

**THE SILVERSTEIN LAW FIRM**  
*A Professional Corporation*

215 NORTH MARENGO AVENUE, 3RD FLOOR  
PASADENA, CALIFORNIA 91101-1504

PHONE: (626) 449-4200 FAX: (626) 449-4205

ROBERT@ROBERTSILVERSTEINLAW.COM  
WWW.ROBERTSILVERSTEINLAW.COM

**ORIGINAL**

March 6, 2018

**VIA HAND DELIVERY**

Hon. Herb Wesson, President  
Los Angeles City Council  
c/o Los Angeles City Clerk  
200 N. Spring Street, Room 395  
Los Angeles, CA 90012



**Re: Agenda Item No. 26, City Council March 6, 2018 Meeting; CEQA Appeal and Objections to the Lorena Plaza Mixed Use Project, Located at 3407-3415 E. First Street; 114, 116, and 126 N. Lorena Street, Los Angeles; Case Numbers: ENV-2014-2392-MND; DIR-2015-1998-DB; Council File 16-0503**

Honorable President Wesson and Los Angeles City Councilmembers:

On behalf of Appellant El Mercado de Los Angeles, we object to the City's recent actions related to the Lorena Plaza Project ("Project").

**I. THE RECORD FAILS TO SHOW THE CITY CIRCULATED THE COMPLETE INITIAL STUDY TO THE PUBLIC OR TO REVIEWING AGENCIES.**

The record shows that the City violated CEQA Guidelines § 15072 (a) and 15073(c) because it failed to circulate the notice of intent to adopt the MND and the MND (including the Initial Study and its technical reports that provide data the City cites/incorporates in support of its conclusions) "to the public, **responsible agencies**, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105." (Emphasis added.)

In the original MND, the City proposed mitigation measure VII-160. It specifically identified the California Department of Conservation – Division of Oil, Gas, Geothermal Resources (“DOGGR”) as an agency which will review plans to approve reabandonment of the oil well on the Project site. Despite identifying such a Responsible Agency in the MND itself, the record is devoid of any evidence that the City either: (1) consulted with DOGGR (no agencies consulted listed in the MND), or (2) sent the proposed MND to DOGGR to comment upon the analysis, the supporting Phase I ESA, the lack of a Phase II ESA, and specific mitigation measures DOGGR would require in order to sign off on the well abandonment. (See **Exhibit 1** contrasting Phase I and Phase II ESAs.)

Having failed to circulate the MND to DOGGR, a Responsible Agency, during the public/agency review process was a failure to proceed in accordance with law.

Additionally, the City in its March 1, 2018 staff letter admits that the MND was not circulated with the full Initial Study including its supporting studies, yet the City now claims there is no law or regulation that “requires” it. Not so. CEQA Guideline § 15071(d) requires that the contents of a “negative declaration circulated for public review shall include . . . [a]n attached copy of the initial study documenting reasons to support the finding.” The table of contents of the Initial Study circulated by the City in this case lists Appendices A, B, C, D, E as containing information that is part of and supporting the conclusions of the Initial Study, which presumably is why they are listed in the Table of Contents for the Initial Study.

The City could not credibly assert that circulation of a Draft EIR does not include the supporting appendices. In a similar fashion, the law and regulations mandate that the entire Initial Study be attached to the negative declaration “circulated for public review.” The purpose of the public review process would be defeated if the City was not required to circulate all the information it knows so that the public, responsible agencies, and trustee agencies can fulfill their role in the CEQA review process.

Having conceded that it failed to attach all the supporting studies that it specifically identified as part of the Initial Study to the public and DOGGR, the City fails to proceed in accordance with law if it approves the Project today without first recirculating the MND to cure these fatal defects.

**II. THE CITY'S NEW MITIGATION MEASURE ON HAZARDOUS SUBSTANCES EXPANDS THE NUMBER OF RESPONSIBLE AGENCIES BEYOND DOGGR, ALSO REQUIRING RE-CIRCULATION.**

Last week, the City raised the curtain on a new direction and new proposal. Instead of adopting the recommendation of the PLUM Committee that our appeal be granted, the City now proposes to adopt what it claims is a “substitute mitigation measure” under CEQA Guideline § 15074.1. However, the proposed mitigation measure is no longer limited to only DOGGR, and in no way can be considered to be a substitute mitigation measure. The City was confronted with detailed comments (**Exhibits 2 and 3**) that demonstrate the City failed to adopt enforceable mitigation to address the methane intrusion risk, or to address the likely hazardous materials on site from the drilling of the oil well and decades of use as a lumber yard with poisons and solvents. In response, it now proposes to conduct a deferred, post-Project approval, Phase II ESA, and contact any agency that must review and approve clean-up of the site to devise undisclosed mitigation plans. That may include DOGGR, South Coast Air Quality Management District, Regional Water Control Board, Department of Toxic Substances Control, or other agencies.

The development of this “substitute mitigation,” because it implies the City agrees there is a fair argument of other significant impacts from methane and other toxic contaminants, far exceeds the scope of a “substitute mitigation” for the original DOGGR mitigation measure VII-160. The implicit admission that more agencies must review and sign off on mitigation of potential contamination is a significant new mitigation measure.

When new mitigation measures are added to address previously undisclosed impacts, re-circulation of the MND and revised project mitigation plan is mandatory. CEQA Guideline § 15073.5(b) defines a “substantial revision” of an MND to mean either: “(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or (2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.” That is precisely what is occurring now.

New effects are implied by the purposely vaguely written new mitigation measure, including which indicates that more agencies than just DOGGR must now sign off on any clean-up of the site if the Phase II ESA reveals there is any contamination. Having conceded that there are greater or new impacts than first analyzed, the new mitigation measure to more than DOGGR means it is not just a “substitute mitigation measure,” but rather a new one. In turn, that mandates re-circulation of the revised MND and Initial

Study to the public and all the new Responsible Agencies that may have to sign off on the site clean up.

**III. EVEN IF THE SCOPE OF THE SUBSTITUTE MITIGATION WERE PROPER, WHICH IT IS NOT, THE NEW SUBSTITUTE MITIGATION MEASURE IS IMPROPER.**

Under CEQA, it is generally improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur *before* the project is approved. That has not yet occurred as to the issues raised by Appellant, including regarding the toxic substances and air quality/health risk issues.

The deferred study and formulation of mitigation measures as now proposed, i.e., until after already having approved the Project, is improper, including because the delays in conducting the Phase II first are unreasonable, and entirely within the responsibility of the Applicant and/or City. Deferring the determination of whether the Project will have significant environmental impacts and of mitigation under these circumstances is improper.

The proposed Project site is a single parcel, vacant, and accessible with permission from the owner, LA County Metro. Since Metro has been fully cooperative with ACOF in furtherance of this project (see, e.g., **Exhibit 4**), and has supported ACOF throughout, no reason is shown why the Phase II has not already been conducted, or why it cannot be conducted before the City Council would approve the Project. If site inaccessibility were actually a controlling factor, then perhaps the analysis would be different. But it is not. No explanation has been provided as to why it would be impractical to conduct a full investigation (and remediation) of the Project site prior to the approval of the MND.

As explained in Sacramento Old City Assn. v. City Council (1991) 229 Cal.App.3d 1011, 1028-1029, “for [the] kinds of impacts for which mitigation is known to be feasible, *but where practical considerations prohibit devising such measures early in the planning process . . .*, the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval.” (Emphasis added.) No such practical considerations or legal or physical access limitations exist here.

Similarly, in Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 89-96, the question was whether an EIR for a project to permit



Chevron Products Company to replace and upgrade certain manufacturing facilities at an oil refinery had improperly deferred identification of measures to mitigate the project's contribution to greenhouse gas emissions until after the EIR process. The Court noted that the reason for the delay was the City of Richmond's reluctance to make a finding early in the EIR process that such emissions would create a significant effect: after initially declining to state conclusions about the extent of any impacts, the city published a new volume of the EIR considering the impact after "an outpouring of public comment." Id. at pp. 90-91.

Here, ACOF has been reluctant to simply perform the Phase II and has inexcusably delayed in doing so. While the City Council now appears poised to endorse that improper delay and deferral, that was not the case when the City Councilmembers on the PLUM Committee voted unanimously to recommend granting El Mercado's appeal and to require preparation of a Phase II before the City Council would consider approving the Project or its MND.

This is further demonstrated in the quoted comments in the NPR interview, as contained and referenced in our March 2, 2018 objection letter, and repeated here: "The environment consultant for the project had reviewed documentation – this is what's called phase one environmental – they recommended a phase two environmental, which would test the soil for environmental contamination. And none was done, and in fact there is an old oil well there, that we don't know if the soil is in fact contaminated or not. So they need to do that extra work. . . . [¶] Well, when you have two different opinions on that, you err on the side of caution. I've chaired the Planning and Land Use Management Committee for some time now, and we always ask for phase two. . . ." See <https://www.scpr.org/programs/take-two/2017/08/17/58642/1-a-city-councilman-jose-huizar-on-why-he-opposes/>, incorporated herein by this reference.

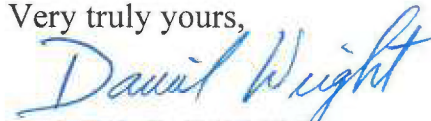
Deferral under these circumstances, even assuming all other factors for future performance standards, etc., were met – which they are not – is illegal because no good reason exists for the failure to have already conducted the Phase II, or to order it conducted now, before the City considers voting to approve the Project and MND. The Phase II could and should have been conducted by now, certainly since August 2017, when the PLUM Committee and Councilman Huizar made clear their desire for and expectation of a Phase II to be conducted and submitted for City and public consideration and analysis prior to potential City approval of the Project and MND.

Finally, that the City Council now intends to approve the Project despite the lack of the Phase II being completed and available for consideration, along with all the related considerations and mitigation measures that would need to be disclosed, analyzed and

implemented, including regarding air quality and health risk issues for surrounding community members and uses, shows another violation of CEQA. The City Council's actions reveal that the City Council is now engaged in a post hoc rationalization for a decision already made. Indeed, based upon the statement attributed to the Councilman whose district includes the Project site in the February 26, 2018 Los Angeles Times editorial, where he conveyed before this vote occurred that he had changed his mind and would vote to approve the Project, the admission in the context of and in advance of a quasi-judicial review under CEQA is a further violation of the law. And the Los Angeles City Council is well known for deferring to the member whose district a project is in. Indeed, the Los Angeles City Council votes unanimously an astounding more than 99% of the time. See Center for Governmental Studies' report, "Money and Power in the City of Angels," which found that the L.A. Council votes unanimously more than 99 percent of the time. Whichever Councilmember has the district where a project is proposed effectively wields 15 votes.

Thank you for your consideration of these objections.

Very truly yours,



DANIEL E. WRIGHT

FOR

THE SILVERSTEIN LAW FIRM, APC

DEW/vl

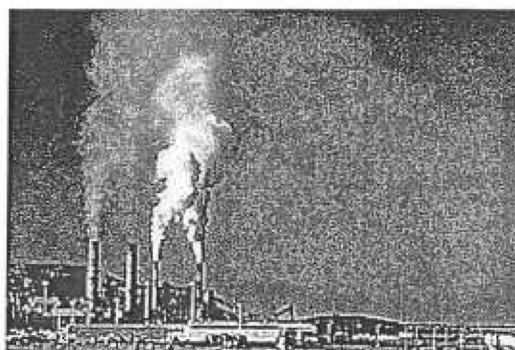
# EXHIBIT 1

WIKIPEDIA

# Phase I environmental site assessment

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In the United States, an **environmental site assessment** is a report prepared for a real estate holding that identifies potential or existing environmental contamination liabilities. The analysis, often called an **ESA**, typically addresses both the underlying land as well as physical improvements to the property. A proportion of contaminated sites are "brownfield sites." In severe cases, brownfield sites may be added to the National Priorities List where they will be subject to the U.S. Environmental Protection Agency's Superfund program.



Any piece of real estate can be the subject of a Phase I ESA.

The actual sampling of soil, air, groundwater and/or building materials is typically not conducted during a Phase I ESA. The Phase I ESA is generally considered the first step in the process of environmental due diligence. Standards for performing a Phase I site assessment have been promulgated by the US EPA<sup>[1]</sup> and are based in part on ASTM in Standard E1527-13.<sup>[2]</sup>

If a site is considered contaminated, a Phase II environmental site assessment may be conducted, ASTM test E1903, a more detailed investigation involving chemical analysis for hazardous substances and/or petroleum hydrocarbons.<sup>[3]</sup>

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## Background

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As early as the 1970s specific property purchasers in the United States undertook studies resembling current Phase I ESAs, to assess risks of ownership of commercial properties which had a high degree of risk from prior toxic chemical use or disposal. Many times these studies were preparatory to understanding the nature of cleanup costs if the property was being considered for redevelopment or change of land use.

In the United States of America demand increased dramatically for this type of study in the 1980s following judicial decisions related to liability of property owners to effect site cleanup. Interpreting the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the U.S. courts have held that a buyer, lessor, or lender may be held responsible for remediation of hazardous substance residues, even if a prior owner caused the contamination; performance of a Phase I Environmental Site Assessment, according to the courts' reasoning, creates a safe harbor, known as the 'Innocent Landowner Defense'.

In 1998 the necessity of performing a Phase I ESA was underscored by congressional action in passing the Superfund Cleanup Acceleration Act of 1998.<sup>[4]</sup> This act requires purchasers of commercial property to perform a Phase I study meeting the specific standard of ASTM E1527: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

The most recent standard is "Standards and Practices for All Appropriate Inquiries" 40 Code of Federal Regulations, Section 312<sup>[1]</sup> which drew heavily from ASTM E1527-13, which is the ASTM Standard for conducting 'All Appropriate Inquiry' (AAI) for the environmental assessment of a real property. Previous guidances regarding the ASTM E1527 standard were ASTM E1527-97, ASTM E1527-00, and ASTM E1527-05.

Residential property purchasers need only conduct a site inspection and chain of title survey.

## Triggering actions

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A variety of reasons for a Phase I study to be performed exist, the most common being:<sup>[5]</sup>

- Purchase of real property by a person or entity not previously on title.
- Contemplation by a new lender to provide a loan on the subject real estate.
- Partnership buyout or principal redistribution of ownership.
- Application to a public agency for change of use or other discretionary land use permit.
- Existing property owner's desire to understand toxic history of the property.
- Compulsion by a regulatory agency who suspects toxic conditions on the site.
- Divestiture of properties

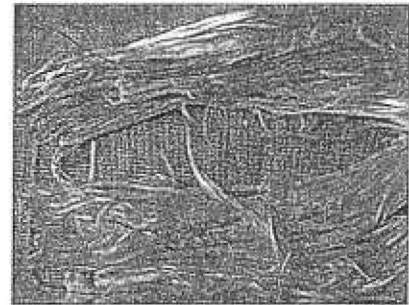
## Scope

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Scrutiny of the land includes examination of potential soil contamination, groundwater quality, surface water quality and sometimes issues related to hazardous substance uptake by biota. The examination of a site may include: definition of any chemical residues within structures; identification of possible asbestos containing building materials; inventory of hazardous substances stored or used on site; assessment of mold and mildew; and evaluation of other indoor air quality parameters.<sup>[6]</sup>

Depending upon precise protocols utilized, there are a number of variations in the scope of a Phase I study. The tasks listed here are common to almost all Phase I ESAs:<sup>[7]</sup>

- Performance of an on-site visit to view present conditions (chemical spill residue, die-back of vegetation, etc.); hazardous substances or petroleum products usage (presence of above ground or underground storage tanks, storage of acids, etc.); and evaluate any likely environmentally hazardous site history.
- Evaluation of risks of neighboring properties upon the subject property
- Review of Federal, State, Local and Tribal Records out to distances specified by the ASTM 1528 and AAI Standards (ranging from 1/8 to 1 mile depending on the database)
- Interview of persons knowledgeable regarding the property history (past owners, present owner, key site manager, present tenants, neighbors).
- Examine municipal or county planning files to check prior land usage and permits granted
- Conduct file searches with public agencies (State water board, fire department, county health department, etc.) having oversight relative to water quality and soil contamination issues.
- Examine historic aerial photography of the vicinity.
- Examine current USGS maps to scrutinize drainage patterns and topography.
- Examine chain-of-title for Environmental Liens and/or Activity and Land Use Limitations (AULs).



Asbestos-containing materials are not typically surveyed or sampled in a Phase I site inspection, but suspect building materials may be noted

In most cases, the public file searches, historical research and chain-of-title examinations are outsourced to information services that specialize in such activities. Non-Scope Items in a Phase I Environmental Site Assessment can include visual inspections or records review searches for:

- Asbestos Containing Building Materials (ACBM)
- Lead-Based Paint
- Lead in Drinking Water
- Mold
- Radon
- Wetlands
- Threatened and Endangered Species
- Mercury poisoning
- Debris flow
- Earthquake Hazard
- Vapor intrusion

## Preparers

Often a multi-disciplinary approach is taken in compiling all the components of a Phase I study, since skills in chemistry, atmospheric physics, geology, microbiology and even botany are frequently required. Many of the preparers are environmental scientists who have been trained to integrate these diverse disciplines. Many states have professional registrations which are applicable to the preparers of Phase I ESAs; for example, the state of California had a registration entitled "California Registered Environmental Assessor Class I or Class II" until July 2012, when it removed this REA certification program due to budget cuts.<sup>[8]</sup>

Under ASTM E 1527-13 parameters were set forth as to who is qualified to perform Phase I ESAs. An Environmental Professional is someone with

1. a current Professional Engineer's or Professional Geologist's license or registration from a state or U.S. territory with 3 years equivalent full-time experience;
2. have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and 5 years equivalent full-time experience; or
3. have the equivalent of 10 years full-time experience.

A person not meeting one or more of those qualifications may assist in the conduct of a Phase I ESA if the individual is under the supervision or responsible charge of a person meeting the definition of an Environmental Professional when concluding such activities.

Most site assessments are conducted by private companies independent of the owner or potential purchaser of the land.

## Examples

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While there are myriad sites that have been analyzed to date within the United States, the following list will serve as examples of the subject matter:

- Auke Bay U.S. Postal Facility, Juneau, Alaska
- Eso Canada Ltd. Former Bulk Fuels Facility, Owen Sound, Ontario, Canada
- Dakin Building, Brisbane, California
- East Elk Grove Specific Plan, Elk Grove, California
- Mariners Marsh Park, Staten Island, New York
- Richmond State Hospital Farm Industrial Park, Wayne County, Indiana
- Sydney Steel Plant Lands, Sydney, Nova Scotia
- Weyerhaeuser Technology Center, Federal Way, Washington

## International context

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In Japan, with the passage of the 2003 *Soil Contamination Countermeasures Law*, there is a strong movement to conduct Phase I studies more routinely. At least one jurisdiction in Canada (Ontario) now requires the completion of a Phase I prior to the transfer of some types of industrial properties. Some parts of Europe began to conduct Phase I studies on selected properties in the 1990s, but still lack the comprehensive attention given to virtually all major real estate transactions in the USA.

In the United Kingdom contaminated land regulation is outlined in the Environment Act 1995. The Environment Agency of England and Wales have produced a set of guidance; CLEA a standardized approach to the assessment of land contamination. A Phase 1 Desktop Study is often required in support of a planning application.<sup>[9]</sup> In the UK these reports must be assembled by a "competent person".

## Other environmental site assessment types

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There are several other report types that have some resemblance in name or degree of detail to the Phase I



Storage and handling of toxics is assessed for each site within a Phase I study.

#### Environmental Site Assessment:

**Phase II Environmental Site Assessment** is an "intrusive" investigation which collects original samples of soil, groundwater or building materials to analyze for quantitative values of various contaminants.<sup>[10]</sup> This investigation is normally undertaken when a Phase I ESA determines a likelihood of site contamination. The most frequent substances tested are petroleum hydrocarbons, heavy metals, pesticides, solvents, asbestos and mold.

**Phase III Environmental Site Assessment** is an investigation involving remediation of a site. Phase III investigations aim to delineate the physical extent of contamination based on recommendations made in Phase II assessments. Phase III investigations may involve intensive testing, sampling, and monitoring, "fate and transport" studies and other modeling, and the design of feasibility studies for remediation and remedial plans. This study normally involves assessment of alternative cleanup methods, costs and logistics. The associated reportage details the steps taken to perform site cleanup and the follow-up monitoring for residual contaminants.

**Limited Phase I Environmental Site Assessment** is a truncated Phase I ESA, normally omitting one or more work segments such as the site visit or certain of the file searches. When the field visit component is deleted the study is sometimes called a **Transaction Screen**.

**Environmental Assessment** has little to do with the subject of hazardous substance liability, but rather is a study preliminary to an Environmental Impact Statement, which identifies environmental impacts of a land development action and analyzes a broad set of parameters including biodiversity, environmental noise, water pollution, air pollution, traffic, geotechnical risks, visual impacts, public safety issues and also hazardous substance issues.

**SBA Phase I Environmental Site Assessment** means all properties purchased through the United States Small Business Administration's 504 Fixed Asset Financing Program require specific and often higher due diligence requirements than regular Real Estate transactions. Due diligence requirements are determined according to the NAICS codes associated with the prior business use of the property. There are 58 specific NAICS codes that require Phase I Investigations. These include, but are not limited to: Funeral Homes, Dry Cleaners, and Gas Stations. The SBA also requires Phase II Environmental Site Assessment to be performed on any Gas Station that has been in operation for more than 5 years. The additional cost to perform this assessment cannot be included in the amount requested in the loan and adds significant costs to the borrower.

**Freddie Mac/Fannie Mae Phase I Environmental Site Assessments**<sup>[1]</sup> (<https://www.partneresi.com/resources/publications/going-through-a-phase-fannie-mae-freddie-mac-environmental-guidelines>) are two specialized types of Phase I ESAs that are required when a loan is financed through Freddie Mac or Fannie Mae. The scopes of work are based on the ASTM E1527-05 Standard but have specific requirements including the following: the percent and scope of the property inspection; requirements



for radon testing; asbestos and lead-based paint testing and operations-and-maintenance (O&M) plans to manage the hazards in place; lead in drinking water; and mold inspection. For condominiums, Fannie Mae requires a Phase I ESA anytime the initial underwriting analysis indicates environmental concerns.<sup>[11]</sup>

**HUD Phase I Environmental Site Assessment** The U.S. Department of Housing and Urban Development also requires a Phase I ESA for any condominium under construction that wishes to offer an FHA insured loan to potential buyers.<sup>[11]</sup>

## See also

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- Environmental remediation
- Environmental scientist
- Certified Hazardous Materials Manager
- Institute of Environmental Management and Assessment

## References

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1. EPA Standards and Practices for All Appropriate Inquiries -Final Rule ([http://epa.gov/brownfields/aai/aai\\_final\\_rule.pdf](http://epa.gov/brownfields/aai/aai_final_rule.pdf))
2. "ASTM Standard E1527-13 for Phase I ESAs" (<http://www.astm.org/Standards/E1527.htm>).
3. "ASTM Standard E1903 for Phase II ESAs" (<http://www.astm.org/Standards/E1903.htm>).
4. *Superfund Cleanup Acceleration Act of 1998*, U.S. Congress, March 26, 1998
5. Thomas M Missimer and Missimer M Missimer, *A Lender's Guide to Environmental Liability Management* CRC Press (1996)
6. Sara N Martin, *Site Assessment and Remediation Handbook*, CRC Press (2003)
7. "Components of a Phase I Environmental Site Assessment" (<http://apex-enviro.com/faq.html#1>).
8. California (<http://www.dtsc.ca.gov/REA/DTSC>)
9. Desktop Study Reports (Phase 1) ([http://southwest-environmental.co.uk/Desktop%20Study\\_copy\(1\).html](http://southwest-environmental.co.uk/Desktop%20Study_copy(1).html))
10. *Environmental Aspects of Real Estate and Commercial Transactions: From Brownfields to Green Buildings*, American Bar Association, ed. by James B. Witkin (2002)
11. "Phase I Environmental Site Assessments" (<http://strategicinspections.com/services/phase-i-environmental-site-assessments-esas/>).

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# EXHIBIT 2



Technical Consultation, Data Analysis and  
Litigation Support for the Environment

2656 29<sup>th</sup> Street, Suite 201  
Santa Monica, CA 90405

Matt Hagemann, P.G., C.Hg.  
(949) 887-9013  
[mhagemann@swape.com](mailto:mhagemann@swape.com)

May 15, 2017

Robert P. Silverstein, Esq.  
The Silverstein Law Firm, APC  
215 North Marengo Avenue, 3rd Floor  
Pasadena, CA 91101-1504

**Subject: Comments on the Lorena Plaza Mixed Use Project**

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Dear Mr. Silverstein:

We have reviewed the September 2015 Initial Study and Mitigated Negative Declaration (IS/MND) for the Lorena Plaza Mixed Use Project ("Project") in Los Angeles. The Project proposes to construct a four- to five-story mixed-use development consisting of 49 dwelling units and ground floor commercial space. The IS/MND fails to adequately describe and mitigate Hazards and Hazardous Waste impacts. Preparation of a Draft Environmental Impact Report (DEIR) is necessary to identify impacts and to prescribe appropriate mitigation.

#### Hazards and Hazardous Waste

The Phase I Environmental Site Assessment (ESA) prepared for the Project (Appendix C) found two hazards associated with the Project site: (1) the potential for contaminated soil associated with cuttings from drilling activities of an abandoned oil well; and (2) that abandonment techniques for the oil well, which was drilled in 1949, are not on par with modern California Department of Conservation, Division of Oil and Gas (DOGGR) abandonment requirements. On the basis of these findings, a Phase II ESA, which involves the collection of soil samples and groundwater samples where warranted, was recommended (Phase I ESA, p. 25). No such Phase II investigation was completed for the Project site and mitigation, to provide for the collection of soil samples, is deferred until after Project approval. A DEIR is necessary to include the results of soil sampling and a DOGGR-certified abandonment report of the oil well.

#### Potentially Contaminated Soils Have Not Been Investigated

On the issue of potentially contaminated soils, the IS/MND states (p. 4.0-41):

It is very unlikely that any significant soil segregation and excavation would be required as part of site grading and construction of the underground garage. Prior to grading activities, soil testing would occur to confirm that no significant contamination exists. If soil contamination is

discovered during site grading, all impacted soils should be managed according to State and federal laws.

This is vague and deferred mitigation. There is a fair argument that by delaying soil sampling until prior to site grading, unanticipated contamination may be found in significant quantities and concentrations from past uses which include a lumber yard and a saw mill (Phase I ESA, p. 1). In addition to potential drill cutting contamination, past use as a lumber yard and a saw mill may have involved the use of arsenic- and copper-based wood preserving activities, leading to soil contamination. These past uses should be investigated through a soil sampling program under a Phase II as recommended in the Phase I ESA. The Phase II should be conducted prior to Project approval and any mitigation necessary for removal of contaminated soils should be completed prior to Project groundbreaking.

#### Abandonment of Oil Well Has Not Been Undertaken

An oil well was drilled and abandoned at the Project site in 1949. The depth of the well was 4,587 feet.

Prior well abandonment practices were not as protective as modern well abandonment practices regulated by the DOGGR. Current well abandonment practices require conformity with California Code of Regulations, Section 1723, as follows<sup>1</sup>:

- A Notice of Intention to Abandon must be filed with the appropriate district office, and a permit to conduct operations must be received from the Division prior to commencing operations.
- The hole will be filled with drilling mud.
- Cement plugs will be placed across all oil or gas zones, the fresh water/salt water interface, the casing shoe (if open hole is below the shoe), casing stub (if casing was removed from the hole), and at the surface. The length required for each plug will vary.
- If there is junk in the hole, a cement plug is required to be placed on top of the junk.
- If there is uncemented casing at the base of fresh water interface, cement must be squeezed through perforations in the casing. The same applies if there is uncemented casing at the surface; all annuli need to be plugged.
- Plugging and abandonment operations require witnessing by a DOGGR engineer.

The IS/MND is vague on how well abandonment will be completed stating only (Mitigation Measure VII-160):

Pursuant to the Los Angeles Building Code, the Applicant will engage in the Construction Site Plan Review (CSPR) process with the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). The CSPR process includes, but is not limited to locating excavating, and conducting a methane leak test on the well, providing DOGGR with a site plan indicating the footprint of the proposed structure and well location, and provide DOGGR with a well evaluation and work plan to re-abandon the well, as necessary.

There is no discussion of impacts of well abandonment, including noise, air emissions, or generation of dust. A DEIR is necessary to discuss these impacts and to mitigate any impacts that were not identified in the IS/MND.

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<sup>1</sup> [http://www.conservation.ca.gov/dog/faqs/Pages/Index.aspx#how are wells plugged](http://www.conservation.ca.gov/dog/faqs/Pages/Index.aspx#how%20are%20wells%20plugged)



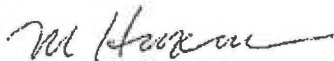
### Contaminated Soil May Pose Hazards to Adjacent Residents

A fair argument can also be based on the potential for contamination in soil to pose significant air quality impacts. Upon Project excavation, contaminants in soil, if present, may be liberated and become airborne via dust generation. Air quality impacts on those people in surrounding homes and businesses may be significant through the inhalation pathway without effective mitigation, to include fenceline dust monitoring and a program of public outreach to communicate the findings of the monitoring.

The IS/MND provides no specific mitigation measures to address potential contamination in soil. The IS/MND only mentions that during construction, unpaved areas would be wetted at least twice daily during excavation and construction, and temporary dust covers shall be used to reduce dust emissions and meet SCAQMD District Rule 403. Additional measures mentioned in the IS/MND include the discontinuation of earth moving activities when winds are greater than 15 mph (p. 4.0-15).

These measures are insufficient to protect nearby receptors from potential airborne contaminants sorbed to dust. The IS/MND documents the nearest sensitive receptors to the Project Site to be single-family residences located approximately 150 feet to the southeast across E. 1st Street (p. 4.0-17). A DEIR needs to be prepared to address the potential that people in these houses, as well as other people nearby, may be at risk for breathing contaminated dust and to provide for mitigation to include fenceline monitoring and public outreach to communicate monitoring results.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Technical Consultation, Data Analysis and  
Litigation Support for the Environment

1640 5<sup>th</sup> St., Suite 204 Santa  
Santa Monica, California 90401  
Tel: (949) 887-9013  
Email: [mhagemann@swape.com](mailto:mhagemann@swape.com)

**Matthew F. Hagemann, P.G., C.Hg., QSD, QSP**

Geologic and Hydrogeologic Characterization  
Industrial Stormwater Compliance  
Investigation and Remediation Strategies  
Litigation Support and Testifying Expert  
CEQA Review

**Education:**

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

**Professional Certifications:**

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

**Professional Experience:**

Matt has 25 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

#### Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 100 environmental impact reports since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, Valley Fever, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at industrial facilities.
- Manager of a project to provide technical assistance to a community adjacent to a former Naval shipyard under a grant from the U.S. EPA.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.
- Expert witness on two cases involving MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.
- Expert witness in litigation at a former plywood plant.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.



- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

#### Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

#### Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nationwide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

#### Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9. Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, *Oxygenates in Water: Critical Information and Research Needs*.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

### Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

### Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt taught physical geology (lecture and lab and introductory geology at Golden West College in Huntington Beach, California from 2010 to 2014.

### Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and Hagemann, M., 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and Hagemann, M.F. 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examination, 2009-2011.



# **EXHIBIT 3**



Technical Consultation, Data Analysis and  
Litigation Support for the Environment

2656 29<sup>th</sup> Street, Suite 201  
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.  
(949) 887-9013  
[mhagemann@swape.com](mailto:mhagemann@swape.com)

August 15, 2017

Robert P. Silverstein, Esq.  
The Silverstein Law Firm, APC  
215 North Marengo Avenue, 3rd Floor  
Pasadena, CA 91101-1504

**Subject: Additional comments on the Lorena Plaza Mixed Use Project**

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Dear Mr. Silverstein:

I have reviewed additional material prepared in response to the May 13, 2017 comments we prepared on the September 2015 Initial Study and Mitigated Negative Declaration (IS/MND) for the Lorena Plaza Mixed Use Project ("Project") in Los Angeles. Two pertinent documents were prepared in response to the comments we made: (1) a July 5, 2017 "Letter of Clarification" prepared by Andersen Environmental; and (2) a July 22, 2017 letter "re: Comments - The Silverstein Letter - Lorena Plaza Mixed Use Project." Following review of these documents, I maintain that environmental impacts have not been adequately evaluated and human health is potentially at risk by construction of the Project. Preparation of a Draft Environmental Impact Report (DEIR) is necessary to identify impacts and to identify appropriate mitigation as necessary.

Two hazards associated with the Project site were identified in the 2014 Phase I Environmental Site Assessment (ESA) prepared for the Project (Appendix C to the IS/MND): (1) the potential for contaminated soil associated with cuttings from drilling activities of an abandoned oil well; and (2) abandonment techniques for the oil well, which was drilled in 1949, are not consistent with modern California Department of Conservation, Division of Oil and Gas (DOGGR) abandonment requirements. The Phase I ESA recommended the preparation of a Phase II ESA, which involves the collection of soil samples and groundwater samples (Phase I ESA, p. 25).

No such Phase II investigation has been completed. Instead, the two documents, cited above, were commissioned after preparation of our comments.

The July 5, 2017 letter stated that there was no "direct evidence indicating the drilling of the abandoned oil well on the property resulted in any contamination of soil on the site" (p. 1). The letter goes on to say the potential for impacts from the drilling of the well meets the standard for a Recognized

Environmental Condition as defined by the American Society for Testing and Materials (ASTM). The letter concludes, "due to the limited potential for the site to contain significant hazardous materials from the drilling of the abandoned well, it is our opinion there is no significant hazard to the public or the environment that would result in a significant impact as defined by CEQA" (p. 1). Never does the letter retract, however, their recommendation that a Phase II ESA is necessary as made in the 2014 Phase I, attached to the IS/MND as Appendix C.

The second document, the July 22, 2017 letter from Mearns Consulting, found our comments regarding the potential for contamination associated with the abandoned well (which simply reiterated concerns expressed in the 2014 Phase I) to be "speculative, erroneous, not based on facts, spurious and an unsubstantiated opinion (p. 4)." Regarding the observation we made, that the abandoned well had not been reabandoned to meet current DOGGR standards, Mearns found that the conclusion was "engaging in speculation" (p. 5).

The Mearns letter also found:

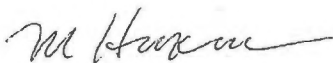
"Andersen Environmental's designation of "Taylor" 1 as a recognized environmental condition in their Phase I ESA is, in my opinion, speculative, not based on facts, false and therefore an unsubstantiated opinion" (p. 3).

After review of these two documents, prepared in response to our comments, my recommendations stand:

- (1) The potential for contaminated soil in association with the abandoned well has not been assessed through the conduct of a Phase II ESA, as recommended by the consultant in 2014, and should be done for inclusion in a DEIR.
- (2) The well on the property has not been reabandoned in accordance with modern DOGGR standards and that an abandonment report from DOGGR is necessary in order to properly assess impacts.

Accordingly, a fair argument exists based on substantial evidence in the record, most notably from the 2014 Phase I, attached to the IS/MND as Appendix C, that the Project may have significant, unmitigable health risks and air quality impacts, including during construction, by disturbance and excavation of potentially contaminated soil.

Sincerely,



Matt Hagemann, P.G., C.Hg.

# **EXHIBIT 4**



## Board Report

File #:2017-0301, File Type:Agreement

Agenda Number:36.

EXECUTIVE MANAGEMENT COMMITTEE  
JUNE 15, 2017

SUBJECT: 1ST AND LORENA JOINT DEVELOPMENT

ACTION: AUTHORIZE AMENDMENT TO EXTEND EXISTING EXCLUSIVE NEGOTIATING  
AGREEMENT FOR 24 MONTHSRECOMMENDATION

AUTHORIZE the Chief Executive Officer to execute an amendment to the Exclusive Negotiations and Planning Agreement with A Community of Friends to extend its term for an additional 24 months, for the joint development of Metro-owned property at 1st and Lorena Street along the Metro Gold Line Eastside Extension.

ISSUE

In June 2016, the LACMTA Board of Directors (Board) authorized a 12-month extension to the Exclusive Negotiations and Planning Agreement (ENA) with A Community of Friends (ACOF) (Developer) for the development of a 49-unit mixed-use affordable housing project (Proposed Project) at 1st and Lorena Street (See Attachment A, Site Map). During this extension term, the Developer has diligently pursued and performed its obligations under the ENA and the proposed project was on track to proceed to the Joint Development Agreement (JDA) phase with Metro by the end of the 12-month extension term. However, in April 2016, a CEQA appeal was filed against the Proposed Project with the City of Los Angeles (City) by an adjacent property owner. After one year, the matter was heard before the City of Los Angeles Planning and Land Use Management (PLUM) Committee on May 16, 2017; however the Committee continued the matter. A date has not been set for when it will be heard again. In light of this appeal, the Developer has requested a one-year extension to the ENA. However, Metro staff believes that in order to have sufficient time to resolve the matter more time is necessary; therefore, staff recommends that the Board authorize an additional extension to the ENA term for a period of 24 months, and grant an exception to the JD Policy's term limit to allow a full ENA term for a period of 72 months.

DISCUSSIONBackground

On June 27, 2013, the Developer and Metro entered into the ENA to plan and consider the terms and conditions of a potential Joint Development Agreement (JDA) and Ground Lease (GL) for

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development of a transit-oriented mixed-use affordable housing development at 1st and Lorena in Boyle Heights. The term of the original ENA was 18 months. During that timeframe, the Developer advanced the Project through final design, and diligently pursued entitlements including the California Environmental Quality Act (CEQA) approval process and project approval requirements by the City. Community meetings were also held, as well as individual presentations to various community groups. However, additional time was needed to complete the City's entitlement/CEQA review and approval process and to continue the community engagement process. The Board granted an additional 12 months in December 2014 and another 6-month extension in December 2015, and subsequently an additional year in June 2016 to address the CEQA appeal.

When the Board approved the 12-month extension in June 2016, they also granted an exception to the JD Policy to permit a term of 48 months. If the requested extension is provided, the total term of the ENA will be for up to 72 months, requiring another exception to the JD Policy.

During the course of the ENA term to date, the Developer has actively worked to progress the Proposed Project to the JDA stage. Activities included conducting multiple community meetings to further engage the community and obtain their input, securing approval from the Boyle Heights Neighborhood Council (BHNC) as well as the Boyle Heights Design Review Advisory Committee (DRAC) and seeing the Project CEQA process through a final determination. To date, the Council Office for the Boyle Heights community has consistently opposed the proposed mixed-use development, preferring a project with significantly more commercial use. However, during the past year, the Developers have met with the adjacent property owners and the Council Office to address their concerns.

The CEQA appeal was heard at PLUM Committee on May 16, 2017; however, after all the testimony was taken, the Committee continued the matter. The appellant's attorney submitted a letter to the file which the City wants time to review. A date has not been set for when it will be heard again.

### The Project

The original project scope included 48 affordable housing units; 24 units for households with special needs and 24 family units, with one manager's unit, and limited ground floor commercial. Since the project's inception, the Developer has been meeting with community stakeholders, and during the ENA extension periods held numerous meetings with stakeholders. In response to stakeholder feedback, the project scope was modified and is now comprised of 24 units of affordable housing for disabled/homeless veterans, 24 units of affordable family housing and 10,000 square feet of ground floor commercial space (see Attachment C Project Scope). Furthermore, in response to additional community feedback, the Developer is exploring including childcare and fitness facilities, and approximately 5,000 square feet of general retail business services. This modified scope, as well as the final design, was presented to the Boyle Heights Neighborhood Council on July 22, 2015. The Council approved the project 15-1. Their testimony spoke to the need for housing for veterans and low income families. Sixty percent of the units will be for individuals/families at 30% Area Median Income (AMI).

### Entitlement Status



The City Planning Department issued a Director's Determination dated March 2, 2016 (See Attachment B Director's Determination) approving certain incentives for the Proposed Project, and approving a Mitigated Negative Declaration and corresponding Mitigation Monitoring Program as the Proposed Project's environmental clearance pursuant to CEQA. The deadline to file an appeal to the Director's Determination was March 17, 2016, and no appeal was filed by that date. As such, the Developer filed a Notice of Determination with the County of Los Angeles on March 21, 2016. Thereafter, a CEQA appeal was filed with the City of Angeles by an adjacent property owner on April 20, 2016, and the City has accepted the appeal for hearing.

The CEQA appeal was heard at the PLUM Committee on May 16, 2017; however, after all the testimony was taken, the Committee continued the matter. The appellant's attorney submitted a letter to the file which the City needs time to review. A date has not been set for when it will be heard again. We are recommending a 24-month extension to the ENA to allow time for the resolution of the CEQA matter. Pursuant to state law, staff cannot seek Board authorization of a JDA before CEQA approval has been granted by the City of Los Angeles.

#### **DETERMINATION OF SAFETY IMPACT**

Approval of this item will have no impact on safety as it only seeks a time extension for the ENA. No improvements will be constructed during the exclusive negotiations period. An analysis of safety impacts will be completed and submitted to the Board if negotiations result in a JDA and GL.

#### **FINANCIAL IMPACT**

Funding for joint development activities is included in the FY18 budget under Project 401020.

#### **Impact to Budget**

There is no impact to the FY16-17 budget and staff costs are included in the proposed FY18 budget to negotiate the proposed transaction, supervise any related design, review environmental documents and provide Metro oversight during construction. However, no new capital investment or operating expenses are anticipated to implement this project. Revenues from the Developer deposit will offset continued staff and project related professional services costs.

#### **ALTERNATIVES CONSIDERED**

The Board could choose not to extend the ENA term and instead solicit a new developer. Staff does not recommend this alternative due to the current Developer's longstanding commitment to and financial investment in the Proposed Project, substantial progress achieved towards the Proposed Project's development and overall community benefits. Moreover, the Developer has engaged the community, culminating in obtaining approval of the Proposed Project from the BHNC in a 15-1 vote. This project will serve the needs of those with the lowest income - one of the most needed forms of housing in the Boyle Heights community.

#### **NEXT STEPS**

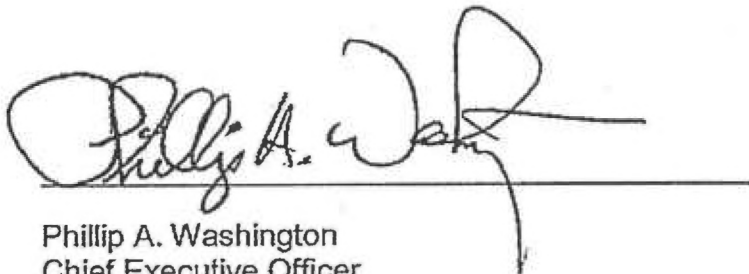
Upon approval of the recommended action, staff will prepare and execute an amendment to the ENA providing for a 24-month extension of the term. Staff will continue working with the Developer to finalize negotiations for a JDA and GL, and will present the terms of such agreements to the Board for its consideration following resolution of the CEQA matter.

**ATTACHMENTS**

Attachment A - Site Map  
Attachment B - Director's Determination  
Attachment C - Project Scope

Prepared by: Vivian Rescalvo, Senior Director, 213-922-2563  
Jenna Hornstock, Executive Officer, 213-922-7437  
Calvin Hollis, Senior Executive Officer, 213-922-7319

Reviewed by: Therese W. McMillan, Chief Planning Officer, (213) 922-7077



Phillip A. Washington  
Chief Executive Officer

## ATTACHMENT A

### Site Plan of Proposed Development Project



 Development site