164(a). An addendum need not be circulated for public review, but the decision-making body shall consider the addendum prior to making a decision on the project. Guidelines §15164(c), (d).

It is unlikely that the proposed addendum will suffice, as the violation of the Ordinance can only be described as a substantial change to the Project. Nonetheless, the City has not exercised its discretion on the adequacy of Developer's proposed environmental review, and the issue is not ripe for judicial review.

5. CRA/LA Has No Duty to Terminate the OPA

As of February 1, 2012, under the Redevelopment Dissolution Law ("Dissolution Law") redevelopment agencies were abolished and those powers not "repealed, restricted, or revised" were transferred to the Successor Agency of each former RDA. Health & Safety ("H &S") Code §34175. The Dissolution Law "[r]equire[s] successor agencies to expeditiously wind down the affairs of the dissolved [RDAs] and to provide the successor agencies with limited authority that extends only to the extent needed to implement a winddown of [RDA] affairs." AB 26X-1, §1(j)(4). Wright Decl., Ex.4.[13] The Successor Agencies, like the former RDAs, are state agencies.

Respondent CRA/LA is the Successor Agency to the CRA (also "Former Agency"). When the City Council declined to create a Successor Agency for CRA, Governor Brown appointed three citizens under the Dissolution Law to administer the CRA/LA on a day-to-day basis. H&S Code §34173(a)-(b), (d)(3).

The Dissolution Law imposed a duty on Successor Agencies to "[e]nforce all former redevelopment agency rights for the benefit of the taxing entities, including. . . continuing to collect loans, rents, and other revenues that were due to the redevelopment agency." H&S §34177(f). Thus, the CRA/LA has a mandatory duty to take action that benefits the "taxing entities" (cities, counties, school districts) by enforcing former redevelopment agency rights.

The CRA/LA's Oversight Board, which oversees whether the Former Agency's Owner Participation Agreements will be placed on the Recognized Obligation Payment Schedule, has a more explicit mandatory duty: "The oversight board shall direct the successor agency to do all of the following.. . (b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations." H&S Code §34181(b).

When read within the statutory scheme of the Dissolution Law, these provisions of the Successor Agency and Oversight Board are obligatory, not permissive. *See* Morris v. County of Mann, (1977) 18 Cal.3d 901, 908 ("the term 'mandatory' refers to an obligatory duty which a governmental entity is required to perform, as opposed to a permissive power which a governmental entity may exercise or not as it chooses"). The Dissolution Law explains that its purpose is intended to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies for use by the taxing agencies to fund core governmental services such as police and fire protection services and schools, and that redevelopment agencies should take no actions that would further deplete the corpus of the agencies' funds. H&S Code §34167(a).

Petitioner contends that CRA/LA, through its Governing Board and Oversight Board, has a mandatory duty under the Dissolution Law to exercise the contractual rights of the Former Agency only one way by terminating the OPA. Petitioner concludes that the duties of the CRA/LA and its Oversight Board should be construed as broadly as possible in favor of protecting the taxing entities. Because of Developer's breach of the OPA, H&S Code section 34181 "terminates the CRA/LA's discretion to continue performance" of the OPA and "obligates the CRA/LA to take action to terminate for the breach." Mot. at 20-21. CRA/LA's failure to take advantage of Developer's breach of the OPA by terminating the OPA, refusing to expend

[13]The Dissolution Law was amended in AB1484.

millions of dollars of public funds which should be allocated to the taxing entities for the benefit of the public, and seek disgorgement of monies already transferred for the Project is a violation of the Dissolution Law.[14] Mot. at 21.

CRA/LA does not really dispute that some entity would have a ministerial duty to terminate the OPA in the event of Developer's breach. Instead, CRA/LA contends that H&S section 34181 expressly describes the duties of local Oversight Boards and does not impose a clear duty on CRA/LA to act without direction from the Oversight Board. CRA/LA Opp. at 5.[15]

The Successor Agency is the transferee of all assets of the former redevelopment agency. H&S Code §34175(b). All major decisions of a Successor Agency must be approved by its Oversight Board. H&S Code §34179. The Dissolution Law expressly grants a Successor Agency the right to sue and be sued. H&S Code §34173. It does not expressly grant these rights to the Oversight Board.

The critical issue is whether the Oversight Board enjoys a personality separate from the successor agencies, and therefore may sue or be sued. Bauer v. County of Ventura, (1955) 45 Cal.2d 276, 288-89. Case law recognizes that where two closely related public entities have a "genuine separate existence" from one another, one of the public entities cannot be sued based on claims against the other public entity. *See* Rider v. County of San Diego, (1998)18 Cal.4th 1035, 1044 (joint powers agency is separate entity from county); County of Solano v. Vallejo Redevelopment Agency, (1999) 75 Cal.App.4th 1262, 1267 (redevelopment agency is separate entity from city, which is not liable for the former's debts).

Oversight Board members are appointed from different entities separate from Successor Agencies. H&S Code §34179(a)(1-10). Successor Agencies and Oversight Boards do not have the same duration; the Dissolution Law provides that all Oversight Boards in every county will be consolidated on July 1, 2016, while Successor Agencies potentially could continue indefinitely. H&S Code §34179 (j).

The Oversight Board has final authority and can approve or disapprove the Successor Agencies' decisions. H&S Code §§ 34177(a)(l), 34177(e), 34177(I)(2)(B). All Oversight Board actions are adopted by resolution. H&S Code §34179(e). The Oversight Board itself, not just individual members, have fiduciary responsibilities to holders of enforceable obligations and taxing entities, but not to Successor Agencies. H&S Code §34179(i). Oversight Boards are authorized to contract with the county or other public or private agencies for administrative support. H&S Code §34179(o). The Oversight Board has authority to appeal any judgment, or

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[14]Petitioner argues that Developer should be subjected to an unjust enrichment action. Assuming there is a mandatory duty to terminate the OPA, Petitioner makes no showing that CRA/LA has no discretion but to file suit against Developer.

[15]CRA/LA also contends that it has complied with its duties under the Dissolution Law by obtaining approval to make payments under the OPA from its Oversight Board and the Department of Finance. CRA/LA Opp. at 9-10. This position begs the question. If the Oversight Board is part of, and subsumed within, CRA/LA, then approval from its own board is mere bootstrapping. Approval from the Department of Finance also would not relieve CRA/LA from its independent mandatory statutory duty.

to move to set aside any settlement or arbitration decision involving former redevelopment agency, the latter ostensibly by filing an action in superior court. H&S Code §34171(d)(l)(D).

These are strong indicators that the Oversight Board is a separate entity for purposes of suit. This is not a circumstance in which a public entity was created to evade the law (*see* Rider v. County of San Diego, (1991) 1 Cal.4th 1, 11-12 (county's essential control of special district created to avoid Prop 13). The cited provisions demonstrate the genuine separate existence of the Oversight Board from the CRA/LA for purposes of suing and being sued. Indeed, the Oversight Board is deemed a local entity for the purpose of the Ralph M. Brown Act. H&S Code §34179(e). Unlike a city council and county board of supervisors, the Oversight Board has separate powers and authority. Most critically, the Oversight Board has the authority to enter into contracts, has a fiduciary responsibility to the taxing entities, and has authority to appeal any judgment, or to move to set aside any settlement or arbitration decision involving a former redevelopment agency. The latter ostensibly would occur by filing an action in superior court.

Petitioner contends that there are provisions in the statute that indicate the Oversight Board is subsumed within the Successor Agency and need not be sued separately, including that the Oversight Board has no budget outside that of the Successor Agency (H&S Code §34179(c)), and that its decisions are subject to veto by the State Department of Finance (H&S Code §34179(h)). Mot. at 19. These distinctions are inadequate. The Oversight Board serves as a watchdog over the Successor Agency to protect taxing entities and the holders of enforceable obligations, just as the Department of Finance does. It is genuinely separate from the Successor Agency.

Given that CRA/LA is separate from its Oversight Board, the question is whether CRA/LA has any obligation with respect to the OPA. Petitioner relies on H&S Code section 34181(b), which requires the Oversight Board to "direct the successor agency" to "cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations." Section 34181 concerns only the duties of Oversight Boards. It appears that the Legislature contemplated that Successor Agencies would have to demonstrate the viability of their contracts to the Oversight Board and other watchdogs, and the Oversight Board would direct the Successor Agency's action. There is no suggestion that the Successor Agency is empowered to take action in the first instance. Indeed, the Successor Agency may only enforce former redevelopment agency rights, which generally means enforcing contractual obligations. H&S Code H&S §34177(f).

Thus, CRA/LA had no mandatory duty to terminate the OPA; only the Oversight Board could have such a duty. Where it appears that the officer named as respondent is not the one whose duty is involved, relief must be denied. Wenzler v. Municipal Court for Pasadena Judicial Dist., (1965) 235 Cal.App.2d 128, 132.

Petitioner has sued the wrong entity, and the SAP is denied for the fourth cause of action as to Respondent CRA/LA.

F. Conclusion

The SAP's second, third, and sixth causes of action are granted, and the fourth cause of action is denied. Issuance of a writ will occur only upon final judgment of all causes of action. The fifth cause of action will be transferred to Department One for assignment to an independent

calendar court.