

Agenda Item No. 07 - PLUM
COUNCIL FILE # 16-0180

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Superior Court of California
County of Los Angeles

MAY 20 2016

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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 PATRICK SHERMAN, an Individual,

14 Petitioner,

15 vs.

16 CITY OF LOS ANGELES, a Charter City
17 and Municipal Corporation; CITY
18 COUNCIL OF LOS ANGELES; and
19 DOES 1-10, inclusive,

20 Respondents.

21
22 NOAH ORNSTEIN, an Individual; LOF
23 PARTNERS, a California General
24 Partnership; and ROES 1-10, inclusive,

25 Real Parties In Interest.

CASE NO. BS162622

VERIFIED PETITION FOR
WRIT OF MANDATE &
COMPLAINT FOR INJUNCTIVE
RELIEF

[Code of Civ. Proc. §526; §1085; §1060;
§1094.5; Government Code
§66452.5(d); Government Code §66473;
California Environmental Quality Act
(CEQA); Public Resources Code §§
21000, et seq.; Public Resources
Code §21151(c); LAMC §17.06(A)(4);
LAMC §17.06(A)(5); California
Constitution]

Date: 06/21/2016

Submitted in PLUM Committee

Council File No: 16-0180

Item No. 7

Deputy: Comm from Appellant
Representative

26 Petitioner PATRICK SHERMAN (hereinafter "Petitioner") seeks a writ of
27 mandamus, declaratory and injunctive relief commanding Respondents and Defendants
28 City of Los Angeles and Los Angeles City Council (sometimes collectively called the

Verified Petition for Writ of Mandate
Patrick Sherman vs. City of Los Angeles, et al.

1 “City”) to schedule and conduct a hearing before the LA City Council on his appeal
2 challenging *both* (i) the City’s CEQA work-up in support of the grant of the preliminary
3 (tentative) and conditional final parcel map application of real parties **NOAH**
4 **ORNSTEIN** and **LOF PARTNERS** (sometimes collectively identified as “real parties”),
5 and (ii) the Advisory Agency’s determination in support of the (Small Lot Subdivision)
6 parcel map grant. Petitioner’s challenge is premised on Petitioner’s right, under CEQA
7 (Public Resources Code §21151(c)) to have his CEQA appeal heard by an elected body
8 (in this case the LA City Council), and his right under the California Subdivision Map
9 Act (Government Code §66452.5(d)) to have his appeal of the City’s grant of the
10 preliminary parcel map heard and decided by the LA City Council. Petitioner further
11 challenges on a substantive basis (i) the City’s CEQA determination attendant to the
12 parcel map land use entitlement grant, and (ii) the City’s grant to real parties of a
13 (tentative) parcel map allowing for the subdivision of the real property and air space
14 above the real property located at 1324 North Quintero Street, Los Angeles, California
15 90026 (“*the 1324 No. Quintero St. property*”) into four (4) small lots under the City’s
16 Small Lot Subdivision Ordinance (LAMC §12.22(C)(27)).

17 **INTRODUCTION**

18 1. Petitioner has been prejudiced by Respondent City’s purposeful refusal to
19 schedule a hearing on the merits of Petitioner’s administrative appeal of (i) the Advisory
20 Agency’s CEQA work-up on the “project” (detailed below) consisting of real parties’
21 request to subdivide the land and air space of the real property located at 1324 North
22 Quintero Street, Los Angeles, California 90026 (the “*1324 No. Quintero St. property*”)
23 into four (4) small lots under the City’s Small Lot Subdivision Ordinance (LAMC
24 §12.22(C)(27); and (ii) the Advisory Agency’s approval of a preliminary parcel map
25 allowing for the small lot subdivision of *the 1324 No. Quintero St. property*. Petitioner
26 timely filed his appeal to the City Council on February 1, 2016, after his appeal to the
27 East Area Planning Commission had been officially denied pursuant to the letter of
28

1 determination dated January 22, 2016.

2 2. Petitioner seeks a writ of mandamus under Code of Civil Procedure §1085,
3 *inter alia*, directing City to perform City’s ministerial, non-discretionary duties under
4 Public Resources Code §21151(c) (as to the CEQA work-up) and Government Code
5 §66452.5 (as to the parcel map grant) as follows:

6 a. Under Public Resources Code §21151(c), where a nonelected decision body
7 certifies an environmental impact report, “that certification, approval, or determination
8 may be appealed to the agency’s elected decision-making body. . .”

9 b. Under Government Code §66452.5(d)(1), any interested person adversely
10 affected by a decision of the advisory agency “may file an appeal with the legislative
11 body concerning any decision of the advisory agency or appeal board” relating to the
12 issuance of a tentative (parcel or tract) map. To the extent that Los Angeles Municipal
13 Code §17.06(A)(4) contemplates the prospect of the appeal being “deemed denied” by
14 the Council’s failure to act on an appeal of the City’s grant of a parcel map, Petitioner
15 contends that any such implicit action to “deem” the appeal to have been denied (or the
16 grant of the parcel map “affirmed”) is inconsistent with the foregoing state mandate
17 because it denies Petitioner the right to have his appeal actually heard and decided.

18 3. If and to the extent the City takes the position that the failure of the City
19 Council to hear and decide Petitioner’s appeal of the preliminary parcel map grant within
20 the 30 day time period mandated by both state law (Government Code §66452.5(d)(1))
21 and LAMC §17.06(A)(4) means that the decision of the advisory agency granting the
22 preliminary parcel map is “deemed approved”, Petitioner challenges the “finality” of the
23 decision as being contrary to state law and reflective of an abuse of discretion; and seeks
24 a writ of mandate pursuant to Code of Civil Procedure §1094.5 to invalidate and set aside
25 the City’s grant of the preliminary parcel map on the following substantive legal grounds:

26 a. *Improper de facto Variance Permitted*: The Advisory Agency’s determination
27 unlawfully grants a *de facto* variance from the City’s front set-back rule allowing for a
28

1 10' front set-back for Parcel A instead of the 15' front set-back mandated by the
2 development standards for properties lying within the RD1.5-1VL zone (Condition No.
3 21). In addition, the preliminary parcel map grant impermissibly allows real parties to
4 "vary" from the rule that a 20' wide common access driveway be provided by only
5 allowing for a 16' wide common access driveway with just 10' open to the sky. Lastly,
6 contrary to the mandate contained in the small lot subdivision law (LAMC
7 §12.22(C)(27)) which limits the maximum number of dwelling units permitted on any
8 one (subdivided) lot to three, the parcel map approved by the Planning Department which
9 subdivides the *1324 No. Quintero St. property* (lot) contemplates 4 dwelling units on the
10 *1324 No. Quintero St. property*. This represents yet another *de facto* variance from the
11 City's zoning laws which was allowed in contravention of the protocol mandated under
12 both state law, the LA City Charter, and LAMC §12.27, which protocol directs that one
13 wishing to vary from the zoning laws and the development standards incorporated therein
14 must apply for and procure a variance.

15 b. *CEQA Workup Deficient in that the Findings are Unsupported by Substantial*
16 *Evidence*. Specifically, the structure (theoretically) contemplated to be constructed on the
17 subdivided *1324 No. Quintero St. property* completely obliterates the views of adjacent
18 property owners. Shade and shadow studies were not evaluated. The impact on
19 infrastructure capacity was ignored, and there was no solar access report provided in
20 advance of the parcel map approval. Cumulative impacts of pending projects (including
21 commercial projects) in the Echo-Park and Silver-Lake area were not evaluated. Instead,
22 a singular reliance was placed on the fact that each individual project represents an "infill
23 development", thereby ignoring the fact that the accumulation or aggregation of each of
24 these separate "infill developments" identified in the appeal has a clear *cumulative*
25 environmental impact which should have been evaluated. The project-specific cumulative
26 impacts on traffic, as further complicated and impacted by what occurs during Dodger
27 home games, was ignored. Fire access and safety considerations stemming from allowing
28

1 a narrower common driveway than allowed under the LA Zoning law was never
2 examined. No attempt was objectively undertaken to specifically incorporate the City's
3 Design Guidelines into the CEQA analysis. Issues related to the noise and how the
4 privacy of adjacent property owners would be impacted were never evaluated; nor was
5 consideration given to how approving the (small lot) subdivision of *the 1324 No.*
6 *Quintero property* via the parcel map would deprive adjacent property owners of light
7 and air.

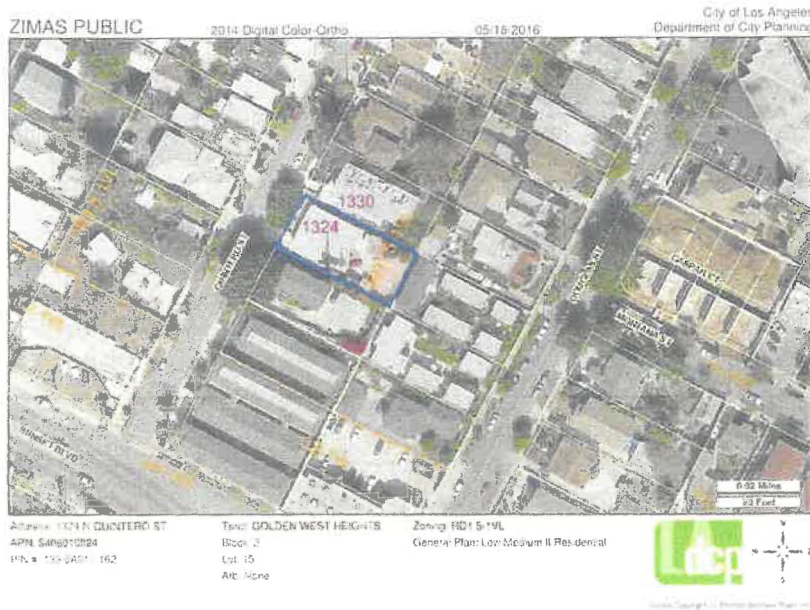
8 c. *CEQA Work-Up Undermined by the Bifurcation between Parcel Map Review*
9 *and the Evaluation of a Specific Project.* The approval of a parcel map allowing for the
10 subdivision of land and air space on *the 1324 No. Quintero St. property* is different from
11 the permitting and approval of the construction of an actual "project" (or structure) on the
12 parcel, as per the allowed subdivision of the land and air space. The environmental
13 considerations evaluated in the context of approving the (small lot) subdivision of *the*
14 *1324 No. Quintero St. property* are not identical to the environmental impacts attendant
15 to the specific project to be constructed on the subdivided lots. No CEQA work-up has
16 ever been undertaken as regards a specific project; and Planning has never approved any
17 plans (referenced as "Exhibit A" on page 11 of the Parcel Map Approval). Accordingly, a
18 separate CEQA work-up is needed with regard to the specific project proposed to be
19 constructed on the subdivided lots, particularly in light of the fact that no formal
20 "variance" was ever sought with regard to deviating from the zoning standards relating to
21 the size of the common driveway, the extent of the front-yard set-back on the
22 (subdivided) lot fronting Quintero St., or of allowing for an increased density of four
23 units on *the 1324 No. Quintero St. parcel* (as subdivided) over the maximum three
24 dwelling units contemplated under the Small Lot Ordinance.

25 d. *Findings Made Pursuant to the Subdivision Map Act are Unsupported by*
26 *Substantial Evidence.* Subdividing *the individual 1324 No. Quintero St. property* lot (land
27 and airspace) into four (separate) "small-lots" is not compatible with the Silver Lake-

1 Echo Park-Elysian Valley Community Plan because the *subdivided Quintero St. lot* is
2 contemplated to contain the four tallest and largest structures on what is a steeply graded
3 (28°) street. Apart from being oversized and incompatible with the character and scale of
4 the neighborhood, the City views from Petitioner’s property (and the property of others)
5 will be completely blocked. There is no affordable housing contemplated so it cannot be
6 said to provide housing except to the “1%” who can afford multi-million properties. Such
7 a massing of buildings so close together on one lot in a manner inconsistent with the
8 City’s residential design guidelines incorporated into the Framework Element of the
9 City’s General Plan contravenes existing law and is thus incompatible with the General
10 Plan and General Plan Framework. The fact that *de facto* “variances” from the
11 development standards were allowed in contravention of the City’s zoning code, but
12 without the formal “variance” findings contemplated under the LA City Charter (Chapter
13 562), implementing Ordinance (LAMC §12.27), and state law (Government Code
14 §65906), reinforces the conclusion that sub-dividing *the 1324 No. Quintero St. property*
15 into four (smaller) “sub-lots” allows for too much density on what was formerly one
16 individual lot improved with one single family residence. Safety considerations are
17 impacted by the fact that the width of the common driveway (accessing a steep street) is
18 decreased by 25%. No other parcel on Quintero St. or in the surrounding area has been
19 further “sub-divided” in such a manner. Accordingly, the ‘Finding” that the physical site
20 is suitable for such an oversized-dense, out of scale project is not supported by substantial
21 evidence.

22 *Parcel Map Subdivision of 1324 No. Quintero St. Property*

23 4. *The 1324 No. Quintero St. property* is depicted below as Exhibit “1”.
24 Petitioner’s property, at 1330 No. Quintero Street is also identified.



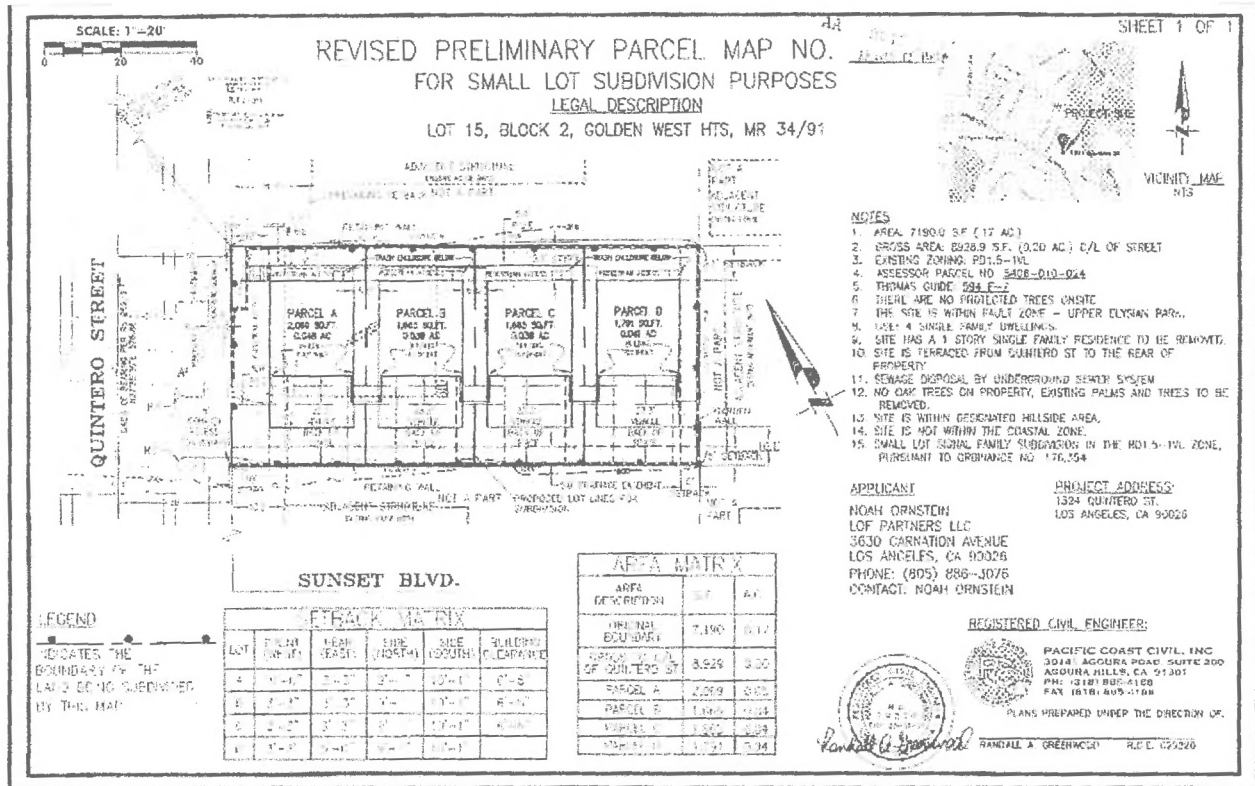
10
11 Exhibit "1" - 1324 North Quintero Street Property – Petitioner's Property (1330 North Quintero)
 12 Aadjacent to the North is also shown. Note Steep Roadway (28 °) Grade (Running North to South) of
 13 North Quintero Street

14 5. The 1324 No. Quintero St. property's orientation in relation to the City is
 15 depicted on Exhibit "2" below:



26 Exhibit "2" - Broad Google Map view of 1324 North Quintero Street Property in relation to surrounding
 27 City environs. Note Dodger Stadium to the South East – The 1324 No. Quintero St. property fronts a
 28 surface street (Quintero St.) which has a steep 28° grade running north to south.

1 6. The parcel map which City approved and which is the subject of the appeal
 2 which the City Council refuses to schedule for hearing and decision is set out in Exhibit
 3 "3", reprinted below:



18 Exhibit "3" Preliminary Parcel Map For Small Lot Subdivision of 1324 No. Quintero Street Property Dated
 19 October 27, 2015 - Approved by City Planning on November 24, 2015; then appealed to the East Area
 20 Planning Commission. Letter of Determination denying Appeal was dated January 22, 2016; and then
 21 appealed to City Council February 1, 2016. The appeal was never scheduled for hearing. Note the
 22 reference to a 10' Front Set-Back on Lot "A". As noted in ¶1 of the writ petition, this 10' front set-back is
 23 inconsistent with the code-mandated 15' set-back; yet no formal "variance" was sought or granted;
 24 thereby rendering the Parcel Map non-code compliant. Note also the allowance on this map of the non-
 25 code compliant 16' wide common driveway (when a minimum 20' width is required). This also renders
 26 the parcel map defective because in the absence of a formal variance being sought and granted, the
 27 sub-division of the 1324 No. Quintero St. parcel as depicted on this map contravenes the City's zoning
 28 law and the specific development standards incorporated therein.

7. The view obstruction created by the structure contemplated to be built to
 the 45' height limit allowed by the zoning is depicted by Exhibit "4" and Exhibit "5"
 reproduced below:

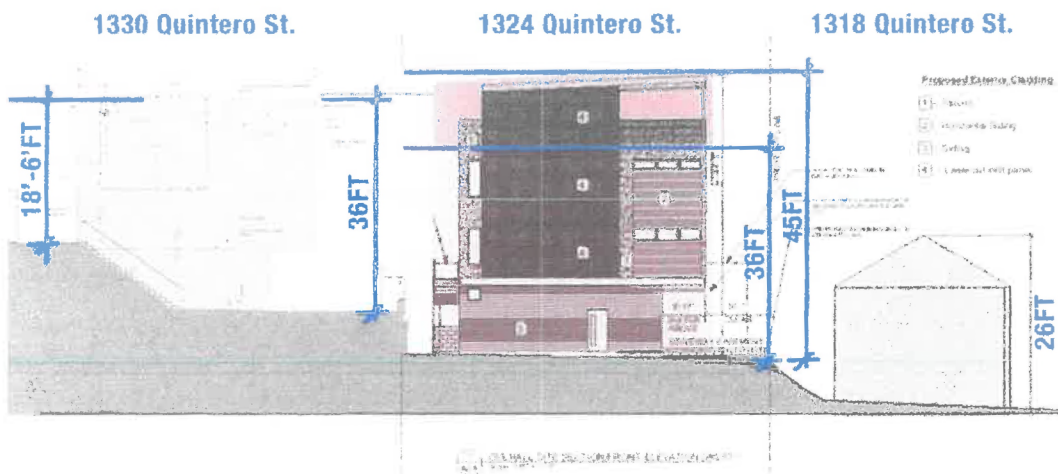


Exhibit "4" – Depicting how the 45' height of the 1324 Quintero St. Project will totally impair views of the City and Hillside currently enjoyed by residents of the 1330 No. Quintero Street property owned by Petitioner.



Exhibit "5" – Photo Looking South From 1330 North Quintero Street – Illustrates how the 1324 North Quintero structure will Impair Hillside View currently enjoyed by residents of 1330 North Quintero and surrounding properties.

Petitioner's Appeal of CEQA Work-Up and Parcel Map Subdivision Grant

8. City's grant of the small lot parcel map subdivision of the 1324 No. Quintero St. property and CEQA work-up was rendered by way of a formal written decision dated November 24, 2015. Petitioner timely appealed both determinations (the

1 CEQA determination and the parcel map grant) to the East Area Planning Commission.
2 Petitioner's appeal was formally denied by the East Area Planning Commission by a
3 Letter of Determination dated January 22, 2016. Petitioner thereafter appealed the
4 (deficient) CEQA work-up to the City Council on February 1, 2016. The appeal included
5 references to the reasons why the unlawful parcel map grant infected and undermined the
6 CEQA findings, and thus why the parcel map grant was also legally deficient and should
7 be overturned. Petitioner's efforts to discuss the scheduling of his appeal and inquire
8 when a hearing would be held with the staff of the PLUM Committee were rebuffed and
9 deflected. Despite Petitioner's efforts, the City Council never scheduled Petitioner's
10 appeal for a hearing.

11 9. On May 16, 2016, Petitioner again objected both by letter and in public
12 testimony directed to the City Council PLUM Committee, and specifically requested the
13 City Council PLUM Committee hear his appeal before the statute of limitations ran out
14 on his CEQA challenge. As of the date of the filing of this writ petition, Respondent City
15 has failed and continues to refuse to accord Petitioner the hearing on his appeal to which
16 he is entitled under CEQA (Public Resources Code §21151(c)) and the California
17 Subdivision Map Act (Government Code §66452.5(d)(1)). Petitioner has thus exhausted
18 all of his administrative remedies prior to commencing this lawsuit.

19 **PARTIES**

20 10. **PATRICK SHEMAN** ("Petitioner") is an individual who owns the real
21 property located at 1330 North Quintero Street, which is immediately adjacent (to the
22 north) of *the 1324 No. Quintero St. property* which is the subject of this lawsuit.

23 11. Respondent **CITY OF LOS ANGELES** is a political subdivision of the
24 State of California organized as a charter city within the County of Los Angeles. It
25 operates as a municipal corporation pursuant to the Charter of the City of Los Angeles.
26 Respondent **CITY COUNCIL OF LOS ANGELES** is the elected legislative body of the
27 City of Los Angeles, and is authorized to decide the land use and planning issues
28

1 involved herein.

2 12. Petitioner is informed and believes, and based thereon alleges, that Real
3 Party in Interest **NOAH ORNSTEIN** is an individual who maintains an ownership
4 interest in *the 1324 No. Quintero St. property*, either as sole owner, or as a member of the
5 business entity known as “**LOF PARTNERS**”, which Petitioner is informed and
6 believes, and thereon alleges, is a general partnership which also maintains an ownership
7 interest in *the 1324 No. Quintero St. property*. Collectively **NOAH ORNSTEIN** and
8 **LOF PARTNERS** are referred to in this writ petition as “real parties”.

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

18 14. Petitioner is ignorant of the true names of real parties sued herein as ROES
19 1 through 10, inclusive, and therefore sues said real parties by those fictitious names.
20 Petitioner will amend the petition to allege their true names and capacities when the same
21 have been ascertained. Petitioner is informed and believes, and based thereon alleges,
22 that each of these fictitiously named real parties were, at all times mentioned in this
23 petition, the agents, servants, and employees of their co-real parties and were acting
24 within their authority as such with the consent and permission of their co-real parties.

25 15. Petitioner has a substantial interest in ensuring that the City’s decisions are
26 in conformity with the requirements of law, and in having those requirements properly
27 executed and the public duties of the City enforced. Petitioner is aggrieved by the acts,
28

1 decisions and omissions of the City as alleged in this petition. Petitioner is suing on his
2 behalf, and on behalf of others who will be affected in the immediate area, as well as all
3 citizens of the City of Los Angeles and the broader geographic area.

4 **JURISDICTION AND VENUE**

5 16. This Court has original jurisdiction over this matter pursuant to article VI,
6 section 10 of the California Constitution, and §§1085 and 1094.5 of the Code of Civil
7 Procedure.

8 17. Venue is proper in the County of Los Angeles pursuant to Code of Civil
9 Procedure §394 in that Respondents are governmental entities within the County of Los
10 Angeles.

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 18. As alleged hereinabove, Petitioner has submitted both oral and written
13 objections to the City Council's continuing refusal to set, hear, and determine Petitioner's
14 administrative appeals of the City's CEQA work-up and parcel map land use entitlement
15 grant consistent with his rights to a hearing by the City Council under state law.
16 Petitioner has been prejudiced by this omission because the statute of limitations on his
17 right to a substantive review, on the merits, of his appeal, continues to run. Absent the
18 City Council's scheduling, hearing, and adjudicating Petitioner's appeal, Petitioner will
19 lose the right and the ability to challenge the City's actions in Court. Petitioner's efforts
20 at persuading City staff and the members of the City Council PLUM Committee have
21 been met with continued passive resistance and a refusal to set Petitioner's appeal for a
22 hearing. As such, Petitioner has satisfied all applicable prerequisites to the seeking of
23 judicial review of Respondents' actions and is left with no alternative but to commence
24 suit prior to the expiration of the 90 day period within which actions under CCP §1094.5
25 must be commenced.

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Ministerial Duties in Failing to Hear and Decide**
3 **Petitioner's Administrative Appeal - Code of Civil Procedure §1085/Pub. Res. Code**
4 **§21151(c); Government Code §66452.5(d))**

5 19. Petitioner incorporates all of the allegations set forth in the preceding
6 paragraphs as though fully set forth herein.

7 20. LAMC §17.06(A)(4) provides for a right of appeal to the City Council of
8 any action by the Advisory Agency with respect to the grant of a tentative parcel or tract
9 map. The City Council is mandated under the law to hold a hearing on the appeal within
10 30 days of its filing. No similar institutional protocol exists with respect to the City
11 Council's scheduling, hearing, and adjudicating CEQA appeals.

12 21. Petitioner filed his appeal to the City Council on February 1, 2016. The
13 City Council therefore had a mandatory, non-discretionary duty to have scheduled and
14 heard Petitioner's appeals as to CEQA and the deficient findings supportive of the parcel
15 map grant under the subdivision map act by March 2, 2016. By not scheduling and
16 holding a hearing on Petitioner's appeal, City has violated Petitioner's right to a hearing
17 and decision, both of which are mandated under Public Resources Code §21151(c) (as to
18 CEQA) and Government Code §66452.5(d)(1) (as to the alleged deficiency of the parcel
19 map findings under the California Subdivision Map Act).

20 **SECOND CAUSE OF ACTION**

21 **(Abuse of Discretion in Failing to Hear & Decide Petitioner's Appeal)**
22 **(Code of Civil Procedure §1094.5/Pub. Res. Code §21151(c);**
23 **Government Code §66452.5(d))**

24 22. City's conduct in refusing to schedule and hear Petitioner's appeal before
25 the City Council in a timely manner is an abuse of discretion because LAMC
26 §17.06(A)(4) mandates that an appeal relating to tentative map approvals must be heard
27 by the City Council within 30 days of the filing of the appeal. With regard to CEQA
28 appeals to the City Council, the City lacks any procedural protocol as to the timing of

1 when such CEQA appeals are to be heard and decided. This prejudices Petitioner because
2 the statute of limitations on the City's CEQA determination continues to run; meanwhile,
3 citizens such as Petitioner confront being "sand-bagged" by the passage of time as they
4 are induced to wait for a hearing on their CEQA appeal, while the statute of limitations
5 on filing a court action to challenge the CEQA work-up continues to run and is not tolled
6 by the City Council's lack of action. In the face of this prejudice to Petitioner, and those
7 similarly situated, such inaction by City and its staff represents an abuse of discretion
8 which can only be corrected by this Court's directing City to hold a hearing on
9 Petitioner's appeal and render a decision on its merits. To the extent that LAMC
10 §17.06(A)(4) "deems" the appeal to be denied if it is not heard, Petitioner contends that
11 any such "deemed denial" contradicts the provisions of the Subdivision Map Act
12 (Government Code §66452.5(d)(1)) and the state's CEQA law (Public Resource Code
13 §21151(c)), both of which provide for and direct that CEQA appeals and appeals
14 challenging the legality of parcel map approvals are to be heard by the City Council.

15 23. Petitioner has a direct and beneficial interest in the action herein and a
16 beneficial right to Respondents' performance of their respective duties herein. All
17 administrative remedies have been exhausted.

18 **THIRD CAUSE OF ACTION**
19 **(Denial of Substantive and Procedural Due Process Under Fifth and Fourteenth**
20 **Amendments to the United States Constitution)**

21 24. Petitioner alleges and incorporates herein the allegations of Paragraphs 1
22 through 23, inclusive, of this Petition and Complaint.

23 25. The Respondents' failure to set a hearing date and then hear and adjudicate
24 the merits of Petitioner's appeal constitutes a denial of due process because the actual
25 scheduling, hearing, and adjudication of the merits of Petitioner's appeal represents the
26 minimal "process" which is "due" Petitioner in the context of Petitioner's challenge to
27 City's grant of the (small lot) parcel map (land and air) subdivision of *the 1324 No.*

1 *Quintero St. property*. By failing to schedule, hear, and decide the merits of Petitioner's
2 appeal, Petitioner has been unlawfully and prejudicially denied the right and the ability to
3 administratively challenge the legality of the parcel map (small lot) subdivision and the
4 attendant CEQA work-up, which hearing (and decision) rights are expressly granted to
5 Petitioner and those similarly situated by Public Resources Code §21151(c) (as to CEQA)
6 and Government Code §66452.5(d)(1) (as to the subdivision of *the 1324 No. Quintero St.*
7 *lot* by way of the approved parcel map).

8 **FOURTH CAUSE OF ACTION**

9 **(Violation of CEQA and CEQA Guidelines; MND Does not Comply with CEQA –**
10 **CCP 1094.5; Pub. Res. Code §§21000, et seq.)**

11 26. Petitioner realleges and incorporates herein by reference the allegations of
12 Paragraphs 1 through 25, inclusive, of this petition.

13 27. CEQA requires a lead agency for a project to prepare an EIR or MND
14 (where appropriate) that complies with the requirements of the statute. The lead agency
15 must also provide for public review and comment on the project and associated
16 environmental documentation. An EIR or MND must provide sufficient environmental
17 analysis such that decision-makers can intelligently consider environmental consequences
18 when acting on proposed projects. The lead agency may not commit to a project or a
19 parcel map approval before CEQA review is complete.

20 28. The City's action in certifying an MND in support of the parcel map land
21 and air subdivision for the *1324 No. Quintero St. property* constitutes a prejudicial abuse
22 of discretion in that the City failed to proceed in the manner required by law and failed to
23 support its decision by substantial evidence. Among other things, the City:

- 24 a. Failed adequately to disclose or analyze the Project's significant
25 impacts on the environment, including but not limited to the
26 Project's impacts with respect to aesthetics, land use and planning
27 laws, and traffic impacts;

- 1 b. Improperly deferred impact analysis and mitigation measures via a
2 bifurcation of (i) the environmental impact of the (small lot)
3 subdivision of *the 1324 No. Quintero St. parcel* from (ii) the
4 environmental impact of *the 1324 No. Quintero St. parcel*, as
5 developed;
- 6 c. Failed adequately to mitigate potential adverse environmental
7 impacts arising from the parcel map approval;
- 8 d. Failed properly to analyze cumulative impacts;
- 9 e. Specifically permitted a variance from the City’s zoning laws
10 without requiring real parties to have applied for and procured a
11 variance with regard to (i) the deviation from the front yard set-back
12 rules; (ii) the development rules which dictate the width of the
13 common driveway; and (iii) the rules which limit the total number of
14 dwelling units on any one subdivided ‘small lot’ to 3 dwelling units
15 (real parties contemplate the construction of 4 units on *the 1324 No.*
16 *Quintero St. property* in contravention of this rule limiting the
17 number of dwelling units to “3” as set out in the small lot ordinance
18 (LAMC §12.22(C)(27)).

19 29. As a result of the City’s violations of CEQA, Petitioner has been harmed in
20 that Petitioner and other members of the public were not fully informed about the
21 significant environmental impacts of the Project prior to the City’s approval of the
22 MND; and further, that the public has been prejudiced by the City’s allowance of
23 development standards and density of use which contravene the City’s zoning laws and
24 thus give to real parties the ability to use their property in contravention of the City’s
25 zoning laws.

26 30. Petitioner as well as members of the general public will suffer irreparable
27 harm if the relief requested herein is not granted and the Project is allowed to operate in
28

1 the absence of a full and adequate EIR and absent compliance with all other applicable
2 provisions of CEQA and other laws.

3
4 **FIFTH CAUSE OF ACTION**

5 **(Violation of CEQA and CEQA Guidelines – Improper/Inaccurate Alternatives**
6 **Analysis; CCP §1094.5; Pub. Res. Code §§21000, et. seq.)**

7 31. Petitioner realleges and incorporates herein by reference the allegations of
8 Paragraphs 1 through 30, inclusive, of this petition.

9 32. Respondent's action in certifying the MND in support of the Parcel Map
10 constitutes a prejudicial abuse of discretion in that Respondent failed to proceed in the
11 manner required by law and failed to support its decision by substantial evidence,
12 including but not limited to as follows:

13 a. The Project MND fails to consider a reasonable range of alternatives, including
14 alternatives identified as feasible in other public records in possession of Respondent,
15 and fails to adopt alternatives that could have avoided or substantially lessened the
16 Project's significant environmental impacts, including those related to the adverse
17 impacts on views, noise, and privacy which are adversely impacted by the subdivision of
18 the land and air rights of *the 1324 No. Quintero property*;

19 b. The Project MND fails to consider a reasonable range of on-site alternative
20 configurations, in accordance with what is legally permissible under the City's zoning
21 laws, and fails to adopt an alternative that could have avoided or substantially lessened
22 the significant environmental impacts accruing from the proposed small lot subdivision.

23 c. The failure to undertake a separate CEQA analysis with regard to the specific
24 project which is to be built on the subdivided lots of *the 1324 No. Quintero St. property*
25 given the fact that no specific project has been proposed which is otherwise (zoning)
26 code compliant. The public is prejudiced in the absence of an independent CEQA
27 evaluation of the specific project which is to be constructed on the site, giving due
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1 account to the specific environmental impacts which attend the precise project which
2 real parties seek to construct. Subdividing the land and air space above *the 1324 No.*
3 *Quintero St. property* is one thing; evaluating the details of the specific project to be
4 constructed is something else. The kind of CEQA analysis undertaken with strict regard
5 to the subdivision of the land and air space of the *1324 No. Quintero St. property* is a
6 different analysis than that which accompanies the environmental impacts of the specific
7 project real parties seek to construct. A separate CEQA work-up should be undertaken
8 once real parties have submitted definitive plans consistent with the City's zoning laws,
9 including, but not limited to, any variance applications needed in order to lawfully
10 construct the legal number of dwelling units allowed under the City's zoning laws. To
11 the extent the CEQA work-up on the parcel map request fails to take these additional
12 "construction-specific" matters into account, it is deficient.

13 d. The failure to undertake a thorough and competent cumulative analysis of the
14 projects in the immediate area which have been approved and the environmental impact
15 the subdivision of *the 1324 No. Quintero property* will have in the context the
16 cumulative development of those projects (planned or undertaken).

17 33. As a result of Respondent's violations of CEQA, Petitioner has been
18 harmed in that Petitioner and other members of the public were not fully informed about
19 potential alternatives to the proposed subdivision that could have substantially lessened
20 or eliminated significant environmental impacts prior to approval and/or certification of
21 the Project MND.

22 34. Petitioner as well as members of the general public will suffer irreparable
23 harm if the relief requested herein is not granted and the parcel map grant allowed in the
24 absence of a full and adequate MND and/or EIR, consistent with all other applicable
25 provisions of CEQA.

1 SIXTH CAUSE OF ACTION

2 (Violation of Subdivision Map Act/ CCP §1094.5; Government Code
3 §66473.1, §66774.60, §66474.61 and §66474.63 – Abuse of Discretion and Absence of
4 Legally Required Findings)

5 35. Petitioner realleges and incorporates herein by reference the allegations of
6 Paragraphs 1 through 34, inclusive of this petition and complaint.

7 36. Respondent's action in granting real parties the small lot subdivision parcel
8 map constitutes a prejudicial abuse of discretion in that Respondent failed to proceed in
9 the manner required by law and failed to support its decision by substantial evidence, as
10 follows:

11 a. The proposed map is not consistent with the City's general plan and the Silver
12 Lake-Echo Park-Elysian Valley Community Plan for the reasons noted herein, including
13 the fact that the 4 dwelling massive structures to be constructed on the subdivided lots
14 will impair the views, light, air, and result in a loss of the privacy enjoyed by adjoining
15 land owners and residents; there will be excessive noise created by the overly dense and
16 intense use of *the 1324 No. Quintero St. property*, as subdivided, along with the
17 interference of the quiet enjoyment of adjoining property owners. Unless revised, the
18 project sought to be constructed by real properties violates the City's zoning laws as
19 related to the front yard set-back requirement, the width of the common driveway, and
20 the number of dwelling units permitted on a (subdivided) lot. Public safety is impaired by
21 the steepness of the grade of Quintero Street, coupled with the smaller common driveway
22 width; that the build-out of a structure on the subdivided lots will result in overly dense
23 use and a structure which is completely out of scale and character with the neighborhood;
24 and one which does not meet any affordable housing goals in the Community Plan;
25 allowing instead for a massing and design which is inconsistent with the City's
26 residential design guidelines.

27 b. The "Findings" that the site is physically suitable for the proposed
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1 development, and is physically suitable for the proposed density of the development is
2 not supported by substantial evidence; nor are the “Findings” competent in that they rely
3 on allowed “variances” from the development standards incorporated in the City’s
4 zoning code without real parties having had formally applied for and procured a
5 “variance”;

6 c. The “Finding” that the design of the structure (the contemplated
7 “improvement” or small lot development) is consistent with the City’s Design Guidelines
8 and the General and Community Plan is not supported by substantial evidence.

9 37. As a result of Respondent’s violations of the Subdivision Map Act, Petitioner
10 as well as members of the general public will suffer irreparable harm if the relief
11 requested herein is not granted and the Project is commenced in the absence of a full and
12 adequate EIR, and absent compliance with all other applicable provisions of CEQA.

13 **SEVENTH CAUSE OF ACTION**

14 **(Violation Of City Charter Section 562, LAMC §12.27 Improper Grant of Variance**
15 **From City’s Development Standards Incorporated Into The City’s Zoning Law;**
16 **CCP §1094.5)**

17 38. Petitioner realleges and incorporates herein by reference the allegations of
18 Paragraphs 1 through 37, inclusive, of this Petition.

19 39. Section 12.09.1(B) of the LAMCC requires 15’ front set-back on all
20 properties constructed within the “RD” zone. The small lot ordinance
21 (LAMC§12.22(C)(27) limits the number of dwelling units which can occupy a lot whose
22 land and air space is further subdivided into smaller lots to a maximum of three dwelling
23 units. In addition, the zoning code requires that the common driveway accessible by all
24 dwelling units be 20’ wide.

25 40. The specific project proposed to be constructed by real parties contravenes
26 each of these development standards.

27 41. LAMC §12.27 and §562 of the Los Angeles City Charter mandates that to
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1 deviate from the City's zoning law and the development standards incorporated therein
2 requires a property owner to apply for and procure a variance, the grant of which is
3 premised on five specific "Findings".

4 42. For the Planning Department to have granted real parties the parcel map
5 which incorporated provisions and development standards which do not accord with the
6 City's zoning law without real parties first having procured a variance is an abuse of
7 discretion because it contravenes the City's zoning laws.

8 43. Petitioner is informed and believes, and based thereon alleges, that the City
9 abused its discretion in that the findings required in the LAMC and the City Charter for
10 the grant of a variance were ignored; and instead were improperly morphed and
11 transmuted into the parcel map grant. As such, the "Findings" made in support of the
12 parcel map subdivision map are legally unsupportable as a matter of law, absent real
13 parties having applied for and procured a variance.

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15 **EIGHTH CAUSE OF ACTION**
16 **(Declaratory Relief; Code Civ. Proc. § 1060)**

17 44. Petitioner hereby refers to the allegations set out in the foregoing
18 Paragraphs and incorporate the same herein by reference as though plead in full.

19 45. An actual and present controversy has arisen between Petitioner, on the one
20 hand, and Respondent and real parties on the other, in that Petitioner contends and
21 believes, for the reasons states herein, that Respondents' actions in denying Petitioner a
22 timely appeal with regard to his objections to the CEQA work-up and the Parcel Map
23 grant were and are unlawful, unconstitutional, and constituted an abuse of discretion.
24 Petitioner is informed and believes, and thereon alleges, that Respondents and real parties
25 dispute Petitioner's contentions.

1 case, the Los Angeles City Council); and further, that City be mandated to repeal the
2 portion of LAMC §17.06(A)(4) which “deems” any appeal not timely acted upon to have
3 been “denied”.

4 **PRAYER**

5 **WHEREFORE**, Petitioner prays entry of judgment as follows:

6 1. That this Court issue a writ of mandamus directing City and Respondents to
7 hold a hearing and render a determination on the merits of Petitioner’s appeal of the
8 City’s CEQA work-up as it pertains to the grant of the tentative parcel map on the small
9 lot sub-division of the *1324 No. Quintero St. property*; and on the merits of Petitioner’s
10 appeal of the grant of the tentative parcel map allowing the (small lot) subdivision of the
11 land and air space of the *1324 No. Quintero St. property*;

12 2. That this Court issue a peremptory writ of mandamus directing the City and the
13 City Council to vacate and set aside the CEQA approval and the grant of the tentative
14 parcel map allowing for the subdivision of the land and air space of *the 1324 No.*
15 *Quintero St. property*;

16 3. That this Court issue a temporary restraining order and a permanent injunction
17 enjoining the City and City Council, their officers, employees, agents, boards,
18 commissions and other subdivisions from granting any authority, entitlements, or permits
19 for *the 1324 No. Quintero St. property* which derive from the parcel map approval and
20 CEQA approval until such time as City and real parties have otherwise fully complied
21 with all laws and protocol attendant to the lawful subdivision of *the 1324 No. Quintero*
22 *St. property*; and the City’s full compliance with its obligations under CEQA, including
23 providing for the requisite protocol by which Petitioner’s CEQA appeal can be heard by
24 the Los Angeles City Council pursuant to the mandate of Public Resources Code
25 §21151(c);

26 4. That this Court enjoin the real party or its successors from undertaking any
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1 activities or construction pursuant to the City's approval of the land use entitlements
2 described herein;

3 5. That this Court issue a Declaration and Judgment stating that Respondents have
4 failed to comply with their mandatory and ministerial duties under the Government Code
5 §66452.5(d) as to the (small lot) subdivision *the 1324 No. Quintero St. property*; and
6 Public Resources Code §21151(c) as to CEQA;

7 6. That this Court award Petitioner its attorney fees, including under Code of Civil
8 Procedure Sections 1021.5 and 1036.

9 7. That this Court award Petitioner its costs of suit herein.

10 8. That this Court award such other and further relief as it deems just and proper.

11 DATED: May 19, 2016

LAW OFFICES OF NOEL WEISS

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NOEL WEISS

Counsel for Petitioner **PATRICK SHERMAN**

VERIFICATION

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

I, **PATRICK SHERMAN**, declare as follows:

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Pasadena, California on the 21st day of May, 2016.


PATRICK SHERMAN