

1 **ANGEL LAW**

2 Frank P. Angel (SBN: 113301)
3 2601 Ocean Park Boulevard, Suite 205
4 Santa Monica, CA 90405-5269
5 Telephone: (310) 314-6433
6 Facsimile: (310) 317-7323
7 E-mail: fangel@angellaw.com

8 Attorney for Hollywoodians
9 Encouraging Rental Opportunities
10 (HERO), Sylvie Shain, and Max Blonde

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, SOUTHEAST DISTRICT**
13 **UNLIMITED CIVIL CASE**

14 HOLLYWOODIANS ENCOURAGING
15 RENTAL OPPORTUNITIES (HERO),
16 SYLVIE SHAIN, and MAX BLONDE,

17
18 Petitioners/Plaintiffs,

19 v.

20 CITY OF LOS ANGELES,
21 CITY COUNCIL OF THE CITY OF LOS
22 ANGELES,
23 CENTRAL LOS ANGELES AREA
24 PLANNING COMMISSION, and
25 DOES 1 through 10, Inclusive,

26 Respondents/Defendants.

27 MILLENIUM SETTLEMENT
28 CONSULTING / 1850 NORTH
29 CHEROKEE, LLC et al.,

30 Real Parties in Interest/Defendants.
31
32
33

Case No. BS163828

**PETITIONERS' MOTION FOR
PEREMPTORY WRIT OF
ADMINISTRATIVE MANDAMUS AND
DECLARATORY RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

ASSIGNED FOR ALL PURPOSES TO
THE HONORABLE JUDGE JOHN A.
TORRIBIO

Department: G
Trial Date: May 19, 2017
Time: 9:00 a.m.

Action Filed: August 1, 2016

1 TO OPPOSING PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on Friday, May 19, 2017, at 9:00 a.m., or as soon
3 thereafter as counsel may be heard, in Department G of the Southeast District of this Court
4 (Norwalk Courthouse), located at 12720 Norwalk Blvd., Norwalk, California, 90650-3188,
5 Petitioners/Plaintiffs Hollywoodians Encouraging Rental Opportunities et al. (**Petitioners**), on
6 behalf of themselves, their supporters, and present and future voters, taxpayers and residents of
7 the City of Los Angeles (**City**) displaced or at risk of displacement from rent-stabilized housing
8 located in the City, as well as all citizens interested in the enforcement of the environmental
9 information disclosure provisions of the California Environmental Quality Act (**CEQA**; Pub.
10 Resources Code, § 21000 et seq.), and the State CEQA Guidelines (**Guidelines**; Cal. Code
11 Regs., tit. 14, § 15000 et seq.), will move the Court for judgment as follows:

12
13 1. Directing the issuance of a peremptory writ of administrative mandamus
14 commanding Respondents City and the City Council of the City of Los Angeles (collectively
15 **Respondents**) to:

16 1.1. Set aside and void a decision made on June 29, 2016 by Respondent City Council
17 (**City Council**; Council File No. 09-0967-S1; Case No. ZA-2015-2683-CU-ZV-ZAA-1A; ENV-
18 2015-2684-MND), on behalf of the City, to adopt the recommendations made in a report of the
19 City Council’s Planning and Land Use Management Committee (**PLUM Committee**), and,
20 based on those recommendations, approving a mitigated negative declaration/initial study
21 (**MND/IS**) issued by the City planning department for a project of Real Parties in
22 Interest/Defendants Millennium Settlement Consulting / 1850 North Cherokee, LLC et al.
23 (collectively **RPI**), proposing to convert 18 rent-stabilized apartment units in two buildings
24 located at 1850 North Cherokee Avenue into a boutique hotel with 24 guest units (**Project**);
25 adopting Project-related findings purportedly made by Respondent Central Los Angeles Area
26 Planning Commission (**APC**); and receiving and filing (without deciding) an appeal by
27 Petitioner Sylvie Shain of a 2:1 decision by the APC in favor of the Project, including a variance
28 to permit offsite, leased parking more than 750 feet away from the proposed boutique hotel.
29
30
31
32
33

1 1.2. Set aside and void the MND/IS, and the Project-related entitlements for use, i.e.,
2 the offsite parking variance;¹ a conditional use permit (**CUP**) for the operation of the hotel use in
3 a residential zone; and a so-called “adjustment” (a variance) to permit a reduced 9’-5” rear yard
4 in lieu of the minimum required 15’.

5 1.3. Prepare, circulate, review and certify an environmental impact report (**EIR**) for the
6 Project, disclosing and evaluating, first and foremost, the Project’s direct and cumulative
7 physical impacts in eliminating rent-stabilized residential buildings and displacing people from
8 rent-stabilized housing, and the attendant “substantial adverse effects on human beings, either
9 directly or indirectly” (Pub. Resources Code, § 21083, subd. (b)(2) & (3) ; Guidelines, § 15065,
10 subd. (a)(3) & (4)), before taking any further action on the Project (or on an alternative Project
11 design).
12

13 1.4. Take all further specific action as shall be necessary to bring their environmental
14 review, decisions, determinations, findings, mitigation measures, and mitigation monitoring and
15 reporting into full compliance with CEQA, the Guidelines, and all other laws and regulations
16 applicable to Respondents’ action or to the Project.

17 1.5. Take such other action as is specifically enjoined upon Respondents by CEQA, the
18 Guidelines, and all other applicable laws and regulations, including such action as shall be
19 necessary to ensure preparation of adequate CEQA documents, informed and meaningful public
20 review, and informed and independent exercise of discretion by the City’s decisionmakers.
21

22 2. Ordering Respondents and RPI to suspend all activities pursuant to Respondents’
23 decisions that could result in an adverse change or alteration to the physical environment, until
24 Respondents have taken all actions (including without limitation, mitigation measures set forth
25 in their own CEQA Thresholds Guide to alleviate the Project’s adverse effects on displaced
26 residents) as shall be necessary to bring their environmental review, decisions, determinations,
27

28 ¹ After Ms. Shain appealed the APC’s decision to grant the parking variance to the City Council,
29 Respondents abruptly changed course, and determined that this variance was no longer required, even
30 though the proposed boutique hotel was not scaled down. However, because (a) the City Zoning
31 Administrator had required and approved the parking variance, (b) the APC required and approved the
32 variance as well (or purported to approve it by a 2:1 vote, i.e., without majority vote of all of its five
33 members as required by its own rules), and (c) the City Council did not deny the variance or reverse the
APC’s purported approval thereof, Petitioners, in abundance of caution, include the variance among the
Project entitlements they move to be rescinded by writ of administrative mandamus under Code of Civil
Procedure section 1094.5 and Public Resources Code section 21168.9.

1 findings, mitigation measures, and mitigation monitoring and reporting into full compliance
2 with CEQA, the Guidelines, and all other laws and regulations applicable to Respondents'
3 action or to the Project.

4 3. Directing the issuance of a peremptory writ of ordinary mandate commanding the
5 APC to refrain from deciding appeals from Zoning Administrator decisions by less than three (a
6 minority) of its five members; and further commanding the City Council to review and take
7 action on Ms. Shain's appeal of the entire decision of the APC (the entire proposed Project),
8 rather than considering only the MND, and to act as the City's independent decisionmaking
9 body for both the decision on the MND, and the decision on the Project, i.e., the parking and
10 rear yard variances, as well as the CUP determined by the Zoning Administrator and the APC.

11 4. Issuing a binding judicial declaration of the rights of Petitioners and the duties of
12 Respondents, to the effect that the APC has a public duty under Los Angeles City Charter
13 sections 562 and 563, and Los Angeles Municipal Code section 12.24 to take action and adopt
14 written findings on appeals from City Zoning Administrators' approvals of CEQA documents,
15 variances, and CUPs with no less than three votes either upholding the Zoning Administrator's
16 decision, or granting the appeal (whether in whole or in part); and that, as the City's elected
17 decisionmaking body, the City Council has a public duty under CEQA to independently
18 consider, act upon and adopt written findings on appeals from APC approvals of CEQA
19 documents, variances, and CUPs.

20 5. Granting Petitioners such other and further relief as the Court may deem necessary
21 and just pursuant to its equity powers.

22 The grounds for this motion are that by adopting the MND and approving the Project,
23 Respondents acted without jurisdiction, failed to afford Petitioners a fair administrative trial, and
24 prejudicially abused their discretion in that:

25 1. Contrary to CEQA, Respondents failed to prepare, circulate and certify an EIR for
26 the Project, despite being presented with substantial evidence, in the light of the whole record of
27 the proceedings before them (**ROP**), supporting a fair argument that the Project, by eliminating
28 and converting all onsite rent-controlled housing units into boutique hotel units, may have
29 significant direct, indirect and cumulative effects on the environment, and has caused and will
30 continue to cause substantial adverse effects on human beings, due to its direct, indirect and
31 cumulative environmental effects.

1 2. Contrary to CEQA, Respondents prepared an MND/IS that fails to show revisions
2 in the Project plans made by, or agreed to by, RPI, avoiding or mitigating the effects of the
3 Project to a point where clearly no significant effect on the environment and no substantially
4 adverse effects on human beings would occur, and fails to support checklist conclusions
5 concerning the CEQA issues raised by Petitioners, with any relevant information, facts, other
6 substantial evidence, or reference to substantial evidence in the ROP; as such, it fails to provide
7 Respondents with useful information to decide whether or not to prepare an EIR, while
8 precluding the public and the reviewing court, from ascertaining the analytic route Respondents
9 traveled from evidence to action.
10

11 3. Contrary to CEQA and administrative mandamus review standards, and contrary
12 to the decisions of the Zoning Administrator and the APC in this case, the City Council
13 implicitly exempted the Project from the previously required parking variance without making
14 any findings bridging the analytic gap between the evidence, if any, the council might have
15 relied on for Respondents' eleventh-hour about-face, and its ultimate decision to approve the
16 Project without determining the variance or requiring RPI to provide offsite parking.
17

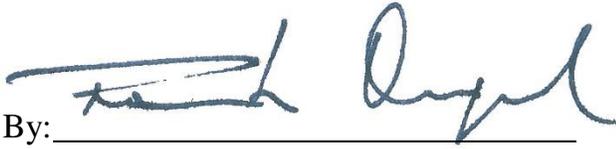
18 4. Contrary to CEQA, the City Council did not act as the City's elected, independent
19 decisionmaking body for both the adoption of the MND and the approval of the Project as
20 Respondents impermissibly split the authority to approve or disapprove the Project from the
21 council's responsibility to review and approve the MND.
22

23 5. Contrary to the Los Angeles City Charter and City zoning regulations, and its own
24 rules of procedure, the APC acted without jurisdiction and failed to proceed in the manner
25 required by law by purporting to take action on the Project and the MND with the affirmative
26 votes of less than a quorum of its membership.
27

28 This motion is based on the verified first amended petition for writs of administrative
29 mandamus and ordinary mandate; and complaint for declaratory and injunctive relief in this case
30 (the operative pleading), this motion, including the attached supporting memorandum or points
31 and authorities, the ROP (administrative record) in this case, all matters of which judicial notice
32 may be taken, and such further evidence or argument as may be lawfully presented at or before
33 trial.

1
2 DATED: March 6, 2017

3 ANGEL LAW
4 Frank P. Angel

5 
6 By: _____

7 Frank P. Angel
8 Attorney for Petitioners/Plaintiffs
9 HOLLYWOODIANS ENCOURAGING
10 RENTAL OPPORTUNITIES (HERO),
11 SYLVIE SHAIN, and MAX BLONDE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Angel Law
2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 90405

TABLE OF CONTENTS

1

2

3 INTRODUCTION 13

4 FACTUAL AND PROCEDURAL BACKGROUND..... 15

5 LEGAL ARGUMENT 20

6 I. RESPONDENTS FAILED TO PROCEED IN THE MANNER REQUIRED BY CEQA

7 BY FAILING TO PREPARE AN ENVIRONMENTAL IMPACT REPORT

8 DISCLOSING AND EVALUATING THE SIGNIFICANT DIRECT AND

9 RELATED PROJECTS ELIMINATING RENT-STABILIZED HOUSING, AND

10 THEIR SUBSTANTIAL ADVERSE EFFECTS ON HUMAN BEINGS. 20

11 A. The Fair Argument Standard of Review. 20

12 B. Substantial Evidence in the Record Supports a Fair Argument of Substantial Adverse

13 Effects on Human Beings, Due to the Environmental Effects of the Project Alone,

14 and Due to the Incremental Environmental Effects of the Project when Viewed in

15 Connection with the Effects of Past, Other Current, and Probable Future Projects

16 Eliminating Rent-stabilized Housing. 22

17 C. Substantial Evidence in the Record Supports a Fair Argument of Significant

18 Cumulative Effects on the Environment, Due to the Incremental Environmental

19 Effects of the Project when Viewed in Connection with the Effects of Past, Other

20 Current, and Probable Future Projects Eliminating Rent-stabilized Housing..... 26

21 D. The Initial Study Prepared for the Project Is Inadequate; It Fails to Provide

22 Respondents with Information to Use as the Basis for Deciding Whether to Prepare

23 an Environmental Impact Report or a Mitigated Negative Declaration..... 27

24 II. THE CITY COUNCIL’S IMPLICIT DECISION TO EXEMPT REAL PARTY IN

25 INTEREST FROM THE PARKING VARIANCE REQUIRED BY THE ZONING

26 ADMINISTRATOR AND THE AREA PLANNING COMMISSION IS

27 UNSUPPORTED BY ANY FINDINGS EXPLAINING RESPONDENTS’ ELEVENTH-

28 HOUR DETERMINATION THAT NO PARKING VARIANCE IS REQUIRED..... 29

29 III. THE CITY COUNCIL FAILED TO PROCEED IN THE MANNER REQUIRED BY

30 CEQA BY APPROVING THE MITIGATED NEGATIVE DECLARATION FOR THE

31 PROJECT IN A LEGAL VACUUM, WITHOUT CONSIDERING OR ACTING ON

32 THE PARKING VARIANCE, OR, FOR THAT MATTER, ON ANY ENTITLEMENT

33 FOR USE APPLIED FOR BY REAL PARTY IN INTEREST. 30

Angel Law
2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 90405

1 IV. THE AREA PLANNING COMMISSION ACTED WITHOUT JURISDICTION AND
2 FAILED TO PROCEED IN THE MANNER REQUIRED BY THE LOS ANGELES
3 CITY CHARTER, CITY ZONING REGULATIONS, AND ITS OWN RULES OF
4 PROCEDURE BY PURPORTING TO REAFFIRM THE ZONING
5 ADMINISTRATOR’S DECISION WITH THE VOTES OF A MINORITY OF ITS
6 MEMBERSHIP. 31

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
CONCLUSION.....32

Angel Law
2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 90405

Angel Law
2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 90405

TABLE OF AUTHORITIES

CALIFORNIA CASES

1

2

3

4 *Arviv Enterprises, Inc. v. South Valley Area Planning Com.*

5 (2002) 101 Cal.App.4th 1333 21, 28

6 *California Building Industry Assn. v. Bay Area Air Quality Management District*

7 (2015) 62 Cal.4th 369 14, 22, 24

8 *Citizens Assn. for Sensible Development of Bishop Area v. County of Iny*

9 (1985) 172 Cal.App.3d 151 28

10 *Citizens for the Restoration of L Street v. City of Fresno*

11 (2014) 229 Cal.App.4th 340 20, 21, 31

12 *City of Marina v. Board of Trustees of California State University*

13 (2006) 39 Cal.4th 341 25

14 *City of Redlands v. County of San Bernardino*

15 (2002) 96 Cal.App.4th 398 30

16 *City of San Diego v. Board of Trustees of California State University*

17 (2015) 61 Cal.4th 945 25

18 *County Sanitation Dist. No. 2 v. County of Kern*

19 (2005) 127 Cal.App.4th 1544 20, 27

20 *Daily Journal Corp. v. County of Los Angeles*

21 (2009) 172 Cal.App.4th 1550 31

22 *Keep Our Mountains Quiet v. County of Santa Clara*

23 (2015) 236 Cal.App.4th 714 21, 24

24 *Laurel Heights Improvements Assn. v. Regents of University of California*

25 (1988) 47 Cal.3d 376 20, 28

26 *Laurel Heights Improvements Assn. v. Regents of University of California*

27 (1993) 6 Cal.4th 1112 21

28 *Lighthouse Field Beach Rescue v. City of Santa Cruz*

29 (2005) 131 Cal.App.4th 1170 20, 24

30 *Mejia v. City of Los Angeles*

31 (2005) 130 Cal.App.4th 322 20, 21

32 *No Oil, Inc. v. City of Los Angeles*

33 (1974) 13 Cal.3d 68 21

Pocket Protectors v. City of Sacramento

(2004) 124 Cal.App.4th 903 21

1	<i>Sierra Club v. City of Hayward</i>	
2	(1981) 28 Cal.3d 840	30
3	<i>Stanislaus Audubon Society, Inc. v. County of Stanislaus</i>	
4	(1995) 33 Cal.App.4th 144	13
5	<i>Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.</i>	
6	(2013) 215 Cal.App.4th	20, 21, 22, 24
7	<i>Topanga Assn. for a Scenic Community v. County of Los Angeles</i>	
8	(1974) 11 Cal.3d 506	15, 30
9	<i>Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova</i>	
10	(2007) 40 Cal.4th 412	20
11	<i>Walnut Acres Neighborhood Assn. v. City of Los Angeles</i>	
12	(2015) 235 Cal.App.4th 1303	30
13	<i>West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles</i>	
14	(2011) 198 Cal.App.4th 1506	30
15	CODE OF CIVIL PROCEDURE	
16	§ 1085.....	31
17	§ 1094.5.....	3
18	GOVERNMENT CODE	
19	§ 7060 et seq.	15
20	PUBLIC RESOURCES CODE	
21	§ 21000 et seq.	2
22	§ 21064.5.....	20
23	§ 21065.....	22
24	§ 21068.....	20
25	§ 21080, subd. (c)(2).....	20
26	§ 21080, subd. (d)	20
27	§ 21080, subd. (e)(1).....	24
28	§ 21080, subd. (e)(2).....	24
29	§ 21083, subd. (b)	22
30	§ 21083, subd. (b)(2).....	3, 22, 29
31		
32		
33		

1	§ 21083, subd. (b)(3).....	passim
2	§ 21151.....	20
3	§ 21168.9.....	3
4		
5	CALIFORNIA CODE OF REGULATIONS	
6	§ 15000 et seq.	2
7	§ 15063, subd. (b)(1).....	13
8	§ 15064, subd. (d)	22
9		
10	§ 15064, subd. (e).....	25
11	§ 15064, subd. (f)(1)	21
12	§ 15064, subd. (f)(5)	24
13	§ 15064, subd. (f)(6)	24
14		
15	§ 15065.....	22
16	§ 15065, subd. (a).....	22
17	§ 15065, subd. (a)(3).....	3, 22
18	§ 15065, subd. (a)(4).....	3, 14, 22, 27
19		
20	§ 15355.....	22
21	§ 15358.....	22
22	§ 15360.....	20
23	§ 15378.....	28
24		
25	§ 15382.....	20, 24
26	§ 15384.....	24
27	§ 15384, subd. (a).....	24
28	§ 15384, subd. (b)	24
29		
30	CEQA Guidelines, Appen. G.....	25
31		
32		
33		

1	LOS ANGELES CITY CHARTER	
2	§ 506.....	31
3	§ 562.....	4
4	§ 563.....	4
5	§ 563, subd. (b)(2).....	31
6	LOS ANGELES MUNICIPAL CODE	
7	§ 12.24.....	4
8	§ 151.00 et seq.	13
9	LOS ANGELES CITY COUNCIL RESOLUTIONS	
10	Res. (Harris-Dawson - Ryu), Council File No. 15-0002-S201.....	14
11	OTHER AUTHORITIES	
12	<i>boutique hotel</i> , Business Dictionary.....	16
13	<i>boutique hotel</i> , Dictionary.com.....	16
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		
33		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 ***INTRODUCTION***

3 This action arises out of Respondents’ approval of a mitigated negative declaration (**MND**) and
4 discretionary entitlements for a project of Real Parties in Interest/Defendants Millennium Settlement
5 Consulting / 1850 North Cherokee, LLC et al. (collectively **RPI**), proposing the conversion of two
6 residential buildings totaling approximately 11,400 ft², containing 18 rent-stabilized apartment units,
7 into a boutique hotel with 24 separate guest units, ranging in size from 195 to 556 ft² (**Project**). The
8 Project is located on a 0.42-acre, residentially zoned parcel in the City’s Hollywood planning area, at
9 1850 North Cherokee Avenue. (Record of Proceedings [**ROP**] 49, 672, 674, 248–59.)

10 Rent-stabilized units are residential apartment units subject to rent control and relocation
11 assistance requirements under the City’s Rent Stabilization Ordinance (**RSO**; LAMC, § 151.00 et seq.)
12 where, as here, the apartment buildings were constructed before October 1978. (ROP 1328–29.) It is an
13 undisputed fact that Hollywood (as well as other parts of the City, such as West and downtown Los
14 Angeles), in recent years, has been experiencing increasingly severe losses of rent-stabilized housing,
15 due to a proliferation of projects proposing trendy, upscale “boutique” hotels, or new or remodeled
16 apartments for urban-dwelling professionals, that the tenants displaced from the rent-stabilized housing
17 cannot afford to relocate to. (E.g., ROP 1414, 1571-73, 1621, 645.) It is just as undisputed a fact that
18 the City’s dwindling rent-stabilized housing stock provides badly needed housing for people of low- and
19 moderate income, homeless persons (or at risk of homelessness), as well as people with special needs,
20 such as seniors with health disabilities or persons living with HIV/AIDS, i.e., people who require costly
21 medical treatments or therapies severely impacting their ability to afford housing. (ROP 1294, 1281–
22 87.)

23 The first issue in this case concerns whether the City failed to proceed in the manner required by
24 CEQA and the State CEQA Guidelines (**Guidelines**) by failing to prepare an EIR for the Project. It did:
25 an EIR was required because substantial evidence in the ROP supports a fair argument that several
26 aspects of the Project, “either individually or cumulatively may cause a significant effect on the
27 environment” (Guidelines, § 15063, subd. (b)(1).) As explained in part I of the legal argument
28 below, Petitioners here are “required only to demonstrate that the record contains substantial evidence
29 sufficient to support a *fair argument* that the project *may* have a significant [environmental] effect.”
30 (*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 152-153, original
31 emphasis); or that its potential “environmental effects,” regardless of whether they are direct or
32 cumulative effects, “will cause substantial adverse effects on human beings, either directly or
33

1 indirectly.” (§ 21083, subd. (b)(3);¹ Guidelines, § 15065, subd. (a)(4).) A project’s effects on human
2 beings thus are expressly cognizable under CEQA. And, so long as we can agree that human beings are
3 part of the City’s urban environment, it is difficult (to say the least) to distinguish between a project’s
4 environmental effects and its physical, physiological or mental health effects on humans.

5 Adverse effects on human beings encompass effects on human health and safety. (*California*
6 *Building Industry Assn. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 386
7 (CBIA)). To that point, we note in passing that shortly after we filed this action, the City Council passed
8 a formal resolution, urging the Governor to declare a homeless State of Emergency. (L.A. Res. (Harris-
9 Dawson - Ryu), Council File No. 15-0002-S201, <[http://clkrep.lacity.org/onlinedocs/2015/15-0002-](http://clkrep.lacity.org/onlinedocs/2015/15-0002-S201_reso_08-12-2016.pdf)
10 [S201_reso_08-12-2016.pdf](http://clkrep.lacity.org/onlinedocs/2015/15-0002-S201_reso_08-12-2016.pdf)> [as of Mar. 6, 2017].) In this resolution, the council proclaims that
11 “homelessness is a pervasive issue that affects the health and safety of the City’s residents, the economic
12 stability of the City, and impacts the infrastructure of emergency medical services”; and that according
13 to the 2016 Homeless Count released by the Los Angeles Homeless Services Authority, the City has
14 experienced an 11% increase in the homeless population relative to the year prior with a [2016]
15 population of approximately 28,464 homeless individuals on any given night.”² Yet, when the council
16 and City planning staff review projects like the one challenged in this case, it is as though these adverse
17 effects don’t exist, or need not be mitigated. Yet each “boutique hotel” or similar such project, one by
18 one, creates and contributes to these effects. Each, one by one, amplifies them and intensifies their
19 severity.

20 The second issue in this case arises out of an eleventh-hour decision by Respondents to exempt
21 RPI from a parking variance required for the Project by the Zoning Administrator (**ZA**) and the Area
22 Planning Commission (**APC**). After Petitioner Shain appealed the APC’s entire decision to the City
23 Council, RPI requested withdrawal of this variance from the Project and the City accepted that request --
24 acting through the ZA despite the City Council’s jurisdiction over the then pending appeal. (ROP 2298--

25 _____
26 ¹ Unlabeled section (§) references are to the Public Resources Code, unless otherwise indicated.

27 ² Homelessness and its adverse impacts on human beings and physical environmental conditions
28 in the City rise in tandem with the loss of rent-controlled apartment units. City data disclose a loss of
29 17,635 rent-stabilized units between 2001 and 2013. (ROP 1330; 543:12 [citizen testimony before the
30 PLUM Committee in June 2016, noting a loss of 22,000 such units since 2000].)

31 Less than two weeks ago, the Los Angeles Times reported additional City-sourced data showing
32 steep increases in removals of rent-controlled units since 2013. While 376 disappeared in 2013, the
33 numbers rose to 1142 for 2014, and 1018 for 2015. (Khouri & Poston, *Building Brawl*, L.A. Times
(Feb. 26, 2017) p. C1, col. 1. <[www.pressreader.com/usa/los-angeles-times/20170226/](http://www.pressreader.com/usa/los-angeles-times/20170226/281934542724473)
<[281934542724473](http://www.pressreader.com/usa/los-angeles-times/20170226/281934542724473)> [as of Mar. 6, 2017].) Assuming, conservatively, that rent-controlled units provide
shelter for an average of no more than two persons per unit, projects converting or demolishing the
City’s rent-stabilized housing stock now cause thousands of human evictions *per year*.

99, 2303–05.) The facts and zoning justification for this action are a mystery, but what it meant is clear. It meant the council neither heard nor determined the parking variance, thus implicitly exempting the Project from the variance without any findings (or having any findings from the ZA) explaining the City’s abrupt U-turn on the analytic route to final Project approval. This was prejudicial error both under CEQA, and the administrative mandamus review standards expounded in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.

The third issue arises out of Respondents’ splitting the City Council’s responsibility to review and approve the MND from the authority to approve or disapprove the Project itself. The council here considered the MND, but none of the entitlements for use applied for by RPI. (ROP 35, 307–08.) This was prejudicial error. CEQA required the council to act as the City’s elected, independent decisionmaking body for *both* the adoption of the MND and approval of the Project.

Finally, the fourth issue presents the question whether the APC acted without jurisdiction and failed to proceed in the manner required by law by purporting to take action on the Project and the MND with the votes of a minority and less than a quorum of its membership. The APC has five members. Only three heard Ms. Shain’s appeal from the ZA’s decision to approve the Project entitlements and the MND. Two voted to approve the Project entitlements; one voted no. The City agrees this was a failure to act. (ROP 472–73.) Yet the APC purported to reaffirm the ZA’s decision. (*Id.*) Under the Los Angeles City Charter (**City Charter**), City zoning regulations, and the APC’s own rules of procedure, two planning commissioners do not have the power to act on behalf of the Commission. When only three members are present, their vote must therefore be unanimous. Respondents’ decisions are null and void on those additional grounds.

FACTUAL AND PROCEDURAL BACKGROUND

The Project history is a tortuous one. Before RPI submitted the boutique hotel plans to the City, it evicted all tenants, based on an earlier plan to demolish the 1850 N. Cherokee buildings altogether and construct a condominium building. (ROP 9095–08; 2590, 729-30.)³ The evictions occurred in the fall of 2013. Following their displacement, two tenants became homeless and were still living without

³ Whether this was a true plan or a ruse -- a representation by RPI to the City’s Housing Department to be able to invoke Ellis Act (Gov. Code, § 7060 et seq.) provisions that allow rental property owners, under specified conditions, to remove rental units from the housing market (ROP 1330–31) -- we don’t know. (ROP 3118–19.) For CEQA purposes, whether the tenants were displaced to make way for a condo building (which removes the units from the rental market), or a boutique hotel (which does not remove them, and hence does not legitimize evictions under the Ellis Act), is irrelevant. What matters for this action is the fact that the proposed boutique hotel depends on, and, indeed requires displacement of the tenants; and that it eliminates 18 rent-stabilized units from Hollywood’s affordable housing stock.

1 permanent housing three years later. One lives on couches by the benevolence of friends, the other is
2 currently living in a car. Others were forced to move out of Hollywood or the City to find housing they
3 could afford. They include a Vietnam War veteran, separated by over 100 miles from his adult children
4 following his displacement. (ROP 2314, 489, 2458–59, 2823.)

5 Less than two years after the evictions, in July 2015, RPI submitted a master land use permit
6 application with the City’s planning department, revealing the plan to convert the 1850 N. Cherokee
7 buildings into a “boutique hotel” with “a mix of studio, one-bedroom, and two-bedroom” units. (ROP
8 1427–28, 1400.) Not one affordable housing unit was included for low- and moderate income persons
9 or households to mitigate the total loss of rent-stabilized units.⁴

10 On October 23, 2015, the City Planning Department posted a notice of intent to adopt the
11 MND/IS. (ROP 49–54 [MND]; 55–92 [IS].) Less than two weeks later, on November 4, 2015, the ZA
12 held a public hearing on the Project. (ROP 1448–50.) The comments made at the hearing are
13 summarized in the ZA’s written decision, which the ZA released on December 21, 2015. (ROP 224–59;
14 235–37.) That decision approves all three entitlements applied for, subject to conditions, and further
15 adopted the planning department’s action in issuing an MND. (ROP 247.)

16 On January 5, 2016, Ms. Shain appealed the ZA’s decision to the APC. (ROP 1619–23.) Her
17 letter of appeal informed the APC that she was losing her own rent-stabilized home of 8 years in
18

19 ⁴ RPI’s lobbyist, Ms. Dana Sayles, in taking issue with Ms. Shain’s characterization of the
20 Project as a commercial use, noted that the Los Angeles Municipal Code’s definition of hotel refers to a
21 hotel as a “residential building.” (ROP 1719.) However, in RPI’s Project application she stated that the
22 Project actually will effect a “change of use from a residential to hospitality use” -- one that “will
23 increase the economic vitality of the Hollywood area by serving the needs of the tourism, entertainment,
24 and corporate sectors by providing creative and historic guest accommodations.” (ROP 1402; 1719, fn.
25 5 [revealing that the Project is the product of a business partnership between a boutique hotel investment
26 group and RPI, and that they pursue other boutique hotel projects].) Her statement concerning the
27 change of use accords with the definition of a “boutique hotel,” which is commonly understood to mean
28 a small but exclusive hotel “that caters to the affluent clientele with an exceptional level of service at
29 premium prices.” (*boutique hotel*, Business Dictionary, <[http://www.businessdictionary.com/definition/
30 boutique-hotel.html](http://www.businessdictionary.com/definition/boutique-hotel.html)> [as of Mar. 6, 2017]; see also *boutique hotel*, Dictionary.com,
31 <<http://www.dictionary.com/browse/boutique-hotel>> [“a small luxury hotel offering premium services,
32 often located in a fashionable location”] [as of Mar. 6, 2017].)

33 In her letter to the APC attempting to rebut Ms. Shain’s point that a boutique hotel, for all intents
and purposes, is a commercial use, Ms. Sayles similarly stated: “In addition, the Project performs a
beneficial service by ‘increas[ing] the economic vitality of the Hollywood area by serving the needs of
the tourism, entertainment, and corporate sectors by providing creative and historic guest
accommodations’ ” (ROP 1716 [partially quoting a ZA finding].) Ms. Sayles here cleverly edited
the ZA’s finding by deleting the inconvenient introductory language (“*The change of use from
residential to hotel will increase the economic vitality*” (ROP 238, emphasis added), replacing it
with this: “*In addition, the Project performs a beneficial service by ‘increas[ing] the economic vitality . .
. . .*” (ROP 1716, emphasis added.) Also note that in quoting the ZA, Ms. Sayles quoted herself -- minus
the inconvenient truth. (ROP 1402.)

1 Hollywood, due to a similar conversion. She wrote:

2 “I am completely aggrieved by this decision. Having had to look for replacement housing, I can
3 tell you that it is an appalling and dismal situation, and I am well-aware of the fact that those at
4 the lower end of the economic scale are displaced into homelessness. The pool of available
5 workforce housing is shrinking and the demand is increasing. The replacement housing that I
6 have found is 45% more than what I currently pay. I will join the ranks of the severely rent-
burdened, paying over 50% of my income for housing. These conversions threaten the very
fabric of our city and the people who contribute to its vitality.”

7 (ROP 1623; ROP 1782–84 [additional Shain comment letter]; 652–53 [written communication from
8 former tenant, Jesse Cilio]; 1830 [comments by citizen Judith Roth Goldman].) Ms. Shain’s appeal
9 was originally scheduled to be heard on February 23, 2016. The hearing was continued to March 8,
10 2016 because three of the APC’s five members failed to show up. Two do not form a quorum. (ROP
11 377, 461–63.) At the March 8, 2016 hearing, three members were present with two still missing. The
12 APC heard from Ms. Shain and other members of the public. (ROP 383–459 [transcript].) The vote
13 was 2:1 to uphold the ZA’s decision. This failure to reach consensus is a failure to act. (ROP 450–59;
14 472–73 [APC minutes].) The APC’s “Determination Letter” dated March 25, 2016 confirmed that the
15 failure to reach a consensus amounted to a “deadlock” vote and a “failure to act.” (ROP 260.)
16 However, the letter further stated that the APC’s failure to act “resulted in the automatic denial of [Ms.
17 Shain’s] appeal and reaffirmation of the determination of the [ZA]”

18 On April 11, 2016, Ms. Shain thus appealed the APC’s entire decision and the related MND to
19 the City Council. (ROP 262–70, 2050–60.) While her appeal was pending before the council, RPI
20 withdrew its application for the parking variance. The appeal was heard on June 21, 2016 before the
21 council’s PLUM Committee. (ROP 481–518.) Only three of the committee’s five members showed up,
22 and one member was prepared to uphold the appeal. Here, too, three affirmative votes either in favor or
23 against the appeal were required, and so the hearing was continued to June 28. (ROP 511–17.) At the
24 close of that hearing (ROP 519–62), the PLUM Committee recommended against the CEQA appeal.
25 (ROP 560–62.) The committee made no recommendations for the council in favor or against any of the
26 Project entitlements. It briefly noted only the parking variance, stating: “RECEIVE and FILE the Zone
27 Variance appeal, to permit off-site parking to be located 925 feet from the use it serves for the property
28 located at 1850 North Cherokee Avenue, inasmuch as the Applicant has withdrawn the Zone Variance
29 application.” (ROP 307–08.)

30 Public testimony before the PLUM Committee, like earlier testimony and comments, focused on
31 the Project’s direct and cumulative impacts of eliminating rent-stabilized housing, and displacing or
32 pushing into homelessness low- and very-low income residents for whom Hollywood and neighboring
33 areas’ prevailing high market rents are out of reach; and the City’s compounding the displacement

1 impacts through systematic approval of projects similar to the Project, without performing adequate
2 CEQA review of those impacts or requiring mitigation therefor. The comments by City resident Shawna
3 Johnson are representative of many others:

4 “I live in Council District 13 at the Yucca-Argyle Apartments. This is a 40-unit rent-stabilized
5 complex, home to seniors, veterans, and working-class families. Like the displaced Cherokee
6 residents, we are facing imminent eviction so Champion Realty can tear down our apartments to
7 replace it with the fifteenth hotel and the eleventh luxury apartment complex within a 1.5-mile
8 radius. I came here today to ask you to support the appeal of 1850 Cherokee so that the City and
9 the developer can identify the impacts that this project will have individually and cumulatively
10 on homelessness and the loss of housing stock. With the current crisis-level shortage of
affordable housing and homelessness at epidemic levels, we can’t keep losing rent-stabilized
buildings and displacing long-time residents of this stable and diverse community. Please
support this appeal.”

11 (ROP 537.)⁵ Other citizens, likewise, related their observations and personal experiences:

12 “I would just like to say that the gentleman supporting the project said there is no hard evidence
13 (of impacts) I would suggest that he just walk outside this building and, in maybe 20 feet in

14 ⁵ A 2015 study by the City’s Community Investment Department (**HCIDLA**), produced by Ms.
15 Shain, showed that in 2014, average rent in the City was \$2,031, and new apartments built in the ten
16 preceding years, then rented for \$2,609 (ROP 2325) -- a figure 237% higher than the highest rent at
17 1850 N. Cherokee (\$1,100), and 700% higher than the lowest (\$371). (ROP 908.) With a City median
18 income of \$50,544 (2014), to afford the average market-based rent, families must make \$81,240, and to
19 afford a new apartment, \$104,360. (ROP 2325.) Contrast those income figures with the \$26,250 annual
20 income a living hourly wage of \$15 translates to. (*Id.*) Evidently, whether your wages are minimum
21 wages, so-called “living” wages, or amount to median income, there is “a *tremendous wage gap* for
workers seeking to rent in Los Angeles.” (*Id.*, emphasis added.) The HCIDLA study further points out
that the high vacancy rate for newer housing in the City (12%) “*exemplifies the disparity in the type of*
housing being built demonstrating that new, higher cost housing, is out of reach for many Angelenos.”
(ROP 2325, emphasis added.) Based on this data, HCIDLA’s conclusions should come as no surprise:

22 “A contributing factor to the acute housing affordability problem is a *mismatch between what is*
23 *being built and what needs to be built.* In 2013 (the most recent year for which full data are
24 available), of the 1,605 units needed for low-income households in the City . . . only 593 were
25 built. Los Angeles added 37 percent of the needed housing for low-income residents but nearly
26 150 percent (5,874 units) of the units needed by above moderate income earners. In spite of the
27 economic recovery and accompanying increases in multifamily production, *new apartment rents*
are not reachable by lower income families. An inability to supply enough housing for diverse
income groups is contributing to eroding confidence in Los Angeles’ potential to promote income
and social mobility.”

28 (*Id.*, emphasis added.)

29 Simply put, when it comes to replacing the loss of rent-stabilized housing with new housing in
30 the City (even at a ratio greater than 1:1), trickle-down economics don’t work. This is all the more so as
31 commercial leasing operations (promoting themselves as enablers for property owners to circumvent
32 “tenant friendly housing laws”) have taken over the City’s Airbnb and other short-term rental (**STR**)
33 company listings. (ROP 2339–45 [study based on data gathered in October 2014, finding that Airbnb
listings dominated by commercial operations exacerbate the lack of affordable rental units in the City’s
already tight housing market].) Over 60% of the 17,453 net new housing units added to the City’s
housing market between 2010 and 2014, indeed, were captured by the STR industry. (ROP 2341–42.)

1 any direction, and he'll get some hard evidence about the devastation that projects like this cause
2 in terms of homeless impact.”

3 (ROP 498 [Mark Simon, representing the Los Angeles Tenants Union, who also testified that he
4 personally experienced displacement as a tenant].)

5 “I live right down the street from Cherokee, right down the street from this property. We have a
6 terrible homeless problem in Hollywood.”

7 (ROP 534 [Travis Wester].)

8 “At the time of the tour, we were told it would be either this project or tall condos Eighteen
9 rent-stabilized units disappeared. Potential loss of a residential neighborhood, loss of homes,
10 separation of families, people living in cars and on sofas. Good God. What does it take for you
11 to wake up? CEQA protects our wildlife. No significant impacts? Tell the US Vietnam vet
12 who got thrown out and had to be separated from his children and wound up homeless that
13 there's no significant impacts.”

14 (ROP 539–40 [Annie Gagen, 35-year Hollywood resident and Neighborhood Council member].)

15 “I'm going to repeat my statement from last week since you guys were on your phones last time .
16 . . . I am here on behalf of the parents of Canyon School Co-op at 1823 Las Palmas, which is
17 one block away from Cherokee There are many facilities nearby that rely on a stable
18 community, such as the Canyon School, the Las Palmas Senior Center, the Yucca Community
19 Center, the YMCA, the public library, Hollywood High School, and more. This neighborhood
20 does not need more hotels. It needs affordable housing for the permanent residents who rely on
21 these services. By continuing to push these residents out, these much-needed facilities suffer.”

22 (ROP 542–43 [Heather Fox, parent].)

23 “They may have legally complied with the technical aspects of the law including the Ellis Act,
24 but clearly they have devastated the lives of the 18 tenants and more who have been evicted.
25 This is happening all over the district, including in ours (Councilmember) Huizar.”

26 ROP 543–44 [Walton Senterfitt, public health epidemiologist and tenant evicted from Hollywood]; see
27 also 545–46 [testimony from evicted former tenant and manager of the 1850 N. Cherokee building, J.T.
28 Lawson]; 485–90, 546–551 [Shain testimony].) Ms. Shain shared her own experience:

29 “Buildings in large part are rendered vacant in order to entitle them for other uses. This
30 contention is validated by a similar project less than a mile away at a 50-unit building called the
31 Villa Carlotta, where I am the last remaining tenant, and which the property owners aim to
32 convert to a boutique hotel under the premise that it, too, has been withdrawn from the rental
33 market under the Ellis Act and therefore will have no impact on housing supply. Whether you
34 consider this a direct or indirect impact, CEQA requires it to be identified. [¶] In determining
35 whether there is an associated environmental impact with population and housing displacement, I
36 beg you to consider that question the next time you have to step over or around a homeless
37 person on the sidewalk, under a bridge, or anywhere you walk. Are human bodies finding
38 shelter on our streets not causing an environmental impact and a public safety impact?”

39 (ROP 488–89.) The next day, her appeal came up before the City Council. There was no hearing, nor
40 did the council adopt any resolution demonstrating that the adoption of the MND reflected its
41 independent judgment. Who knows if they even heard or read what the PLUM Committee heard. A
42 one-page document memorializing the council's action simply states: “[PLUM] COMMITTEE
43

1 REPORT – ADOPTED FORTHWITH.” (ROP 35.) The document makes clear that the council
2 considered only the MND. The agenda description does not refer to the entitlements for the Project.

3 After the City filed its notice of determination (NOD; ROP 10), Petitioners timely filed suit.

4 **LEGAL ARGUMENT**

5 I. *RESPONDENTS FAILED TO PROCEED IN THE MANNER REQUIRED BY CEQA BY*
6 *FAILING TO PREPARE AN ENVIRONMENTAL IMPACT REPORT DISCLOSING AND*
7 *EVALUATING THE SIGNIFICANT DIRECT AND CUMULATIVE ENVIRONMENTAL*
8 *EFFECTS OF THE PROJECT AND SIMILAR, RELATED PROJECTS ELIMINATING*
9 *RENT-STABILIZED HOUSING, AND THEIR SUBSTANTIAL ADVERSE EFFECTS ON*
10 *HUMAN BEINGS.*

11 A. *The Fair Argument Standard of Review.*

12 “With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve
13 . . . a project that may have a significant effect on the environment. [Citations.] [Footnote.]” (*Laurel*
14 *Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390; see §§
15 21080, subd. (d) , 21151.) The “ ‘environment’ includes both natural and man-made conditions.”
16 (Guidelines, § 15360; see *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229
17 Cal.App.4th 340, 364; *Taxpayers for Accountable School Bond Spending v. San Diego Unified School*
18 *Dist.* (2013) 215 Cal.App.4th 1013, 1053.)⁶

19 Barring circumstances not present here (e.g., adequate analysis of a project in a previously
20 prepared EIR), an EIR must be prepared where the ROP contains “ ‘substantial evidence that *any aspect*
21 *of the project, either individually or cumulatively, may cause a significant effect on the environment,*
22 *regardless of whether the overall effect of the project is adverse or beneficial’ ”* (*County Sanitation*
23 *Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580, emphasis added; quoting Guidelines,
24 § 15063, subd. (b)(1); accord, *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131
25 Cal.App.4th 1170, 1197.)⁷ This standard is known as the “fair argument standard of review.” (*Laurel*

26 ⁶ Section 21080, subdivision (c)(2) , sets forth the criteria that trigger the “narrow exceptions” to
27 the EIR requirement. It provides for an MND only if revisions in the project plans or proposals made or
28 agreed to by the applicant before the MND and initial study are released for public review “avoid the
29 effects or mitigate the effects to a point where clearly no significant effect on the environment would
30 occur,” and “there is no substantial evidence, in light of the whole record before the lead agency, that the
31 project, as revised, may have a significant effect on the environment.” (Emphasis added; see § 21064.5
32 [definition of MND].) An MND is proper only if the record establishes these circumstances. (*Mejia v.*
33 *City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.)

34 ⁷ CEQA defines “ ‘[s]ignificant effect on the environment,’ as ‘a substantial, or *potentially*
35 *substantial, adverse change in the environment.’ ”* (§ 21068, emphasis added; see Guidelines, § 15382.)
36 Hence, adverse effects or changes in the environment that are “potentially significant” must be treated as
37 significant effects or changes. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho*
38 *Cordova* (2007) 40 Cal.4th 412, 448 & fn. 17.) Put differently, “CEQA does not speak of projects
39 which *will* have a significant effect, but those which *may* have such an effect.” (*No Oil, Inc. v. City of*
40 (Footnote continued on next page . . .)

1 *Heights Improvements Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123.) It
2 requires preparation of an EIR “whenever it can be fairly argued on the basis of substantial evidence that
3 the project may have significant environmental impact.” (*No Oil*, 13 Cal.3d at 75; see *City of Fresno*,
4 229 Cal.App.4th at 363–364; *Taxpayers*, 215 Cal.App.4th at 1034.) By the fair argument standard:

5 “ [I]f a lead agency is presented with a fair argument that a project may have a significant effect
6 on the environment, the lead agency shall prepare an EIR *even though it may also be presented*
7 *with other substantial evidence that the project will not have a significant effect.* [Citation.] ”
8 (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1345–1346,
9 emphasis added; quoting Guidelines, § 15064, subd. (f)(1); accord, *Mejia*, 130 Cal.App.4th at 332 [EIR
10 requirement not negated by “substantial evidence to the contrary”]; *Pocket Protectors v. City of*
11 *Sacramento* (2004) 124 Cal.App.4th 903, 927, 927, 930–931, 935 [if substantial evidence supports a fair
12 argument that a project conflicts with applicable land use policies or regulations that would mitigate
13 environmental impacts, sufficient grounds for requiring an EIR are established, and contrary evidence
14 does not excuse the agency from its duty to prepare an EIR].)

15 Importantly, the fair argument standard governs judicial review itself, and so trial courts
16 independently review the record for substantial evidence that a project may have a significant effect, and
17 they set aside agency decisions that fail to prepare an EIR when the record contains a fair argument,
18 based on substantial evidence of a significant effect, regardless of conflicting substantial evidence that
19 the project will not have any such effect. (*Keep Our Mountains Quiet v. County of Santa Clara* (2015)
20 236 Cal.App.4th 714, 731; *Taxpayers*, 215 Cal.App.4th at 1035–1036 [the fair argument standard is a “
21 ‘question of law’ ”]; *Pocket Protectors*, 124 Cal.App.4th 903, 927, 933.) As stated in *Taxpayers*:

22 “ ‘A court reviewing an agency’s decision not to prepare an EIR in the first instance must set
23 aside the decision if the administrative record contains substantial evidence that a proposed
24 project might have a significant environmental impact; in such a case, the agency has not
25 proceeded as required by law.’ [Citation.]”
26 (215 Cal.App.4th at 1036.) Suffice it to say, the fair argument test “ ‘creates a low threshold
27 requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of
28 environmental review [(i.e., an EIR)]’ [Citation.]” (*Taxpayers*, 215 Cal.App.4th at 1034.)⁸

29 *Los Angeles* (1974) 13 Cal.3d 68, 83, fn. 16, original emphasis [“the word ‘may’ connotes a ‘reasonable
30 possibility’ ”]; accord, *Taxpayers*, 215 Cal.App.4th at 1035.)

31 ⁸ Courts defer to the agency’s determination only on “ ‘legitimate, disputed issues of
32 credibility’ [citation] [citation].’ [Citation.]” (*Mejia*, 130 Cal.App.4th at 332–333.) “Under the fair
33 argument standard, thus, “deference to the agency’s determination is not appropriate and its decision not
to require an EIR can be upheld only when there is no credible evidence to the contrary. [Citation.]’
[Citation.]” (*Id.* at 333.)

1 *B. Substantial Evidence in the Record Supports a Fair Argument of Substantial Adverse*
2 *Effects on Human Beings, Due to the Environmental Effects of the Project Alone, and*
3 *Due to the Incremental Environmental Effects of the Project when Viewed in*
4 *Connection with the Effects of Past, Other Current, and Probable Future Projects*
5 *Eliminating Rent-stabilized Housing.*

6 CEQA expressly mandates both a finding of significant environmental effect *and preparation of*
7 *an EIR* “where there is substantial evidence, in light of the whole record, that any of [certain] conditions
8 [specified in Guidelines section 15065] *may occur.*” (Guidelines, § 15065, subd. (a), 1st par., emphasis
9 added.) These conditions include the following (inter alia):

10 • The “incremental effects” of a project, although “individually limited[,]” are cumulatively
11 significant “when viewed in connection with the effects of past projects, the effects of other current
12 projects, and the effects of probable future projects.” (Guidelines, § 15065, subd. (a)(3) [**§ 15065 (a)(3)**];
13 referring to cumulatively significant effects as “cumulatively considerable” effects]; see § 21083, subd.
14 (b)(2) [**§ 21083 (b)(2)**]; same]; see also Guidelines, § 15355 [cumulative impacts defined].)

15 • “The environmental effects of a project will cause substantial adverse effects on human
16 beings, either directly or indirectly.” (Guidelines, § 15065, subd. (a)(4) [**§ 15065 (a)(4)**]; see § 21083,
17 subd. (b)(3) [**§ 21083 (b)(3)**].)

18 *CBIA* emphasizes that § 21083, subd. (b) is an “express command that these criteria [in the
19 Guidelines] ‘shall require a finding that a project may have a “significant effect on the environment” if
20 one or more of’ a set of certain conditions exist.” (62 Cal.4th at 384, original emphasis; quoting §
21 21083, subd. (b).)⁹ *CBIA* further teaches that the last criterion (“substantial adverse effects on human
22 beings”) addresses “human health and safety.” (*Id.* at 386.)

23 By the § 15065 criteria, then, the City had a mandatory public duty to prepare an EIR when
24 presented with substantial evidence that the Project’s direct or cumulative effects on the environment
25 cause substantial adverse effects on the health and safety of human beings, directly or indirectly.¹⁰
26 Unquestionably, the City was presented with such evidence.

27 ⁹ To this point, our high court’s understanding of the fair argument standard is noteworthy:

28 “Given the statute’s text, and its purpose of informing the public about potential environmental
29 consequences, it is quite clear that an EIR is required *even if the project’s ultimate effect on the*
30 *environment is far from certain.*”

31 (62 Cal.4th at 382, emphasis added.)

32 ¹⁰ That a project’s indirect adverse effects on human beings are cognizable under § 21083 (b)(3)
33 is consistent with the general principle that “CEQA does not limit consideration of a project’s effects on
 the environment to only those that are ‘direct’ or ‘primary.’ ” (*Taxpayers*, 215 Cal.App.4th at 1052; see
 § 21065; Guidelines, §§ 15064, subd. (d), 15358 [“ ‘Effects’ and ‘impacts’ are synonymous” and
 encompass both direct effects which “occur at the same time and place[,]” and reasonably foreseeable
 indirect or secondary effects which “are later in time or farther removed in distance”].)

1 First, it cannot be reasonably disputed that absent the physical environmental impacts of the
2 Project, and, for that matter, of similar rent-stabilized housing conversion projects as well as projects
3 involving demolition of rent-stabilized housing, and construction of new apartment and condo buildings
4 (construction phase impacts, construction traffic etc., and later in time operational impacts), whole
5 classes of human beings (including low wage workers in Hollywood’s hotel industry, and others living
6 from paycheck-to-paycheck, or living on social security) would not be permanently displaced from rent-
7 stabilized apartments, and thus would not suffer the adverse health and safety effects associated with the
8 loss of the only housing they can afford to live in.

9 Nor can it be reasonably disputed that these human beings suffer health and safety effects as a
10 direct consequence of the loss of affordable housing, displacement, and housing instability, and that
11 those adverse effects are substantial.¹¹ Health care and other experts who have studied these effects
12 have found and documented substantial adverse human health and safety effects on populations (mostly
13 low-income and minority populations) affected by the loss of housing and the consequences of this loss
14 (housing instability, insecurity, and homelessness); and these health and safety effects are physical,
15 physiological, and psychological.¹² These adverse effects do not spare people who find alternative
16

17 ¹¹ Housing instability manifests itself in many ways, e.g., “having difficulty paying rent,
18 spending more than 50% of household income on housing, having frequent moves, living in
19 overcrowded conditions, or doubling up with friends and relatives.” (ROP 718/717–724 [Kushel et al.,
20 Housing Instability and Food Insecurity as Barriers to Health Care Among Low-Income Americans
21 (2006) 21 J. General Internal Medicine 71].)

22 ¹² “Lack of housing and the overcrowding found in temporary housing for the homeless have
23 been found to contribute to morbidity from respiratory infections and activation of tuberculosis.” (ROP
24 699–700 [San Francisco Dept. of Public Health, The Case for Housing Impacts Assessment: the Human
25 Health and Social Impacts of Inadequate Housing and their Consideration in CEQA Policy and Practice
26 (2004) , pp. 7–8; hereafter, **Housing Impacts**].)

27 The testimony City decisionmakers received about homeless persons ill and destitute in the
28 streets of Hollywood is consistent with public health science data reporting high rates of mortality
29 among the homeless, barriers to health care access, and higher rates of emergency department
30 admissions for those lucky enough to be picked up by a case worker. (ROP 718.) Of the City’s
31 estimated 23,539 homeless in 2011, 8,265 persons (35%) were mentally ill. (ROP 1295–96 [L.A. Dept.
32 of City Planning, Housing Needs Assessment (2013), p. 1–29; hereafter **Housing Needs Assessment**]),
33 which has adverse public safety effects on workers and residents alike. Housing instability is also
associated with poor health, lower weight, and developmental issues among children. (ROP 893–94,
897–902 [Cutts et al., U.S. Housing Insecurity and the Health of Very Young Children (2011) 101
American J. of Public Health 1508.]

Overcrowded living conditions created when displaced residents find temporary lodging with
families or friends deprives children of quiet space to do homework, thus adversely affecting childhood
development. (ROP 698–99.) Displacement from housing, housing instability and increased commutes
from communities where housing is cheaper (e.g., Kern or San Bernardino counties) causes chronic
stress, increasing the rate at which inoculation with a common cold virus leads to clinical infection, heart
disease, diabetes, and hypertension. (ROP 697–98 [Housing Impacts, pp. 5–6].)

1 housing but are faced with higher rental costs because they cannot make ends meet without trading off
2 other basic human needs.¹³

3 In the case at bench, 19 human beings have been displaced from 18 rent-stabilized units. (ROP
4 2485.) Consistent with the fair argument standard, thus, this Court must determine, as matter of law,
5 whether the ROP contains substantial evidence that this is a substantial, direct adverse effect on human
6 beings.¹⁴ We submit the ROP contains substantial evidence compellingly proving that this is indeed a
7 substantial, direct adverse effect on human beings. The public health and housing studies in the ROP
8 cannot be dismissed as argument, speculation, or unsubstantiated opinion. (See *Keep Our Mountains*
9 *Quiet*, 236 Cal.App.4th 714, 734 [significant impact caused by noise from temporary events at winery
10 estate located near wildlife habitat established by studies which indicated that noise may induce stress-
11 related illness in mountain lions and bobcats, and their displacement from favored habitats]; *Taxpayers*,
12 215 Cal.App.4th at 1035–1036 [expert opinion supported by facts need not be based on specific
13 observations as to the site under review].) Likewise, because substantial evidence includes reasonable
14 assumptions predicated upon facts and reasonable inferences from relevant information, factual
15 testimony from citizens about existing baseline conditions “can form the basis for substantial evidence.”
16 (*Keep Our Mountains Quiet*, 236 Cal.App.4th 714, 730–731 & fn. 9.) Most of the evidence in the ROP
17 we quoted or cited is not even contradicted by other evidence, nor does it reveal social and economic
18 impacts *unrelated to* environmental, human health and human safety impacts.¹⁵

19 _____
20 ¹³ “When housing is unaffordable, people often sacrifice other material needs including food,
21 clothing, and health care services.” (ROP 698 [Housing Impacts, p. 6].) Food insecurity and
22 malnutrition lead to increased hypoglycemia among adult diabetics, obesity in adults, and emergency
23 department visits.” (ROP 721.)

24 ¹⁴ “ ‘Substantial evidence’ . . . means enough relevant information and reasonable inferences
25 from this information that a fair argument can be made to support a conclusion, even though other
26 conclusions might also be reached.” (Guidelines, § 15384.) The determination of whether a fair
27 argument of significant environmental effect can be made calls for examination of “the whole record
28 before the lead agency.” (*Id.*) “Substantial evidence shall include facts, reasonable assumptions
29 predicated upon facts, and expert opinion supported by facts.” (*Id.*, subd. (b)); *id.*, § 15064, subd.
30 (f)(5); § 21080, subd. (e)(1).) On the other hand, “[a]rgument, speculation, unsubstantiated opinion or
31 narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts
32 which do not contribute to or are not caused by physical impacts on the environment does not constitute
33 substantial evidence.” (*Id.*, §§15384, subd. (a), 15064, subd. (f)(5), (6) ; see § 21080, subd. (e)(2).)

¹⁵ Evidence of a project’s social and economic impacts, standing alone, is not substantial
evidence of a significant environmental effect. (Guidelines, §§ 15382, 15384; see, e.g., *Lighthouse*, 131
Cal.App.4th at 1206 [decreases in enjoyment or use of state beach by some visitors due to park plan
allowing presence of dogs, without more, are “essentially social” effects].)

That said, although displacement of people from rent-stabilized housing undoubtedly has adverse
social and economic effects, “adverse effects on human beings” within the meaning of CEQA, are not
social or economic effects to begin with. They are primarily effects on human health and safety. (*CBIA*,
62 Cal.4th at 386.) Moreover, that displacement of people from rent-stabilized housing has adverse
(Footnote continued on next page . . .)

1 What reinforces the conclusion that the ROP supports a fair argument of a substantial, direct
2 adverse effect on human beings is the fact that Respondents here failed to mitigate the impacts on the
3 tenants displaced from 1850 N. Cherokee, thereby ignoring the City’s own CEQA Thresholds Guide,
4 which sets out the following mitigation measures: “Exceed statutory requirements for relocation
5 assistance”; and “Increase the number of housing units affordable to lower income households.”¹⁶ This
6 failure can be traced to Respondents’ denial that the Project’s environmental effects will cause any
7 adverse effect on human beings. (ROP 64, 92 [IS].)

8 Even if the Project’s direct effects on 19 low- and moderate-income tenants displaced from the
9 rent-stabilized units at 1850 N. Cherokee (and on others indirectly impacted by their displacement)
10 could be characterized as individually “minor,” which they shouldn’t, they most certainly cannot be
11 found cumulatively inconsiderable when viewed in connection with the effects of past rent-stabilized
12 apartment building conversion projects, the effects of other current such projects, and the effects of
13 probable future such projects. The City itself considers the net loss of 25 units or more as a potentially
14 significant population and housing impact. (ROP 82, 2347/2346–2352.) Thus, it takes only one other
15 project converting or demolishing eight rent-stabilized units in the area, for the City to consider the
16 Project’s housing and population displacement impacts, and the attendant adverse effects on human
17 beings, potentially significant. The evidence we discussed before shows far more significant cumulative
18 losses of rent-stabilized housing than 25 units, including recent losses in Hollywood alone.¹⁷ This
19

20 _____
21 social and economic effects does not take it out of CEQA’s ambit. For one thing, the Guidelines
22 consider population and housing displacement as “environmental factors” an IS must account for.
23 (Appen. G, p. 2 & subd. XIII.) For another, “economic and social effects of a physical change may be
24 used to determine that the physical change is a significant effect on the environment” (Guidelines, §
15064, subd. (e)), and so, if “the physical change causes adverse economic or social effects on *people*,
those adverse effects may be used as a factor in determining whether the physical change is significant.”
(*Id.*, emphasis added; ROP 706–09 [Housing Impacts, pp. 14–17].)

25 Guidelines section 15064, subdivision (e) offers this pertinent example: “[I]f a project would
26 cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the
27 overcrowding would be regarded as a significant effect.” Also, the economic strain among low income
individuals caused by displacement from rent-stabilized housing may increase psychological and
physiological stress, a health effect. (ROP 697–98 [Housing Impacts, pp. 5–6].)

28 ¹⁶ Compensation for an adverse housing displacement impact through payment of money or the
29 provision of units affordable to lower income households is appropriate mitigation so long as it is
30 roughly proportional to the permanent loss of the 18 apartment units from the City’s rent-stabilized
31 housing stock. (See *City of San Diego v. Board of Trustees of California State University* (2015) 61
Cal.4th 945, 962; *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th
341, 359, 364.)

32 ¹⁷ One commenter, attorney Sean Chandra, in a letter to the City, dated November 30, 2015,
33 specifically identified nine projects each of which the City chose to issue a negative declaration for, just
in the last two months prior to his letter. (ROP 2788/2783–89; see also 2555.) Mr. Chandra asked the
(Footnote continued on next page . . .)

1 evidence also includes the City’s own forecasts predicting massive future losses.

2 The cumulative effects of projects eliminating rent-stabilized housing units, whether through
3 conversion or otherwise, when considered together, are anything but insignificant. The citizen
4 testimony in the ROP alone shows that the Project and related, similar past and presently pending
5 projects slowly but surely erode Hollywood’s rent-stabilized housing stock, thus driving increasing
6 numbers of residents and households of very low, low- and moderate-income out of Hollywood and
7 neighboring urban centers, while City planners check and City officials approve checklist boxes
8 pretending that these massive demographic changes, along with their cumulative housing, housing
9 equality, environmental justice, and public health and public safety impacts, are nonexistent or
10 insignificant. At the same time, if you’re displaced from your rent-stabilized unit in Hollywood but
11 must stay in the area to be close to your employment, good luck! Monthly rents for new apartment units
12 upwards of \$2,600 (fn. 5, *ante*), not to mention the rates charged for using a boutique hotel guest unit,
13 are out of whack with rent-stabilized rates. Even moderate income earners would have to severely cut
14 down on health insurance or material human needs to be able to afford market rents in the area.

15 The City’s manner of proceeding is highly prejudicial. Project after project, it escalates the
16 cumulative harm it causes. Boutique hotels and kindred projects strike at the heart of Hollywood’s
17 human fabric. The City’s manner of proceeding precludes informed decisionmaking and mitigation for
18 the thousands of human beings displaced annually.¹⁸

19 *C. Substantial Evidence in the Record Supports a Fair Argument of Significant*
20 *Cumulative Effects on the Environment, Due to the Incremental Environmental*
21 *Effects of the Project when Viewed in Connection with the Effects of Past, Other*
22 *Current, and Probable Future Projects Eliminating Rent-stabilized Housing.*

23 The discussion and evidence relied on in subpart I.B., *ante*, establishes a fair argument, based on
24 substantial evidence, that the direct and indirect adverse human health and safety effects caused by the
25 *environmental effects* of the Project and similar related projects are substantial. Perusal of that evidence
26 indicates that these environmental effects are cumulatively significant themselves, which constitutes

27 _____
28 City to address how these projects might combine with the Project to significantly impact population
and housing in the City. There was no response.

29 ¹⁸ The City currently still has over 600,000 rent-stabilized units, with 75% of all remaining
30 buildings with four or fewer units. (ROP 1328–29.) Considering those figures, it is reasonable to
31 assume that substantially more than 550,000 apartment buildings (more than 90%), subject to the RSO,
32 have less than 25 units. What that means is that, under the City’s arbitrary 25-unit threshold of
33 significance for an individual project (ROP 82, 2347), the mitigation measures (relocation assistance
above minimum required by RSO; replacement affordable units) specified in its local CEQA Guidelines
are illusory for thousands of displaced tenants.

1 separate and additional grounds for EIR review.¹⁹ We have already discussed that evidence or cited to
2 the excerpts of the ROP that contain it. Suffice it to say, the effects on the environment of the Project
3 and similar related projects have been described graphically by Ms. Shain (ROP 489, ROP 549) and
4 others. (ROP 700 [need for new emergency shelters]; 701 [loitering and illegal disposal of hazardous
5 substances].) Homelessness is neither invisible nor without imprint on the environment.

6 The physical environmental changes that constitute or lie in the wake of conversions and
7 demolitions of rent-stabilized apartment buildings, and the demographic shifts they cause, too, have a
8 significant imprint on the man-made environment. (ROP 699 [overcrowding of renter households];
9 ROP 702–03 [residential segregation and ghettoization; new demands on public transportation services,
10 as housing at comparable rents forces people to live far from their jobs and schools].) Repopulation of
11 Hollywood with a more affluent transient population and a more affluent resident population, too, has a
12 physical imprint -- not just on the residential zones. A new “residential” neighborhood canvas of
13 boutique hotels, STR lodging, and new or refurbished apartment units catering to above-average income
14 residents brings about changes to neighboring commercial districts. The new uses become gentrification
15 anchors, displacing ethnic economic enclaves and culturally-specific entertainment while attracting your
16 usual slew of community-homogenizing retail formula businesses, from Lululemon to Sephora to . . . no
17 more local hardware store. (ROP 2325.)²⁰

18 *D. The Initial Study Prepared for the Project Is Inadequate; It Fails to Provide*
19 *Respondents with Information to Use as the Basis for Deciding Whether to Prepare*
20 *an Environmental Impact Report or a Mitigated Negative Declaration.*

21 A lead agency must “investigate potential environmental impacts.” (*County of Kern*, 127
22 Cal.App.4th at 1597.) If it fails “ ‘to study an area of possible environmental impact, a fair argument
23 may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the
24 scope of fair argument by lending a logical plausibility to a wider range of inferences.’ [Citation.]”
(*Ibid.*) Here, gaps and deficiencies in the IS do indeed enlarge the scope of fair argument.

25 First, the IS makes the bald checklist conclusion that the Project has no adverse effects on human
26 beings (ROP 64), which means that for the City, the impact does not even apply to projects like the one

27
28 ¹⁹ § 21083 (b)(3) and § 15065 (a)(4) require a causal nexus between substantial adverse effects
29 on human beings, and “environmental effects,” not “significant environmental effects.” Under § 21083
30 (b)(3) and § 15065 (a)(4), thus, an EIR is required when direct or cumulative environmental effects,
31 whether they are significant or not, cause substantial adverse effects on human beings.

32 ²⁰ Whether those physical changes are for the better or worse isn’t the point. “[F]or projects that
33 may cause both beneficial and adverse significant impacts on the environment, preparation of an EIR is
required because the consideration of feasible alternatives and mitigation measures might result in
changes to the project that decrease its adverse impacts on California’s environment.” (*County of Kern*,
127 Cal.App.4th at 1580.)

1 involved. (ROP 57.) But the City specifies no information, facts, or reference to the ROP to support
2 this astounding determination.²¹ The City makes a similarly unsupported conclusion regarding
3 cumulative effects. (ROP 64, 91.) This violates its own CEQA standards. (ROP 57 [#3, #4].)²²

4 Second, the IS avoids addressing the significant population and housing displacement impacts
5 caused by the direct and cumulative Project-related losses of rent-stabilized housing units. The IS
6 assumes that because the existing 1850 N. Cherokee apartment buildings have been vacant since 2013
7 (due to the evictions), the Project will not have any population or housing impacts. (ROP 82–83.) As a
8 matter of CEQA law, this assumption is untenable. It seizes upon RPI’s clever timing of the evictions in
9 relation to Project program and design. Respondents and RPI are too clever by half. CEQA requires
10 focus on a project as a whole. It does not allow them to downplay impacts by dividing aspects,
11 elements, or phases of a project. (*Laurel Heights*, 47 Cal.3d at 395–397; *Arviv*, 101 Cal.App.4th at 1346
12 & fn. 13; *Bishop*, 172 Cal.App.3d at 166–167; see Guidelines, § 15378.) Moreover, Respondents’
13 assumption fails to recognize that, vacant or not, the conversion of the 1850 N. Cherokee buildings into
14 a boutique hotel does permanently eliminate 18 rent-stabilized apartment units.

15 The IS also states that “[t]he removal of 18 units from the housing market does not meet the
16 minimum threshold of 25 multi-family units adopted by the City as creating a potential impact.” (ROP
17 82.) Aside from failing to account for the cumulative impacts of the Project and similar conversions or
18 demolitions of rent-stabilized apartment buildings units in the area, the City’s mechanical use of this
19 screening criterion (ROP 2347) is unexplained and unsupported. By the City’s CEQA Thresholds
20 Guide, “[t]he determination of significance shall be made on a *case-by-case* basis, considering the
21 following factors:

- 22 • “The total number of residential units to be demolished, converted to market rate, or removed
23 through other means as a result of the proposed project, in terms of net loss of market-rate and
24 affordable units;
- 25 • “The current and anticipated housing demand and supply of market rate and affordable housing
26 units in the project area;
- 27 • “The land use and demographic characteristics of the project area and the appropriateness of

28 ²¹ The IS attempts to explain it as follows: “Any potential impacts, direct or indirect, will be
29 mitigated by existing city, state, and federal regulations and will be further reduced with the adopted of
30 [sic] mitigation measures.” (ROP 92.) What those regulations and mitigations are, or what public
31 health and safety effects they would address, we aren’t told, and the City is just as mum as to *when* the
32 affected human beings might expect its unspecified mitigations to alleviate displacement effects.

33 ²² While an IS may use a checklist to identify environmental effects, “it must also disclose the
34 data or evidence upon which the person(s) conducting the study relied.” (*Citizens Assn. for Sensible
35 Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.) “Mere conclusions
36 simply provide no vehicle for judicial review.” (*Ibid.*) Source and content of information relied upon
37 for environmental conclusions must be specifically identified. (*Id.* at 172.)

1 housing in the area; and

- 2 • “Whether the project is consistent with adopted City and regional housing policies such as the
3 Framework and Housing Elements, HUD Consolidated Plan and CHAS policies, redevelopment
4 plan, Rent Stabilization Ordinance, and the Regional Comprehensive Plan and Guide (RCP&G).”

5 (ROP 2348–49.) The IS is oblivious to those factors and the CEQA Threshold Guide’s methodology for
6 applying them. With respect to the determination of the level of significance of a project’s cumulative
7 impacts, the Thresholds Guide instructs:

8 “Determine the number and type of housing units to be eliminated and added as a result of the
9 related projects in the same manner as described . . . for Project Impacts[,]” i.e., by identifying
10 “the net change in the number of habitable housing units, as well as units affordable to low- and
11 very-low income households from the Evaluation of Screening Criteria”; then “[c]ompare the
12 combined effect of the displacement from the project and the related projects to the current and
13 anticipated housing demand and supply in the project area and adopted housing policies.”

14 (ROP 2350, 2349.) The IS, again, completely ignores this guidance and cumulative impacts. No
15 attempt is made at providing any explanation for the checkbox conclusion that cumulative housing and
16 population displacement impacts are nonexistent or insignificant. Given that the City still has over
17 600,000 rent-stabilized units most of which are in buildings of less than 25 units (ROP 1328–29), and
18 given the rate of recent, pending and reasonably foreseeable conversions and demolitions of buildings
19 subject to the RSO (e.g., ROP 1334–37, 1981; fn. 2, *ante*), by the City’s manner of proceeding,
20 thousands of low- and moderate-income tenants have been, are, and will be displaced from their housing
21 without the City ever finding that this is or has a significant cumulative effect on the environment, or
22 causes substantial adverse effects to human beings. That these effects should escape EIR review and
23 mitigation cannot possibly be squared with the intent of § 21083 (b)(2) and (3). Respondents were
24 repeatedly advised of this substantial CEQA violation -- to no avail. (ROP 287-88, 1622–23, 2314.)

25 *II. THE CITY COUNCIL’S IMPLICIT DECISION TO EXEMPT REAL PARTY IN
26 INTEREST FROM THE PARKING VARIANCE REQUIRED BY THE ZONING
27 ADMINISTRATOR AND THE AREA PLANNING COMMISSION IS UNSUPPORTED BY
28 ANY FINDINGS EXPLAINING RESPONDENTS’ ELEVENTH-HOUR
29 DETERMINATION THAT NO PARKING VARIANCE IS REQUIRED.*

30 Both the ZA and two of the three APC members required a parking variance. RPI’s counsel
31 agreed: “We are required to have 11 off-site parking spaces, which we agree to.” (ROP 398.) Things
32 changed quickly, however, after Ms. Shain appealed the APC’s decision to the City Council. The
33 council implicitly exempted RPI from the variance after the ZA’s unexplained acknowledgment of
RPI’s withdrawal of the variance application. (ROP 306.) It simply “filed” Ms. Shain’s appeal of the
variance without explaining why the 24-unit boutique hotel is now approved without a variance.

The Project requires 21 parking spaces, including 11 offsite. It was found that without the
variance, it would conflict with City zoning regulations. (ROP 79, 225 [#8], 241.) Yet the City Council
adopted the MND without evidence or findings that the Project no longer needs a parking variance, or

1 that it would not conflict with City zoning regulations with less than half the number of the previously
2 required parking. Put differently, the council adopted the MND based on a substantially inaccurate
3 Project description. This is prejudicial CEQA error. (*City of Redlands v. County of San Bernardino*
4 (2002) 96 Cal.App.4th 398, 406 [“The negative declaration is inappropriate where the agency has failed
5 either to provide an accurate project description or to gather information and undertake an adequate
6 environmental analysis”].)

7 The council action also violates the rule of *Topanga*. Adjudicative agency decisions, as here,
8 must be predicated on written findings that reveal “the analytic route the administrative agency traveled
9 from evidence to action.” (11 Cal.3d at 515; see *id.* at 516-517 & fn. 15 [findings are “roadsigns”
10 serving to “enable the reviewing court to trace and examine the agency’s mode of analysis”; and to help
11 “persuade the parties that administrative decision-making is careful, reasoned, and equitable”]; *id.* at
12 522.) These standards required the City to make a deliberate determination of the issues raised by the
13 Project application, based on findings that bridge “the analytic gap between the raw evidence and
14 ultimate decision” (*id.* at 515) -- certainly where, as here, an about-face results in contradictory
15 conclusions regarding whether a variance is needed. (See *Sierra Club v. City of Hayward* (1981) 28
16 Cal.3d 840, 869; *West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198
17 Cal.App.4th 1506, 1520-1522.)

18 *West Chandler* is on point. There, the City Council reversed the APC’s denial of a parking
19 variance for expanded synagogue facilities. (198 Cal.App.4th at 1509-1511.) The court held:

20 “By approving a proposal materially different from that addressed by the zoning administrator,
21 the city council acted on evidence not in the record before the zoning administrator and acted
22 without any reference to the zoning administrator’s findings. The city council’s conclusory
23 findings did not show how the city council traveled from evidence to action nor indicate how the
24 zoning administrator erred or abused her discretion.”

25 (198 Cal.App.4th at 1522.) This holding equally applies to our case. The council’s decision is silent
26 concerning why the ZA and the APC would have erred in requiring 21 rather than 10 parking spaces.
27 Explanatory findings were required in the PLUM Committee’s recommendation and the council’s
28 decision. The Court cannot simply presume the City’s decision rests on findings and good evidence.
(*Walnut Acres Neighborhood Assn. v. City of Los Angeles* (2015) 235 Cal.App.4th 1303, 1312-1313.)

29 **III. THE CITY COUNCIL FAILED TO PROCEED IN THE MANNER REQUIRED BY CEQA**
30 **BY APPROVING THE MITIGATED NEGATIVE DECLARATION FOR THE PROJECT**
31 **IN A LEGAL VACUUM, WITHOUT CONSIDERING OR ACTING ON THE PARKING**
32 **VARIANCE, OR, FOR THAT MATTER, ON ANY ENTITLEMENT FOR USE APPLIED**
33 **FOR BY REAL PARTY IN INTEREST.**

As just noted, after Ms. Shain filed her appeal with the City Council, Respondents abandoned the
requirement for an offsite parking variance. It is undisputed that this abrupt change in position occurred

1 without reduction of the number of guest rooms, which would have reduced parking demand associated
2 with the Project; and that the council failed to consider and exercise discretionary review authority over
3 the parking variance. The PLUM Committee was told by a representative of the councilmember of the
4 13th council district (where the Project is located) that “[t]he only thing before you . . . is the
5 environmental determination.” (ROP 505.)

6 The council erred by not exercising CEQA-mandated discretionary review authority over the
7 variance -- and, for that matter, the entire Project since the council also did not consider the CUP and the
8 rear yard variance.

9 The council erred because its decision wasn’t “CEQA compliant in its own right.” (*City of*
10 *Fresno*, 229 Cal.App.4th at 359.) *City of Fresno* teaches that Respondents may not split responsibility
11 for projects subject to CEQA between the council and subordinate decisionmaking bodies. Thus, the
12 City Council must act “as the [City’s] independent decisionmaking body for *both* the adoption of the
13 [MND] and the approval of the Project.” (*Id.* at 360 [“A decision on both matters must be made by the
14 same decisionmaking body because ‘... CEQA is violated when the authority to approve or disapprove
15 the project is separated from the responsibility to complete the environmental review’ ”].)

16 *City of Fresno* affirmed a trial court judgment ordering the Fresno city council to set aside a
17 decision upholding a subordinate review body’s approval of an MND. There, a city commission had
18 approved demolition permits for two locally designated “heritage properties.” (*Id.* at 351.) As here, the
19 city council considered the MND but declined to pass on the underlying entitlements. This manner of
20 proceeding amounted to prejudicial CEQA error. As *City of Fresno* explains, when local government’s
21 legislative body determines an administrative, internal CEQA appeal, that body proceeds as required by
22 CEQA only if it acts “as the final, independent decisionmaking body for both the Project and the
23 environmental review documents” (*Id.* at 359.)

24 Here, the City Council made the exact same error as the council in *City of Fresno*. Its decision
25 deserves the same fate as that of the Fresno city council.

26 ***IV. THE AREA PLANNING COMMISSION ACTED WITHOUT JURISDICTION AND***
27 ***FAILED TO PROCEED IN THE MANNER REQUIRED BY THE LOS ANGELES CITY***
28 ***CHARTER, CITY ZONING REGULATIONS, AND ITS OWN RULES OF PROCEDURE***
29 ***BY PURPORTING TO REAFFIRM THE ZONING ADMINISTRATOR’S DECISION***
30 ***WITH THE VOTES OF A MINORITY OF ITS MEMBERSHIP.***

31 This Court may, by writ of ordinary mandate (Code Civ. Proc., § 1085), order the APC to
32 exercise its discretion in the first instance when it has refused to act at all. (See *Daily Journal Corp. v.*
33 *County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1555.) Such a writ is called for in light of the
APC’s admitted failure to act on Ms. Shain’s appeal with a 2:1 vote.

The City Charter provides an affirmative right to appeal to the APC a ZA’s decision to grant a

1 CUP. (City Charter, § 563, subd. (b)(2) .) The APC’s rules, which it adopted pursuant to City Charter
2 section 506, state: “Commission action (the decision of the Commission) shall be by majority vote of *all*
3 the members (three).” (Central Los Angeles Area Planning Commission Rules and Operating
4 Procedures, Rule 28.) In the case at bench, the APC failed to take action but purported to take action by
5 declaring the ZA’s decision reaffirmed. Because two members lack jurisdiction to act, the APC’s
6 purported action is null and void. It must be ordered to take action on Ms. Shain’s appeal.

7
8 **CONCLUSION**

9 With losses of rent-stabilized housing units displacing thousands of people per year since 2000,
10 and market rents upwards of 50% higher than what low-income and “living” wage earners can afford,
11 Respondents should no longer stand by idly and blink at their duties under CEQA when they approve
12 projects that permanently eliminate rent-stabilized housing for low- and moderate-income tenants,
13 breaking their connection to their neighborhoods, work places, health care providers, children’s schools,
14 and places of worship. Enforcement of CEQA, and of the mitigations that CEQA and the City’s own
15 CEQA Guide require to alleviate the substantial, adverse effects on human beings of displacement from
16 rent-stabilized housing, isn’t just good public policy. It is the law. CEQA compliance will allow City
17 planners and decisionmakers to see *and effectively mitigate* the direct and cumulative adverse effects on
18 human beings of their decisions in this and future cases of projects converting rent-stabilized housing
19 units into “boutique hotel,” STR, new apartment, or condo units that are out of reach of the tenants
20 displaced. An order from this Court granting the relief Petitioners request will prevent Respondents
21 from continuing to incentivize the housing inequalities and the substantial, adverse effects on the human
22 victims of their avoidance of CEQA.

23 DATED: March 6, 2017

ANGEL LAW
Frank P. Angel

24
25
26 By: 
Frank P. Angel
Attorney for Petitioners/Plaintiffs
HOLLYWOODIANS ENCOURAGING RENTAL
OPPORTUNITIES (HERO), SYLVIE SHAIN, and
MAX BLONDE

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
3 not a party to this action. My business address is 2601 Ocean Park Boulevard, Suite 205, Santa Monica,
4 California.

5
6 On March 6, 2017, I served the foregoing document, entitled "PETITIONERS' MOTION FOR
7 PEREMPTORY WRIT OF ADMINISTRATIVE MANDAMUS AND INJUNCTIVE RELIEF;
8 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT," on the opposing parties via
9 overnight delivery and e-mail to:

<p>10 Oscar Medellin, Deputy City Attorney 11 Los Angeles City Attorney's Office 12 200 North Main Street, City Hall East, 7th Fl. 13 Los Angeles, CA 90012 14 E-mail: oscar.medellin@lacity.org</p>	<p>Matthew D. Hinks Jeffer Mangels Butler & Mitchell LLP 1900 Avenue of the Stars, 7th Floor Los Angeles, CA 90067 E-mail: mh2@jmbm.com</p>
<p>15 and</p> <p>16 Sabrina V. Teller 17 Remy Moose Manley, LLP 18 555 Capitol Mall, Suite 800 19 Sacramento, CA 95814 20 E-mail: steller@rmmenvirolaw.com</p>	<p>(Counsel for Real Parties in Interest/Defendants Millennium Settlement Consulting / 1850 North Cherokee, LLC et al.)</p>
<p>(Counsel for Respondents/Defendants City of Los Angeles et al.)</p>	

21
22 **OVERNIGHT DELIVERY:** I deposited true copies of the foregoing document in sealed
23 envelopes designated by the express service carrier Golden State Overnight, with delivery fees provided
24 for, and addressed with the names and addresses above, in the pickup box regularly maintained by
25 Golden State Overnight at 2601 Ocean Park Blvd., Santa Monica, California.

26 **E-MAIL:** I e-mailed a true copy of the foregoing document in Portable Document Format (PDF)
27 from my e-mail address lmcmanus@angellaw.com through Angel Law's electronic mail system to the
28 interested parties at their e-mail addresses listed above. The electronic transmissions were reported as
29 sent, and I did not receive any electronic message or other indication that the transmissions were
30 unsuccessful.

Angel Law
2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 90405

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct, and that I have executed this proof of service in Santa Monica, California, on March 6,
3 2017.

4
5
6
7
8 _____
Lake McManus
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33