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May 21, 2019

VIA ELECTRONIC MAIL AND PERSONAL DELIVERY

Honorable Marqueece Harris-Dawson
Chair Planning Land Use Management Committee
Los Angeles City Council
200 N. Spring Street
Los Angeles, CA 90012
clerk.plumcommittee@lacity.org

Re: Development Project Located at 4511 West Russell Avenue (Council File No. 16-0185-S1); (*Los Feliz Improvement Association v. City of Los Angeles* et al. (Case No. 19STCP00567))

Dear Chair Harris-Dawson and Honorable Members of the PLUM Committee:

This firm represents the Los Feliz Improvement Association ("LFIA") with respect to the development at 4511 Russell ("Project"). As you may know, LFIA filed a CEQA appeal of the proposed approval of the development project located at 4511 Russell Avenue. This appeal was filed on February 25, 2019 pursuant to Public Resources Code Section 21151(c). Despite this fact, the City has allowed the developer to proceed with construction of the proposed Project – completely ignoring the vocal objections of my client and demands for the issuance of a Stop Work Order. To that end, the City issued demolition permits to facilitate the project and the developer destroyed the existing structure(s) despite the fact that the CEQA appeal was pending before City Council. This was a violation of the California Environmental Quality Act.

It is fundamental that once an agency determines that an activity is subject to CEQA (i.e. it is a "project"), that it must not take any action that changes the physical environment (including issuance of demolition permits) until a public agency renders a determination under CEQA.

An environmental clearance document is the "heart of CEQA," an environmental "alarm bell" designed to alert the public and their governmental representatives of environmental changes "before they have reached ecological points of no return." *Laurel Heights Improvement*

Ass'n v. Regents of Univ. of Cal. (1988) 47 Cal.3d 376, 392 (*Laurel Heights I*). An EIR is not "a mere set of technical hurdles" for agencies to overcome, but rather functions to ensure that "government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449 (*Vineyard*). In this sense, environmental reviews such as EIRs or MNDs are a "document of accountability" that "protects not only the environment but also informed self government." *Laurel Heights* I, supra, at p. 392.

The law is clear that a City cannot defer environmental review until after a decision is made on a project – this applies to any approval. CEQA Guidelines, section 15004(a), entitled "Time of Preparation," states as follows: "*Before granting any approval of a project subject to CEQA, every Lead Agency or Responsible Agency shall consider a final EIR or Negative Declaration or another document authorized by these Guidelines to be used in the place of an EIR or Negative Declaration*." (emphasis added). This was long ago established by the California Supreme when it stated "If postapproval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken." *Laurel Heights* I, supra, 47 Cal.3d 376, 394. A City has no discretion to define approval so as to make its commitment to a project precede the required preparation of an environmental clearance document. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 132.

In this case, the City determined that the activity was subject to CEQA, but that the project was exempt. However, as noted above, this exemption determination was appealed by LFIA on or about February 25, 2019. Therefore, the City's CEQA determination was NOT final. And yet, the City issued demolition permits for the Project and the structure(s) were destroyed – the physical environment irreparably altered. This was a violation of CEQA as well as a violation of LFIA's equal protection rights.

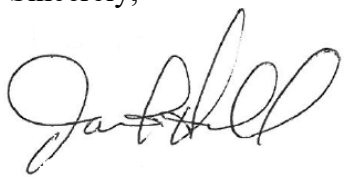
The City has previously acted to prevent construction activity during the pendency of a CEQA appeal. For example, on or about, May 2, 2018, the City issued a Notice of Intent to Revoke and Stop Work Order for a single-family home at 3314 N. Lugano Place, Los Angeles, CA. The applicant had started grading while a CEQA appeal was pending. The City indicated in the Stop Work Order that the building permits for the project were issued "prematurely" because the CEQA appeal was still pending. The assigned staff person told the applicant that "[u]ntil such action is taken by the City Council, there should be no construction activity until the entire process has been completed."

The City cannot have it both ways. Either the filing of a CEQA appeal prevents an applicant from proceeding with a project during the pendency of an appeal or it doesn't. The City cannot treat similarly situated parties differently. The federal equal protection clause (U.S. Const., 14th Amend.) and its California counterpart (Cal. Const., art. I, § 7, subd. (a)) provide that persons who are similarly situated with respect to the legitimate purpose of a law must be treated alike under the law. (*Cleburne v. Cleburne Living Center, Inc. (*1985) 473 U.S. 432, 439 [87 L. Ed. 2d 313, 105 S.Ct. 3249]; *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253 [127 Cal. Rptr. 2d 177, 57 P.3d 654].)

The City has violated the equal protection rights of my client. My client intends on amending its Verified Petition for Writ of Mandate to add a cause of action for violation of its equal protection rights (*Los Feliz Improvement Association v. City of Los Angeles et al.* (Case No. 19STCP00567)).

I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,



Jamie T. Hall

Exhibit A

CITY OF LOS ANGELES
CALIFORNIA

ERIC GARCETTI
MAYOR

May 2, 2018

Michael S. Swischuk, The Savage Swischuk Trust
2153 Groveland Dr.
Los Angeles, CA 90046

NOTICE TO STOP WORK AND NOTICE OF INTENT TO REVOKE BUILDING PERMIT NO. 17010-10000-03334 FOR A NEW 3-STORY SINGLE FAMILY DWELLING AND ATTACGED GARAGE AND 3 UNCOVERED PARKING STALLS, 17020-10000-02484 FOR NEW RETAINING WALL, AND 17030-10000-05959 FOR EXCAVATION OF BASEMENT AND RETAINING WALL AT 3314 N. LUGANO PLACE.

On April 2, 2018, the Department of Building and Safety (LADBS) issued Building Permit No. 17010-10000-03334 for a new 3-story single family dwelling and attached garage and 3 uncovered parking stalls, 17020-10000-02484 for new retaining wall, and 17030-10000-05959 for excavation of basement and retaining wall at 3314 N. Lugano Place.

The approval of the permits was contingent upon the Department of City Planning's (DCP) approval of the Hollywood Land Specific Plan Project Permit Review and Design Review, Planning Case No. DIR-2017-1001-DRB-SPP on the LADBS clearance summary worksheet on March 28, 2018.

After issuance of the above mentioned permits, LADBS received written communication from DCP on May 1, 2018, that staff inadvertently approved the clearance for Planning Case No. DIR-2017-1001-DRB-SPP prior to City Council acting on the CEQA appeal.

Therefore, LADBS has determined that Building Permit Nos. 17010-10000-03334, 17020-10000-02484, and 17030-10000-05959 were issued in error and intents to revoke the permits. The authority to revoke permits is stipulated in Section 98.0601 of the L.A.M.C., which reads: