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10 STOPTHEMILLENNIUMHOLLYWOOD.COM;
11 COMMUNITIES UNITED FOR REASONABLE
12 DEVELOPMENT; BEACHWOOD CANYON
13 NEIGHBORHOOD ASSOCIATION; AND GEORGE
14 ABRAHAMS

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 STOPTHEMILLENNIUMHOLLYWOOD.
18 COM and COMMUNITIES UNITED FOR
19 REASONABLE DEVELOPMENT,
20 California unincorporated associations;
21 BEACHWOOD CANYON
22 NEIGHBORHOOD ASSOCIATION, a
23 California corporation; GEORGE
24 ABRAHAMS, individually,

25 Petitioners and Plaintiffs,

26 vs.

27 CITY OF LOS ANGELES, a municipal
28 corporation; LOS ANGELES CITY
COUNCIL; and DOES 1 through 20,
inclusive,

Respondents and Defendants

MILLENNIUM HOLLYWOOD, LLC, a
Delaware limited liability company, doing
business in California; and ROES 1 through
20, inclusive,

Real Parties in Interest.

Conformed Copy

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 05 2014

Sherri R. Carter, Executive Officer/Clerk
By: Jennifer De Luna, Deputy

Case No. BS144606

[Related to Case No. BS144491]

VERIFIED FIRST AMENDED
PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

[Code Civ. Proc. §§ 1060, 1085,
1094.5; Pub. Res. Code §§ 21000, *et*
seq. (CEQA); Constitutional Due
Process; Govt. Code § 65804; Los
Angeles City Charter § 562; Los
Angeles Municipal Code §§ 12.04,
12.27(D), 12.32]

[Hon. James C. Chalfant, Dept. 85]

1 Petitioners and Plaintiffs StopTheMillenniumHollywood.com, Communities
2 United for Reasonable Development, Beachwood Canyon Neighborhood Association, and
3 George Abrahams (“Petitioners”) seek a writ of mandamus and declaratory and injunctive
4 relief against Respondents and Defendants City of Los Angeles the Los Angeles City
5 Council (sometimes collectively the “City” or “Respondents”), and allege as follows:

6 **INTRODUCTION**

7 1. On July 24, 2013, the Los Angeles City Council, led by former Hollywood
8 Councilmember and now Mayor Eric Garcetti, and new Hollywood Councilmember Mitch
9 O’Farrell, gave final approvals to a real estate development project known as the
10 Millennium Hollywood project located on two parcels totaling 4.46 acres straddling Vine
11 Street north of Hollywood Boulevard, and surrounding the Capitol Records Building in
12 Hollywood.

13 2. This case, perhaps more than any project carried out by City of Los Angeles
14 personnel and elected officials in recent years, has struck a nerve with citizens and sparked
15 national media attention: What kind of City of Los Angeles leadership would approve this
16 project when compelling evidence showed the Millennium Developer’s geologists,
17 Department of City Planning, and Department of Building and Safety fraudulently hid the
18 fact that an active earthquake fault, capable of a surface rupture that could shear a building
19 in half, crossed the site where 39- and 35-story skyscrapers are proposed for construction?
20 Since the filing of the original Petition herein, the California Geological Survey and
21 California State Geologist have issued a Preliminary Alquist-Priolo Fault Zone Map which
22 indicates active traces of the Hollywood Earthquake Fault cross through the Millennium
23 Hollywood project’s East and West Sites.

24 3. As an object lesson for political science students, this case demonstrates the
25 corrosive influence of campaign contributions and more than \$4 million in lobbying
26 payments made by the Millennium Developer from 2009 through the second quarter of
27 2013. In exchange for those campaign contributions, which are little more than legalized
28 bribery that fuel the political ambition of those focused on their “public service” careers,

1 our City Council members carried out a grossly unfair and politically choreographed public
2 hearing where they voted to endanger the lives of thousands of people who would occupy
3 or visit the Millennium Project.

4 4. For this and many other reasons, the people of Los Angeles are once again
5 forced to sue their own government to enforce the law and expose shocking dereliction of
6 duty by public officials. The Millennium Project approvals demonstrate that Los Angeles'
7 city government suffers from a moral bankruptcy that now threatens the very physical
8 safety of its residents. Our overburdened Los Angeles County Superior Court system must
9 now hear and decide a case that would never have been necessary if the Los Angeles
10 Mayor and City Council actually cared about the lives of the people they supposedly
11 represent.

12 5. Accordingly, this petition and complaint challenges the City's July 24, 2013
13 actions, and all subsequent actions, in approving zone and height district changes, vesting
14 tentative tract map, Millennium Development Regulations, Land Use Equivalency
15 Program, and other associated entitlements further described herein ("Project Approvals")
16 and an environmental impact report ("EIR") for the "Millennium Hollywood" project, the
17 proposed construction of approximately 1,166,000 square feet of an unspecified set of
18 mixed-use buildings (up to 585 feet in height) which may or may not include residential
19 condominiums, and/or apartments, and/or retail space, and/or indoor/outdoor restaurants,
20 and/or a health club, and be served by an unknown number of parking spaces located
21 within approximately 800,000 square feet of additional uninhabitable space, all sited on
22 two development parcels that straddle Vine Street in Hollywood, California (the "Project").
23 The street addresses of the Project include, but are not limited to, 1720, 1722, 1724, 1730,
24 1740, 1745, 1749, 1750, 1751, 1753, 1760, 1762, 1764, 1766, 1768, 1770 N. Vine Street;
25 6236, 6270, 6334 W. Yucca Street; 1733, 1741 N. Argyle Avenue; 1746, 1748, 1754,
26 1760, 1764 N. Ivar Avenue, Los Angeles, California, 90028. In essence, the Project will
27 place approximately twice the square footage of the Staples Center (950,000 s.f.) into a
28 mere 4.46 acres of land in Hollywood.

1 Beachwood Canyon in or immediately adjacent to Hollywood, California and the site of the
2 proposed Project. Beachwood Canyon Neighborhood Association is a founding member
3 organization of both STMH and CURD.

4 10. Petitioner George Abrahams is an individual resident and taxpayer of
5 Hollywood, California, serves as a director of the Beachwood Canyon Neighborhood
6 Association, and is a leader and representative of STMH and CURD.

7 11. The members of STMH, CURD, and Beachwood Canyon Neighborhood
8 Association include residents and property owners in the City of Los Angeles who
9 collectively advocate for residential health, safety and quality of life issues, and oppose
10 worsening environmental impacts such as unwarranted density/height that overwhelms
11 municipal infrastructure and public services, gridlocked Hollywood streets as a cumulative
12 result of existing/future projects, and diminished street parking and intrusion of parking
13 from under-parked projects into adjoining residential neighborhoods.

14 12. Petitioners have a substantial interest in ensuring that the City's decisions
15 are in conformity with the requirements of law, and in having those requirements properly
16 executed and the public duties of the City enforced. Petitioners will be adversely affected
17 by impacts resulting from the City's actions and approvals, and are aggrieved by the acts,
18 decisions and omissions of the City as alleged in this petition and complaint. Petitioners
19 are suing on their behalf, and on behalf of others who will be affected in the Hollywood
20 area, as well as all citizens of the City of Los Angeles, and more broadly, including all
21 those who use the Hollywood Freeway.

22 13. Respondent City of Los Angeles is a California charter city located in the
23 County of Los Angeles, California. The Project is within the jurisdictional limits of the
24 City of Los Angeles.

25 14. Respondent Los Angeles City Council is the elected governing body of the
26 City, and is the body responsible for the decisions at issue herein.

27 15. Petitioners are informed and believe, and based thereon allege, that
28 Millennium Hollywood, LLC (sometimes "Real Party"), named as a real party in interest,

1 is a Delaware limited liability corporation, doing business in California, to which the City
2 granted all of the Project approvals.

3 16. Petitioners are ignorant of the true names of respondents sued herein as
4 DOES 1 through 20, inclusive, and therefore sue said respondents by those fictitious
5 names. Petitioners will amend the petition to allege their true names and capacities when
6 the same have been ascertained. Petitioners are informed and believe, and based thereon
7 allege, that each of these fictitiously named respondents is in some manner responsible for
8 the wrongful conduct alleged in this petition. Petitioners are informed and believe, and
9 based thereon allege, that these fictitiously named respondents were, at all times mentioned
10 in this petition, the agents, servants, and employees of their co-respondents and were acting
11 within their authority as such with the consent and permission of their co-respondents.

12 17. Petitioners are ignorant of the true names of real parties sued herein as
13 ROES 1 through 20, inclusive, and therefore sue said real parties by those fictitious names.
14 Petitioners will amend the petition to allege their true names and capacities when the same
15 have been ascertained. Petitioners are informed and believe, and based thereon allege, that
16 each of these fictitiously named real parties is in some manner responsible for the wrongful
17 conduct alleged in this petition. Petitioners are informed and believe, and based thereon
18 allege, that these fictitiously named real parties were, at all times mentioned in this petition,
19 the agents, servants, and employees of their co-real parties and were acting within their
20 authority as such with the consent and permission of their co-real parties.

21 JURISDICTION AND VENUE

22 18. Jurisdiction over Respondents and Real Party, and each of them, exists
23 because each of the Respondents and Real Party named in this litigation are present and
24 operating within the jurisdictional limits of the County of Los Angeles.

25 19. Venue is proper because most or all of the acts and omissions complained of
26 in this litigation took place within this judicial district.

27 GENERAL ALLEGATIONS

28 20. Petitioners are informed and believe, and based thereon allege, that Real

1 Party filed a 2008 Master Land Use Application that proposed a project that required the
2 following discretionary actions: (1) Development Agreement to establish development
3 parameters in the form of custom drafted Millennium Hollywood Development
4 Regulations and a Millennium Hollywood Land Use Equivalency Program that purport to
5 allow within a design envelope an infinite number of possible undisclosed mixed uses for
6 the Project, only to be revealed after the expiration of statutes of limitation under state law
7 and just prior to issuance of the building permits and only limited by a traffic trip cap set
8 forth in the Land Use Equivalency Program; (2) Vesting Tentative Tract Map for the
9 mixed-use development components; (3) Vesting Zone Change from C4 Zone to C2 Zone
10 (to permit Sports Club use); (4) Height District Change to remove the D Development
11 limitation; (5) Conditional Use Permit for limited sale and on-site consumption of alcoholic
12 beverages, live entertainment, and floor area ratio averaging in a unified development; (6)
13 Vesting Conditional Use Permit for a hotel within 500 feet of an R Zone; (7) Variances for
14 sports club parking, and for restaurants with outdoor eating areas above the ground floor;
15 (8) Demolition, grading, excavation, and foundation permits; (9) Haul route approval; and
16 (10) Community Redevelopment Agency of Los Angeles design review and approval to
17 permit a floor area ratio in excess of 4.5:1.

18 21. Petitioners are informed and believe, and based thereon allege, that the City
19 designated the City land use entitlements for the application as Case No. CPC 2008-3440-
20 ZC-CUB-CU-ZV-HD (“CPC Entitlements”)

21 22. Petitioners are informed and believe, and based thereon allege, that Real
22 Party also filed an application for a Development Agreement, and that the City designated
23 the application as Case No. CPC-2013-103-DA (“Development Agreement”). The
24 Development Agreement proposed by the City and Millennium Developer included
25 Millennium Hollywood Development Regulations (“Development Regulations”). The
26 Development Regulations purport to be a set of zoning rules and guidelines that are custom
27 written for the Project. Most significantly, in an unprecedented proposal, the Development
28 Regulations included a provision that if any part of the Development Regulations were

1 more permissive than another provision of the City's Municipal Code, the Development
2 Regulations would prevail over the City's other laws. Additionally, the Development
3 Agreement included a proposed "Land Use Equivalency Program" for the Project. Under
4 the Land Use Equivalency Program, the Millennium Developer would be given
5 "flexibility" to disclose after the final discretionary decision the precise mixed land use
6 elements of the Project at the time of plan review, just prior to issuance of demolition and
7 building permits.

8 23. Petitioners are informed and believe, and based thereon allege, that Real
9 Party also filed an application for a Vesting Tentative Tract Map on or about February 21,
10 2012, and that the City designated the application as Case No. VTT-71837-CN-1A ("Tract
11 Map Application").

12 24. Collectively, the CPC Entitlements, Development Agreement, and Tract
13 Map Application sought entitlements for approximately 1,166,970 square feet of habitable
14 space with an unspecified mix of land uses, approximately 800,000 square feet of
15 uninhabitable space of which the greatest portion was a parking garage with "1,918 parking
16 spaces, subject to the shared parking provisions of the Development Regulations" ("Land
17 Use Entitlements").

18 25. The City caused an EIR for the Project to be prepared and circulated. The
19 Draft EIR was released for a 45-day public comment period on October 25, 2012. Despite
20 requests to do so, the City refused to extend the public comment period. The public
21 comment period ended December 10, 2012. On February 8, 2013, the City released the
22 Final EIR including responses to comments submitted regarding the Project during the
23 Draft EIR public comment period.

24 26. A joint public hearing on the Project was held before the Deputy Advisory
25 Agency and Hearing Officer on February 19, 2013.

26 27. On or about February 22, 2013, just three days later, the Deputy Advisory
27 Agency approved the Tract Map Application for the Project.

28 28. On or before March 4, 2013, Petitioners Beachwood Canyon Neighborhood

1 Association, represented by Petitioner George Abrahams, timely filed appeals of the
2 Advisory Agency's approval of the Vesting Tentative Tract Map, adoption of the EIR, and
3 adoption of a Statement of Overriding Considerations to the City Planning Commission. In
4 addition, on or before March 4, 2013, other entities and persons filed appeals of the
5 Advisory Agency's approvals, including the American Musical and Dramatic Arts College
6 and Conservatory of Performing Arts, Argyle Civic Association, and Annie Geoghan (on
7 behalf of members of the Whitley Heights community). These appeals raised objections to
8 the Project and the EIR that are incorporated into the objections raised in this Petition.

9 29. Subsequently, the City issued a notice of public hearing for the appeals of
10 the Tract Map approvals by the Advisory Agency, and a notice of public hearing on the
11 initial consideration of the CPC Entitlements and Development Agreement. The notice of
12 public hearing invited the interested public to appear at the hearing where public testimony
13 would be heard by the City Planning Commission.

14 30. On March 28, 2013, the various appeals of the Advisory Agency decision
15 and the initial consideration of the Hearing Officer's recommendations regarding the CPC
16 Entitlements and the Development Agreement were scheduled for hearing before the City
17 Planning Commission. Many people who attended this hearing signed the Interested
18 Persons list at the back of the meeting room so that their names would be on the City's list
19 of persons entitled to notice of and right to participate in all future hearings regarding the
20 Project.

21 31. At the outset of the City Planning Commission's meeting, Assistant City
22 Attorney Adrienne Khorasanee made an announcement to the audience. She said that City
23 Planning Commission President, William Roschen, had been determined to have a
24 financial conflict of interest in the Millennium Project Development Agreement under
25 Government Code Section 1090 because he had accepted employment from the
26 Millennium Developer in connection with the Project under consideration by the City
27 Planning Commission. Accordingly, she stated twice to the audience that the Millennium
28 Developer had withdrawn the Development Agreement from the requested entitlements.

1 Then Ms. Khorasanee stated that the City Planning Commission could go forward with its
2 consideration of the appeals of the Advisory Agency determination approving the Tract
3 Map, and the Commission's initial decision on the CPC Entitlements. She announced that
4 Mr. Roschen would not participate in the hearing, but that since he allegedly had no
5 unlawful financial interest in the CPC entitlements or the Tract Map, the remaining CPC
6 members could hear the matter and decide the Tract Map appeals and the CPC
7 Entitlements.

8 32. Representing several of the appealing community organizations and Annie
9 Geoghan at the CPC appeal hearing on the Tract Map, Attorney Daniel Wright of The
10 Silverstein Law Firm made several objections including that if Mr. Roschen had a
11 disqualifying interest in the Development Agreement, then he had a disqualifying interest
12 in the CPC Entitlements or related Project entitlements, and the City Planning Commission
13 should immediately halt the proceedings in accordance with conflict of interest laws.
14 Nonetheless, the CPC continued with its proceedings.

15 33. At the hearing, all appealing parties and members of the public entered into
16 the record objections to the Project and the adequacy of its EIR. Specifically, STMH and
17 CURD member Brian Dyer objected to the Project based upon the work of Professor James
18 Dolan of the University of Southern California. Mr. Dyer noted that studies performed by
19 Professor Dolan suggested the active Hollywood Earthquake Fault crossed the Millennium
20 Project site. Additionally, many people, including a representative of the W Hotel
21 Residences, noted that the Millennium Hollywood Development Regulations and Land Use
22 Equivalency Program were so ill-defined that the Project was being given infinite
23 discretion to determine what mix of land uses would be proposed for construction AFTER
24 the last discretionary decision. In other words, the Project Description, including the
25 description contained in the EIR, was so ill-defined by the Developer's refusal to put a
26 specific proposal before the public and City decision makers that it was impossible to
27 identify possible Project impacts, mitigate them as required by law, and even to determine
28 whether the statement of overriding considerations was supported by substantial evidence.

1 34. The City Planning Commission, ignoring all objections, including that its
2 Commission members risked violation of Government Code Section 1090 by continuing to
3 consider the case when Mr. Roschen was a paid consultant to the Millennium Project,
4 voted to approve the Project. As part of the project approvals, the City Planning
5 Commission was asked to allow the Millennium Development Regulations and the
6 Millennium Hollywood Land Use Equivalency Program provisions, originally proposed to
7 be adopted under the Development Agreement, to instead be adopted as part of “Q”
8 Conditions “imposed” on the Millennium Project. In this way, the substantive provisions
9 of the now unlawful Development Agreement were transferred into the CPC Entitlements
10 project conditions as a Q “limitation” on the Project.

11 35. On or about April 27, 2013, the City Planning Commission issued a
12 determination letter on the CPC Entitlements, recommending a zone change and height
13 district change ordinance, approving the Conditional Use Permits and Alcohol Permits,
14 approving the zoning variances, adopting findings, and adopting the EIR and Statement of
15 Overriding Considerations for the Project.

16 36. On or about April 27, 2013, the City Planning Commission also issued a
17 determination letter on the Tract Map Application, denying all six of the appeals, and
18 sustaining the decision of the Advisory Agency in approving a vesting tentative tract map,
19 adopting findings, conditions of approval, the EIR, and a Statement of Overriding
20 Considerations for the Project.

21 37. On May 7, 2013, Petitioner CURD timely filed an appeal of the City
22 Planning Commission’s approval of a zone change and height district change and
23 associated actions with respect to the CPC Entitlements.

24 38. On May 7, 2013, CURD also timely filed an appeal of the City Planning
25 Commission’s denial of its appeal and of associated actions with respect to the Tract Map
26 Application.

27 39. In addition to the appeals of the CPC Entitlements and Tract Map
28 Application filed by CURD, the W Hotel Residences also filed a timely appeal of the CPC

1 Entitlements.

2 40. Petitioners are informed and believe, and based thereon allege, that once a
3 project is appealed from the City Planning Commission and the Advisory Agency to the
4 City Council, jurisdiction over the appeals is transferred to the City Council. In accordance
5 with the transfer of jurisdiction, the appeal document filed by an appellant, the lower
6 administrative body's decision, findings, and other information, are supposed to be
7 transferred to the City Clerk for placement in the City Council File and scanned into the
8 online City Council File.

9 41. Petitioners are informed and believe, and based thereon allege, that when the
10 City Council undertakes to hear land use appeals under its City Charter and Municipal
11 Code, it is acting as a quasi-judicial municipal planning agency.

12 42. Petitioners are informed and believe, and based thereon allege, that the
13 City's administrative appellate process demands that the parties submit all written materials
14 in a pending quasi-judicial land use appeal to the body which has jurisdiction over the
15 appeal, in this case, the City Council. Materials submitted to the City Council are
16 submitted via the City Clerk, and the City Clerk has a ministerial duty to immediately place
17 the materials in the physical Council File and post the same materials in the online City
18 Council File.

19 43. On May 24, 2013, the City Clerk, pursuant to state law and Los Angeles
20 Municipal Code requirements, issued a notice of the land use appeal public hearing before
21 the City Council's Planning Land Use and Management ("PLUM") Committee for June 4,
22 2013. The notice was issued to the "APPELLANTS, APPLICANT(S), AND
23 INTERESTED PARTIES." The notice said that a "public hearing" would be conducted at
24 a particular time and place to consider the EIR, Mitigation Monitoring and Reporting
25 Program, Statement of Overriding Considerations, California Environmental Quality Act
26 findings, and the land use appeals filed by the appellants. Attached to the Notice was the
27 list of interested parties who signed the list at the City Planning Commission meeting.

28 44. Petitioner CURD and various organizations and individuals appeared at the

1 June 4, 2013 PLUM Committee hearing, where City officials announced that the hearing
2 had been postponed at the request of the Millennium Developer to June 18, 2013, and that
3 the matter would heard by the full City Council on June 19, 2013.

4 45. On June 18, 2013, the CURD appeals and W Hotel Residence appeals and
5 Project entitlements came on for public hearing before the PLUM Committee. Prior to the
6 commencement of the public hearing on the Project, Petitioner CURD submitted to the
7 City Clerk a detailed objection letter. In this letter, CURD provided objections that are at
8 issue in this petition and complaint. Among the issues raised was objection to the City
9 Planning Commission purporting to use "Q" Conditions to grant the Millennium
10 Hollywood Development Regulations and Land Use Equivalency Program superiority over
11 any and all conflicting Los Angeles Municipal Code provisions, whatever they might be.
12 Petitioner CURD contended that the proposed action was unlawful in a Development
13 Agreement and it was equally unlawful when, in some form of desperation, the City moved
14 these provisions over to the CPC Entitlements (to attempt to avoid the Government Code
15 Section 1090 conflict of interest violation) and tried to authorize them through use of a "Q"
16 Condition.

17 46. For the PLUM Committee public hearing on the Project, the Chair,
18 Councilmember Ed Reyes, first asked the City staff to present an overview of the Project.
19 When City Planning staff merely read aloud a perfunctory general description of the
20 Project, even the PLUM Chair incredulously said: "Is that all?" Yet City Planning staff
21 offered no further details about the Project to the PLUM Committee.

22 47. Next the PLUM Committee Chair called a representative of CURD, attorney
23 Robert P. Silverstein, to the podium and informed him at that time he would be given 10
24 minutes to present CURD's appeal. Because the City Council has failed to adopt and
25 publish rules and procedures for land use appeals and hearings, no land use appellant has
26 any idea how much time they may be given to present to the PLUM Committee until it is
27 announced by the Chair. This lack of adopted and published procedural rules means that
28 Los Angeles City Council land use appeal and real estate entitlement public hearings are at

1 the unbridled discretion of the Chair of the meeting.

2 48. Mr. Silverstein submitted to the record an objection letter in further support
3 of CURD's initial appeal documents, including detailed objections as to why the EIR was
4 deficient as an information disclosure document to the public and decision makers. Mr.
5 Silverstein's oral presentation focused upon new information that had only recently come
6 to light that established that the Millennium Developer's geologists, Langan Engineering,
7 had distorted its analysis and falsified maps regarding the location of the Hollywood
8 Earthquake Fault relative to the Project site. Mr. Silverstein noted that while a May 2012
9 Langan Report asserted that the Hollywood Fault was .4 miles (2,112 feet) from the Project
10 site, the 2010 California Geologic Survey's Fault Activity Map and several academic
11 studies of the Hollywood Fault readily found on the Internet and well-known in
12 professional geologic circles showed projected traces of the Hollywood Fault traversing
13 both the East and West parcels of the Project site. Mr. Silverstein also expressly noted that
14 throughout the environmental review process which commenced with the issuance of the
15 Notice of Preparation of the EIR on April 28, 2011, the California Department of
16 Transportation had objected to the City's blatant failure to study the Project's traffic
17 impacts on the immediately adjacent Hollywood Freeway, which study was required of the
18 City by Caltrans as a Responsible Agency under the California Environmental Quality Act.
19 Mr. Silverstein also referred the PLUM Committee to the content of the June 18, 2013
20 objection letter and all of its supporting exhibits because the PLUM Committee Chair kept
21 insisting that Mr. Silverstein end his presentation of the appeal.

22 49. Thereafter, City Council member Mitch Englander spent three minutes
23 disparaging the CURD presentation regarding the possibility of an active earthquake fault
24 trace across the Millennium Project site. After this PLUM Committee "rebuttal" to the
25 CURD appeal, the representative of co-appellant the W Hotel Residences presented his
26 objections to the EIR. Those objections focused on the deficiencies of the Project
27 description in the EIR. The speaker noted that based upon the infinite flexibility granted by
28 the City in the Land Use Equivalency Program (which he pointed out is only tied to traffic

1 trip count and nothing else), the Project could be 0 residences, 900 residences, or
2 something in between. He also pointed out that under the deficient Project description, the
3 Project could have a Health Club of 35,000 square feet, or no Health Club; a 200-room
4 luxury hotel, or none, multiple outdoor restaurants with alcohol licenses and live
5 entertainment totaling 100,000 square feet, or none, or something in between, 200,000
6 square feet of office space or none, and a large amount of retail uses, or none. This
7 exposed a critical fatal flaw in the EIR: the Millennium Developer had refused, and City
8 staff in dereliction of its duty under CEQA had refused, to provide the public and City
9 decision makers with a stable, accurate and finite Project description upon which reasoned
10 and intelligent analysis could be based. The speaker argued that the Project was being
11 given a design envelope and complete carte blanche as to what to put in it, which had never
12 been done on this massive of a scale in the history of the City. He observed: “If this is
13 way development will be done in Los Angeles in the future, why have any public
14 hearings?”

15 50. Next, Mr. Reyes, the PLUM Chair, called up the Millennium Developer
16 who was given more time than others to present the Project and make arguments in favor of
17 Project approvals. During the presentation, the Developer described and showed drawings
18 of what it called a “Concept Plan” for the Project that set forth one possible combination of
19 mixed uses, but as the Appellants had noted, the Land Use Equivalency Program allowed
20 this Project to be dramatically different from the Concept Plan presented to the PLUM
21 Committee. Although this was presented as if the Concept Plan was the Project that would
22 be submitted for Plan Check and Building Permits, nothing could be further from the truth.

23 51. Next the PLUM Chair announced that he was restricting the right of
24 interested persons attending the public hearing to speak at this noticed hearing. The PLUM
25 Committee Chair allowed only 20 minutes for each side. Many of the people listed as
26 Interested Persons on the City’s legally required public hearing notice were present,
27 submitted a card asking to speak, but were denied the right to testify at the City’s legally
28 required public hearing.

1 52. When the PLUM Committee Chair closed the public testimony, there was
2 about one minute of shouts of frustration from the audience and argument with the PLUM
3 Committee Chair protesting the public's denial of their right to speak at a noticed land use
4 public hearing. Nonetheless, Mr. Reyes, the PLUM Committee Chair, demanded silence.

5 53. Next the PLUM Committee Chair read aloud a statement announcing that
6 the Project would not be heard at the full City Council the next day on June 19, 2013.
7 Instead, he announced that the matter, after hearing at the PLUM Committee, would be
8 heard by the full City Council on July 24, 2013.

9 54. Then the PLUM Committee Chair called the Millennium Developer's
10 representatives to the podium to answer questions and attempt to rebut evidence presented
11 by the appellants and members of the public. During this presentation, Jerold Neuman,
12 attorney for the Millennium Developer, made numerous factual misrepresentations to the
13 PLUM Committee, including that there was "no document in the records of the City" of an
14 active earthquake fault on the Millennium Property. (As set forth herein, in March 2012,
15 attorneys from Sheppard Mullin made email inquiries with the City Building and Safety
16 Department regarding geologic maps showing the Hollywood Fault crossing the
17 Millennium Hollywood property. Thus, there were such documents "in the records of the
18 City," and Mr. Neuman was copied on them.)

19 55. Next the PLUM Committee Chair called the City Council representative for
20 City Councilmember Eric Garcetti to the podium. In turn, he read a prepared statement
21 congratulating the Millennium Developer for reducing the height (although not the square
22 footage) of the two skyscrapers somewhat and "listening" to the public's concerns.

23 56. Finally, the PLUM Committee Chair and Committee members discussed
24 with City staff how to adopt motions to approve the Project as it was presented to them.
25 For the third time, the Millennium Developer's representative was brought to the podium to
26 make further statements. The PLUM Committee then voted 3-0 to approve the Project
27 subject to the conditions as modified at the meeting, deny all the appeals, adopt the EIR,
28 and adopt the Statement of Overriding Considerations.

1 57. At no time in taking actions on the Project did the PLUM Committee adopt
2 a recommendation to receive and file the City Planning Commission's recommended
3 zoning change ordinance and substitute a new ordinance that included not only the
4 modifications to the City zoning map but adding to the Los Angeles Municipal Code the
5 Millennium Project Development Regulations and Land Use Equivalency Program
6 provisions in their entirety. Nothing on the meeting transcript and nothing in the letters
7 referenced by the City staff include a request to substitute an unprecedented elevation of a
8 single real estate project's entitlements into the Los Angeles Municipal Code.

9 58. Although a land use appellant has the burden of proof to sustain his or her
10 appeal, CURD was never allowed to speak after its initial comments. CURD, a land use
11 appellant, was afforded no opportunity to rebut the Millennium Developer's presentation,
12 the public hearing testimony from those supporting the Project, the Millennium
13 Developer's second turn at the podium where previously undisclosed changes were made
14 to the Project without any notice, or the Millennium Developer's third turn at the podium
15 as the PLUM Committee was about to vote on the matter.

16 59. Following the PLUM Committee hearing, Petitioners' representatives
17 contacted the office of City Councilmember Mitch O'Farrell to learn whether or not the
18 matter would be afforded a hearing at City Council. They were informed that the matter
19 would be heard by the full City Council.

20 60. In order to prepare for its presentation at the City Council meeting and in the
21 exercise of reasonable diligence, CURD's counsel submitted narrowly defined California
22 Public Records Act requests to the Los Angeles Department of Building and Safety
23 ("LADBS") seeking all communications between certain LADBS geologists and staff, and
24 representatives of the Millennium Developer. Instead of promptly responding to the
25 requests, the City waited 10 days and then extended its response by another 14 days, and at
26 the end of that time, illegally failed to produce the narrowly defined set of records
27 requested.

28 61. Just like its PLUM Committee, when the full Los Angeles City Council sits

1 in a quasi-judicial capacity to hear land use matters for which a public hearing is required
2 by law, it is required to have adopted written hearing rules and procedures. Petitioners are
3 informed and believe, and based thereon allege, that the City Council has never adopted or
4 published any such public hearing rules and procedures.

5 62. Shortly prior to the scheduled July 24, 2013 City Council meeting to hear
6 the Millennium Project land use appeals, the PLUM Committee issued its
7 “Recommendation Report” to the City Council. Contrary to what actually took place at the
8 PLUM Committee hearing, the City Clerk’s PLUM Committee Report stated that among
9 the actions of the PLUM Committee was the adoption of a recommendation to merely
10 “Receive and File” the original zoning map ordinance forwarded from the City Planning
11 Commission (“Old Ordinance”). Additionally, the PLUM Committee Report stated that
12 the PLUM Committee took action to recommend the adoption of a new and different
13 zoning map ordinance that not only included the zoning map amendment, but added into
14 the Los Angeles Municipal Code the entire customized Millennium Hollywood Project
15 Development Regulations, and the Millennium Hollywood Project Land Use Equivalency
16 Program (“New Ordinance”). Petitioners are informed and believe, and based thereon
17 allege, that the PLUM Committee Recommendation Report to the Los Angeles City
18 Council was a false report of what actions were in fact taken at the PLUM Committee
19 meeting.

20 63. Petitioners are informed and believe, and based thereon allege, that the
21 purpose of moving the Millennium Development Regulations and Land Use Equivalency
22 Program into the Los Angeles Municipal Code via the New Ordinance was to enable the
23 Millennium Developer to override any more restrictive Municipal Code provision, no
24 matter what it may turn out to be. Petitioners are informed and believe, and based thereon
25 allege, that this proposed new action of the City Council was a continuation of its unlawful
26 effort to grant the Millennium Developer and its Project carte blanche superiority over any
27 and all conflicting Municipal Code provisions: The City first had these provisions in the
28 Development Agreement which was withdrawn because of Planning Commission President

1 William Roschen’s financial conflict of interest. Then the City moved them into the CPC
2 Entitlements as an unlawful and *ultra vires* “Q” condition. And when challenged by
3 CURD on that scheme, the City used a false public report of the actions of the PLUM
4 Committee to try to enact them into the Los Angeles Municipal Code itself. This New
5 Ordinance was brought to the City Council final hearing without any reasonable
6 opportunity for Appellant CURD or other interested persons and community groups, who
7 were sent notice of this public hearing and who have the right to rebut it, to know of the
8 proposal and to rebut it in public testimony.

9 64. As part of the City Council’s hearing notice to CURD and interested parties
10 who are members of CURD, no mention was made in the May 24, 2013 hearing notice that
11 the PLUM Committee intended to consider setting aside the Old Ordinance and substitute
12 the New Ordinance. When the PLUM Committee acted on the Project on June 18, 2013, it
13 took no action to recommend to the City Council to “Receive and File” the Old Ordinance
14 and to instead adopt the New Ordinance. However, when the City Council published its
15 meeting agenda for the July 24, 2013 meeting, the agenda listed as a proposed action that
16 the City Council “Receive and File” the Old Ordinance and adopt the New Ordinance.

17 65. Petitioners are informed and believe, and based thereon allege, that the City
18 Clerk, under the supervision of PLUM Committee members and the Millennium
19 Developer’s representatives, wrote a PLUM Committee Recommendation Report to the
20 City Council that contained false information. Specifically, the Recommendation Report
21 claimed that the PLUM Committee had voted to recommend receiving and filing the Old
22 Ordinance and adopting the New Ordinance, when no such action occurred at the PLUM
23 Committee hearing.

24 66. On Saturday, July 20, 2013, California State Geologist Dr. John Parrish of
25 the State Department of Conservation sent an urgent letter to City Council President Herb
26 Wesson and the City Council. In that letter, Dr. Parrish notified the City Council – with
27 specific reference to the Millennium Project and its EIR – that the California Geological
28 Survey had commenced a “detailed study” of the “Hollywood Fault and its associated splay

1 faults.” This significant new information should have caused the City Council to
2 immediately defer consideration of any approvals for the Project and its EIR until after the
3 State had completed these critical studies under the Alquist Priolo Act. Indeed, Dr. Parrish
4 notified the City Council that the State’s investigation could affect the City’s “reviewing of
5 plans for the prospective Millennium Hollywood Project, which may fall within an
6 Earthquake Fault Zone.” It should have been abundantly clear that the City and
7 Millennium Developer were on very shaky legal ground if the City went ahead with Project
8 and EIR approval before the State studies were completed. Despite this significant new
9 information, the City Council ignored Dr. Parrish and the California Geological Survey.

10 67. Some time on July 23, 2013, the day before the City Council hearing on the
11 appeals, the Millennium Developer’s attorneys, Sheppard Mullin, filed with the City Clerk
12 (but not with the appellants) a 311-page letter responding to and submitting to the
13 administrative record hundreds of pages of new evidence. Included in this eleventh-hour
14 submittal was a new letter from Langan Engineering attempting to rebut the evidence
15 CURD had submitted at the PLUM Committee meeting that Langan’s reports and the
16 City’s EIR contained fraudulent and misleading documents that hid the fact that the
17 Millennium Project site was likely sitting on the active Hollywood Earthquake Fault.

18 68. On the evening of July 23, 2013, an individual supporter of CURD alerted
19 CURD that new evidence and the 311-page rebuttal letter of Sheppard Mullin had been
20 posted to the City Clerk’s website. That night and early the morning of the hearing,
21 Petitioners’ legal counsel could only begin to review the content of the Sheppard Mullin
22 letter and the new evidence attached to it. Obviously, there was no opportunity to gather
23 much rebuttal evidence. Despite the totally unfair practice of the City Council having no
24 adopted hearing rules and procedures that barred the eleventh-hour submittal by the
25 Millennium Developer, Petitioners’ counsel prepared a brief letter trying to respond to the
26 Sheppard Mullin letter, but in no way was it a complete response to this “sandbagging” of
27 the land use hearing appellant by the Millennium Developer applicant.

28 69. Prior to the commencement of the public hearing before the City Council on

1 July 24, 2013, Petitioner's representative filed with the City Clerk additional objections to
2 the PLUM Committee proceedings, including objections to the City's false claim that the
3 PLUM Committee had taken action to recommend to the full City Council the New
4 Ordinance that would elevate the Millennium Development Regulations and Land Use
5 Equivalency Program into the City's Municipal Code. Petitioners' counsel also filed with
6 the City Clerk a copy of a letter sent the day before to the City's Building and Safety
7 Department reminding it of its mandatory duties to protect the public safety and to disclose
8 adverse earthquake fault conditions to the public, which duties were abandoned in the case
9 of the Millennium Project's EIR. Finally, Petitioners' counsel also filed with the City
10 Clerk a brief but only partial letter trying to note obvious deficiencies with the Sheppard
11 Mullin letter and its supporting evidence, and objecting to the unfair process that allowed
12 such significant new evidence and argument to be placed in the record in favor of the
13 Project at the last minute.

14 70. Once CURD's objection letter had been entered into the record with the City
15 Clerk, Petitioners' representative took 17 copies of the objection letter into the City Hall
16 Chambers to submit the copies to the staff for distribution to the City Council. A City Hall
17 staff member said: "We can't accept this. You need to submit 31 copies." When it was
18 pointed out that the City Council has no adopted rules or procedures for submittal of
19 written materials at a land use hearing, City staff reluctantly took the number of copies
20 submitted by Petitioners' representative – which was more than an adequate number for the
21 13 City Council members, the City Clerk, and City Attorney present in chambers.

22 71. After conducting most of the other business of the day, the Project and the
23 appeals of Petitioner CURD and of W Hotel Residences came on for public hearing at the
24 full City Council on July 24, 2013.

25 72. First, without asking for any kind of an overview or basic description of the
26 Project from the City Planning Department, the acting City Council President, Mitch
27 Englander, called for taking public testimony first. And just like the PLUM Committee,
28 the acting City Council President declared that public testimony would be severely limited

1 to only 10 minutes for each side, instead of taking the testimony of each and every
2 Interested Person who appeared in response to a public land use hearing for which the law
3 requires a public notice. In fact, Councilmember Englander said: “That brings us to Items
4 21 and 22. We’re going to take those items together. We’ll have 10 minutes for – We’re
5 going to split this up. We have a lot of cards on this and there’s a lot of interest. I believe
6 that’s what most people are here for today – the Millennium Project. So we’ll do 10
7 minutes on the cards so far for the supporters, 10 minutes for the opposition, 10 minutes for
8 each of the appellants, another 10 minutes for the applicant. And we’ll open it in that
9 order.”

10 73. Immediately after this announcement, the City Clerk announced that an
11 “amending motion by O’Farrell and Koretz” had been “circulated.” When this occurred,
12 there was no explanation to the public about what the amending motion was or even where
13 they could obtain a copy of it.

14 74. At the conclusion of the truncated public testimony afforded by the City
15 Council, Petitioner George Abrahams, who was an Interested Person listed in the City
16 Hearing Notice, had not been called even though he had submitted a speaker’s card
17 requesting to testify. When he saw that he was being denied his right to testify at the
18 hearing, he submitted 35 copies of his written statement to the guard, asking that it be
19 submitted to the City Clerk before the close of the hearing, although of course the City
20 Council never heard his testimony before voting.

21 75. Thus, one of the largest, tallest, and most controversial real estate
22 development projects in the history of Hollywood, one that the acting City Council
23 President acknowledged everyone was likely there to be heard on – was given so little time
24 for the public to weigh in that dozens of people who came to City Hall to speak were
25 denied their opportunity to speak. Essentially, the City issued a noticed public hearing and
26 then refused to hear the testimony of those entitled to speak pursuant to their rights as
27 Interested Persons.

28 76. Following the public testimony before the City Council, Petitioner CURD’s

1 attorney, Robert Silverstein, was called to the podium to present the appeals of the CPC
2 Entitlements and Tract Map Application. Mr. Silverstein used most of what little time he
3 was allotted to emphasize the severe problems with the earthquake fault issue and the City
4 Council's subverting of the CEQA process by failing to have all necessary information in
5 the EIR before the City Council voted to approve the Project.

6 77. Thereafter, the Millennium Developer made no formal presentation to the
7 City Council. No presentation boards or pictures or explanation of the Project were offered
8 to the City Council during the entire hearing. Instead, after a brief prepared statement by
9 Phil Aarons, a partner in Millennium Hollywood, LLC, Jerold Neuman, the Sheppard
10 Mullin attorney for the Millennium Developer, came to the podium. In his brief remarks
11 he tried to defend the submission of the 311-page letter and evidence. He specifically
12 stated that no new evidence or argument had been submitted which, in light of the new
13 Langan Engineering Report attached to his letter, was a false statement. Nonetheless, in
14 order to make sure he still had all of the votes of City Council he bluntly said: "We would
15 never put you at risk in litigation."

16 78. Next, having completed the portion of the "hearing" at which the appellants,
17 the applicant, or limited public testimony of interested persons was allowed, Hollywood
18 Councilmember Mitch O'Farrell, reading from a script, called up to the table
19 representatives of the Los Angeles Department of Building and Safety and the
20 Transportation Department.

21 79. Personnel from these two departments made presentations that attempted to
22 assure the City Council there was no reason to believe an earthquake fault crossed the
23 Project site, and that Caltrans' repeated oral and written concerns about the impacts on the
24 Hollywood Freeway had been addressed – even though the City Department of
25 Transportation conceded that any further mitigation which might be offered by the
26 Developer would be "voluntary," and thus not legally enforceable, contrary to CEQA's
27 requirements to assure mitigation of project impacts. It was announced that these City
28 officials would be allowed to submit new materials to the administrative record responding

1 to issues raised, even though Appellants were given no opportunity to see the materials
2 submitted by these City Departments, nor any opportunity to submit counter evidence,
3 rebuttal or argument.

4 80. Near the close of the hearing, Councilmember Paul Krekorian expressed
5 “outrage” that significant new documents were submitted the morning of the hearing. As
6 he waved Petitioners’ submittals in front of the television cameras, Mr. Krekorian
7 suggested that CURD’s materials should be excluded from the administrative record.
8 Later, in response to a question from the City Attorney, acting City Council President
9 Englander clarified that he thought the new materials submitted by the City Departments in
10 rebuttal to CURD’s objections to the Project should be included in the administrative
11 record, but apparently still sought to exclude CURD’s submittals. Notwithstanding Mr.
12 Krekorian’s due process-violating outburst, the City Clerk properly placed all materials
13 submitted by CURD into the City Council File as part of the administrative record for the
14 matter.

15 81. Finally, the acting Council President called on Councilmember Mitch
16 O’Farrell to close out the hearing. Councilmember O’Farrell read into the record what
17 Petitioners later learned were additional voluntary “commitments” of the Millennium
18 Developer, which were then allegedly being made new conditions of approval for the
19 Project. Many of these commitments were originally included within the proposed
20 Development Agreement, since withdrawn because of the William Roschen conflict of
21 interest issue. Once the Development Agreement was withdrawn by the Developer, there
22 was no longer substantial evidence in the record to support the Statement of Overriding
23 Considerations that ostensibly justified approving the Project, given the significant impacts
24 that were acknowledged in the EIR.

25 82. Petitioners are informed and believe, and based thereon allege, that many of
26 the voluntary commitments to make payments to an affordable housing trust fund, the
27 Hollywood Cap Park, and various transportation funds were added back to the Project in
28 Councilmember O’Farrell’s “amending motion” in order to place back in the record

1 evidence in support of the Statement of Overriding Consideration to try to justify approval
2 of the Project. These changes to the Project were made in an “amending motion” that the
3 City Clerk cryptically announced at the opening of the hearing. This amending motion was
4 only distributed to the City Council members. No copies of it were offered to CURD. No
5 copies of it were made available to the interested persons or public attending the hearing.
6 Apparently, at some point during the hearing a City staffer thumb-tacked the proposed
7 amending motion to a bulletin board on the side of the Council Chambers. This bulletin
8 board has no sign on it indicating to the public what it is or what purpose it serves. No one
9 is allowed to take a posted piece of paper down from this bulletin board if they ever figured
10 out that something significant had been posted on it. Neither CURD nor the Interested
11 Persons attending the City Council public hearing were given a copy of the amending
12 motion, told why it was offered, or given an opportunity to offer rebuttal evidence or
13 testimony.

14 83. Petitioners are informed and believe, and based thereon allege, that the City
15 Council’s attempt to impose the Millennium Developer’s voluntary commitments from the
16 withdrawn Development Agreement as a “Q” condition is illusory. The City Attorney has
17 previously opined that voluntary developer conditions are legally unenforceable. Thus,
18 Petitioners are informed and believe, and based thereon allege, that the City’s attempt to
19 insert these commitments back via a “Q” condition was merely for the purpose of restoring
20 the illusion of enforceable public benefits to shore up the City’s now even more faulty and
21 unsupported Statement of Overriding Considerations.

22 84. Petitioners are informed and believe, and based thereon allege, that because
23 the City gave no notice of its intention to change the Project using the amending motion,
24 Petitioners were denied the opportunity to review the proposal, gather evidence to rebut it,
25 and submit that evidence to the administrative record. For example, Petitioners were
26 denied the opportunity to put into the record evidence of other cases where the City
27 Council has obtained commitments from developers as a condition of project approval in
28 order to appease project opponents and then, when no one is watching, the project

1 conditions can quietly be deemed unenforceable by the City Attorney without further
2 notice to the Interested Persons or other members of the public.

3 85. A mere 85 minutes after opening the July 24, 2013 hearing on the largest
4 development project in the history of Hollywood, the City Council voted 13-0 (one absence
5 and one seat vacant) to approve the Millennium Project – significantly, without ever asking
6 the City Planning Staff or the Developer to explain what the Project will consist of, and
7 without showing a single concept drawing of what it will look like to the public.

8 86. After Petitioners' counsel had returned to his office, just two hours after the
9 close of the City Council final public hearing and final approval of the Millennium Project,
10 he received notice from LADBS that the records responsive to his Public Records Act
11 request were available for pick up. Petitioners are informed and believe, and based thereon
12 allege, that LADBS deliberately withheld the responsive public records in order to prevent
13 Petitioners from being able to review and use these documents prior to the close of the final
14 hearing. Petitioners exercised reasonable diligence in trying to obtain these additional
15 records, which records and emails show the City, Millennium Developer and its geologists
16 participated in fraud and misconduct to hide reports and prevent the public from knowing
17 that the Millennium Project Site contains the Hollywood Fault running through the middle
18 of the property.

19 **FURTHER DETAILS REGARDING FAULTY ENVIRONMENTAL REVIEW**

20 87. During 2008, when the Millennium Developer filed the Master Land Use
21 Application, the first geologic investigation of the Project site was conducted by Langan
22 Engineering & Environmental Services ("Langan"), the geologic firm retained for the
23 Project. Petitioners are informed and believe, and based thereon allege, that the first
24 Langan geologic report was dated December 18, 2008, but because the Project was put on
25 hold for two years between 2009 and 2011, this report was ultimately submitted to the City
26 with a date of November 22, 2011.

27 88. For this investigation, four boreholes were drilled generally in an east-west
28 alignment across the West and East Sites of the Property in June and July 2008.

1 Groundwater was encountered in each borehole as follows: West Site Drilling [LB-1 (51
2 feet), LB-2 (50 feet)], East Site Drilling [LB-3 (dry all the way down to 61.5 feet end of
3 drilling), LB-4 (56.5 to 57 feet)].

4 89. Petitioners are informed and believe, and based thereon allege, that the
5 dramatic drop in the groundwater level between LB-4 (56.5 feet) and the more southerly
6 LB-3 (no water encountered to 61.5 feet) on the East Site was evidence of a fault with
7 perched or damned water behind it.

8 90. On April 28, 2011, the City issued a Notice of Preparation of Environmental
9 Impact Report and Initial Study for the Project.

10 91. The Notice of Preparation was not sent to the California Department of
11 Conservation, or its California Geological Survey, which is the Responsible Agency that
12 has jurisdiction over earthquake fault studies and the Alquist Priolo Act. The City sent no
13 notice to the California Geological Survey even though the Initial Study form specifically
14 refers lead agencies to "Division of Mines and Geology Special Publication 42." That
15 publication outlines the considerations for earthquake fault investigations and obligations
16 of cities not to approve any project that proposes to place buildings for human occupancy
17 over or immediately adjacent to an active earthquake fault capable of surface rupture. This
18 publication also sets forth the minimum standards for investigation and disclosure of
19 information in an adequate fault investigation report. Professional geologists are expected
20 to prepare any fault investigation report in compliance with the standards set forth in
21 Publication 42.

22 92. The Initial Study for the Project showed the City found a potential
23 significant impact from rupture of a known earthquake fault "or based on other substantial
24 evidence of a known fault." In its written discussion of this item in the Initial Study, after
25 acknowledging that a significant impact may occur if a project is located within a fault
26 zone and appropriate building practices are not employed, the City claimed that, based
27 upon the California Division of Mines and Geology Active Near-Source Fault Zones map
28 and City Zoning Information Maps Access System (ZIMAS) website, the Hollywood Fault

1 was .4 miles from the Project Site. Based upon this, the City promised that “the EIR will
2 **provide additional analysis** to assess the possibility of the Site lying within an area of
3 other known faults or other designated fault zones, and any required building practices or
4 mitigation measures.” (Emphasis added.)

5 93. The Millennium Developer and Langan sat on its 2008 drilling information
6 for more than 3 years before the first Preliminary Geotechnical Engineering Study for the
7 Project was submitted to the Los Angeles Department of Building and Safety on November
8 22, 2011 (“November 2011 Geo Report”). The November 2011 Geo Report expressly
9 stated it was submitted as a technical appendix for the EIR. The entire analysis of
10 Groundwater was: “Groundwater was first observed in the borings (as inferred from
11 relative wetness of the soil samples) at depths ranging from 51 to 56.6 feet (about el 341 to
12 el 347) in borings LB-1, LB-2, and LB-4; groundwater was not observed in boring LB-3.
13 This depth range is about 40 to 45 feet higher than the groundwater level indicated on a
14 historical regional groundwater map; see Figure 3.” The report failed to comment on the
15 groundwater anomaly between LB-4 and LB-3.

16 94. Nor did the report recommend a further investigation for the presence of an
17 earthquake fault despite the groundwater anomalies. In fact, the November 2011 Geo
18 Report expressly stated the opposite: “As discussed above, the Site is not located within a
19 fault rupture study zone. *Thus, Site-specific fault studies were not performed as part of*
20 *our investigation because such investigations are not required for sites located outside*
21 *boundaries of fault rupture study zones.*” (Emphasis added.) The clear import of this
22 sentence was that site-specific earthquake fault studies are required for projects that are
23 within the boundaries of a City fault rupture study area.

24 95. Significantly, while the text of the November 2011 Geo Report claimed that
25 the Project site was not within an earthquake fault rupture study zone, Figure 4 of that same
26 report dated November 22, 2011 actually showed the City’s “Earthquake Fault Rupture
27 Study Area” boundary crossing the Project’s East Site. Although Millennium’s consultant
28 report showed the Project was partially within the City’s Safety Element Earthquake Fault

1 Rupture Study Area, on February 21, 2012, Millennium signed land use permit applications
2 and the subdivider's statement stating the exact opposite. Millennium Vice President
3 Mario J. Palumbo, Jr. signed the Master Land Use Permit Application under penalty of
4 perjury, and subscribed the supporting Subdivider's Statement as "true to the best of my
5 knowledge" and checkmarked "No" to the question: "Is the proposed tract . . . In a fault
6 rupture study area".

7 96. On March 15, 2012, Attorney Alfred Fraijo of Sheppard Mullin on behalf of
8 the Millennium Developer contacted Raymond Chan, General Manager of LADBS. Mr.
9 Fraijo stated: "We are looking for information on the building code regulations that apply
10 to development within a fault zone or prohibitions on development related to fault areas.
11 We were informed by Mr. Dana Prevost [the City Geologist] that a limited fault
12 investigation would be required in the portion of the subject site. There is a Hollywood
13 Fault trace mapped by the California Geological Survey that prompted the discussion with
14 Mr. Prevost." Thus, as early as March 2012, seven months before the Draft EIR was
15 circulated, the record shows that the City and the Millennium Developer's attorneys knew
16 that the Hollywood Fault might cross the property – yet this information was never
17 ultimately disclosed or discussed in the EIR.

18 97. On March 16, 2012, LADBS Engineer Charmie Huynh reported to
19 Raymond Chan the following: "I spoke to Dana Prevost regarding the Millennium project
20 at 1750 N. Vine St. He mentioned that he met with the project team to discuss the
21 Hollywood Fault line that could potentially be crossing the property. Here are some
22 bullet points on what we discussed: - Currently, the Hollywood Fault line is not mapped
23 and may be addressed by the State Geologist in the next 4-5 years minimum. – Per code
24 section 1803.5.11, a geotechnical report shall be conducted for the site to address (among
25 other things) surface displacement due to faulting or lateral spreading. Dana advised the
26 project team that they need to do their own investigation to locate the fault per this code
27 section. – Per the Alquist Priolo Earthquake Fault Zoning Act, no structure for human
28 occupancy shall be permitted to be placed on or across an active fault trace. I've attached a

1 copy of our info bulletin and highlighted this condition (#2). It also describes a min 50' no
2 build zone. However, Dana discussed with the project team that he has granted one
3 modification in the past on another project that allowed them to build right adjacent
4 to the fault line." (Emphasis added.) Thus, in March 2012, the City acknowledged that
5 State law barred the development of structures for human occupancy over an active fault,
6 and that the Millennium Developer would be required to conduct a fault investigation per
7 Building Code Section 1803.5.11.

8 98. Petitioners are informed and believe, and based thereon allege, that City
9 officials and Millennium Developer representatives conspired to allow the Fault
10 Investigation to go forward under the pretense that it was only required for the purposes of
11 tract map approvals, and the November 2011 Geo Report would be altered to conceal from
12 the public that any fault investigation was even required for the Project. In so doing, and as
13 a result of this agency misconduct, City staff agreed to allow preparation of a Draft EIR
14 that would contain materially misleading and false representations regarding the location of
15 the Hollywood Earthquake Fault and the fact that the East Site of the property was within
16 the boundary of the City's own Earthquake Fault Rupture Study Area.

17 99. On May 2, 2012, the November 2011 Geo Report was revised now bearing
18 a May 2012 date ("May 2012 Geo Report"). The records of the LADBS Grading Division
19 do not show that the Millennium Developer ever officially submitted the May 2012 Geo
20 Report to LADBS for review and approval. Instead, it appears that the May 2012 Geo
21 Report was prepared for and solely used as an appendix in support of the Geology analysis
22 of the EIR. This May 2012 Geo Report was substantially the same as the November 2011
23 Geo Report except for at least two significant modifications: (1) A new Figure 4, dated on
24 May 10, 2012, showing the Project site vis-a-vis the City's Earthquake Fault Rupture Study
25 Area contained a revised drawing that falsely moved the outline of the Project site about
26 850 feet north, to a position north of Yucca Street and just south of Franklin Avenue; (2)
27 the bold italic sentence from the November 2011 Geo Report ("*Thus, Site-specific fault*
28 *studies were not performed as part of our investigation because such investigations are*

1 *not required for sites located outside boundaries of fault rupture study zones.”*) was
2 deleted from the May 2012 Geo Report. Thus, the public would not be told in the Draft
3 EIR that a Fault Investigation Report was required by City officials or being prepared
4 because the Project allegedly was not within an Earthquake Fault Rupture Study Area.
5 Petitioners are informed and believe, and based thereon allege, that the City and
6 Millennium Developer agreed to issue the May 2012 Geo Study in support of the Draft
7 EIR’s false assertion that the Hollywood Fault was .4 miles from the site (when the City
8 and Developer were in possession of, but suppressed, evidence that the Hollywood Fault
9 crossed the property) and the site was adjacent to but not within an Earthquake Fault
10 Rupture Study Area (when the City and Developer knew the contrary was true).

11 100. Petitioners are informed and believe, and based thereon allege, that on July
12 2, 2012, LADBS geologists Dana Provost and Jeffrey Wilson met with Langan geologists
13 Dan Eberhart, Rudolph Frizzi, Millennium Partners representatives S. Hood, J. Luciano, K.
14 Gonsar, and Sheppard Mullin attorney P. Tate. During this meeting, an agreement was
15 documented in a Langan email sent to the City’s LADBS personnel that:

- 16 “1. A fault investigation for the Hollywood fault will be required prior to
17 approval of the tentative map. **The investigation was agreed to be**
18 **limited to the western parcel** of the tentative map (that portion west
19 of Vine Street).
- 20 2. The subsurface investigation scope as indicated on the attached map
21 and section has been agreed to by the city.
- 22 3. Should the building envelope extend north of B1, additional
23 subsurface investigation will be required prior to issuance of building
24 permits.
- 25 4. Should the investigation find evidence of recent fault activity, a
26 restricted use area **will be defined by Langan.**
- 27 5. Should datable materials be found, carbon dating will be performed.
- 28

- 1 6. Langan will have a meeting with the city **to discuss our findings**
2 **from the fault investigation prior to report submittal.**
3 7. The final geotechnical engineering study as recommended in the city
4 review sheet dated May 23, 2012 **is not required prior to approval**
5 **of the vesting tentative map and will be deferred until the**
6 **buildings have been designed.** The report will be prepared prior to
7 building permit issuance.” (Emphasis added.)

8 The practical effect of these “agreements” between the City and the Millennium
9 Developer’s representatives and attorneys was that the City would defer any geological
10 investigation for major portions of the Project site until after circulation of the Draft and
11 Final EIR, and after all discretionary project approvals were issued (because the tract map
12 approval would be part of all project approvals made simultaneously). Petitioners are
13 aware of no written document showing that either LADBS personnel or Millennium
14 representatives or attorneys ever informed the City Planning Department – Environmental
15 Unit that a fault investigation was underway due to the existence of a fault trace crossing
16 the Project site.

17 101. Petitioners are informed and believe, and based thereon allege, that one or
18 more of the Millennium Partners representatives or Sheppard Mullin attorneys who
19 attended the July 2, 2012 meeting where the agreement to defer study of the other portions
20 of the Project site **until after discretionary approvals** were the persons who oversaw
21 preparation of the Draft EIR eventually released by the City to the public.

22 102. Petitioners are informed and believe, and based thereon allege, that persons
23 from the Millennium Developer, its geologists, its attorneys, and City personnel agreed to
24 the conducting of a fault investigation of only the southern portion of the West Site of the
25 Project when they knew the boundary for the City’s Safety Element Earthquake Fault
26 Rupture Study Area crossed the East Site and that the East Site contained prior boreholes
27 showing the significant groundwater level anomaly. In reaching this agreement, the
28 Millennium Developer and City geologists, whose professional licenses require them to

1 protect the public health and safety, agreed not to investigate the northern portion of the
2 West Site, or any portion of the East Site, which contained the known groundwater
3 anomaly and the boundary of the City's Earthquake Fault Rupture Study Area crossing it.

4 103. In July 2012, four boreholes on the West Site were drilled under the
5 supervision of Langan. When carbon dating of the materials in LB-2 showed older rock
6 materials laying on top of younger rock materials (a sign of earthquake fault activity),
7 Langan drilled two additional bore holes LB-5 and LB-6 slightly north/south and east of
8 LB-2. Upon drilling the additional boreholes in October 2012 and learning that these two
9 additional boreholes again showed evidence of older rock material laying over younger
10 rock materials, Langan did not conduct any further investigation such as trenching the
11 location or other studies which a competent and professional geologist would undertake.

12 104. Meanwhile, on October 27, 2012, City Planning Department –
13 Environmental Unit, apparently without knowing about or without waiting for the results of
14 the Fault Investigation Study which would be significant information the public should
15 have known in order to exercise its public participation rights under CEQA, released the
16 Draft EIR for the minimum allowed 45-day public comment period.

17 105. In the Geology Section of the Draft EIR, the City failed to include any more
18 analysis of the location of the Hollywood Fault than was included in the comment section
19 of the Initial Study – although the Initial Study promised a more in depth study. The Draft
20 EIR falsely claimed that the Hollywood Fault was at least .4 miles (2,112 feet) from the
21 Project site at the same time the City and Millennium Developer were secretly drilling the
22 Project site and completing an earthquake fault investigation report, albeit inadequate, and
23 only on the southern portion of the West Site. In fact, instead of including detailed
24 information about the active Hollywood Earthquake Fault, including the well-known
25 geologic studies of Professor James Dolan (1997, 2001) and Crook and Proctor (1992), and
26 perhaps most importantly, the California Geological Survey 2010 Fault Activity Map
27 which showed the Hollywood Fault crossing the Millennium Project site, the Draft EIR
28 was written to be more vague than the analysis found in the Initial Study.

1 106. The Geology Section of the Draft EIR also falsely claimed that the Project
2 Site was “adjacent to but not within” the City’s Earthquake Fault Rupture Study Area.
3 This conclusion was supported by the falsified Figure 4 dated May 10, 2012 in the Langan
4 May 2012 Geo Report that misrepresented the location of the Project site to be 850 feet
5 north of its actual location, to just south of Franklin Avenue and with portions of the
6 Project site actually overlapping where a portion of the roadway of the 101 Freeway would
7 be.

8 107. The Draft EIR’s geology “analysis” was supported in the appendices with
9 only the May 2012 Geo Report. There was no acknowledgement of the existence of the
10 prior November 2011 Geo Report, which can only be understood as the City and the
11 Millennium Developer hiding the prior report’s existence from the public because it
12 showed the Project Site was in fact within the boundaries of the City’s Earthquake Fault
13 Rupture Study Area, which both the City staff and the Developer’s representatives
14 understood to mandate not only the completion of a fault investigation report, but its
15 disclosure to the public as part of a good faith effort at full disclosure and analysis of
16 environmental risks associated with the Project.

17 108. Petitioners are informed and believe, and based thereon allege, that on
18 November 8, 2012 the pre-submittal meeting occurred as previously agreed, and then on
19 November 30, 2012, Langan officially submitted the Fault Investigation Report for the
20 Project (“November 2012 Fault Report”). This report persisted in falsely stating that the
21 Hollywood Fault was .4 miles away, but acknowledged that the City had required the
22 preparation of an investigation because the California Geological Survey Map showed the
23 Hollywood Fault to be within 500 feet of the Project site (it actually shows it crossing the
24 Project site). This report also included the same falsified figure that showed the Project
25 Site about 850 feet north of its actual location, apparently in order to avoid admitting to the
26 public and other public officials that the Project lies within the boundary of the City’s
27 Earthquake Fault Rupture Study Area.

28 109. The November 2012 Fault Report falsely concluded that there was no

1 evidence of an earthquake fault on the Millennium Project site. As to the adverse
2 conditions found in three of the six boreholes, the anomalies were weakly and bizarrely
3 explained away, including by Langan claiming that they had contaminated one of their own
4 samples! Thus, Langan had complex explanations as to why 50% of the boreholes
5 appeared to show older rock material laying on top of younger rock material, instead of the
6 simpler explanation – there was an earthquake fault there.

7 110. Despite having 50% of the boreholes with older rock material laying over
8 younger rock material as a justification to recommend trenching of the Millennium Project
9 site on both the West and East Sites, the November 2012 Fault Report concluded no further
10 study was warranted because the data were allegedly consistent with no fault presence.

11 111. Petitioners are informed and believe, and based thereon allege, that once the
12 November 2012 Fault Report was submitted to City staff, the Millennium representatives
13 responsible for preparation of the Final EIR, the Millennium attorneys, and City
14 environmental planning staff agreed not to release the November 2012 Fault Report to the
15 public as part of the EIR, or even to notify the public of, or acknowledge, its existence.

16 112. Petitioners are informed and believe, and based thereon allege, that on
17 February 8, 2013, the City issued its Notice of Availability of the Final EIR. The Final
18 EIR, in each and every response to a public comment that the Hollywood Fault was on or
19 near the Project site, falsely asserted that the Hollywood Fault was .4 miles from the site
20 even though LADBS Grading Division officials had internally concluded the Hollywood
21 Fault was either on or at least within 500 feet of the Project site. Additionally, the City
22 continued to fail to disclose to the public the existence of the November 2011 Geo Report.
23 Furthermore, although the City had required the preparation of a fault investigation report
24 for the Project site, the City failed to disclose the existence of this investigation and, as to
25 the Final EIR, declared they were finished with the environmental analysis, even though
26 the City possessed significant new information via the November 2012 Fault Report that
27 mandated re-circulation of the Draft EIR, before finalizing or certifying the EIR. In
28 violation of the law, the City failed to re-circulate the Draft EIR, and disclose, analyze and

1 mitigate these new significant public health and safety issues before approving the Project.

2 113. After evidence of possible Millennium Developer and geologist consultant
3 fraud came to the attention of Petitioners, and after consultation with numerous well-
4 qualified geologists, Petitioners' representative filed a complaint with the California State
5 Board of Engineers, Land Surveyors, and Geologists, alleging that Langan geologists and
6 engineers had participated in an ongoing conspiracy with Millennium Developer
7 representatives, attorneys, and City officials to falsely deny that the Hollywood Fault
8 crosses the Project Site or that the Project Site lies within the boundaries of the City Safety
9 Element's Earthquake Fault Rupture Study Area. Additionally, Petitioners' representative
10 alleged to the Board's investigators that the Fault Investigation Report prepared for
11 submission to the LADBS Grading Division was seriously deficient and failed to satisfy
12 minimum professional requirements -- most of which are specified in the State Board of
13 Mines and Geology's Publication 42, which is referenced in the CEQA Initial Study
14 checklist.

15 114. As outlined previously herein, when these acts of fraud and deceit by the
16 Millennium Developer, its geologists, and City personnel were revealed at hearings before
17 the PLUM Committee of the City Council and then the City Council itself, these officials
18 were more concerned about approving the Project for their important campaign contributor
19 than confronting the truth and protecting the public they supposedly represent.

20 115. Petitioners and other interested parties and individuals made oral and written
21 comments on the Project and EIR, and raised each of the legal deficiencies asserted in this
22 petition and complaint. Petitioners have exhausted all administrative remedies.

23 116. A Notice of Determination for certification of the EIR for the Project was
24 posted with the Los Angeles County Clerk in Norwalk and dated July 30, 2013, as
25 personally verified in Norwalk by Petitioner George Abrahams.

26 117. Petitioners have performed all conditions imposed by law precedent to filing
27 this action, including complying with the requirement of Public Resources Code Section
28 21167.5 by providing notice to the City that this action would be filed.

1 118. Petitioners will also serve a copy of this Petition on the California Attorney
2 General as required by law.

3 119. Petitioners have no plain, speedy or adequate remedy available in the
4 ordinary course of law to redress the claims alleged in this petition.

5 120. Petitioners as well as members of the general public will suffer irreparable
6 harm if the relief requested herein is not granted and the Project is commenced based upon
7 the EIR, Project Approvals, and Land Use Entitlements granted for the Project.

8
9 **FIRST CAUSE OF ACTION**

10 **(Violation of CEQA and CEQA Guidelines**

11 **Regarding Deficient Analysis Throughout The EIR)**

12 121. Petitioners reallege and incorporate herein by reference the allegations of
13 Paragraphs 1 through 120 inclusive, of this petition and complaint.

14 122. CEQA requires a lead agency for a project to prepare an EIR that complies
15 with the requirements of the statute. The lead agency must also provide for public review
16 and comment on the project and associated environmental documentation. An EIR must
17 provide sufficient environmental analysis such that decision-makers can intelligently
18 consider environmental consequences when acting on proposed projects.

19 123. The City's action in certifying the EIR for the Project constitutes a prejudicial
20 abuse of discretion in that the City failed to proceed in the manner required by law and
21 failed to support its decision by substantial evidence. Among other things, the City:

22 a. Failed to provide an accurate, stable and finite project description,
23 which is the *sine qua non* for an informative and legally sufficient EIR.

24 b. Failed to address comments raising significant environmental issues
25 in good faith, reasoned responses. The City simply ignored numerous comments raising
26 issues with the EIR's inadequacy, including comments from experts, and further including
27 comments from other governmental agencies, including Caltrans and the State Geological
28 Survey.

1 c. Failed adequately to disclose, analyze, mitigate or avoid the Project's
2 significant impacts on the environment, including but not limited to the Project's impacts
3 with respect to aesthetics, cultural and historic resources, geology and seismology, land use
4 and planning, recreation and parks, noise, air quality, traffic and circulation, parking, and
5 public utilities and services, including emergency services;

6 d. Failed adequately to disclose, analyze, mitigate or avoid the Project's
7 traffic impacts, including to the 101 Freeway, its on- and off-ramps, and the surrounding
8 street system;

9 e. Failed adequately to disclose, analyze, mitigate or avoid the Project's
10 cumulative impacts, including cumulative traffic impacts, and failed to include as related
11 projects numerous past, present and reasonably foreseeable probable future projects;

12 f. Failed adequately to disclose, analyze, mitigate or avoid the Project's
13 geologic and seismic impacts, including by actively suppressing and/or falsifying
14 information about the true location of the Hollywood Fault in relation to the Millennium
15 site, by failing to wait for completion of significant new information, i.e., the State's
16 Alquist Priolo mapping and study, and by unlawfully deferring geologic/seismic studies
17 until after Project approval and after FEIR certification;

18 g. Failed adequately to disclose, analyze, mitigate or avoid the Project's
19 impacts to police, fire and life safety emergency response times, including because the EIR
20 used demonstrably false and unreliable data, which data had been repudiated by the Fire
21 Department itself;

22 h. Failed adequately to disclose, analyze, mitigate or avoid the Project's
23 air quality and health risk impacts, including because the EIR used a false 500-foot
24 proximity map to the Hollywood Freeway and failed to impose all feasible mitigation of air
25 quality impacts;

26 i. Failed to re-circulate the Draft EIR when significant new information
27 was added late or was requested to be added even after FEIR certification, including related
28 to the critical seismic issue, all of which further demonstrates that the City's approval of

1 the Project and FEIR prior to completion of appropriate studies, including seismic studies,
2 prevented the City from making adequate and informed findings;

3 j. Failed adequately to disclose, analyze, mitigate or avoid the Project's
4 land use impacts associated with each Municipal Code provision overridden in favor of the
5 Millennium Development Regulations and/or Land Use Equivalency Program;

6 k. Failed adequately to disclose, analyze, mitigate or avoid the Project's
7 land use impacts related to the Project's violation of the City Advisory Agency's parking
8 requirements;

9 l. Failed to adequately analyze the impacts of the Project on and with
10 reference to the 1988 Hollywood Community Plan because the overwhelming majority of
11 the Draft EIR's analysis of land use impacts was limited to the 2012 Hollywood
12 Community Plan Update, which Update on February 11, 2014 was ordered set aside by Los
13 Angeles County Superior Court Judge Allan J. Goodman, for failure to comply with CEQA
14 mandates because the City used false and out-of-date population data to justify
15 densification of Hollywood (*La Mirada Avenue Neighborhood Association of Hollywood v.*
16 *City of Los Angeles, et al.* [BS 138369] and related cases [BS 138580 and BS 138570]);

17 m. Improperly deferred impact analysis and mitigation measures;

18 n. Failed adequately to mitigate Project impacts;

19 o. Failed properly to analyze cumulative impacts and growth inducing
20 impacts;

21 p. Failed properly to disclose and analyze a reasonable range of
22 alternatives, and indeed, could not legally analyze a reasonable range of alternatives to the
23 Project because the Project description is so amorphous and identifies such a wide range of
24 potential uses and building forms that it effectively evaluates no specific uses or structures
25 at all. Accordingly, the fundamental CEQA requirement of analyzing a reasonable range of
26 alternatives to the Project was frustrated by the unstable Project description, which in turn
27 undermined every other CEQA study area required to be analyzed in the EIR.

28 124. CEQA requires every lead agency to provide a good faith, reasoned analysis

1 in response to comments received on an EIR, to address recommendations and objections
2 in detail, and to explain why specific comments and suggestions, especially those of
3 experts, were not accepted. The EIR fails to respond adequately to comments on the EIR,
4 including comments from Petitioners' experts and the State's experts.

5 125. As a result of the City's violations of CEQA, Petitioners have been harmed in
6 that Petitioners and other members of the public were not fully informed about the
7 significant environmental impacts of the Project prior to the City's approval of the Project
8 and certification of the Project EIR, and have been and will be injured by the City's
9 violations of CEQA.

10 126. Petitioners as well as members of the general public will suffer irreparable
11 harm if the relief requested herein is not granted and Project construction commences in the
12 absence of a full and adequate EIR and absent compliance with all other applicable
13 provisions of CEQA and other laws.

14 127. CEQA requires that a lead agency's findings for the approval of a project be
15 supported by substantial evidence in the administrative record. CEQA further requires that
16 a lead agency provide an explanation of how evidence in the record supports the
17 conclusions it has reached.

18 128. The City further violated CEQA by adopting findings that are inadequate as a
19 matter of law in that they are not supported by substantial evidence in the record, including,
20 but not limited to, the following:

21 a. The determination that certain impacts would be less than significant
22 and/or that adopted mitigation measures would avoid or lessen the Project's significant
23 effects on the environment;

24 b. The determination that overriding economic, legal, social,
25 technological, or other benefits of the Project outweighed its significant impacts on the
26 environment – including because the so-called "community benefits" may be
27 unenforceable.

28 129. As a result of the foregoing defects, the City prejudicially abused its

1 discretion by adopting findings that do not comply with the requirements of CEQA and by
2 approving the Project in reliance thereon. Accordingly, the City's certification of the EIR,
3 and approval of the Project and all of the Project Approvals and Land Use Entitlements
4 which rely on the defective EIR, must be set aside.

5
6 **SECOND CAUSE OF ACTION**

7 **(Violation of CEQA and CEQA Guidelines Re Ignoring Responsible Agency**
8 **Caltrans' Direction For Study of Traffic Impacts Related To Hollywood Freeway)**

9 130. Petitioners reallege and incorporate herein by reference the allegations of
10 Paragraphs 1 through 129, inclusive, of this petition and complaint.

11 131. Public Resources Code § 21080.4(a) provides in pertinent part:

12 "If a lead agency determines that an environmental impact
13 report is required for a project, the lead agency shall
14 immediately send notice of that determination by certified
15 mail or an equivalent procedure to each responsible agency,
16 the Office of Planning and Research, and those public
17 agencies having jurisdiction by law over natural resources
18 affected by the project that are held in trust for the people of
19 the State of California. Upon receipt of the notice, each
20 **responsible agency**, the office, and each public agency
21 having jurisdiction by law over natural resources affected by
22 the project that are held in trust for the people of the State of
23 California **shall specify to the lead agency the scope and**
24 **content of the environmental information that is germane**
25 **to the statutory responsibilities of that responsible agency,**
26 the office, or the public agency in connection with the
27 proposed project **and which, pursuant to the requirements**
28 **of this division, shall be included in the environmental**

1 impact report. The information shall be specified in writing
2 and shall be communicated to the lead agency by certified
3 mail or equivalent procedure not later than 30 days after the
4 date of receipt of the notice of the lead agency's
5 determination." (Emphasis added.) Additionally, Public
6 Resources Code § 21092.4 imposed an explicit duty upon the
7 City to consult with "public agencies that have transportation
8 facilities within their jurisdictions which could be affected by
9 the project" if a project is of "statewide, regional, or areawide
10 significance."

11 132. Guidelines § 15096(b)(2) similarly provides:

12 "As soon as possible, but not longer than 30 days after
13 receiving a notice of preparation from the lead agency, the
14 responsible agency shall send a written reply by certified mail
15 or any other method which provides the agency with a record
16 showing that the notice was received. The reply shall specify
17 the scope and content of the environmental information
18 which would be germane to the responsible agency's
19 statutory responsibilities in connection with the proposed
20 project. The lead agency shall include this information in
21 the EIR." (Emphasis added.)

22 133. Petitioners are informed and believe, and based thereon allege, that Caltrans
23 is a responsible agency under CEQA related to the Project and its EIR, and that Caltrans
24 was notified about the EIR by the City as part of the City's duties to notify and consult with
25 responsible agencies.

26 134. Petitioners are informed and believe, and based thereon allege, that the City
27 issued a Notice of Preparation of environmental review for the Project on or about April
28 28, 2011.

1 135. Petitioners are informed and believe, and based thereon allege, that within
2 30 days thereof, and more specifically on May 18, 2011, Caltrans sent a detailed letter to
3 the City “specify[ing] the scope and content of the environmental information which would
4 be germane to the responsible agency’s statutory responsibilities.” Although the City, as
5 lead agency, “shall include this information in the EIR,” the City failed and refused to
6 comply with Caltrans’ requests and directions. As a result, the City violated Public
7 Resources Code §§ 21080.4(a), 21092.4, and Guidelines § 15096(b)(2).

8 136. In its May 18, 2011 letter, after noting that “[b]ecause of the size and land
9 uses of the project, this project may have a regional traffic impact on the State facilities,”
10 Caltrans provided numerous detailed and specific requests for disclosure, study, analysis
11 and mitigation as part of the EIR.

12 137. Notwithstanding Caltrans’ written objections and specific EIR study
13 directions, the City failed and refused to comply with Caltrans’ requests, and failed and
14 refused to comply with the mandates of Public Resources Code §§ 21080.4(a), 21092.4 and
15 Guidelines § 15096(b)(2).

16 138. Subsequently, on or about December 10, 2012, Caltrans sent another
17 detailed letter to the City in which it stated “Caltrans’ major concerns with the Draft
18 Environmental Impact Report (DEIR) for the Millennium Project.” Caltrans then provided
19 approximately three pages of comments and criticisms to the City, again “specify[ing] the
20 scope and content of the environmental information which would be germane to the
21 responsible agency’s statutory responsibilities,” and which should have been included in
22 the EIR. Caltrans pointedly concluded this letter by stating:

23 “Caltrans is concerned that the project impacts may result in
24 unsafe conditions due to additional traffic congestion, unsafe
25 queuing, and difficult maneuvering. These concerns need to
26 be adequately addressed in the EIR. In summary, without the
27 necessary traffic analysis, Caltrans cannot recognize the TIS
28 [traffic impact study] and DEIR as adequately identifying and

1 mitigating the project's impacts to State highway facilities.”

2 139. Notwithstanding Caltrans' written objections and specific EIR study
3 directions, the City continued to fail and refuse to comply with Caltrans' requests, and
4 thereby failed and refused to comply with the mandates of Public Resources Code §§
5 21080.4(a), 21092.4, and Guidelines § 15096(b)(2).

6 140. Subsequently, on or about February 19, 2013, Caltrans sent another detailed
7 letter to the City in which it commented on the Final EIR for the Project. Caltrans provided
8 five additional pages of specific comments and criticisms to the City, again “specify[ing]
9 the scope and content of the environmental information which would be germane to the
10 responsible agency's statutory responsibilities,” and which should have been included in
11 the EIR. Among other things, Caltrans noted:

12 “This letter serves to reiterate our concerns that the
13 FEIR does not fulfill the requirements of the California
14 Environmental Quality Act (CEQA). . . .

15 A valid TIS [traffic impact study] represents the
16 linchpin in Caltrans' efforts to assess a project's potential
17 impacts to the State transportation infrastructure. To assist
18 the City in its preparation of a valid TIS, Caltrans informed
19 the City that the TIS needs to comply with the “*Caltrans*
20 *Guide for the Preparation of the Traffic Impact Studies.*”
21 Unfortunately, the City did not work with Caltrans and
22 instead relied on its own Congestion Management Program
23 (CMP), which **DOES NOT** adequately study the impacts to
24 the SHS [State Highway System]. Because the TIS did not
25 adequately analyze the traffic impacts, the City therefore did
26 not identify adequate mitigation. Caltrans is concerned the
27 Project impacts may result in unsafe conditions due to
28

1 additional traffic congestion, unsafe queuing, and difficult
2 maneuvering. . . .

3 The purpose of allowing the public and other
4 governmental agencies the opportunity to review EIRs
5 include: sharing expertise, disclosing agency analyses,
6 checking for accuracy, detecting omissions, discovering
7 public concerns, and soliciting counter proposals. (CEQA
8 Guidelines, Section 15200.) The TIS did not provide
9 Caltrans, or any other reader, with sufficient traffic analysis to
10 properly review and assess the traffic assumptions, lead
11 agency analysis, and conclusions regarding the Project and its
12 impacts.” (Caps, bold and underline in Caltrans’ original.)

13 141. Notwithstanding Caltrans’ written objections and specific EIR study
14 directions, the City continued to fail and refuse to comply with Caltrans’ requests, and
15 thereby failed and refused to comply with the mandates of Public Resources Code §§
16 21080.4(a), 21092.4, and Guidelines § 15096(b)(2).

17 142. Subsequently, on or about May 7, 2013, Caltrans sent another letter, this
18 time directly to then Hollywood Councilmember (and now Mayor) Eric Garcetti. In it,
19 apparently with great frustration at the City’s disregard of Caltrans’ repeated concerns,
20 objections and EIR study directions, Caltrans attached all of its prior correspondence dating
21 back to May 18, 2011. To Caltrans’ great credit, it repeated its strong objections to the
22 City and Millennium Developer’s flagrant disregard for Caltrans’ directions. The May 7,
23 2013 letter stated in pertinent part:

24 “We are writing this letter to reiterate Caltrans’
25 concerns that the Environmental Impact Report (EIR), Final
26 Environmental Impact Report (FEIR), and Traffic Study for
27 this project **did not fulfill the requirements of the**
28 **California Environmental Quality Act (CEQA).**

1 **The Millennium Hollywood Project is a regionally**
2 **significant project** that will construct over 1 million square
3 feet of mixed use development and is approximately one
4 block from the US-101 freeway. With the existing condition
5 of the freeway operating at Level of Service “F”, this project
6 will contribute significant traffic impacts to the US-101
7 freeway and its on/off ramps. **The traffic study does not**
8 **analyze nor does it disclose the traffic impacts that this**
9 **project will contribute to the State Highway System.**

10 After reviewing the Response to Comments from the
11 City, Caltrans sent a letter, dated February 19, 2013,
12 commenting on the FEIR (see attachment 3). We have not
13 received a response from the City regarding our comments.

14 The Los Angeles Planning Commission approved the
15 project on April 27, 2013. As a commenting agency, we
16 would like to, once again, bring to the City’s attention that the
17 project impacts will likely **result in unsafe conditions due to**
18 **additional traffic congestion, unsafe queuing, and difficult**
19 **maneuvering. As mentioned in our previous letters, these**
20 **concerns have not been adequately addressed in the EIR.**

21 In summary, without the necessary traffic analysis,
22 **Caltrans cannot agree that the FEIR substantively**
23 **identifies and mitigates the Project’s impacts to the State**
24 **highway facilities as required under CEQA.”** (Emphasis
25 added.)

26 143. Petitioners are informed and believe, and based thereon allege, that between
27 May 18, 2011 and the City’s certification of the EIR on July 24, 2013, Caltrans also had
28 numerous meetings and telephone conversations with City staff, City officials, and

1 Millennium Developer representatives in which Caltrans repeated its requests and
2 directions regarding the severe deficiencies in the EIR as prepared by the City and
3 Millennium Developer.

4 144. Petitioners are informed and believe, and based thereon allege, that despite
5 these repeated written and oral requests and directions from Caltrans as a responsible
6 agency to the City as lead agency, the City willfully failed and refused to comply with
7 Caltrans' explicit requests, failed and refused to comply with the clear mandates of both
8 Public Resources Code §§ 21080.4(a), 21092.4, and Guidelines § 15096(b)(2), and thereby
9 failed to proceed in accordance with the law.

10 145. Amazingly, in complete derogation of every effort made by Caltrans over
11 the course of more than two years to get the City and the EIR to study a specified "scope
12 and content of the environmental information" that the City "shall include" in the EIR,
13 Councilman Mike Bonin at the July 24, 2013 City Council hearing on approval of the EIR
14 erroneously and disparagingly stated: "I guess the question for both DOT and for Caltrans
15 is Caltrans came to the table fairly late in this process so I'm wondering going forward how
16 we can avoid that and what sort of procedures we can put into place to establish a better
17 working relationship with Caltrans so they can get fed into the process sooner." One could
18 almost see the jaws dropping from Los Angeles to Sacramento.

19 146. Petitioners are informed and believe, and based thereon allege, that the City
20 as lead agency failed and refused to respond to significant environmental issues and
21 concerns repeatedly identified by Caltrans, and in violation of the law, failed and refused to
22 provide the disclosure, analysis, and mitigation of impacts in the EIR as repeatedly
23 requested and directed by Caltrans. Accordingly, the EIR fails as a sufficient informational
24 document, and the EIR must be invalidated on this ground.

25 147. Petitioners are informed and believe, and based thereon allege, that the City
26 as lead agency failed to make the required "good faith effort at full disclosure" in the EIR
27 regarding Caltrans' repeated requests and directions for specific analysis and disclosure in
28 the EIR.

1 148. Petitioners are informed and believe, and based thereon allege, that the City
2 violated the express mandates of both Public Resources Code §§ 21080.4(a), 21092.4, and
3 Guidelines § 15096(b)(2). On this basis the EIR, and the Project Approvals and Land Use
4 Entitlements which rely on the defective EIR, all must be set aside.

5
6 **THIRD CAUSE OF ACTION**

7 **(Violation of CEQA and CEQA Guidelines Regarding Failure To Notice And**
8 **Consult With Responsible Agency California Geological Survey)**

9 149. Petitioners reallege and incorporate herein by reference the allegations of
10 Paragraphs 1 through 148, inclusive, of this petition and complaint.

11 150. The City's Initial Study listed the California Department of Conservation as
12 a potential "Responsible Agency" in this matter. Nonetheless, despite extensive
13 knowledge on the part of the City, including through its Building and Safety and Planning
14 Departments, of a high probability of traces of the Hollywood Earthquake Fault running
15 directly through the Millennium site (a fact now supported by the State's issuance of a
16 revised preliminary earthquake fault rupture and seismic hazard map for the Hollywood
17 quadrangle), the City improperly failed and refused to notify and consult with the
18 California Department of Conservation, State Geological Survey, as a responsible agency
19 for purposes of EIR review, analysis, and comment.

20 151. Petitioners are informed and believe, and based thereon allege, that the
21 City's failure to timely notify and consult with the California Department of Conservation,
22 California Geological Survey, constitutes an independent violation of CEQA, including but
23 not limited to under Public Resources Code § 21153 and Guidelines § 15086(a)(1). The
24 City frustrated and prevented a required consultation process with a critical responsible
25 agency, thereby further depriving the public and decision makers of comments, analysis
26 and expertise regarding substantial adverse environmental effects of the Project,
27 particularly related to seismic dangers to persons on and off the Project Site, and related
28 environmental impacts.

1 Paragraphs 1 through 155, inclusive, of this petition and complaint.

2 157. Code of Civil Procedure § 1094.5(b) authorizes judicial review of the
3 fairness of an administrative hearing. Numerous due process and fair hearing violations
4 occurred throughout the City proceedings related to the Project.

5 158. The City failed to attach to the April 27, 2013 City Planning Commission
6 letters of determination copies of the precise versions of the Millennium Hollywood
7 Development Regulations and Millennium Hollywood Land Use Equivalency Program.
8 This omission deprived appellants and other interested parties of the ability to know from
9 the four corners of the letters of determination precisely what the City Planning
10 Commission's decision was. When confronted about this deficiency, the City refused to
11 cure and correct the defect. This made it impossible for appellants and interested parties to
12 track changes made by the City during the City Council hearing process because they could
13 not verify what the operative versions of these zoning documents were.

14 159. When the Los Angeles City Council issues public hearing notices to conduct
15 land use hearings and appeal hearings, it determines how land use and environmental laws
16 shall be applied to particular parcels of land and persons, all as a quasi-judicial
17 administrative planning agency. The failure of the Los Angeles City Council to propose,
18 publicly consider, adopt, and publish official land use procedural rules to assure a fair and
19 consistent public hearing process before its committees and full City Council, as mandated
20 by Government Code § 65804, is an ongoing failure to proceed in accordance with law for
21 which declaratory and injunctive relief may issue to compel the performance of this
22 statutory duty, as set forth more fully in the Fifth Cause of Action herein.

23 160. As a result of the Los Angeles City Council's failure to comply with its
24 mandatory duty to adopt and follow fair hearing policies and procedures as required by
25 Government Code § 65804, Petitioners CURD, Beachwood Canyon Neighborhood
26 Association, and George Abrahams were subjected to a series of actions that deprived them
27 of a fair hearing and their due process rights.

28 161. Without adopted procedural rules, appellants such as Petitioner CURD had

1 no reliable and verifiable way to prepare for a public hearing before the PLUM Committee
2 or the full City Council. There are no adopted rules specifying the order of presentation,
3 the length of appeal presentations, the number of copies of written materials to be
4 submitted, the burden of proof and right to rebut arguments or evidence of opposing parties
5 that are consistently followed by the Chair of the PLUM Committee or the President of the
6 City Council. The current process is arbitrary and capricious. The amount of time an
7 appellant receives to present its case is severely curtailed despite the fact that the appellant
8 has filed an appeal under provisions of law and paid the necessary fees to appeal City
9 decision making. The unbridled discretion of the Chair of the PLUM Committee and the
10 President of City Council leaves land use appellants like Petitioners subject to the whim
11 and caprice of City officials.

12 162. Existing law gives project applicants, appellants, and interested persons
13 rights to receive notice of the time and place that the City will conduct land use public
14 hearings so that they may prepare for and appear at the public hearing required by law.
15 Interested persons who appear at a public hearing, including those to whom the City has
16 sent a hearing notice, have a due process right to testify before the City decision making
17 body. That right is routinely violated by the City, and was violated in this matter.

18 163. The actions of the City at the PLUM Committee hearing on June 18, 2013
19 subjected Petitioner CURD, as a land use appellant with hearing rights, to a fundamentally
20 unfair process. This included not having access to adopted and published land use hearing
21 procedural rules as required by Government Code § 65804, known hearing presentation
22 order, unknown and ever-shifting hearing presentation times for the parties, an unfair
23 process that prohibited Petitioner CURD from an opportunity to speak after its initial
24 presentation while the Millennium Developer was given more time and made false
25 statements that Petitioner CURD was prevented from rebutting to the PLUM Committee,
26 and similar arbitrary, capricious, and unfair actions that conferred hearing favoritism upon
27 the Millennium Developer.

28 164. The actions of the City at the PLUM Committee hearing on June 18, 2013

1 subjected Petitioner George Abrahams and other Interested Persons to whom the City
2 mailed public hearing notice to an unfair hearing. Although the City mailed public hearing
3 notices to Petitioner Abrahams and others who signed the Interested Persons list at the City
4 Planning Commission meeting, when they appeared at the public hearing and submitted
5 speaker cards to exercise their right to give public testimony (as opposed to public
6 comment on an item of business under the Brown Act), they were told they would not be
7 allowed to testify. Accordingly, Interested Persons, including Petitioner Abrahams, were
8 denied their right to give public testimony at the PLUM Committee hearing.

9 165. Separately, the actions of the City to issue a materially false PLUM
10 Committee Recommendation Report that claimed the PLUM Committee voted to:
11 (1) recommend that the City Council set aside the City Planning Commission reviewed and
12 approved zone change ordinance (Old Ordinance); and (2) recommend that the City
13 Council approve a zone change ordinance that enacted the Millennium Development
14 Regulations into the Los Angeles Municipal Code, when the PLUM Committee did no
15 such thing, deprived Petitioners CURD, Beachwood Canyon Neighborhood Association,
16 and George Abrahams of their right to know that such a dramatic change to the Project was
17 under consideration, and to meet it with analysis and rebuttal evidence at the PLUM
18 Committee hearing.

19 166. Separately, the actions of the City in having no adopted hearing procedures
20 that require the applicant to provide timely copies of all submittals to the City deprived
21 Petitioners of their fair hearing rights because Petitioner CURD was given no meaningful
22 opportunity to know of the 311-page Sheppard Mullin letter, review its arguments and
23 supporting new evidence, research the evidence claimed in support of the arguments, and
24 prepare evidence or response to such arguments in advance of the July 24, 2013 City
25 Council public hearing. The short letter that the CURD attorney managed to prepare
26 largely focused on how a 311-page last-minute submission by the Millennium Developer
27 was similar to an action that the Los Angeles County Superior Court found to be a violation
28 of due process rights in the case of *La Mirada Avenue Neighborhood Association of*

1 *Hollywood v. City of Los Angeles* (BS132533).

2 167. Separately, the actions of the City deprived Petitioners of their fair hearing
3 rights because Petitioners were given no reasonable time or opportunity to review and
4 prepare evidence or argument to controvert the underlying data, methodology, or
5 conclusions of the new geology report submitted as an attachment to the 311-page
6 Sheppard Mullin letter.

7 168. Separately, the actions of the City at the City Council hearing on July 24,
8 2013 subjected Petitioner George Abrahams and other Interested Persons to whom the City
9 mailed public hearing notice to an unfair public hearing. Although the City mailed public
10 hearing notices to Petitioner Abrahams and others who signed the Interested Persons list at
11 the City Planning Commission meeting, when they appeared at the public hearing and
12 submitted speakers cards to exercise their right to give public testimony (as opposed to
13 public comment on an item of business under the Brown Act), they were told they would
14 not be allowed to testify. Accordingly, Interested Persons, including Petitioner Abrahams,
15 were denied their right to give public testimony at the City Council hearing.

16 169. Separately, Petitioners' counsel submitted a Public Records Act Request to
17 the Los Angeles Department of Building and Safety with ample time for the City to
18 respond with responsive documents before the City Council public hearing on July 24,
19 2013. The City's failure and refusal to timely respond in compliance with the Government
20 Code deprived Petitioners of a fair hearing because the City cynically withheld producing
21 the responsive public records until two hours after the City Council public hearing had
22 closed, thereby thwarting the ability of Petitioners to gather relevant evidence – including
23 as to that specific Public Records Act request – evidence of the City colluding with the
24 Millennium developer and its representatives to suppress critical facts about the seismic
25 conditions on the Millennium property. The City's acts frustrated Petitioners' rights and
26 abilities to fully prepare for the public hearing and to submit such evidence with
27 Petitioners' presentation at the final public hearing.

28 170. Separately, the actions of the City to impose the burden of proof on the

1 Petitioner/Appellant, yet deny Petitioners' counsel any opportunity to rebut evidence and
2 argument improperly submitted by the Millennium Developer and City Building and Safety
3 and Transportation departmental staff at the final hearing, deprived Petitioners of their fair
4 hearing rights. This included the astounding action of the City Council in asking City
5 Geologist Dana Prevost to submit additional information into the record that the public
6 generally, and Petitioners specifically, had no opportunity to see, and in fact, did not have
7 an opportunity to see or rebut prior to the close of the City Council hearing.

8 171. Separately, the actions of the City in failing to have adopted hearing
9 procedures that require the availability of proposed amending motions for a minimum
10 period of time prior to their consideration at the City Council public hearing on July 24,
11 2013, deprived Petitioners CURD, Beachwood Canyon Neighborhood Association, George
12 Abrahams, and other Interested Persons of their right to a fair hearing process because they
13 were denied a reasonable opportunity to know the content of the proposed amending
14 motion, gather evidence to respond to or rebut it, and present it at the City Council public
15 hearing. The City's pattern and practice of slipping amending motions into final public
16 hearings without notice to anyone, distributing copies of amending motions only to
17 members of the City Council and not to land use appellants or the public, and posting one
18 copy of the amending motion on an unmarked bulletin board in the corner of City Hall
19 Chambers, and not allowing persons to take it down from the bulletin board to review it, is
20 fundamentally unfair and designed to deprive the public of knowing what their government
21 is doing.

22 172. Petitioners are entitled to the issuance of a writ commanding the City to set
23 aside approvals of the EIR, Project Approvals and Land Use Entitlements, as well as a
24 judgment finding that the City deprived Petitioners of a fair hearing, and requiring and
25 ordering that a new and fair hearing be provided before reconsideration of the EIR, Project
26 Approvals and Land Use Entitlements for the Millennium Project.

27
28

1 FIFTH CAUSE OF ACTION

2 (Declaratory And Injunctive Relief: Pattern And Practice Of
3 Depriving Public of Fair Hearings On Land Use Appeals)

4 173. Petitioners reallege and incorporate herein by reference the allegations of
5 Paragraphs 1 through 172, inclusive, of this petition and complaint.

6 174. An actual and present controversy has arisen and now exists between
7 Petitioners, on the one hand, and the City, on the other, in that the City has in this case and
8 in other cases demonstrated a pattern and practice of refusing to enact fair land use hearing
9 rules and procedures, which are mandated by Government Code § 65804. The City
10 routinely and illegally denies the right of Interested Persons to testify at land use public
11 hearings for which the law, independent of the Brown Act, imposes an obligation for the
12 City to give notice and take testimony from all those who appear.

13 175. Without this Court's declaratory and injunctive relief, the City will continue
14 to violate Petitioners' and other future appellants' due process and fair hearing rights.

15 SIXTH CAUSE OF ACTION

16 (Improper Grant of Variances: Violations Of

17 Los Angeles City Charter § 562 and Los Angeles Municipal Code § 12.27(D))

18 176. Petitioners reallege and incorporate herein by reference the allegations of
19 Paragraphs 1 through 175, inclusive, of this petition and complaint.

20 177. Los Angeles City Charter Section 562 mandates that the granting of
21 variances is subject to, *inter alia*, an initial hearing and determination before a Zoning
22 Administrator; a specified appeal process; required findings for granting of variances; and
23 also provides in pertinent part that:

24 "The grant of a variance may include conditions that will
25 remedy a disparity of privileges and that are necessary to
26 protect the public health, safety or welfare and assure
27 compliance with the objectives of the General Plan and the
28

1 purpose and intent of the zoning ordinance. A variance shall
2 not be used to grant a special privilege or to permit a use
3 substantially inconsistent with the limitations upon other
4 properties in the same zone and vicinity. The Zoning
5 Administrator may deny a variance if the conditions creating
6 the need for the variance were self-imposed.”

7 178. Los Angeles Municipal Code Section 12.27(D) similarly provides that no
8 variance may be granted unless the Zoning Administrator finds all of the following:

9 a. Strict application of the laws would result in practical difficulties or
10 unnecessary hardships.

11 b. Special circumstances apply to the property which do not apply
12 generally to other properties in the same zone and vicinity.

13 c. The variance is necessary for the preservation and enjoyment of a
14 substantial property right or use generally possessed by other property in the same zone and
15 vicinity but which, because of such special circumstances and practical difficulties or
16 unnecessary hardships, is denied the property in question.

17 d. The variance will not be materially detrimental to the public welfare
18 or injurious to the property in the same zone or vicinity in which the property is located;
19 and

20 e. The variance will not adversely affect the General Plan.

21 179. Petitioners are informed and believe, and based thereon allege, that the City
22 Council abused its discretion in that the findings and subsequent approvals by the City
23 Council for the Project’s variances were unsupported in fact or in law and do not satisfy the
24 strict requirements of Charter § 562 or Los Angeles Municipal Code § 12.27(D) to support
25 the variances as a matter of law.

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27
28

1 SEVENTH CAUSE OF ACTION

2 (Violation of Los Angeles Charter § 562, LAMC §§ 12.32 and 12.04, and
3 Constitutional Prohibition Against Impairment of City Police Power)

4 180. Petitioners reallege and incorporate herein by reference the allegations of
5 Paragraphs 1 through 179, inclusive, of this petition and complaint.

6 181. The City’s attempt to elevate the purported Millennium Hollywood
7 Development Regulations and Millennium Hollywood Land Use Equivalency Program into
8 the Los Angeles Municipal Code under the purported authority of LAMC Sections 12.32
9 and 12.04 using the New Ordinance adopted by the City Council on July 24, 2013 is in
10 irreconcilable conflict with the mandates of Los Angeles Charter Section 562 regarding
11 variances, as more fully described in ¶ 177 herein.

12 182. Petitioners are informed and believe, and based thereon allege, that the
13 Development Regulations provide that any conflicting Los Angeles Municipal Code
14 provision which is more restrictive than the Development Regulations shall be overridden,
15 and the Development Regulations shall “prevail.” This unprecedented provision purports
16 to override not only the Planning and Zoning portions of the Los Angeles Municipal Code,
17 but the Building and Safety Code, and any other Los Angeles Municipal Code provisions
18 that are more restrictive than topics included in the Development Regulations, including
19 potential future Building and Safety Code and Los Angeles Municipal Code provisions that
20 would be more restrictive.

21 183. This means the City Council, without even knowing what the conflicting
22 provisions of the Los Angeles Municipal Code might be, impermissibly is allowing
23 variances, or the purported right to variances, without complying with the variance process
24 required by law, including as mandated by City Charter § 562. Additionally, as to
25 conflicting provisions of the Building and Safety Code or any other Los Angeles Municipal
26 Code provisions, the City Council’s grant of carte blanche authority to override any and all
27 conflicting Los Angeles Municipal provisions is *ultra vires* and *void ab initio* because it
28 amounts to the City unconstitutionally surrendering or impairing its police power to

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1 regulate land use in the future, including in violation of LAMC §§ 12.32 and 12.04.

2 184. In purporting to enact the Development Regulations and Land Use
3 Equivalency Program into the Los Angeles Municipal Code, the City has failed to proceed
4 in accordance with law.

5 185. Petitioners are entitled to relief invalidating the Development Regulations
6 and Land Use Equivalency Program on this additional and independent ground.

7
8 **EIGHTH CAUSE OF ACTION**

9 **(Violation of Existing Peremptory Writ of Mandate)**

10 186. Petitioners reallege and incorporate herein by reference the allegations of
11 Paragraphs 1 through 185, inclusive, of this petition and complaint.

12 187. Many of the findings adopted by the City in approving the Project rely on
13 alleged consistency with the Hollywood Community Plan Update (“HCPU”), a component
14 of the Land Use Element of the General Plan of the City of Los Angeles.

15 188. Some mitigation measures in the EIR for the Millennium Hollywood Project
16 rely exclusively (or partly) on and derive from the HCPU.

17 189. Some of the Statement of Overriding Considerations in the EIR for the
18 Millennium Hollywood Project rely exclusively (or partly) on and derive from the HCPU.

19 190. The HCPU was approved by the Los Angeles City Council on or about June
20 19, 2012, with a Notice of Determination filed on June 21, 2012.

21 191. Three lawsuits were filed against the City over the HCPU, alleging, *inter*
22 *alia*, that the HCPU violated CEQA and was inconsistent with the General Plan of the City
23 of Los Angeles. Those are:

24 a. *La Mirada Avenue Neighborhood Association of Hollywood v. City*
25 *of Los Angeles, et al.*, Los Angeles County Superior Court Case No. BS138369, filed on
26 or about July 18, 2012, with a First Amended Petition filed on or about November 15,
27 2012 (“*La Mirada* litigation”);

28 b. *Fix the City, Inc. v. City of Los Angeles, et al.*, Los Angeles County

1 Superior Court Case No. BS138580, filed on or about July 13, 2012, with a First
2 Amended Petition filed on or about July 19, 2013; and

3 c. *SaveHollywood.org, et al., v. City of Los Angeles, et al.*, Los Angeles
4 County Superior Court Case No. 138370, filed on or about July 18, 2012.

5 192. Collectively, the three related lawsuits are referred to as the “HCPU
6 Lawsuits.”

7 193. The Hollywood Chamber of Commerce was granted leave to intervene in
8 the HCPU Lawsuits on or about November 14, 2012.

9 194. Petitioners are informed and believe, and based thereon allege, that Real
10 Party is and was a member of the Hollywood Chamber of Commerce at all times relevant
11 during the pendency of the HCPU Lawsuits.

12 195. Petitioners are informed and believe, and based thereon allege, that counsel
13 of record for Real Party was also counsel of record for the Hollywood Chamber of
14 Commerce at all times relevant during the pendency of the HCPU Lawsuits.

15 196. After trial before the Hon. Allan J. Goodman in Los Angeles County
16 Superior Court, Dept. P, on September 16 and 17, 2013, a Statement of Decision
17 invalidating the HCPU and its Environmental Impact Report issued on or about January 15,
18 2014.

19 197. A judgment granting peremptory writ of mandate and a peremptory writ of
20 mandate issued in the *La Mirada* litigation on or about February 11, 2014.

21 198. The judgment granting peremptory writ of mandate in the *La Mirada*
22 litigation states in relevant part that the City must:

23 “rescind, vacate, and set aside all actions approving the
24 Hollywood Community Plan Update (“HCPU”) and all
25 actions certifying the Environmental Impact Report (“EIR”)
26 adopted in connection therewith, as well as all related
27 approvals issued in furtherance of the HCPU, including but
28 not limited to the text and maps associated with the HCPU,

1 the Resolution amending the Hollywood Community Plan,
2 the adoption of rezoning actions taken to reflect zoning
3 changes contained in the HCPU, all amendments to the
4 General Plan Transportation and Framework Elements made
5 to reflect changes in the HCPU, the adoption of the Statement
6 of Overriding Consideration, the adoption of the Mitigation
7 and Monitoring Program, and adopting Findings in support of
8 the foregoing; provided that the phrase "all related approvals"
9 refers only to those quasi-legislative actions necessary to
10 carry out the HCPU and the related California Environmental
11 Quality Act ("CEQA") documents and that the provisions
12 hereof are not intended to order that respondents rescind those
13 adjudicatory approvals not challenged which the City may
14 have made under the HCPU after its adoption by the City. . .
15 ."

16 IT IS FURTHER ORDERED ADJUDGED AND DECREED
17 that RESPONDENTS AND DEFENDANTS CITY OF LOS
18 ANGELES and LOS ANGELES CITY COUNCIL . . . be and
19 are enjoined from granting any authority, permits or
20 entitlements which derive from the HCPU or its EIR until an
21 adequate and valid EIR is prepared, circulated, and certified
22 as complete, and such EIR is consistent with CEQA, the
23 CEQA Guidelines, and all other applicable laws, and until
24 legally adequate findings of consistency are made as required
25 pursuant to the Charter of the City of Los Angeles and other
26 applicable laws." (Petitioner attaches a true and correct copy
27 of said judgment as **Exhibit 1** to this First Amended Petition.)

28 199. The peremptory writ of mandate in the *La Mirada* litigation mandates in

1 relevant part that the City:

2 “rescind, vacate, and set aside all actions approving the
3 Hollywood Community Plan Update (“HCPU”) and all
4 actions certifying the Environmental Impact Report (“EIR”)
5 adopted in connection therewith, as well as all related
6 approvals issued in furtherance of the HCPU, including but
7 not limited to the text and maps associated with the HCPU,
8 the Resolution amending the Hollywood Community Plan,
9 the adoption of rezoning actions taken to reflect zoning
10 changes contained in the HCPU, all amendments to the
11 General Plan Transportation and Framework Elements made
12 to reflect changes in the HCPU, the adoption of the Statement
13 of Overriding Consideration, the adoption of the Mitigation
14 and Monitoring Program, and adopting Findings in support of
15 the foregoing; provided that the phrase “all related approvals”
16 refers only to those quasi-legislative actions necessary to
17 carry out the HCPU and the related California Environmental
18 Quality Act (“CEQA”) documents and that the provisions
19 hereof are not intended to order that respondents rescind those
20 adjudicatory approvals not challenged which the City may
21 have made under the HCPU after its adoption by the City. . .
22 .”

23 IT IS FURTHER ORDERED ADJUDGED AND DECREED
24 that RESPONDENTS AND DEFENDANTS CITY OF LOS
25 ANGELES and LOS ANGELES CITY COUNCIL . . . be and
26 are enjoined from granting any authority, permits or
27 entitlements which derive from the HCPU or its EIR until an
28 adequate and valid EIR is prepared, circulated, and certified

1 as complete, and such EIR is consistent with CEQA, the
2 CEQA Guidelines, and all other applicable laws, and until
3 legally adequate findings of consistency are made as required
4 pursuant to the Charter of the City of Los Angeles and other
5 applicable laws.” (Petitioner attaches a true and correct copy
6 of said writ as **Exhibit 2** to this First Amended Petition.)

7 200. The City did not appeal the Superior Court judgment in the *La Mirada*
8 litigation, nor did the City appeal the judgments entered in the other of the HCPU
9 Lawsuits.

10 201. The City rescinded the HCPU and decertified the HCPU’s EIR on or about
11 April 2, 2014.

12 202. Reliance on the now invalidated HCPU and the HCPU’s EIR leaves many
13 of the Millennium Hollywood Project findings, mitigation measures and/or statement of
14 overriding considerations without substantial evidence to support them.

15 203. Project Approvals and Land Use Entitlements that derive from the HCPU
16 and/or were issued in furtherance of or based in whole or in part on the HCPU are in
17 violation of the judgment granting peremptory writ of mandate and of the peremptory writ
18 of mandate which issued in the *La Mirada* litigation and the HCPU Lawsuits, and therefore
19 must be invalidated and set aside on this separate and independent ground.

20 204. Accordingly, the City’s approval of the Project and all of the Project
21 Approvals and Land Use Entitlements are in violation of the judgment granting peremptory
22 writ of mandate and of the peremptory writ of mandate issued in the *La Mirada* litigation
23 and the HCPU Lawsuits, and must be invalidated and set aside on this separate and
24 independent ground.

PRAYER

WHEREFORE, Petitioners pray for judgment in their favor as follows:

On the First, Second, Third and Eighth Causes of Action:

1. For a peremptory writ of mandamus directing the City and City Council to vacate and set aside the actions approving the EIR, Project Approvals and Land Use Entitlements.

2. That the Court enjoin the City, City Council, City Planning Commission, their officers, employees, agents, boards, commissions and other subdivisions from granting any authority, permits, certificate of occupancy, or entitlements as part of the Project pursuant to the City's approvals of the EIR, Project Approvals and Land Use Entitlements.

3. That the Court enjoin Real Party, its agents, and any successors in interest from undertaking any Project construction pursuant to the City's approval of the EIR, Project Approvals and Land Use Entitlements.

On the Fourth Cause of Action:

4. For a declaration that the City violated Petitioners' due process and fair hearing rights, and for a peremptory writ of mandamus directing the City and City Council to vacate and set aside the actions approving the EIR, Project Approvals and Land Use Entitlements, and to provide new and fair hearings that comply in all respects with due process of law.

On the Fifth Cause of Action:

5. For declaratory and injunctive relief finding that the City's failure to adopt fair hearing policies and procedures when the City Council sits as a quasi-judicial appellate body for land use appeals is a violation of law, including pursuant to Government Code Section 65804, and for a peremptory writ of mandamus directing the City and City Council to adopt proper fair hearing policies and procedures for the conduct of land use appeals and

1 hearings.

2 **On the Sixth, Seventh and Eighth Causes of Action:**

3 6. For a peremptory writ of mandamus directing the City and City Council to
4 vacate and set aside the actions approving the Land Use Entitlements.

5 7. That the Court enjoin the City, City Council, City Planning Commission,
6 their officers, employees, agents, boards, commissions and other subdivisions from
7 granting any authority, permits, certificate of occupancy, or entitlements as part of the
8 Project pursuant to the City's approvals of the specified Land Use Entitlements.

9 8. That the Court enjoin Real Party, its agents, and any successors in interest
10 from undertaking any Project construction pursuant to the City's approval of the Land Use
11 Entitlements.

12 **On All Causes of Action:**

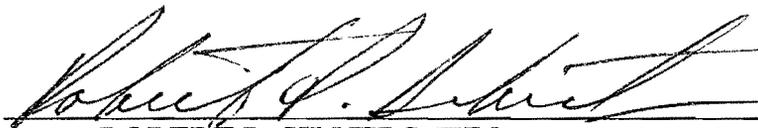
13 9. For attorney fees, including pursuant to Code of Civil Procedure Section
14 1021.5.

15 10. For costs of suit; and

16 11. For such other and further relief as the Court may deem just and proper.

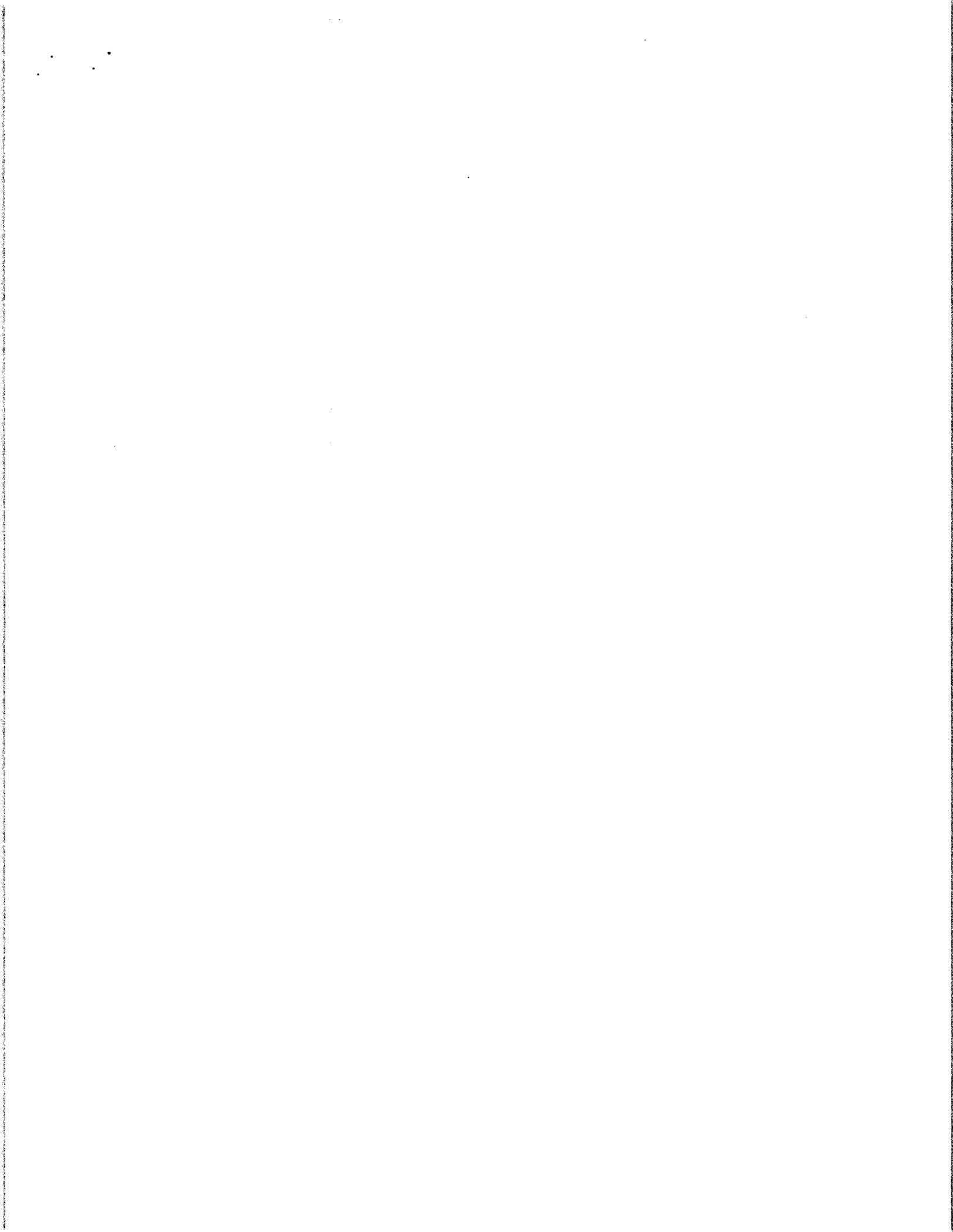
17
18 DATED: September 5, 2014 THE SILVERSTEIN LAW FIRM, APC

19
20 By:



21 ROBERT P. SILVERSTEIN
22 DANIEL E. WRIGHT

23 Attorneys for Petitioners
24 STOPTHEMILLENNIUMHOLLYWOOD.COM;
25 COMMUNITIES UNITED FOR REASONABLE
26 DEVELOPMENT; BEACHWOOD CANYON
27 NEIGHBORHOOD ASSOCIATION; AND GEORGE
28 ABRAHAMS



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Superior Court of California
County of Los Angeles

FEB 11 2014

Sherri R. Carter, Executive Officer/Clerk
By Darian Salisbury, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LA MIRADA AVENUE NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD, a
California unincorporated association,

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal
corporation; CITY COUNCIL OF THE
CITY OF LOS ANGELES, and DOES 1
through 20, inclusive,

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervenor.

Case No. BS138369

[Related to Case Nos. BS138580 and
BS138370]

**JUDGMENT GRANTING
PEREMPTORY WRIT OF MANDATE**

Writ Hearing: September 16-17, 2013

[Hon. Allan J. Goodman, Dept. West-P]

1 On September 16 and 17, 2013, this Court heard argument on Petitioner La Mirada
2 Avenue Neighborhood Association of Hollywood's ("Petitioner") First Amended Verified
3 Petition for Writ of Mandate and Complaint ("Petition"). Bradley S. Torgan appeared on
4 behalf of Petitioner. Siegmund Shyu and Michael Bostrom appeared on behalf of
5 Respondents and Defendants City of Los Angeles and Los Angeles City Council
6 ("Respondents"). Arthur Friedman appeared on behalf of Intervenor Hollywood Chamber
7 of Commerce ("Interevenor"). Concurrently, related cases Fix the City, Inc. v. City of Los
8 Angeles (BS138580) and SaveHollywood.org, et al. v. City of Los Angeles (BS138370)
9 came on for hearing before the Court.

10 Following review and consideration of the pleadings and papers timely filed in
11 support of and in opposition to the Petition, as well as the pleadings and briefs filed in
12 support and opposition to the related cases and the certified administrative record lodged
13 for all related cases, and after hearing arguments of the parties, and the matter having been
14 submitted, the Court issued a Tentative Decision and Proposed Statement of Decision on
15 December 10, 2013. After reviewing the parties' objections and responses to the Tentative
16 Decision and Proposed Statement of Decision, on January 15, 2014 the Court issued its
17 final Statement of Decision ("Decision"), granting the relief as stated in the Decision. The
18 Statement of Decision is hereby incorporated in this judgment. This judgment addresses all
19 matters in controversy.

20 Accordingly,

21 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that a peremptory
22 writ of mandate shall issue, ordering RESPONDENTS AND DEFENDANTS CITY OF
23 LOS ANGELES and LOS ANGELES CITY COUNCIL, together with their officers,
24 employees, agents, boards, commissions, other subdivisions, representatives, and
25 successors, to, immediately upon receipt of the said writ, to rescind, vacate, and set aside
26 all actions approving the Hollywood Community Plan Update ("HCPU") and all actions
27 certifying the Environmental Impact Report ("EIR") adopted in connection therewith, as
28 well as all related approvals issued in furtherance of the HCPU, including but not limited to

1 the text and maps associated with the HCPU, the Resolution amending the Hollywood
2 Community Plan, the adoption of rezoning actions taken to reflect zoning changes
3 contained in the HCPU, and all amendments to the General Plan Transportation and
4 Framework Elements made to reflect changes in the HCPU, the adoption of the Statement
5 of Overriding Consideration, the adoptions of the Mitigation and Monitoring Program, and
6 the adoption of Findings in support of the foregoing; provided that the phrase “all related
7 approvals” refers only to those quasi-legislative actions necessary to carry out the HCPU
8 and the related California Environmental Quality Act (“CEQA”) documents, and that the
9 provisions hereof are not intended to order that respondents rescind those adjudicatory
10 approvals not challenged which the City may have made under the HCPU after its adoption
11 by the City.

12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED that**, in the event
13 that the RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES and LOS
14 ANGELES CITY COUNCIL exercise their discretion to amend the Hollywood
15 Community Plan, they shall do so in a manner that conforms to the policies and objectives
16 of the General Plan of the City of Los Angeles and the requirements of CEQA.

17 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED that**
18 RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES and LOS ANGELES
19 CITY COUNCIL, together with their officers, employees, agents, boards, commissions,
20 and other subdivisions, representatives and successors, be and are enjoined from granting
21 any authority, permits or entitlements which derive from the HCPU or its EIR until an
22 adequate and valid EIR is prepared, circulated, and certified as complete, and such EIR is
23 consistent with CEQA, applicable CEQA Guidelines, and all other applicable laws, and
24 until legally adequate findings of consistency are made as required pursuant to the Charter
25 of the City of Los Angeles and other applicable laws;

26 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that** the Fourth
27 Cause of Action of the First Amended Verified Petition is dismissed without prejudice.
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ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 11 2014

Sherri R. Carter, Executive Officer/Clerk
By Darian Salisbury, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LA MIRADA AVENUE NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD, a
California unincorporated association,

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal
corporation; CITY COUNCIL OF THE
CITY OF LOS ANGELES, and DOES 1
through 20, inclusive,

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervenor.

Case No. BS138369

[Related to Case Nos. BS138580 and
BS138370]

PEREMPTORY WRIT OF MANDATE

Writ Hearing: September 16-17, 2013

Hon. Allan J. Goodman, Dept. West-P

1 THE PEOPLE OF THE STATE OF CALIFORNIA:
2 TO RESPONDENTS CITY OF LOS ANGELES and CITY COUNCIL OF THE
3 CITY OF LOS ANGELES, AND TO ALL PERSONS ACTING ON THEIR BEHALF:

4 Judgment having been entered in the above-captioned case, ordering that a
5 peremptory writ of mandate issue from this Court,

6 IT IS ORDERED THAT:

7 RESPONDENTS CITY OF LOS ANGELES and LOS ANGELES CITY
8 COUNCIL, together with their officers, employees, agents, boards, commissions, other
9 subdivisions, representatives, and successors, shall, immediately upon receipt of this Writ,
10 rescind, vacate, and set aside all actions approving the Hollywood Community Plan Update
11 (“HCPU”) and all actions certifying the EIR adopted in connection therewith, as well as all
12 related approvals issued in furtherance of the HCPU, including but not limited to the text
13 and maps associated with the HCPU, the Resolution amending the Hollywood Community
14 Plan, the adoption of rezoning actions taken to reflect zoning changes contained in the
15 HCPU, all amendments to the General Plan Transportation and Framework Elements made
16 to reflect changes in the HCPU, the adoption of the Statement of Overriding
17 Considerations, the adoptions of the Mitigation and Monitoring Program, and the adoption
18 of Findings in support of the foregoing; provided that the phrase “all related approvals”
19 refers only to those quasi-legislative actions necessary to carry out the HCPU and the
20 related California Environmental Quality Act (“CEQA”) documents, and that the
21 provisions hereof are not intended to order that respondents rescind those adjudicatory
22 approvals not challenged which the City may have made under the HCPU after its adoption
23 by the City.

24 In the event that the RESPONDENTS CITY OF LOS ANGELES and LOS
25 ANGELES CITY COUNCIL exercise their discretion to amend the Hollywood
26 Community Plan, they shall do so in a manner that conforms to the policies and objectives
27 of the General Plan of the City of Los Angeles and the requirements of CEQA.

28 RESPONDENTS CITY OF LOS ANGELES and LOS ANGELES CITY

1 VERIFICATION

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss:

4
5 I, GEORGE ABRAHAMS, declare as follows:

6 I am a representative of StopTheMillenniumHollywood.com, Communities for
7 Reasonable Development, and Beachwood Canyon Neighborhood Association, all
8 Petitioners in this action. I am authorized to make this verification on their behalf and I
9 also make this verification on behalf of myself as an individual Petitioner in this action.

10 I have read the foregoing First Amended Petition for Writ of Mandamus and
11 Complaint for Declaratory and Injunctive Relief and am familiar with its contents. The
12 same is true of my own knowledge, except as to those matters which are therein stated on
13 information and belief, and, as to those matters, I believe them to be true.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed at Los Angeles, California, on the 5th day of
16 September, 2014.

17 
18 _____
19 GEORGE ABRAHAMS

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THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

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215 North Marengo Avenue, 3rd Floor
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PROOF OF SERVICE

I, Marianne Wood, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is The Silverstein Law Firm, 215 North Marengo Ave, Third Floor, Pasadena, California 91101-1504. On September 5, 2014, I served the within document(s):

FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pasadena, California addressed as set forth below.

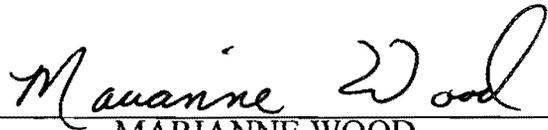
I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

CASE NAME: STOPTHEMILLENNIUMHOLLYWOOD.COM, ET AL. V. CITY OF LOS ANGELES, ET AL.
CASE No.: BS144606

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 5, 2014, at Pasadena, California.



MARIANNE WOOD

SERVICE LIST

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COURTESY COPIES

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(HEI/GC Hollywood and Vine
Condominiums LLC v City of Los
Angeles, et al.; LASC Case No.
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