

ORIGINAL

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CITY CLERK'S OFFICE

2017 NOV 22 AM 8:39

CITY CLERK

November 21, 2017

VIA EMAIL clerk.plumcommittee@lacity.org

VIA HAND DELIVERY

Los Angeles City Council
PLUM Committee
City of Los Angeles
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Date: 11/21/17
Submitted in PLUM Committee
Council File No: 17-1053 / 17-1054
Item No.: 5 and 6
Communication from
public

Re: Objections to Adoption of South Los Angeles and Southeast Los Angeles Community Plan Updates and Certification of FEIR re Same; Council File Nos. 17-1053 and 17-1054 (items 5 and 6 on the Nov. 21, 2017 PLUM Committee meeting agenda item Nos. 5 & 6) Case Nos.: CPC-2008-1552-CPU; CPC-2008-1553-CPU; ENV-2008-1781-EIR; ENV-2008-1780-EIR

Honorable President Huizar and Members of the PLUM Committee:

I. INTRODUCTION.

This firm and the undersigned represent Vermont Development LLC and other community stakeholders in Los Angeles concerned with the City's proposed actions to adopt the above-referenced South Los Angeles and Southeast Los Angeles Community Plan Updates, including proposed CEQA certifications for those actions. These written objections are submitted on their behalf.

We urge the PLUM Committee to withdraw the currently proposed South Los Angeles and Southeast Los Angeles Community Plan Updates, including on the grounds that approval of the Plans and EIR would violate the California Environmental Quality Act ("CEQA") by failing to analyze the environmental effects of the Plan Updates through use of a proper and accurate estimate of population and growth in the Community Plan areas.

The City proposes to authorize many projects pursuant to a ministerial process the City claims would not trigger further CEQA review. As described herein, the City's use of flawed population numbers and factually incorrect information about the future of

certain existing City review processes constitutes a failure to proceed in accordance with law.

II. THE CITY SUBSTANTIALLY RELIES UPON SCAG POPULATION GROWTH PROJECTIONS, ALTHOUGH THIS WAS THE PRECISE GROUND ON WHICH THE LOS ANGELES SUPERIOR COURT INVALIDATED THE CITY'S HOLLYWOOD COMMUNITY PLAN UPDATE.

On January 14, 2014, the Los Angeles County Superior Court issued its statement of decision holding that the City violated CEQA in its evaluation of the potential impacts of the Hollywood Community Plan Update. (See **Exhibit 1** hereto.) The Court found the City's use of inaccurate population and growth projections by the Southern California Association of Governments ("SCAG"), instead of more accurate U.S. Census data, resulted in an EIR analysis of environmental impacts that was "fatally flawed."

In Appendix B of the Draft EIR for the South and Southeast Los Angeles Community Plan Updates, the City has written a description of its "methodology" in persisting in the use of SCAG data, all without reference to the Hollywood Community Plan Update court decision against the City and City Council. Throughout the Methodology section the City makes a number of critical, unsubstantiated claims that use of SCAG's data is a generally accepted practice, yet the City fails to cite the reader to any evidence in support of these contentions. This is particularly concerning where the City fails to disclose in the Draft EIR the details of the Hollywood Community Plan Update decision, or how the City in these plans allegedly has avoided such similar fatal errors. The Hollywood Community Plan decision was handed down almost two years before the City circulated the Draft EIR in this case. There was ample time for the City to disclose the Hollywood Community Plan court decision and explain to the public why choosing to largely rely on SCAG population numbers is allegedly justified in these two new community plan updates.

III. THE CITY'S DRAFT EIR FAILS TO CONSIDER THE AMOUNT OF PROJECTED GROWTH THAT WILL BE ACCOMMODATED IN RESIDENTIAL NEIGHBORHOODS BY THE CITY'S EXISTING AND NEW GRANNY FLAT ORDINANCE.

In the Draft EIR, the City gives lip service to "protection" of existing single-family residential neighborhoods in these community plan updates. However, the City's single-family neighborhoods are under attack by the City. The City has changed its

policies to encourage the development of second granny units on the same lots as a single family home in City residential areas, without environmental review. If there was any time and place to analyze the potential cumulative impact of the granny flat process, it is during the update of a community plan. In this and other manners, the City's process here is flawed by the failure to disclose, analyze and mitigate cumulative impacts, including land use, population and housing, traffic, and provision of public services.

In the Draft EIR, neither the Project Description nor the Land Use/Population/Housing analysis disclosed and estimated the amount of projected growth that will be accommodated by the City's granny flat policies. This failure to analyze and project how many new units would be developed during the plan horizon means that the City has wrongfully ignored how allowing growth in both single-family residential areas and the boulevards will impact the environmental impact analysis of the Project.

IV. THE CITY'S CREATION OF NEW ACRES OF REGIONAL COMMERCIAL LAND USE DESIGNATION IN THE AREA OF WASHINGTON BOULEVARD WILL INJECT TWICE THE DENSITY DISCLOSED IN THE DRAFT EIR.

Prior versions of the South and Southeast Los Angeles Community Plans did not include any areas designated as Regional Commercial – the City's most dense and intense land use designation. In these new plans, at least 8 acres of Regional Commercial land uses will be added into the community plan.

The City's Project Description, and its Land Use/Population/Housing sections, fail to disclose and analyze how much of the projected population growth would be accommodated in the new Regional Commercial area. In fact, the City is currently taking diametrically opposed positions regarding the residential unit density permitted in the Regional Commercial areas of the City.

In the Draft EIR, the City disclosed that the maximum residential unit density permitted in the Regional Center Commercial was R4, which is 400 square feet of lot area per unit of apartments or condominiums. Presumably, the City has projected how much of the projected growth would be accommodated in the new Regional Center Commercial areas at the R4 unit density level. But in reality, the City has misrepresented in the Draft EIR what its pattern and practice has been with regard to residential unit density in Regional Commercial Center mixed use projects on commercial lots.

In 2000, without any environmental review or public notice/hearing process, the Zoning Administrator issued an "interpretation" of LAMC 12.22A18(a) that purports to "read into the code" that R5 residential unit density will be authorized in mixed use projects on commercial lots in all Regional Commercial Center areas of the City. The R5 residential density is double that of R4, requiring only 200 square feet of lot area for each apartment or condominium unit. Thus, in the Draft EIR the City disclosed a residential unit density of R4 as the lawful maximum density, but its pattern and practice is to allow twice as much density in these areas of the City. Had the City disclosed the actual or "in practice" R5 density in the Draft EIR, it should have analyzed whether to make adjustments elsewhere. In other words, the Project and its EIR paint an inaccurate picture of population/housing, density, and corresponding environmental impacts that could flow therefrom.

It is ironic that the City has informed the public in these Draft EIRs that Regional Center Commercial only allows a maximum residential density of R4, because in pending litigation in Hollywood, the City recently succeeded in convincing the Los Angeles County Superior Court that the Zoning Administrator's Interpretation of R5 was lawful, even though LAMC 12.22C is where one would expect to find an express exception allowing R5 density in the place of R4 density in mixed use projects on commercial lots in the Regional Center Commercial land use designation areas of the City. We incorporate by reference that Court ruling, which the City Attorney is also aware of.

If ever there was a time that the cumulative impact of this strange Zoning Administrator Interpretation should be assessed, it would be with each update of a City community plan containing or adding more Regional Commercial Land uses. Research of the archives of the City reveals that when the ordinance authorizing R5 land *uses* in Regional Commercial Areas of the City was enacted, the City's environmental review examined only the environmental impacts of allowing R5 uses, not the doubled R5 *density* to Regional Commercial Center areas of the City. (**Exhibit 2.**)

Thus, now would be the proper time for the City to disclose and analyze the impacts of double density in such projects in Regional Commercial Center, but the City's Draft EIR here failed to disclose and analyze the cumulative impacts, or how much additional projected growth would be accommodated by such doubling of density under the Zoning Administrator's interpretation. The City failed to analyze the cumulative impacts of doubling the residential unit density in 1982 when such mixed use projects were first authorized (**Exhibit 2**), and the City certainly conducted no cumulative impact analysis when the Zoning Administrator's interpretation purported to allow a doubling of

density. Why has the City refused to do so for a third time – even failing to inform the public in the Draft EIR of the existence of the Zoning Administrator’s interpretation?

For these additional reasons, the City’s environmental analysis is fatally flawed, and the City has failed to proceed in accordance with law.

V. **THE CITY FAILED TO REASONABLY ASSESS HOW MANY PROJECTS OVER THE PLANNING HORIZON WILL OBTAIN DENSITY BONUSES.**

Consistent with what appears to be a City pattern and practice, the Draft EIR fails to disclose and analysis how much cumulative floor area and residential density would be added to the Community Plan areas as a result of the density bonus law. The City can and must examine existing data to reasonably project how much of the anticipated future growth could be accommodated under the exercise of the density bonus. Having failed to disclose and analyze the likely impact of density bonuses on future growth in the Project Description and Land Use/Population/Housing sections of the Draft EIR, and corresponding environmental review areas flowing therefrom, the City has failed to proceed in accordance with law.

VI. **THE CITY HAS FAILED TO DISCLOSE HOW MUCH OF ITS INDUSTRIAL LAND IS AT RISK OF LOSS UNDER THE INDUSTRIAL HYBRID ORDINANCE.**

During the period of preparation of the Draft EIR and the proposed community plans, the City enacted a new Industrial Hybrid Ordinance whose name seems to mask its real purpose: to allow loss of precious industrial land and the high paying jobs such land can generate.

While the proposed Community Plans claim to include significant new areas of Industrial Hybrid land uses designations, the Draft EIR fails to disclose and analyze how much of projected population growth will be accommodated by developers opting to construct live-work units on land designated for industrial land uses. The Project Description and Land Use/Population/Housing sections of the Draft EIR do not show that the City considered this source of new housing not necessarily located next to any transit line, and the impacts of injecting this large amount of residential uses into the City’s dwindling industrial land supply. For this additional reason, the City has failed to proceed in accordance with law.

VII. THE CITY FAILED TO DISCLOSE, ANALYZE AND MITIGATE OTHER CONFLICTS, INCLUDING WITH THE CITY'S GENERAL PLAN FRAMEWORK ELEMENT.

Given the similarities between the flaws in the instant Community Plan Updates and EIR and those identified and successfully litigated against the City in the Hollywood Community Plan Update litigation, we attach collectively hereto at **Exhibit 3** and incorporate by reference our opening and reply trial briefs in the HCPU case.

The arguments specifically regarding population estimates, the failures to properly analyze a reasonable range of alternatives, cumulative and growth inducing impacts, and the internal inconsistencies and non-correlative nature with regard to the City's General Plan, including its Framework Element (incorporated herein by this reference), and including regarding infrastructure issues, apply equally to the proposed approvals before you today. This firm's HCPU litigation arguments – which have already received judicial approval against the City – are renewed herein. For the reasons that the City was found to have violated the law in the HCPU litigation, if the current plans and EIR are approved, the City will also see these plans and EIR invalidated.

Finally, to the extent that the City does what it frequently does, i.e., adds significant new information to the EIR only a few days before or at the time of its certification, without recirculating the Draft EIR as CEQA mandates, then this is and will constitute a further violation of CEQA.

VIII. CONCLUSION.

The City's environmental review of the South and Southeast Community Plan Updates is "fatally flawed," like Judge Goodman found the Hollywood Community Plan Update and its associated EIR to be. The Community Plans must be returned to the Planning Department with directions for revision and to prepare a new EIR that starts with proper baseline data and that fully discloses, analyzes and mitigates all potentially significant environmental impacts. Please keep this office advised of all actions, decision, hearings, votes and events related to this matter. Thank you for your consideration of these comments.

PLUM Committee
November 21, 2017
Page 7

Very truly yours,



ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

Attachments

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/14/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. HALL, CSL/CT.ASST.

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am BS138369

Plaintiff

Counsel

NO APPEARANCES

LA MIRADA AVE. NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD

Defendant

Counsel

VS
CITY OF LOS ANGELES

RELATED TO BS138370 AND BS13858

NATURE OF PROCEEDINGS:

MINUTE ORDER RE FINAL STATEMENT OF DECISION AND
ORDERING PREPARATION OF JUDGMENT AND WRIT;

The Court today has filed its final Statement of
Decision in this case.

Counsel for Petitioner in each case shall prepare,
serve and lodge the proposed judgment and proposed
peremptory writ of mandamus for that case, but
should do so after consultation first with counsel
for petitioners in the two related cases. The
proposed judgments and writs are to be served and
lodged directly in the courtroom by the 10th day
after the date of this Minute Order. Any
objections must be served and filed within 10 days
thereafter. The Court extends the time deadlines of
CRC 3.1590 accordingly. CRC 3.1590(h), (i), (l), and
(m).

Each petitioner is to lodge a disc with the text of
its proposed judgment and proposed writ at the time
it lodges the paper originals of those documents.

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/14/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. HALL, CSL/CT.ASST.

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am

BS138369

Plaintiff

Counsel

NO APPEARANCES

LA MIRADA AVE. NEIGHBORHOOD

ASSOCIATION OF HOLLYWOOD

Defendant

VS

Counsel

CITY OF LOS ANGELES

RELATED TO BS138370 AND BS13858

NATURE OF PROCEEDINGS:

above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order and notice of ruling upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Santa Monica, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: January 14, 2014

Sherri R. Carter, Executive Officer/Clerk

By: D. Salisbury

Robert P. Silverstein
Attorney at Law
215 North Marengo Avenue, 3rd Floor
Pasadena, CA. 91101

Siegmund Shyu
Deputy City Attorney
200 North Main Street

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/14/14

DEPT. WEP

HONORABLE ALLAN J. GOODMAN

JUDGE

D. SALISBURY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. HALL, CSL/CT.ASST.

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am

BS138369

Plaintiff

Counsel

NO APPEARANCES

LA MIRADA AVE. NEIGHBORHOOD

ASSOCIATION OF HOLLYWOOD

VS

Defendant

Counsel

CITY OF LOS ANGELES

RELATED TO BS138370 AND BS13858

NATURE OF PROCEEDINGS:

701 City Hall East
Los Angeles, CA. 90012

Sheppard, Mullin, Richter & Hampton
333 South Hope Street, 48th Floor
Los Angeles, CA. 90071

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 15 2014

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
WEST DISTRICT**

FIX THE CITY, etc.,

Petitioner and Plaintiff,

vs.

**CITY OF LOS ANGELES; LOS
ANGELES CITY COUNCIL; LOS
ANGELES DEPT. OF CITY PLANNING;
and DOES 1 through 100, inclusive,**

Respondents and Defendants.

**HOLLYWOOD CHAMBER OF
COMMERCE,**

Intervenor.

**LA MIRADA AVENUE
NEIGHBORHOOD ASSN. OF
HOLLYWOOD, etc.,**

Petitioner and Plaintiff,

vs.

**CITY OF LOS ANGELES; CITY
COUNCIL OF THE CITY OF LOS
ANGELES; and DOES 1 through 100,
inclusive,**

Respondents and Defendants.

CASE NO. BS138580

STATEMENT OF DECISION

CASE NO. BS138369

STATEMENT OF DECISION

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**HOLLYWOOD CHAMBER OF
COMMERCE,**
Intervenor.

**SAVE HOLLYWOOD.ORG, aka
PEOPLE FOR LIVABLE
COMMUNITIES, etc., HOLLYWOOD-
IANS ENCOURAGING LOGICAL
PLANNING, etc.,**

Petitioners/Plaintiffs,

vs.

**THE CITY OF LOS ANGELES, CITY
COUNCIL OF THE CITY OF LOS
ANGELES, CITY ATTORNEY OFFICE
OF CITY OF LOS ANGELES, HERB
WESSON PRESIDENT OF CITY
COUNCIL, CARMEN TRUTANICH CITY
ATTORNEY, DOES 1 through 100,
inclusive,**

Respondents/Defendants.

**HOLLYWOOD CHAMBER OF
COMMERCE,**
Intervenor.

CASE NO. BS138370

STATEMENT OF DECISION

These matters having been tried on September 16 and 17, 2013, and having
been submitted for decision; the Court having issued its Tentative Decision and
Proposed Statement of Decision; the parties having filed comments thereon; and those
comments having been considered; the Court now issues this final Statement of
Decision.

/ / /

INTRODUCTION

The Hollywood Community Plan Update (HCPU) (and its corollary environmental impact report [EIR]), which is a principal subject of this litigation, is a comprehensive, visionary and voluminous planning document which thoughtfully analyzes the potential for the geographic area commonly referred to as Hollywood (as defined in its several hundred pages). The HCPU includes scores of pages of text, detailed maps and tables which together express the finest thoughts of dedicated city planners. The HCPU is intended to be *the* essential component of the General Plan Framework (the Framework) for the City of Los Angeles (the City) as the General Plan for the City (in all of its elements) is applicable to planning and potential growth in Hollywood.

This otherwise well-conceived plan is also fundamentally flawed, and fatally so in its present iteration. As petitioners have articulated, and as will be discussed below, the HCPU, and its accompanying EIR, contain errors of fact and of law that compel granting relief to the community groups which challenge adoption of the HCPU and its EIR in their present forms.

While one can appreciate the goal of finalizing adoption of the HCPU, its accompanying EIR and related documents, and doing so as close to "on schedule" as possible given the many years since the City began its staged revisions to its General Plan planning documents (culminating in adoption of the Framework),¹ forging ahead in the processing of the HCPU, EIR and related documents in this case based on fundamentally flawed factual premises has resulted in a failure to proceed in the manner required by law. This and other bases for the rulings now made are set out below.

¹

The first draft of the Framework was circulated to the public almost twenty years ago, in July 1994. It was not finalized until eleven years later when review of the decision of the Court of Appeal of late 2004 upholding a revised version of the Framework was denied review by the California Supreme Court in February 2005. The attenuated history of adoption of the Framework is described in *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252 [*Federation I*] and *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2005) 126 Cal.App.4th 1180 [*Federation II*].

TRIAL PROCEEDINGS

The matter was tried to the Court on September 16 and 17, 2013. Prior thereto the parties filed extensive briefs, followed by their arguments at length at trial. Following the trial, the parties have filed requests for statement of decision (in addition to that provided for in Public Resources Code section 21005 (c) [requiring that a court specify all grounds on which a public agency has acted not in compliance with CEQA if it so finds]). While those statements have been filed, a controversy over the requests has been created. It is resolved in the accompanying footnote.²

Pursuant to Public Resources Code section 21005(c), Code of Civil Procedure section 632 and California Rules of Court 3.1590, this Tentative Decision is also the proposed Statement of Decision in these matters. If any party now renews its request for a statement of decision, it must timely and fully comply with Rule 3.1590. If not, then this document is also the Statement of Decision in these matters, and prevailing parties are to timely prepare, serve and lodge the appropriate peremptory writs and judgments.

Evidence

The Court admitted the Administrative Record in each case. (It is identical.)

Each party has sought judicial notice of certain items. With the consent of the parties, those items which are determined properly the subject of judicial notice in one case are admitted as to all cases.

Request for Judicial Notice by Fix the City

Fix the City (by Request for Judicial Notice filed August 21, 2013) seeks judicial

²

In addition to filing in each case a list of issues which it contends should be addressed in the statement of decision in each, City and intervenor filed in each case a lengthy set of objections and arguments as to why many of the requests made by each petitioner/plaintiff were erroneous. As no authority to support their editorial comments on the requests made by their adversaries was provided, and the Court is not aware of any authority to challenge another party's *request* for inclusion of any matter or issue in the statement of decision, the *objections* will not be considered *qua* objections: The Court is the final arbiter of the contents of its own statement of decision and does consider the parties' views with respect to its contents in connection with the Court's final document.

1 notice of sections 2.10 through 2.10.6 and 2.11 through 2.11.6 of the City's General
2 Plan Framework EIR (addressing Fire and Emergency Medical Services and Police
3 Services, respectively. These requests are granted pursuant to Evidence Code section
4 452(c).

5 Request for Judicial Notice by La Mirada

6 La Mirada seeks judicial notice of the meaning of the word "range" according to a
7 particular dictionary and of Los Angeles City Charter sections 554, 556 and 558. The
8 Court grants the second request in full and the first subject to the Court's own ability to
9 discern the appropriate and applicable meanings of words when used in particular
10 contexts.

11 La Mirada also sought to "supplement" the Administrative Record by its August
12 21, 2013 Notice of Lodging, to which City objected. The items are Chapter 2 of the
13 City's General Plan Framework and the text of a particular hyperlinked document. The
14 latter is already part of the record pursuant to the correct reading of *Consolidated*
15 *Irrigation District v. Superior Court* (2010) 205 Cal.App.4th 697, 724-725. City's reading
16 of this case is crabbed. City's objection to the Framework is frivolous as City itself both
17 seeks judicial notice of the document and cites it in its Opposition (City's Op. at 11:17-
18 21). La Mirada requests are granted, as is City's request for judicial notice of the
19 Framework.

20 Request for Judicial Notice by SaveHollywood.org et al.

21 There is no objection to Item 1, which is an opinion in a federal court case;
22 granted.

23 Nor is there any objection to item 2, which is a print out of a web page relating to
24 the census, but the Court sees nothing other than the printed page. That is not sufficient
25 basis for granting a request for judicial notice; this request is denied.

26 City objects to item 3, a SCAG document, but it is in the record at AR 21168.
27 And, under the authority of *Consolidated Irrigation District v. Superior Court, supra*, the
28 report at the hyperlinked cite was already also part of the record. The copy of that report

1 at that link (Exhibit 3 to the Cheng declaration, filed with the Request for Judicial Notice)
2 is merely another copy of the document which is already in the record. This request is
3 granted.

4 Request number 4 is not a part of the record and its contents indicate it is only
5 raw data in any event. It is neither timely nor appropriate for judicial notice; City's
6 objections to this item are sustained.

7 City's Request for Judicial Notice

8 The requests of City, et al. that the Court take judicial notice of several items
9 (identical in each case) are resolved as follows:

10 Granted as to Sections 555, 556 and 558 of the City Charter. (Exhibits F, G and
11 H.)

12 Granted as to the extracts of the City of Los Angeles General Plan Framework
13 attached to the Request for Judicial Notice as Exhibit B.

14 Granted as to the official opinion of the Court of Appeal in *Saunders v. City of Los*
15 *Angeles*, reserving determination as to the relevance and application of that opinion to
16 the circumstances of this action.

17 As no adverse party objected, the Court also grants the requests as to the
18 existence and filing of each of the Petitions for Writ of Mandate in *Federation of Hillside*
19 *Canyon Associations v. City of Los Angeles* (two cases) and *Saunders v. City of Los*
20 *Angeles*; and as to the excerpts of the EIR in the *Saunders v. City of Los Angeles*
21 (Exhibits C, D and E).

22 Without additional explanation, which was never provided, the Court finds
23 insufficient the proffer with respect to a single page of the 2013 update of the U.S.
24 Census. (Exhibit A.) Although the population of the HCPU area is a point of
25 considerable interest in and importance to this case, the document attached as Exhibit A
26 to this RJN, was apparently updated in 2013 -- in some unexplained manner -- and the
27 particular document attached has no indication of any particular relevance itself.

28 Nor will the Court accept City's apparently implied offer that the Court search the

1 U.S. Census itself. That would be both improper and inordinately time-consuming. City
2 had the obligation to explain the relevance of the document, and in this case to be clear
3 about the particular parts of the document to which it seeks the Court's attention.

4 Declarations

5 The declarations of MacNaughton and Kruse are not proper subjects of judicial
6 notice; nor is Exhibit 1 to the Reply Brief to which it is attached. City's objections to these
7 matters are sustained.

8 Other evidence

9 All other evidence, which is in the Administrative Record, is admitted.

10 Status of the three cases

11 With the stipulation that all evidence admitted in one case is admitted in all, and
12 based on the congruence of the subject matter of the cases, the Court issues this single
13 decision to address the issues presented in each of the three cases.

14 **Background; the Framework Element**

15 City has sought, and the Court has granted, City's request for judicial notice of a
16 portion of "The Citywide General Plan Framework - An Element of the City of Los
17 Angeles General Plan" ("the Framework Element" [the same document the Court
18 referenced *ante* and which was the subject of the cases cited in footnote 1, *ante*).

19 There is no explanation why this document was not originally included in the
20 Administrative Record in this case as it sets forth "a citywide comprehensive long-range
21 growth strategy" for the city and describes the role of community plans such as the
22 Hollywood Community Plan Update (HCPU) at issue in these proceedings.³ (City's RJN,
23 Exh. B, page 2) Thus: "While the Framework Element incorporates a diagram that
24 depicts the generalized distribution of centers, districts, and mixed-use boulevards
25 throughout the City, it does not convey or affect entitlements for any property. **Specific**

26
27 ³

28 The Court also granted Petitioner Fix the City's request that the Court take judicial
notice of segments of Chapter 2 of the same document.

1 land use designations are determined by the community plans." [Par.] In fulfillment
2 of the State's [planning] requirements [for general plans (Govt. Code secs. 65300, et
3 seq.)], the City's general plan contains citywide elements for all topics listed except Land
4 Use for which community plans establish policy and standards for each of the 35
5 geographic areas." (*id.*, emphasis added.) The HCPU is or will be such a plan for
6 Hollywood.

7 The Framework also contains a statement of relevance with respect to the
8 significance of population data:

9 "In planning for the future, the City of Los Angeles is using population forecasts
10 provided by the Southern California Association of Governments (SCAG). The
11 Framework Element does not mandate or encourage growth. Because population
12 forecasts are estimates about the future and not an exact science, it is possible
13 that population growth as estimated may not occur; it may be less or it may be
14 more. The City could be at the beginning of a long decline in population or at the
15 beginning of a sharp increase." [Par.] The Element is based on the population
16 forecasts provided by SCAG. Should the City continue to grow, the Element
17 provides a means for accommodating new population in a manner which
18 enhances rather than degrades the environment. The City does not have the
19 option of stopping growth and sending it elsewhere. It must prepare for it, should
20 growth occur. In preparing the General Plan Framework Element, the City has
21 answered the question "What would the City do if it had to accommodate this
22 many more people?" In answer to that question there are two possibilities: 1)
23 prepare a Plan to accommodate density equally among all City neighborhoods, or
24 2) prepare a plan to preserve the single-family neighborhoods and focus density
25 — should it occur — in limited areas linked to infrastructure." (*id.*)

26 The HCPU is thus the updated, basic planning document for the Hollywood
27 community which "establish[es] policy and standards for [the Hollywood] geographic
28 area[.]. (*id.*)

1 As will be discussed, the HCPU, includes, *inter alia*, a plan to focus growth along
2 transit corridors and in specific areas of Hollywood. Whether the final environmental
3 impact report for the HCPU withstands scrutiny at this time is the focus of the differences
4 between these petitioners, on the one hand, and City and Intervenor, the Hollywood
5 Chamber of Commerce, on the other.

6 The fundamental dilemma is why and how "specific land use designations" are
7 properly determined based on population estimates which, it is argued and clearly
8 established, are substantially inaccurate.

9 PRELIMINARY PROCEDURAL ARGUMENTS

10 *Waiver?*

11 City and Intervenor contend that certain petitioners waived critical arguments by
12 not asserting them in the administrative proceedings or in the petition for writ of
13 mandate. This contention is an inaccurate statement of what occurred in the
14 administrative proceedings below. Contrary to the claims of City and of Intervenor, it is
15 well-established that whether a particular petitioner made a contention below is not the
16 test for asserting that claim in CEQA proceedings. The question is: Was the subject
17 matter of the claim made *by anyone* below with sufficient specificity?

18 As but two examples of the facts: (1) SaveHollywood raised the issue of the mis-
19 use of the 2005 SCAG population estimate multiple times in the administrative
20 proceeding, and (2) when the 2010 Census data was first incorporated into an official
21 document just days prior to the final action by the City Council, La Mirada wrote to the
22 body before which the issue was then being considered, the City Council, setting out in
23 more than ample detail its objections. *Cf., Endangered Habitats League v. State Water*
24 *Resources Control Board* (1999) 70 Cal.App.4th 482, 489-491 [exhaustion not required
25 when no opportunity to challenge provided]. Public Resource Code section 21177 is
26 simply not applied in the crabbed manner that City and Intervenor contend. Multiple
27 additional examples of timely stated objections to the points now adjudicated appear in
28 the record. Thus, on the facts, the issues now presented were all timely presented

1 below.

2 Next, there was considerable specificity in the objections made by petitioners (and
3 others) at the several stages of the administrative process, specificity that meets the
4 applicable test, even as discussed in the cases cited by Intervenor (e.g., *Resources*
5 *Defense Fund v. Local Agency Formation Commission* (1987) 191 Cal.App.3d 886,
6 894). Moreover, better reasoned cases such as *Citizens Assn. for Sensible*
7 *Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163, make
8 clear that the specificity prong of the Public Resources Code section 21177 requirement
9 was amply met -- and for all of the issues raised in this proceeding. As the *Sensible*
10 *Development* court states: " ... less specificity is required to preserve an issue for appeal
11 in an administrative proceeding than in a judicial proceeding. This is because "[i]n
12 administrative proceedings, [parties] generally are not represented by counsel. To hold
13 such parties to knowledge of the technical rules of evidence and to the penalty of waiver
14 for failure to make a timely and specific objection would be unfair to them." (Note (1964)
15 Hastings L.J. 369, 371.) It is no hardship, however, to require a layman to make known
16 what facts are contested." (*Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1970) 8 Cal.App.3d
17 1009, 1020 [87 Cal.Rptr. 908].)" *Id.*, at 163.⁴

18 *Claim Preclusion as to Fix the City?*

19 City and Intervenor advance two arguments as to claim preclusion of certain
20 contentions by petitioner Fix the City; neither is meritorious.

21 First, City mistakenly asserts (City's Op. at 28-29) that Fix the City's arguments
22 about mitigation measures are barred because it is "in privity with" with a party to
23 *Federation II* (*id.* at 23:12-27). City cites as its legal authority *Frommhagen v. Board of*
24 *Supervisors* (1987) 197 Cal.App.3d 1292, 1301. That case does not support the

25
26 ⁴

27 This last waiver contention is resolved based on the circumstance that the claims
28 which City claims to have been waived are simply elements of petitioner Fix the City's
Fourth Cause of Action. The cases City cites are inapposite. See Fix the City's Reply at
25:1-15.

1 argument made. At the cited page that court is addressing claims made by the same
2 party, not which party is in privity with whom. It is clear that in this case we have multiple
3 petitioning parties and that there is no sufficient evidence presented that Fix the City is in
4 legal privity with any other party to the earlier case. City's claim is without support.
5 *See, e.g., Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180
6 Cal.App.4th 210, 229-231.

7 Nor does Fix the City's participation in *Saunders v. City of Los Angeles*
8 (September 25, 2012) (2012 WL 4357444) support City's claim preclusion arguments.
9 As Fix the City points out, the issue presented in *Saunders* was whether City breached a
10 mandatory duty by failing to prepare annual reports on the City's infrastructure (Fix the
11 City's Reply at 22:19-27); it involved the Framework and not either this EIR or the
12 HCPU. It appears that City relies solely upon the circumstance that Fix the City was a
13 party to *Saunders* as barring its contentions here. That argument ignores the material
14 differences in the issues presented in the two cases. Nor were this HCPU and its EIR
15 considered in any respect in *Saunders*; indeed, there is no way either could then have
16 been subject to anyone's consideration as they had only been adopted and approved
17 after the *Saunders* trial court had issued its decision.⁵

18 PRINCIPAL ARGUMENTS AND ANALYSIS

19 Petitioners' contentions

20 Petitioners advance several arguments in support of their contentions that the
21
22
23

24 5

25 The Court, *sua sponte*, takes judicial notice of the entry of judgment in the trial court
26 in *Saunders* -- on March 2, 2011 -- a date prior to the public dissemination of the draft
27 EIR in the present case, making City's argument -- that of a party to *Saunders* and with
28 detailed knowledge of its proceedings -- more than difficult: There is no way in which the
claims now made concerning this, later issued EIR (and plan), could have been raised or
litigated in that case. *See, Planning & Conservation League v. Castaic Lake Water*
Agency (2009) 180 Cal.App.4th 210, 225-229 and *e.g., Federation II* at 1202.

1 HCPU and its EIR were not prepared in the manner required by law, etc.⁶

2 Population base

3 A fundamental contention of all petitioners is that the population data upon which
4 the EIR for the HCPU is formulated is fatally flawed, with the result that the EIR must be
5 revised and then recirculated with appropriate analysis of the corrected basic data.

6 Applicable facts

7 The first set of relevant facts is the timeline of significant actions for the items,
8 now listed.

- 9 • April 28, 2005 * Notice of Preparation of Draft EIR published
- 10 • March 3, 2011 * Draft EIR released
- 11 • May 2011 * 2010 U.S. Census data released⁷
- 12 • October 2011 * Final EIR released
- 13 • December 11, 2011 * Planning Commission submits HCPU
14 with recommendation of approval of HCPU
- 15 • May 8, 2012 * City Council Planning and Land Use
16 Management Committee (PLUM Com.) submits HCPU to Council
17 without recommendation
- 18 • May 18, 2012 * First Revisions to EIR [contains response to SCAQMD]
- 19 • June 14, 2012 * Second Revisions to EIR - [33 pages; contains references
20 to 2010 US Census data released in May 2011]
- 21 • June 19, 2012 * City Council meeting at which EIR adopted
- 22 • June 21, 2012 * Notice of Determination filed

23 The principal factual and legal dispute concerns City's reliance on population

24

25 ⁶

26 Certain petitioners also address claimed general plan defects. Because they are
analyzed according to a different standard, the Court addresses them separately, *post*.

27 ⁷

28 City cited a web address at which census data could be viewed. The Court declines
this entirely non-specific invitation as vague, overbroad and therefore insufficient.

1 data, which City obtained from the Southern California Association of Governments
2 (SCAG), as the base for analysis in the HCPU and its EIR. There is agreement that the
3 base used for analysis was the SCAG estimate of population in 2005 in the HCPU
4 defined area, and that this number was 224,426 persons. The EIR describes this
5 estimate as having been derived from the 2004 SCAG Regional Transport Plan. Neither
6 this 2004 Plan nor any other source data with respect to the 2005 population number
7 appear in the Administrative Record. (Limited background memoranda relevant to the
8 population statistics do appear in the Reference Library, but they do not provide the
9 missing data.) The Draft EIR (DEIR) uses a forecast of population for 2030 for the
10 HCPU area of 244,302; this was derived from the same 2004 study. The DEIR also sets
11 out a "revised" population estimate of 245,833.

12 Using these various data points, the DEIR analyzed what it referred to as a
13 "reasonable expected level of development for 249,062 people.

14 Petitioners argue that the fact that the results of the 2010 Census became
15 available just after the DEIR was released compelled revision of the DEIR to utilize that
16 data and that failure to do so was prejudicial error requiring preparation and recirculation
17 of a new DEIR which properly incorporates the 2010 Census population data. (While
18 the exact date of release of this data is a point of dispute among the parties, it is clear
19 that the official United States Government census data became available by May, 2011
20 — within 60 days of the release of the DEIR.)

21 This U.S. Census data is relevant to this litigation because it differs so significantly
22 from that used in the EIR process here. The 2010 Census shows that the population of
23 the HCP area was approximately 198,228 persons. The reason why this is given as an
24 approximation is that the relevant census tracts cover an area slightly different than the
25 boundaries of the HCPU area. This difference is known, however, to City's Planning
26 Department, and City did make some adjustments to its own data in its Second Addition
27 to Final EIR, dated June 14, 2012, five days before the City Council took final action on
28 the HCPU and its EIR, confirming its knowledge in this respect.

1 The following table summarizes key data and illustrates the petitioners' contention
2 that the base used by City in its planning constitutes error.⁸

3

4 1990 U.S.	2000	2004/2005	2010	2030	2030
5 CENSUS	U.S.	SCAG pop.	U.S.	Forecast in	CITY
6	CENSUS	est.	CENSUS	DEIR	est.
7 213,912	210,824	224,426	198,228	244,302	249,062

8 Reference to this table produces some obvious questions including the following:

- 9
- 10 (1) Why was the population base which City used for analysis in the DEIR the
- 11 SCAG estimate of 224,426 when the Official Census data became available
- 12 within 60 days of release of the DEIR — and when that data shows a significantly
- 13 lower population (even in a somewhat larger geographic area)?⁹; and
- 14 (2) why was the 2030 population number used not further adjusted once the 2010
- 15 U.S. Census data was available?

16 The 2005 SCAG population estimate was a principal key to the analytical

17 foundation for the DEIR. From it flowed not only the 2030 population estimate used in

18 the DEIR, but, combined with other factors, estimates for water consumption, waste

19

20 ⁸

21 While City argues that it was not possible to estimate the population in the HCPU

22 area because of incongruity of census tracts with the HCPU area, the Administrative

23 Record reveals that petitioner La Mirada was able to estimate the population in the

24 HCPU area at 197,085 persons, and City itself made revisions to the EIR just 5 days

25 prior to its approval by the City Council to incorporate some of the data from the 2010

26 Census, as noted in the text.

27 ⁹

28 It is clear that City's Planning Department had the ability to adjust for the slight

differences between the HCP boundaries and the census tract data as the latter was

discussed in the 33 page June 14, 2012 Second Revision to EIR released just 5 days

prior to the City Council voting to approve the EIR -- and the census tracts themselves

had been extant for a considerable period of time. City advanced several contentions

based on the argued differences, claims that appear fully refuted by the actions taken by

its own Planning Department.

1 water, solid waste, and energy demand,¹⁰ as well as other elements of the EIR.

2 As Fix the City aptly describes the function of the EIR: "At the heart of the [DEIR
3 for the HCPU] and indeed the defining purpose of the Plan Update itself, is the
4 accommodation of projected population growth in the Plan area. The purpose of the
5 EIR is to evaluate the environmental impacts of accommodating this growth in the
6 manner and locations set forth in the Plan Update. In this regard, the magnitude of the
7 population increase accommodated by the Plan Update is a critical component of the
8 environmental analysis and [is] relied upon in numerous instances throughout the EIR."
9 (Fix the City's Opening Memo. at 6:5-21). Thus, it is critical to the EIR that the
10 population base be appropriate to the actual circumstances which exist in the area of the
11 HCPU and its EIR. In this case, it was not.

12 Standard of Review

13 The standard for review of the sufficiency of any EIR is prejudicial abuse of
14 discretion. Public Resources Code sections 21168 and 21168.5. "Abuse of discretion is
15 established if the agency has not proceeded in a manner required by law or if the
16 determination or decision is not supported by substantial evidence. *Laurel Heights*
17 [*Impr. Asn. v. Regents* (1988) 47 Cal.3d 376,] at 392. A prejudicial abuse of discretion
18 occurs if the failure to include relevant information precludes informed decision-making
19 and informed public participation, thereby thwarting the goals of the EIR process." *San*
20 *Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 653.
21 "... the existence of substantial evidence supporting the agency's ultimate decision on a
22 disputed issue is not relevant when one is assessing a violation of the information
23 disclosure provisions of CEQA. " *Association of Irrigated Residents v. County of Madera*
24 (2003) 107 Cal.App.4th 1383. 1392.¹¹ A clearly inadequate or unsupported study is

25 ¹⁰

26 The estimates for public safety services will be discussed, *post*.

27 ¹¹

28 The need to be alert for agency misconduct in CEQA matters is especially strong
where, as here, the agency is the project proponent. *Deltakepper v. Oakdale Irrigation*

1 entitled to no judicial deference. *Berkeley Keep Jets Over the Bay v. Board of Port*
2 *Commissioners* (2001) 91 Cal.App.4th 1344, 1355..

3 Here, a case cited by respondents also supports petitioners' contention.¹² In
4 *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136
5 Cal.App.4th 1, the court held that a lead agency cannot forego its own analysis of base
6 data and rely instead on such data provided by another agency. In the present matter,
7 one of City's principal counter-arguments is that it was entitled by law to rely on the
8 SCAG 2005 population estimate. That contention must be and is rejected upon the
9 authority of *Californians for Alternatives, supra*. See also, *Ebbits Pass Forest Watch v.*
10 *Calif. Department of Forestry* (2008) 43 Cal.4th 936, 956.

11 There are additional reasons why use of the SCAG population estimate is
12 improper in the context of this EIR. As petitioners explain, this EIR does not contain the
13 "analytical route" by which the lead agency reached the conclusions set out in such a
14 document. This requirement, that fundamental information be disclosed in the planning
15 documents, has been the law for decades. *E.g., Topanga Assn. for a Scenic*
16 *Community v. County of Los Angeles* (1974) 11 Cal.3d 506:

17 "We further conclude that implicit in section 1094.5 is a requirement that the
18 agency which renders the challenged decision must set forth findings to bridge the
19 analytic gap between the raw evidence and ultimate decision or order. If the
20 Legislature had desired otherwise, it could have declared as a possible basis for
21 issuing mandamus the absence of substantial evidence to support the
22 administrative agency's action. By focusing, instead, upon the relationships
23 between evidence and findings and between findings and ultimate action, the

24
25 *Distr.* (2001) 94 Cal.App.4th 1092, 1109.

26 ¹²

27 Petitioner La Mirada clearly makes the argument that City did not proceed in the
28 manner required by law. Petitioner Fix the City appears to rely on the other basis to set
aside an EIR, viz., that there is no substantial evidence in its support — a claim joined by
SaveHollywood, as well as by La Mirada.

1 Legislature sought to direct the reviewing court's attention to the analytic route the
2 administrative agency traveled from evidence to action. In so doing, we believe
3 that the Legislature must have contemplated that the agency would reveal this
4 route. Reference, in section 1094.5, to the reviewing court's duty to compare the
5 evidence and ultimate decision to 'the findings' (emphasis added) we believe
6 leaves no room for the conclusion that the Legislature would have been content to
7 have a reviewing court speculate as to the administrative agency's basis for
8 decision." *Id.*, at 515.

9 City and Intervenor contend that City fully complied with EIR requirements, citing
10 Guidelines section 15125(a), which provides:

11 "An EIR must include a description of the physical environmental conditions in the
12 vicinity of the project, as they exist at the time the notice of preparation is
13 published This environmental setting will normally constitute the baseline
14 physical conditions by which a lead agency determines whether an impact is
15 significant."

16 In addition to using the SCAG 2005 estimate of a population of 224,426, the DEIR
17 forecast a population of 244,302 residents in 2030 for planning purposes. This data, as
18 noted previously, was derived from the 2004 SCAG transportation report.¹³ The EIR
19 then estimated the "reasonable expected level of development" utilizing a further
20 estimate of the population in the HCPU area in 2030 of 249,062.

21 Considering the *actual* population in 2010 as evidenced by the 2010 Census data,
22 the real population increase essential to analysis in the DEIR was 50,744 rather than the
23 24,636 persons number which was utilized by City. Thus, the analysis in the DEIR was

24

¹³

25 As Petitioner SaveHollywood points out, the 2004 RPT was not included in the
26 Administrative Record; this is "a fatal error" as it is "a key rationale" for the HCPU and
27 "[b]y omitting purported relevant information from the record, the City deprived the public
28 of the ability to independently verify [City's] population assumptions and its
environmental assessments predicated thereon." SaveHollywood.org Opening Memo. at
8:16-21.

1 predicated upon a population increase — *well under half* — of what would occur if the
2 2030 estimate were to remain. And, if the population estimate for 2030 were to be
3 adjusted based on what the 2010 Census data had shown, then all of the several
4 analyses which are based on population would need to be adjusted, such as housing,
5 commercial building, traffic, water demand, waste produced — as well as all other
6 factors analyzed in these key planning documents.¹⁴

7 City's reliance on what is "normally" permissible as what is required is misplaced.
8 The very fact that Guideline section 15125(a) uses the word "normally" suggests that
9 there are circumstances in which such reliance is not appropriate. It is well-established
10 that, "[i]n some cases, conditions closer to the date the project is approved are more
11 relevant to a determination of whether the project's impacts will be significant. *Save Our*
12 *Peninsula Com. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99,
13 125. Thus, the Guideline in which City and Intervenor seek refuge instead recognizes,
14 and the cases support, the petitioners' contention that there are substantial reasons to
15 use a different (up-to-date) baseline when the circumstances warrant, as the
16 circumstance did, and do, in this case:

17 "Administrative agencies not only can, but should, make appropriate adjustments,
18 including to the baseline, as the environmental review process unfolds. *No*
19 *purpose would be served, for example, if an agency was required to remain*
20 *wedded to an erroneous course and could only make a correction on remand*
21 *after reversal on appeal."* *Citizens for East Shore Parks v. California State Lands*

22
23 ¹⁴

24 As La Mirada points out in its Opening Brief at 7:19-22, just before the City Council
25 voted to approve the several documents in June 2012, City added its conclusion that it
26 was still reasonable to rely on the 2005 SCAG population base even with the 2010
27 Census data. That clearly is a post-hoc rationalization of City's failure to recognize
28 that the HCPU was unsupported by anything other than wishful thinking — and a
demonstration of an effort to avoid further analysis in key planning documents. Nor is
an agency's determination marked by changes such as those in evidence here, entitled
to any deference. *Yamaha Corp. v. State Board of Equalization* (2001) 19 Cal.4th 1,
14.

1 Comsn. (2011) 202 Cal.App.4th 549, 563. (Emphasis added.)

2 Even when the surrounding conditions are recognized close in time to the final
3 certification of the EIR, the baseline must be updated to reflect that new knowledge.
4 E.g., *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357
5 (identification of additional wetlands made just prior to proposed certification of FEIR).
6 Here, the significant factual predicate for the critical analytical issues explicated in the
7 EIR was known far earlier in the EIR process than that in *Mira Monte*; here, just two
8 months after release of the initial DEIR and over a year prior to final action on the EIR —
9 yet no material adjustments were made. Multiple objections to the continued use of
10 these demonstrably incorrect SCAG population estimates repeatedly were made "for the
11 record" by several groups — and ignored by City until their limited [and inadequate] use,
12 just 5 days before final approvals in the Second Addition to Final EIR. This conduct was
13 itself a failure to proceed in the manner required by law. Public Resources Code section
14 21166; *Mira Monte, supra*, at 365-366.

15 When the new facts became known shortly after issuance of the DEIR, the
16 baseline used for analysis should have been adjusted -- in the summer of 2011 rather
17 than proceeding with a fundamentally flawed baseline. The failure to use accurate and
18 then-current data was a failure to proceed in the manner required by law . This is made
19 clear by cases such as *Save our Peninsula Committee v. Monterey County Board of*
20 *Supervisors* (2001) 87 Cal.App.4th 99: "If an EIR fails to include relevant information
21 and precludes informed decisionmaking and public participation, the goals of CEQA are
22 thwarted and a prejudicial abuse of discretion has occurred. (*Sierra Club v. State Bd. of*
23 *Forestry* (1994) 7 Cal.4th 1215, 1236 []; *Fall River Wild Trout Foundation v. County of*
24 *Shasta* (1999) 70 Cal.App.4th 482, 492 []; *County of Amador v. El Dorado County Water*
25 *Agency, supra*, 76 Cal.App.4th at p. 954; Pub. Resources Code, § 21005, subd. (a).)"
26 *Id.*, at 128.

27 While CEQA gives the lead agency flexibility in establishing baseline conditions,
28 as Fix the City argues, "that flexibility must be cabined by the rule that all CEQA

1 determinations must be supported by substantial evidence. (Fix the City, Opening
2 Memo. at 8:17-19). Citing Guideline 15384, which defines substantial evidence, Fix the
3 City points out (*id.*, at 9:5 et seq.) that substantial evidence must have a factual basis
4 which is "a serious deficiency of the 2005 estimate." Decision makers cannot arrive at
5 the required reasoned judgment without it. *Concerned Citizens of Costa Mesa v. 32nd*
6 *Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

7 Intervenor errs in its claim that use of the incorrect baseline was not prejudicial.
8 (Intervenor's Opposing Memo. at 17-18) Rather, as Fix the City argues, use of the
9 flawed baseline "fundamentally distorted the EIR." (Fix the City's Opening Memo. at
10 8:20). Also, the attempted remedy to the prior utilization of the wrong baseline data in
11 the DEIR resulted in City inserting an abbreviated analysis of the 2010 census data in its
12 June 2012 Second Addition to the EIR, which contained a merely truncated — and
13 insufficient — discussion of alternatives. As Fix the City notes: "Clearly, if one goal of
14 the plan is to accommodate projected population growth — setting aside entirely the
15 accuracy of the projection — and the City is advised that there is more capacity in the
16 current plan than it realized, its analysis of necessary future actions to accommodate a
17 projected increase would change." (Fix the City's Reply. at 9:1-4)

18 What is particularly flawed about the Second Addendum to the EIR is the failure
19 to adjust for the 50,744 new residents that are a direct consequence of City's original
20 error (use of the 2005 overstatement of population by SCAG rather than the actual
21 number available from the 2010 Census). The Second Addendum is flawed because it
22 is premised on the unsupportable notion that accommodating 50,744 new residents will
23 have less impact than accommodating 24,636 new residents. The utilities, wastewater
24 and public safety discussions of this EIR are all without support and City has not
25 explained the "analytical route the ... agency traveled from evidence to action," thus
26 rendering invalid its literally last minute attempt (*viz.*, 5 days prior to final approval) to
27 remedy its prior failures and refusals to accept as valid the many objections made to the
28 mistaken use of outdated and substantially wrong SCAG data. See, *Laurel Heights*

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4 No party makes any note of the discussion in *Federation II* of a discussion of
5 projections based on SCAG and census data which appears at 126 Cal.App.4th
6 at 1206-1207. That discussion is not applicable in any event to this case; as may
7 be inferred by the parties omission of any reference to it.

8 At page 11 of its opening memorandum, City claims that a single sentence in the
9 Framework precludes use of up to date population figures, especially the 2010 Census
10 data. As La Mirada argues (Reply at 7:9-11) "Blind adherence to data [City] knows is
11 wrong is not the 'good faith effort at full disclosure' mandated by CEQA. Guideline
12 section 15151." See, *Citizens for East Shore Parks v. California State Lands Comsn.*
13 (2011) 202 Cal.App.4th 549, in which the State Lands Commission as lead agency
14 revisited its baseline during the environmental review process *and modified it as needed*.
15 This practice was specifically approved by the reviewing court of appeal:

16 "To begin with, plaintiffs cite no authority supporting the implied premise of their
17 argument—that the Lands Commission could not revisit the baseline during the
18 environmental review process and modify it as the Commission deemed
19 appropriate or necessary.^[in omitted] Moreover, such a suggestion is unsound.
20 Administrative agencies not only can, but should, make appropriate adjustments,
21 including to the baseline, as the environmental review process unfolds. No
22 purpose would be served, for example, if an agency was required to remain
23 wedded to an erroneous course and could only make a correction on remand
24 after reversal on appeal. [Par.] The record also reveals a sound basis for the
25 Lands Commission's adjustment of the baseline. Chevron presented the
26 Commission with information about other baseline determinations being made for
27 proposed San Francisco Bay Area projects, and urged it to take the same
28 approach so there would be uniformity in the environmental review process. In
addition, the case law in the area was being developed through decisions such as
Fat, 97 Cal.App.4th at pages 1277–1281, 119 Cal.Rptr.2d 402, which endorsed
and followed *Riverwatch, supra*, 76 Cal.App.4th 1428, 91 Cal.Rptr.2d 322. Thus,
as the Lands Commission explained, its view of the appropriate baseline evolved
over time, ultimately leading to modification of the baseline in the 2003–2004
timeframe, some four years before it completed the environmental review
process. [Par.] in sum, the Lands Commission did not abuse its discretion in
defining the baseline used to assess environmental impacts of the proposed
marine terminal lease renewal. The baseline was not contrary to the law, and it
was based on substantial evidence." *Id.* at 563-564.

23 16

24 The claims that the petitioners were too late with their objections is devoid of merit.
25 As City only applied the 2010 Census data in the document dated June 14, 2012, five
26 days prior to the City Council vote on the project component documents, and as the
27 record is clear that some of the petitioners made their objections known even in that
28 short time frame, that was all any citizen might (or need) do — and it fully complies with
the standing requirements of CEQA under such a tight time frame. Public Resources
Code section 21167; e.g., *Endangered Habitats League v. State Water Resources
Control Board* (1997) 63 Cal.App.4th 227, 238-240.

Alternatives Analysis

Alternatives analysis is a core element of each EIR. *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162.¹⁷ An EIR must contain and analyze in depth a "range of reasonable alternatives." *Citizens of Goleta Valley v. Board of Supervisors [Goleta II]* (1990) 52 Cal.3d 533, 566; Guidelines section 15126.6(c). The range must be sufficient "to permit a reasonable choice of alternatives so far as environmental aspects are concerned. *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-751. Each case must be evaluated on its own facts. *Goleta II, supra*, at p. 566. Among the usually included alternatives is one for "reduced density." *Watsonville Pilots Assn. V. City of Watsonville* (2010) 183 Cal.App.4th 1059. The EIR must always include analysis of the No Project Alternative (Guidelines section 15126.6(e); *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 203) which must discuss what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. Guidelines section 15216.6(e). This alternative is not always the same as the baseline environmental setting, and the EIR's analysis of the No Project Alternative should identify the practical consequences of disapproving the project when the environmental status quo will not necessarily be maintained. *Planning & Conservation League v. Dept. Of Water Resources* (2000) 83 Cal.App.4th 892.

In determining what constitutes a reasonable range of alternatives, there must be a set or group of such alternatives which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. Guidelines section 15126.6(a). The term feasible is defined in Public Resources Code section 21061.1 as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic,

¹⁷ The other core element is that of mitigation. *Id.*

1 environmental, social, and technological factors. See Guidelines section 15126.6(f)(1).
2 "The key issue is whether the range of alternatives discussed fosters informed decision
3 making and public participation. *Laurel Heights Improvement Assn. v. Regents*, supra,
4 47 Cal.3d 376, 404-405.

5 The EIR must identify the alternatives considered in, and those excluded from,
6 EIR analysis and should provide the reasons for their rejection. *Goleta II*, supra, at 569;
7 Guidelines section 15126.6(b). A brief explanation of such excluded alternatives is
8 sufficient; the entire administrative record may be considered in determining whether a
9 reasonable range of alternatives has been discussed. *Id.*, at 569.

10 "The selection of alternatives discussed will be upheld, unless the challenger
11 demonstrates that the alternatives are manifestly unreasonable and they do not
12 contribute to a reasonable range of alternatives." *Calif. Native Plant Society v. City of*
13 *Santa Cruz* (2009) 177 Cal.App.4th 957, 988.

14 The EIR in this case contains analysis of three "alternatives": (1) the current
15 (preexisting, 1988) plan, considered as the No Project Alternative, (2) the
16 current/proposed project, and (3) a plan based on the SCAG 2030 population forecast
17 (which is based on a one percent reduction in population from the proposed project).
18 However, under applicable regulations, there are only two alternatives — Public
19 Resources Code section 21100(b)(4) provides that the project itself cannot be an
20 alternative to itself, as La Mirada points out. La Mirada Opening Brief at 16:17-20.

21 There is a further problem in "counting" the alternatives analyzed: La Mirada
22 points out that Guidelines section 15126.6(e)(3)(A) when read in conjunction with
23 *Planning and Conservation League v. Dept. Of Water Resources* (2000) 83 Cal.App.4th
24 892, 917-918 suggests that the "No Project Alternative" is not an alternative for purposes
25 of CEQA. Instead, it is simply the continuation of the existing plan, policy or operation
26 into the future....[T]he projected impacts of the proposed plan or alternative plans would
27 be compared to the impacts that would occur under the existing plan." La Mirada
28 Opening Memo. at 16:21-17:7.

1 However one counts the "alternatives," the flawed environmental setting
2 presented in these EIR documents makes the analysis insufficient and inaccurate.
3 *Friends of the Eel River v. Sonoma County Water Agency* (1994) 27 Cal.App.4th 713,
4 738-739. "[W]ithout [an adequate baseline] description, analysis of impacts, mitigation
5 measures and alternatives becomes impossible." *County of Amador v. El Dorado*
6 *County Water Agency* (1999) 76 Cal.App.4th 931, 953.

7 SaveHollywood and HELP contend that consideration of a down-sizing/down-
8 zoning (DS-DZ) alternative was both feasible and required based on the actual
9 population statistics and trends. These petitioners argue that notwithstanding multi-year
10 and multi-million dollar investments in infrastructure in the Hollywood community, there
11 has been a net outflow of population and an increase in vacancy rates in both
12 commercial and residential properties. Interestingly, they argue that, based on the
13 SCAG 2005 population estimate, the HCP area has lost over 26,100 people in the five
14 year period 2005-2010 (basing the 2010 population on the U.S. Census data) and there
15 have been massive financial losses connected to construction projects — the key
16 example being the difference between the construction cost and eventual sale price of
17 the Hollywood-Highland Project, of over \$420 million. SaveHollywood Opening Memo. at
18 14-19.

19 Fix the City argues that the EIR's 10 page discussion of the three selected
20 alternatives is perfunctory and "[a]s a result of the deficient alternatives analysis, the EIR
21 fails to provide decision makers and the public with a genuine comparison of the
22 environmental consequences of different levels of development in Hollywood." Fix the
23 City Opening Memo. at 15:9-11. Nor, in Fix the City's view does the Second Addition to
24 the EIR (June 14, 2012) sufficiently address the otherwise insufficient range of
25 alternatives in the manner required by law. This petitioner points out that (1) these
26 environmental documents ignore the requirement that other alternatives be identified or,
27 consequently, the reasons they were rejected be stated, and (2) that this defect was
28 raised throughout the environmental review process in numerous comment letters.

1 Instead, "The FEIR states that City Planning 'considered and rejected as infeasible an
2 alternative that would place a blanket moratorium on demolition permits and project
3 development.' ... Like the DEIR, the FEIR also fails to meet CEQA's disclosure
4 requirements...." Fix the City Opening Memo. at 16-17.

5 Focusing on the Second Addition document, Fix the City argues that the
6 discussion there of the no-growth and DS-DZ alternatives are infeasible, but neither the
7 EIR nor the Second Addition document contains "sufficient information ... to enable the
8 public or decision makers to adequately evaluate the City's conclusory statements
9 regarding the infeasibility of a downsizing alternative." *Id.* at 17

10 This argument has particular force when one considers the material discrepancy
11 in the population statistics discussed, *ante*, and the short 5 day window between the
12 release of the Second Addition and the vote by the City Council approving the several
13 documents at issue. The evidence in this record strongly supports petitioners'
14 contention that there has been an insufficiently-reasoned rush to completion of the EIR
15 process, and that the process was administered in a way that is clearly contrary to well-
16 established laws as interpreted by the appellate courts. As Fix the City argues: "The
17 Plan Update EIR ... lacks an analysis of sufficient ranges of alternatives and fails to
18 provide substantial evidence supporting its decisions to analyze only the narrowest
19 range of alternatives. [Par.] While it may be a reasonable policy decision for the City to
20 plan for the level of population growth accommodated in the Plan Update, the City
21 cannot make that decision without a genuine understanding of what the environmental
22 trade-offs are of accommodating this level of growth. The Plan Update EIR is the
23 document designed to inform both the decision makers and the public of the
24 environmental consequences of the Plan Update and of alternative approaches to the
25 critical task of planing the City's growth.... CEQA does not permit an agency to evade its
26 disclosure duties in this manner; the failure to analyze a reasonable range of alternatives
27 without any support of a finding of infeasibility is an abuse of discretion." Fix the City

1 Opening Memo. at 18:21-19:7.

2 One can only wonder how this planning process ran so far off the track when
3 consideration is given to the recent history of the Framework itself and the corrective
4 action it required.¹⁸

5 In response to these arguments, neither City nor Intervenor presents any
6 adequate counter-arguments. Both City and Intervenor ignore the cases, statutes and
7 Guidelines cited by the petitioners. City instead focuses, *inter alia*, on other claimed
8 defects in the petitioners' contentions, but these assertions do not respond to the
9 fundamental point that petitioners have established: City did not proceed in the manner
10 required by law with respect to ascertainment and discussion of these 'core components
11 of the EIR process' as alternatives analysis is defined by our Supreme Court. *In re Bay-*
12 *Delta Programmatic Environmental Impact Report Coordinated Proceedings, supra*, 43
13 Cal.4th 1143, 1162.

14 ***Public Services***

15 Fix the City contends, and City acknowledges, that the EIR's thresholds of
16 significance did require City to evaluate whether the significant capacity increase
17 permitted by the HCPU would require "unplanned upgrading or improvement of existing
18 fire protection equipment or infrastructure" or would "induce substantial growth or
19 concentration of population beyond the capacities of existing police personnel and
20 facilities; or whether the HCPU would "cause deterioration in the operating traffic
21 conditions that would adversely affect [police and fire] response times. City's Op. at 20.
22 As Fix the City points out, "[t]he EIR determined that in fact such thresholds of
23 significance would be exceeded for both police and fire services.... conclud[ing] that,
24 absent mitigation, degraded performance in the[se] critical services was likely." (Fix the
25 City's Reply at 13:4-14.) The issue was of substantial concern to many participants in
26 the environmental and plan review process, including then Council member Eric

27 _____
28 ¹⁸ See footnote 1, *ante*.

1 Garcetti, who wrote a letter (dated March 23, 2012) highlighting the need for improved
2 response times by City's Fire Department (AR21362).

3 Delayed response times of emergency services may be a factor in determining
4 whether increased population concentration is significant. The focus of such analysis is
5 on the physical changes that may result from economic and social changes. Guidelines
6 section 15064(e) addresses this issue; e.g., population increases, as well as other
7 "economic and social effects of a physical change may be used to determine that the
8 physical change is a significant effect on the environment". See *also* Guidelines section
9 15131; and *Christward Ministry v. Superior Court* (1986) 184 Cal.App.4th 180.

10 For reasons explained throughout this decision, this EIR is fatally flawed. One of
11 the reasons is particularly applicable here, viz., the failure to use appropriate population
12 statistics leads to fatally flawed estimation of the impact on fire and police services —
13 and their impact on physical changes: "the effects of decreased response capacity,
14 including both physical effects and social/economic effects that lead to physical effects,
15 require [environmental] review." Fix the City's Reply at 15:12-13.

16 ***Prejudice***

17 For reasons discussed above in detail, petitioners have demonstrated prejudice
18 compelling the granting of relief. The facts and circumstances of the administrative
19 proceedings in this record clearly evidence as much of a rush to completion of the EIR
20 and HCPU as might be possible in a proceeding of this nature. As described, *ante*, the
21 2010 Census data became available within two months of release of the DEIR. As the
22 time line, *ante*, demonstrates, there was ample time to revisit the critical population
23 estimates and still have the documents [re]circulated, heard at public fora and submitted
24 to various City committees and to the Council by June of the year after issuance. When
25 community members and groups repeatedly wrote and spoke against key elements of
26 the documents now being reviewed — and clearly articulated many reasons why the
27 documents were flawed, there were two rushed efforts to supplement the relevant
28 documents, including the first attempt to address some of the consequences of the 2010

1 Census data — but that only 5 days before the matter was voted on by the City Council.
2 The result was a manifest failure to comply with statutory requirements.¹⁹

3 When a public agency does not comply with procedures required by law, its
4 decision must be set aside as presumptively prejudicial. *Sierra Club v. State Bd. of*
5 *Forestry* (1994) 7 Cal.4th 1215, 1236. "Noncompliance with substantive requirements of
6 CEQA or noncompliance with information disclosure provisions 'which precludes
7 relevant information from being presented to the public agency ... may constitute
8 prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5,
9 regardless of whether a different outcome would have resulted if the public agency had
10 complied with those provisions." (§ 21005, subd. (a).) In other words, when an agency
11 fails to proceed as required by CEQA, harmless error analysis is inapplicable. The
12 failure to comply with the law subverts the purposes of CEQA if it omits material
13 necessary to informed decisionmaking and informed public participation. Case law is
14 clear that, in such cases, the error is prejudicial. (*Sierra Club v. State Bd. of Forestry*
15 (1994) 7 Cal.4th 1215, 1236–1237[]; *Fall River Wild Trout Foundation v. County of*
16 *Shasta* (1999) 70 Cal.App.4th 482, 491–493 []; *Kings County Farm Bureau v. City of*
17 *Hanford* (1990) 221 Cal.App.3d 692, 712[]; *East Peninsula Ed. Council, Inc. v. Palos*
18 *Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174 []; *Rural*
19 *Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021–1023 [].)" *County*
20 *of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

21 That is what occurred here to the legal prejudice of petitioners, mandating relief.

22 Failure to recirculate

23 Guidelines section 15088.5(a) mandates that a DEIR be recirculated when
24 "significant new information is added...." Here, it is clear that the significant new
25 information begins with the 2010 Census data, but it cannot stop there. It is also evident

26
27 ¹⁹

28 City's claim that the Framework mandated that SCAG estimates be used is without support for reasons discussed in the text, *ante*.

1 that that information must be given full consideration; this will in turn affect much of the
2 analysis in key documents.

3 City's failure to incorporate and update the DEIR to reflect the significant different
4 population statistics, and all that flows from them, necessarily means that the EIR is
5 fatally flawed. As in *Mountain Lion Coalition v. Fish & Game Comsn.* (1988) 214
6 Cal.App.4th 1043, this DEIR is fundamentally inadequate, even with the Second
7 Supplement, issued 5 days before City Council action — meaningful public review was
8 thwarted by City's pyrrhic rush to final approvals. This hasty action constitutes an
9 additional failure to proceed in the manner required by law, which is legally prejudicial.

10 GENERAL PLAN ISSUES

11 Contentions of Fix the City

12 Fix the City's opening brief sets the argument for this aspect of petitioners'
13 contentions.²⁰ "California law and the Los Angeles City Charter require consistency
14 between the policies set forth in the General Plan and land use ordinances adopted by
15 the City," citing Government Code section 65300.5 and Los Angeles City Charter section
16 556.

17 This petitioner's principal contentions are that the HCPU is "fatally inconsistent"
18 with the Framework because it fails to require policies that will ensure that the timing and
19 location of development are consistent with City's ability to provide adequate
20 infrastructure for additional development.

21 The findings made in support of the HCPU explain, correctly, that the Framework
22 "establishes the standards, goals, policies, objectives, programs, terms, definitions, and
23 direction to guide the update of citywide elements and the community plans."

24 Community plans, such as the HCPU, apply the elements of the Framework
25 regarding growth and development in specific areas of the city, here of Hollywood. The
26

27 ²⁰

28 La Mirada makes a similar contention. SaveHollywood.com, *et al.* do not address this issue.

1 Findings made for the HCPU discuss consistency with Framework Element Objective
2 3.3: "Accommodate projected population and employment growth within the City and
3 each community plan and plan for the provision of adequate supporting transportation
4 and utility infrastructure and public services."

5 The reasoning for the Finding was that the HCPU was consistent with Objective
6 3.3 because it includes a recommended pattern of land use that directs future growth to
7 areas of Hollywood where new development can be supported by transportation
8 infrastructure and different types of land uses can be intermingled to reduce the length
9 and number of vehicle trips.

10 Fix the City places emphasis on this finding because "it focuses exclusively on
11 transportation infrastructure and not [on] other types of infrastructure and public services
12 that are required to support increased population or commercial development; the
13 Finding therefore does not demonstrate consistency with Objective 3.3." Fix the City
14 Opening Brief 29:2-5.

15 Fix the City further focuses on what it contends is City's ignoring significant
16 policies included in the Framework that, it argues, are designed to enable City to meet
17 Objective 3.3. "Most significantly, the City's findings ignore the policies designed to
18 ensure a continual monitoring of population growth *and* the ability of infrastructure to
19 support the pace of growth.... Specifically, the Framework Element requires the use of a
20 monitoring program to assess the status of development activity and supporting
21 infrastructure and public services and "[i]dentify existing or potential constraints or
22 deficiencies of other infrastructure in meeting existing and projected demand." The
23 [HCPU] is inconsistent with the Framework Element because it does not include any
24 mechanism to ensure that the state of infrastructure will be assessed or to provide for
25 controls for controls on development in the event that infrastructure is insufficient to
26 support the level of development permitted by the [HCPU]..... The City's approach to the
27 Framework Element is focused entirely on the aspects that encourage growth, with no
28 attention to those policies that require periodic assessment of the capacity for

1 additional growth. Without inclusion of similar policies in the [HCPU], which is part of the
2 Land Use Element of the General Plan, the City's General Plan is fatally inconsistent.
3 The [HCPU], while permitting increased density and growth in key parts of Hollywood,
4 fails to provide a mechanism to continually assess whether the infrastructure has the
5 ability to support the increased development and therefore frustrates the policies in the
6 Framework Element that are designed to ensure provision of adequate public services.
7 The Framework Element permits only the appropriate amount of growth in light of the
8 City's infrastructure; the [HCPU] omits the necessary mitigation measures to require
9 controls on development where the infrastructure is threatened. (Emphasis in original.)
10 Fix the City's Opening Memo. at 29-30.

11 Fix the City next contends that City Charter section 558 mandates a finding that
12 any plan adopted by City will not have an adverse effect on the General Plan or any
13 other plans. And, this petitioner contends that, although City adopted such a finding, the
14 Findings do not demonstrate actual compliance with this requirement. The Findings rely
15 on the concept of concentrating growth in particular sectors, near public transport such
16 as the new metro system, and the protection of existing single-family neighborhoods
17 from denser development. Yet, Fix the City argues, "[t]he Finding is notable for what it
18 lacks: any substantive discussion of the potential [inter]-plan effects of the [HCPU]. Fix
19 the City next poses the question: "How can the decision makers conclude that the
20 [HCPU] will not have an adverse effect on other community plan areas without
21 considering if the increased growth facilitated by the [HCPU] will harm other areas?"
22 (Fix the City Opening Memo. at 30:16-18).

23 Fix the City concludes as follows: "Because this analysis [that of inter-plan/area
24 impact] is not in the EIR or in the record before the Council, substantial evidence does
25 not support this finding. Indeed, the record before the City showed that public services
26 are stretched thin throughout the City. On this record, the City cannot find that the
27 [HCPU] will not adversely affect other areas of the City; the finding must be overturned."
28 (*Id.*, at 30:18-22.)

La Mirada's Contentions

La Mirada also contends that the HCPU is not consistent with the General Plan for the City of Los Angeles, but focuses on different aspects. This petitioner's view is that, while the Framework is "growth neutral," the HCPU is not. Instead, La Mirada argues first, that the HCPU is "growth inducing," and contends that the reason the 2005 SCAG population estimate was used was to lower the population increase for which planning was required in the HCPU to just over 24,000 -- rather than the more accurate number of 50,000 — that would need to be planned for for 2030.²¹ Using the true population data results in a plan that is growth inducing according to La Mirada, which it argues "provides for a significant amount of excess capacity, a growth inducing effect." La Mirada's Opening Memo. at 23:3-23.

Second argues La Mirada, the objective of growth neutrality was dropped in the final EIR and HCPU. Thus it notes that the final version of the HCPU accommodates "more than double the natural amount of growth through 2030, dropp[ing] all pretense of growth neutrality, further showing an inconsistency with the ... Framework. [Par.] The result is an internally inconsistent General Plan. Is it growth accelerating and inducing, as provided for in the Land Use Element via the HCP, or is it growth accommodating and neutral, as required by the Framework.... Because of this inconsistency, the City cannot make the necessary findings required by Section 556." (La Mirada, Opening Memo. at 24:10-16).

City's Contentions

City advances several counter-arguments in defense of its actions.

On the key issue of whether the General Plan and Specific Plans must be consistent -- and how that requirement is achieved here -- City first acknowledges that a general plan must be "internally consistent and correlative" (City's Op. Memo. at 25:24-

²¹

Whether that was the reason to use the higher baseline, or not, the result is the same — a substantial error in the population baseline and in all planning aspects that rely on it for other impacts.

1 27), and then points out that City has broad discretion to balance the many competing
2 policies expressed in the general plan — and that balance “does not require
3 equivalence, but rather a weighing of pros and cons to achieve an acceptable mix”
4 (citing *Friends of Lagoon Valley v. City of Vacaville* [2007] 154 Cal.App.4th 807, 822
5 [quotations and citations omitted]). After noting the many factors and interests described
6 in the findings made in this case, City notes the role of a court reviewing such
7 arguments: “A reviewing court’s role is simply to decide whether the city officials
8 considered the applicable policies and the extent to which the proposed project
9 conforms with those policies. (*Id.*, at 816 [internal citations omitted]).

10 Specifically in response to Fix the City’s contentions,²² City argues that there was
11 no need to make a specific finding that the HCPU was consistent with Framework
12 Objective Element 3.3. (City’s Op. Memo. at 27:14-22). City’s argument is that the
13 HCPU is an amendment to a previous plan, the Hollywood Community Plan, which is
14 itself a part of the General Plan, and that the adoption or amendment of a general plan
15 is a legislative act -- and, pursuant to state law, “a city need not make explicit findings to
16 support its action.” *South Orange County Wastewater Auth. v. City of Dana Point* (2011)
17 196 Cal.App.4th 1604, 1619.

18 Further, City argues that General Plan amendments are governed by Charter
19 Section 555 rather than section 556, which does not require any specific findings. And,
20 to the extent that Section 556 applies, the findings it requires only need to show “that
21 the action is in substantial conformance with the purposes, intent and provisions of the
22 General Plan; it does not require a separate specific finding of consistency for each of
23 the thousands of policies and objectives contained in the General Plan.... The City’s 16
24 pages of General Plan consistency findings would easily satisfy any requirements
25 Section 556 would impose, if applied to the HCPU.” (City’s Op. Memo. at 27:28-28:7)

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27 ²²

28 City’s collateral estoppel arguments as to Fix the City were discussed and found
invalid, *ante*.

Applicable Law

1. Consistency

"[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.' (*Citizens of Goleta Valley v. Board of Supervisors* [1990] 52 Cal.3d 553, 570, 276 Cal.Rptr. 410, 801 P.2d 1161.) 'The consistency doctrine has been described as 'the linchpin of California's land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law.' *Corona – Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994, 21 Cal.Rptr.2d 803.) 'A project is consistent with the general plan ' "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." ' " "A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan." *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 [emphasis added].

"The general plan and its parts must be "an integrated, internally consistent and compatible statement of policies for the adopting agency." (Govt.C. 65300.5; see *Karlson v. Camarillo* (1980) 100 C.A.3d 789, 161 C.R. 260; *deBottari v. Norco* (1985) 171 C.A.3d 1204, 1210, 217 C.R. 790, *infra*, §1029 [referendum inconsistent with general plan is invalid]; *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado* (1998) 62 C.A.4th 1332, 1336, 1341, 74 C.R.2d 1 [although given project need not be in perfect conformity with each and every general plan policy, it must be compatible with objectives, policies, general land uses, and programs specified in general plan; some general plans are more specific than others, leaving less room for discretion].)

"If a general plan is to fulfill its function as a 'constitution' guiding 'an effective planning process,' a general plan must be reasonably consistent and integrated on its

1 face. A document that, on its face, displays substantial contradictions and
2 inconsistencies cannot serve as an effective plan because those subject to the plan
3 cannot tell what it says should happen or not happen. When the court rules a facially
4 inconsistent plan unlawful and requires a local agency to adopt a consistent plan, the
5 court is not evaluating the merits of the plan; rather, the court is simply directing the local
6 agency to state with reasonable clarity what its plan is." *Concerned Citizens of Calaveras*
7 *County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97.

8 The court in *Garat v. Riverside* (1991) 2 Cal.App.4th 259, *overruled on other*
9 *grounds in Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11
10 (discussed on this point in *Napa Citizens for Honest Government v. Napa County Bd. of*
11 *Supervisors* (2001) 91 Cal.App.4th 342, 388 [*Napa Citizens*], confirmed the application
12 of the consistency requirement to charter cities such as Los Angeles, explaining that
13 under Govt. Code sec. 65700(a), a charter city's general plan must contain the
14 mandatory elements required by Govt. Code sections 65300 et seq. and section 65700,
15 which construed together require not only that a charter city's general plan have the
16 mandatory elements of Govt. Code sec. 65302, but also that these elements be internally
17 consistent as required by Govt. Code sec. 65300.5. *Id.*, at 285, 287. See *Irvine v. Irvine*
18 *Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 875, 876, 879 [Govt.C.
19 65860(a) prohibition of inconsistent zoning ordinances applied to charter city that had
20 enacted ordinance requiring zoning and general plan consistency; hence, proposed
21 referendum inconsistent with general plan was properly declared invalid]. As colorfully
22 explained in *Napa Citizens, supra*, a "zoning ordinance that is inconsistent with the
23 general plan is invalid when passed [citations] and one that was originally consistent but
24 has become inconsistent must be brought into conformity with the general plan.
25 [Citation.] The Planning and Zoning Law does not contemplate that general plans will be
26 amended to conform to zoning ordinances. The tail does not wag the dog. The general
27 plan is the charter to which the ordinance must conform." *Id.*, at p. 389.

28 2. Standard for review of general plan/specific plan consistency issues

1 General plan consistency issues such as those presented by these parties are
2 reviewed under a particularly deferential standard. While a city has broad discretion to
3 weigh and balance competing interests in formulating development policies (*Federation*
4 *II, supra*, at p. 1196), a charter city's²³ general plan must be internally consistent.

5 The case upon which City relies sets out the standard to be applied here: "The
6 adoption or amendment of a general plan is a legislative act. [Citation.] A legislative act
7 is presumed valid, and a city need not make explicit findings to support its action.
8 [Citations.] A court cannot inquire into the wisdom of a legislative act or review the
9 merits of a local government's policy decisions. [Citation.] Judicial review of a legislative
10 act under Code of Civil Procedure section 1985²⁴ is limited to determining whether the
11 public agency's action was arbitrary, capricious, entirely without evidentiary support, or
12 procedurally unfair. [Citations.] A court therefore cannot disturb a general plan based on
13 violation of the internal consistency and correlation requirements unless, based on the
14 evidence before the city council, a reasonable person could not conclude that the plan is
15 internally consistent or correlative. [Citation.]" (*Federation of Hillside & Canyon Assns. v.*
16 *City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195, 24 Cal.Rptr.3d 543.) SOCWA
17 has the burden of proof to demonstrate that the amendment to the general plan
18 rendered the plan internally inconsistent. (See *Garat v. City of Riverside* (1991) 2
19 Cal.App.4th 259, 293, 3 Cal.Rptr.2d 504, disapproved on other grounds in *Morehart v.*
20 *County of Santa Barbara* (1994) 7 Cal.4th 725, 29 Cal.Rptr.2d 804, 872 P.2d 143.)"
21 *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196
22 Cal.App.4th 1604, 1618-1619 [*South Orange County*].

23 On the other hand, it is also true that direct conflict is not the litmus test for
24 general plan consistency. All three petitioners cite *Napa Citizens*, a leading case on this
25

26 ²³

27 There is no dispute about Los Angeles' status as a charter city.

28 ²⁴

Clearly a typographical error in the opinion; the citation should be to section 1085.

1 issue. And, City does not either rely on or seek to distinguish the holding of *Napa*
2 *Citizens* when discussing the consistency arguments made by petitioners.

3 In *Napa Citizens*, the court of appeal specifically addresses the consistency issue
4 in a way that the court in *South Orange County* does not. The *Napa Citizens* court
5 explains:

6 "We are of the opinion that the consistency doctrine requires more than that the
7 Updated Specific Plan recite goals and policies that are consistent with those set
8 forth in the County's General Plan. We also are of the opinion that cases such as
9 *FUTURE v. Board of Supervisors, supra*, 62 Cal.App.4th 1332, do not require an
10 outright conflict between provisions before they can be found to be inconsistent.
11 The proper question is whether development of the Project Area under the
12 Updated Specific Plan is compatible with and will not frustrate the General Plan's
13 goals and policies. If the Updated Specific Plan will frustrate the General Plan's
14 goals and policies, it is inconsistent with the County's General Plan unless it also
15 includes definite affirmative commitments to mitigate the adverse effect or
16 effects." *Id.*, at 379.

17 By contrast with *Napa Citizens*, the facts and procedural setting discussed in
18 *South Orange County* lead to the conclusion that it is of limited value; indeed it is readily
19 distinguishable from the present case. There, the issue of consistency with the general
20 plan was not presented to the trial court; and the question of conflict was far more limited
21 -- there, only whether a single zoning change was appropriate in the context of that
22 general plan — rather than the massive, multi-faceted set of issues addressed in the
23 HCPU. Further, the court of appeals there noted that no change could occur without
24 further action, including review by the Coastal Commission. *Id.*, at 1609.

26 Analysis

27 Applying these principles to the present case, City's opening argument in its
28 opposition, that it was not required to make findings in support of the HCPU, although

1 literally true, nevertheless lacks merit.²⁵

2 While Charter section 555 contains no requirement that findings be made, this
3 does not obviate the need for consistency. The consistency doctrine is, as noted, "the
4 linchpin of California's land use and development laws." *E.g., Families Unafraid, etc. v.*
5 *County Board of Supervisors, supra*, 62 Cal.App.4th at 1336.

6 Fix the City points to what it contends is a fundamental inconsistency between the
7 Framework and the HCPU, viz., City's failure to address the absence from the HCPU of
8 "policies that require monitoring of infrastructure to determine whether the growth
9 permitted in the Plan Update should continue at a given time. The City's Revised
10 Findings reveal how the Plan Update twists the monitoring requirements in Framework
11 Policy 3.3.2 (the infrastructure monitoring policy)..... The City's position is that the Plan
12 Update sufficiently addressed the infrastructure capacity of the area such that *no further*
13 *monitoring is required during implemental of the Plan Update. This hands-off policy is*
14 *completely contrary to the Framework Element's objective of continuous monitoring of*
15 *development activity.* By asserting that the Plan Update conclusively establishes the
16 ability of the infrastructure to absorb the level of development planned, the City thwarts
17 the Framework Element's policy of limiting development when capacity becomes
18 threatened. The failure to include a monitoring requirement makes the Plan Update
19 inconsistent with the Framework Element." Fix the City's Reply at 24:8-26 [first
20 emphasis in original; second emphasis added].

21 La Mirada's reply to City's arguments is multi-faceted.

22 (1) City's reliance on SCAG estimates is faulty and there is no substantial
23 evidence to support the validity of that 2005 SCAG estimate;

24 (2) there is internal inconsistency with the Framework's focus on "growth
25 neutrality" as the true data reveal that the HCPU is in actuality a plan to more than
26

27 ²⁵

28 It also is inconsistent as City concedes it was required to make findings in support of
the zoning changes called for by the HCPU, which it did.

1 double the population in Hollywood;

2 (3) City's plan to focus growth close to transit stations elevates one policy over
3 others, creating an inconsistency; and

4 (4) the 16 pages of findings used by City to justify its actions start from a false
5 premise — the misleading population data used by City which is "less than half what the
6 [HCPU actually] provides..... Accordingly, there is no evidence on which to base the
7 findings, and abuse of discretion is established. Code of Civil Proced. Sec. 1094.5(b)." (La Mirada Reply 17:26-18:3.)²⁶

8
9 City's reliance on the holding of *Napa Citizens, supra*, that "a governing body's
10 conclusion that a particular project is consistent with the relevant general plan carries a
11 strong presumption of regularity that can be overcome only by a showing of an abuse of
12 discretion" (id., at 357) is correct (City's Opposition Memo. at 8:15-19) — but on these
13 facts, circumstances and record — not sufficient. Petitioners' arguments on lack of
14 consistency, particularly those of Fix the City, on balance, overcome the presumption of
15 regularity and explain why adoption of the HCPU on this record constituted an abuse of
16 discretion.

17 The Court also concludes that the actions of City do constitute an abuse of
18 discretion. Fix the City, in particular, cogently sets forth the reasons (summarized
19 above). The fundamental inconsistency between the Framework and the HCPU on the
20 failure of the HCPU monitoring policy is completely contrary to the Framework's
21 essential component of continuous monitoring of development activity. There is a void
22 in an essential aspect of the HCPU where instead there should be a discussion of the
23 inter-plan/area impacts created by the HCPU. And, to the extent City relies on the

24
25 ²⁶

26 Citation of this statute is inapposite; perhaps an inadvertence comparable to the
27 typographical error noted in footnote 24, *ante*. General Plan adoption issues are
28 legislative acts reviewed by ordinary mandamus under Code of Civil Procedure section
1085. Govt. Code section 65301.5; *Yost v. Thomas* (1984) 36 Cal.3d 561, 570-571;
Federation II, supra, at 1195; see, generally, Miller & Starr, Calif. Real Estate Law, 3rd
Ed. Ch. 25:9 at p. 25-39 and fn. 32.

1 entirely discredited SCAG 2005 population estimate (with the substantial impact that has
2 on many facets of the HCPU), there is a fatal inconsistency between the HCPU and the
3 General Plan.

4 The HCPU cannot survive in its present form and substance in the face of these
5 very substantial inconsistencies. The HCPU is fatally flawed as a planning document as
6 it presently stands.

7 **City's Contentions Regarding the Tentative Decision**

8 City filed two sets of comments concerning the Tentative Decision, to which the
9 other parties responded. City's citation of *Neighbors for Smart Rail v. Exposition Metro*
10 *Line Construction Authority* (2013) 57 Cal.4th 439 is inapposite as this Court has
11 concluded that, in the particular circumstances of the present case, reliance on the
12 erroneous baseline was in fact prejudicial. Also, inapposite is City's contention
13 regarding newly enacted Government Code section 65755(c).

14 To be clear, this Court has not ruled on Fix the City's challenge to the use of the
15 Transportation Improvement and Mitigation Program (TIMP) as this Court finds that the
16 overall impact analysis to be factually flawed and legally inadequate.

18 **CONCLUSION²⁷**

19 For the reasons stated, petitioners are entitled to relief as follows:

20
21 (1) to a peremptory writ of mandate ordering respondents and defendants City
22 and City Council to (a) rescind, vacate and set aside all actions approving the HCPU and
23 certifying the EIR adopted in connection therewith and all related approvals issued in
24 furtherance of the HCPU, including but not limited to the text and maps associated with
25 the HCPU, the Resolution amending the Hollywood Community Plan, the adoption of
26

27 ²⁷

28 The relief set out below is the full relief to be awarded in the three cases. Any
argument made and not addresses is deemed rejected.

1 rezoning actions taken to reflect zoning changes contained in the HCPU, all
2 amendments to the General Plan Transportation and Framework Elements made to
3 reflect changes in the HCPU, adopting the Statement of Overriding Considerations,
4 adopting the Mitigation and Monitoring Program, and adopting Findings in support of the
5 foregoing; provided, however, that the phrase "all related approvals" refers only to those
6 quasi-legislative actions necessary to carry out the HCPU and the related CEQA
7 documents, and provided further, that the provisions hereof are not intended to order
8 that respondents rescind those adjudicatory approvals not challenged which City may
9 have made under the HCPU after its adoption by City; and (b) should City exercise its
10 discretion to amend the HCP, City is to do so in a manner that conforms to the policies
11 and objectives of the General Plan and the requirements of CEQA;

12
13 (2) to an injunction that respondents and defendants City and City Council, their
14 officers, employees, agents, boards, commissions and other subdivisions shall not grant
15 any authority, permits or entitlements which derive from the HCPU or its EIR until an
16 adequate and valid EIR is prepared, circulated and certified as complete and is
17 consistent with CEQA, CEQA Guidelines, and all other applicable laws, and until legally
18 adequate findings of consistence are made as required pursuant to the Charter of the
19 City of Los Angeles and other applicable laws;

20
21 (3) attorneys fees and costs as may hereafter be determined.

22
23 **ALLAN J. GOODMAN**
JUDGE

24 DATED: January 15, 2014

25 **ALLAN J. GOODMAN**
JUDGE OF THE SUPERIOR COURT

26
27
28

EXHIBIT 2

CITY OF LOS ANGELES

CITY CLERK'S USE

OFFICE OF THE CITY CLERK

ROOM 395, CITY HALL

LOS ANGELES, CALIFORNIA 90012

CALIFORNIA ENVIRONMENTAL QUALITY ACT**NEGATIVE DECLARATION**

(Article V — City CEQA Guidelines)

LEAD CITY AGENCY

Los Angeles City Planning Department

COUNCIL DISTRICT

ALL

PROJECT TITLE

ND-557-81-ORD

CASE NO.**PROJECT LOCATION**

CITYWIDE

PROJECT DESCRIPTION:

SEE ATTACHED SHEET

NAME AND ADDRESS OF APPLICANT IF OTHER THAN CITY AGENCY

CITYWIDE PLANNING DIVISION

FINDING:

- The City Planning Department Environmental Review Committee of the City of Los Angeles has determined that this project will not have a significant effect on the environment for the following reasons:

The ERC initial study indicates that no significant impacts are apparent which might result from this project's implementation.

This action is based on the project description given on the attached page.

PT ► SEE ATTACHED SHEET(S) FOR ANY MITIGATION MEASURES IMPOSED.

"Any written objections received during the public review period are attached together with the responses of the Lead City Agency."

THE INITIAL STUDY PREPARED FOR THIS PROJECT IS ATTACHED.**NAME OF PERSON PREPARING THIS FORM**

✓ David Garrett

TITLE

City Planner

TELEPHONE NUMBER

213/485-5776

ADDRESS200 N. Spring Street, Room 655
Los Angeles, CA 90012-4856**SIGNATURE (Official)**

Wm. E. Lillenberg, Chairman

DATE

PROJECT DESCRIPTION: The proposed ordinance provides for the subdivision of air space and mixed residential/commercial development on a citywide basis. R5 zone uses are permitted on commercial property located in regional centers. Commercial uses are permitted in the R5 zone in approved redevelopment project areas in the Central City and in other redevelopment project areas by conditional use. Yards in the C zones conform to C zone yard requirements in mixed use development except when adjoining residential properties.

CITY OF LOS ANGELES
OFFICE OF THE CITY CLERK
 ROOM 395, CITY HALL
 LOS ANGELES, CALIFORNIA 90012
CALIFORNIA ENVIRONMENTAL QUALITY ACT

**INITIAL STUDY
 AND CHECKLIST**

(Article IV — City CEQA Guidelines)

LEAD CITY AGENCY City Planning Department		COUNCIL DISTRICT A11	DATE 8-27-81
PROJECT TITLE/NO. Code amendment to provide for mixed residential/Commercial development and the subdivision of air space			CASE NO.
PREVIOUS ACTIONS CASE NO.	<input type="checkbox"/> DOES have significant changes from previous actions. <input type="checkbox"/> DOES NOT have significant changes from previous actions.		

PROJECT DESCRIPTION:
 The proposed ordinance provides for the subdivision of air space and mixed residential/commercial development on a Citywide basis. R5 zone uses are permitted on commercial property located in regional centers. Commercial uses are permitted in the R5 zone in approved redevelopment project areas in the Central City and in other redevelopment project areas by conditional use. Yards in the C zones conform to C zone yard requirements in mixed use development when adjoining residential properties.

PROJECT LOCATION

Citywide

PLANNING DISTRICT A11		STATUS: <input type="checkbox"/> PELIMINARY <input type="checkbox"/> PROPOSED <input type="checkbox"/> ADOPTED _____ date	
EXISTING ZONING Various	MAX. DENSITY ZONING	PROJECT DENSITY	
PLANNED LAND USE "	MAX. DENSITY PLAN	<input checked="" type="checkbox"/> DOES CONFORM TO PLAN <input type="checkbox"/> DOES NOT CONFORM TO PLAN	
PLAN DENSITY RANGE "	PROJECT DENSITY		

DETERMINATION (to be completed by Lead City Agency)

On the basis of the attached initial study checklist and evaluation:

NEGATIVE DECLARATION	<input checked="" type="checkbox"/> I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
CONDITIONAL NEGATIVE DECLARATION	<input type="checkbox"/> I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A CONDITIONAL NEGATIVE DECLARATION WILL BE PREPARED. (See attached condition(s))
ENVIRONMENTAL IMPACT REPORT	<input type="checkbox"/> I find the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

SIGNATURE

TITLE

INITIAL STUDY CHECKLIST (To be completed by Lead City Agency)**BACKGROUND**

PROPOSER NAME

Los Angeles City Planning Department (Frank Eberhard)

PHONE

485-3508

PROPOSER ADDRESS

Room 511, City Hall

AGENCY REQUIRING CHECKLIST

Los Angeles City Planning Department

DATE SUBMITTED

PROPOSAL NAME (if applicable)

ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required to be attached on separate sheets.)

1. EARTH. Will the proposal result in:

- a. Unstable earth conditions or in changes in geologic substructures?
- b. Disruptions, displacements, compaction or overcovering of the soil?
- c. Change in topography or ground surface relief features?.....
- d. The destruction, covering or modification of any unique geologic or physical features?
- e. Any increase in wind or water erosion of soils, either on or off the site?
- f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?.....
- g. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards?.....

YES

MAYBE

NO

		X
		X
		X
		X
		X
		X
		X
		X

2. AIR. Will the proposal result in:

- a. Air emissions or deterioration of ambient air quality?.....
- b. The creation of objectionable odors?.....
- c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?.....
- d. Expose the project residents to severe air pollution conditions?

See Attached
Comments

		X
		X
		X
		X

3. WATER. Will the proposal result in:

- a. changes in currents, or the course or direction of water movements, in either marine or fresh waters?.....
- b. Changes in absorption rates, drainage patterns, or the rate and amounts of surface water runoff?.....
- c. Alterations to the course or flow of flood waters?.....
- d. Change in the amount of surface water in any water body?.....
- e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?
- f. Alteration of the direction or rate of flow of ground waters?.....
- g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?.....
- h. Reduction in the amount of water otherwise available for public water supplies?
- i. Exposure of people or property to water related hazards such as flooding or tidal waves?
- j. Significant changes in the temperature, flow, or chemical content of surface thermal springs.

		X
		X
		X
		X
		X
		X
		X
		X
		X
		X

4. PLANT LIFE. Will the proposal result in:

- a. Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops and aquatic plants)?.....
- b. Reduction of the numbers of any unique, rare or endangered species of plants?
- c. Introduction of new species of plants into an area, or is a barrier to the normal replenishment of existing species?

		X
		X
		X

	YES	MAYBE	NO
5. ANIMAL LIFE. Will the proposal result in:			
a. Change in the diversity of species, or numbers of any species of animals (birds, land animals including reptiles, fish and shellfish, benthic organisms or insects)?.....			X
b. Reduction of the numbers of any unique, rare or endangered species of animals?.....			X
c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?.....			X
d. Deterioration to existing fish or wildlife habitat?.....			X
6. NOISE. Will the proposal result in:			
a. Increases in existing noise levels?.....			X
b. Exposure of people to severe noise levels?.....			X
7. LIGHT AND GLARE. Will the proposal produce new light or glare from street lights or other sources?			X
8. LAND USE. Will the proposal result in an alteration of the present or planned land use of an area?			
	Beneficial-see	attached	comments
9. NATURAL RESOURCES. Will the proposal result in:			
a. Increase in the rate of use of any natural resources?.....			X
b. Depletion of any non-renewable natural resource?.....			X
10. RISK OF UPSET. Will the proposal involve:			
a. A risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?			X
b. Possible interference with an emergency response plan or an emergency evacuation plan.			X
11. POPULATION. Will the proposal result in:			
a. The relocation of any persons because of the effects upon housing, commercial or industrial facilities?			
b. Change in the distribution, density or growth rate of the human population of an area?			
12. HOUSING. Will the proposal:			
a. Affect existing housing, or create a demand for additional housing?			
b. Have a significant impact on the available rental housing in the community?			
c. Result in demolition, relocation or remodeling of residential, commercial, or industrial buildings or other facilities?			
13. RIGHT OF WAY. Will the proposal result in:			
a. Reduced front/side lot area?			X
b. Reduced access?			X
c. Reduced off-street parking?			X
d. Creation of abrupt grade differential between public and private property?			X
14. Transportation/Circulation. Will the proposal result in:			
a. Generation of additional vehicular movement?			
b. Effects on existing parking facilities, or demand for new parking?..			
c. Impact upon existing transportation systems?.....			
d. Alterations to present patterns of circulation or movement of people and/or goods?			
e. Alterations to waterborne, rail or air traffic?.....			
f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?			
15. PUBLIC SERVICES. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:			
a. Fire protection?			
b. Police protection?.....			
c. Schools?			
d. Parks or other recreational facilities?.....			

See attached comments

YES MAYBE NO

16. ENERGY. Will the proposal result in:

- a. Use of exceptional amounts of fuel or energy?
 b. Increase in demand upon existing sources of energy, or require the development of new sources of energy?

X

X

17. UTILITIES. Will the proposal result in a need for new systems, or alterations to the following utilities:

- a. Power or natural gas?
 b. Communications systems?
 c. Water?
 d. Sewer or septic tanks?
 e. Storm water drainage?
 f. Solid waste and disposal?

X

X

X

X

X

X

18. HUMAN HEALTH. Will the proposal result in:

- a. Creation of any health hazard or potential health hazard (excluding mental health)?
 b. Exposure of people to potential health hazards?

X

X

19. AESTHETICS. Will the proposed project result in:

- a. The obstruction of any scenic vista or view open to the public?
 b. The creation of an aesthetically offensive site open to public view?
 c. The destruction of a stand of trees, a rock outcropping or other locally recognized desirable aesthetic natural feature?
 d. Any negative aesthetic effect?

X

X

X

X

20. RECREATION. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities?

X

21. CULTURAL RESOURCES:

- a. Will the proposal result in the alteration of or the destruction of a prehistoric or historic archaeological site?
 b. Will the proposal result in adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object?
 c. Does the proposal have the potential to cause a physical change which would affect unique ethnic cultural values?
 d. Will the proposal restrict existing religious or sacred uses within the potential impact area?

X

X

X

X

22. MANDATORY FINDINGS OF SIGNIFICANCE.

- a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?
 b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals.
 c. Does the project have impacts which are individually limited, but cumulatively considerable?
 d. Does the project have environmental effects which cause substantial adverse effects on human beings, either directly or indirectly?

X

X

X

X

* "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

DISCUSSION OF ENVIRONMENTAL EVALUATION

(Attach additional sheets if necessary)

Air - air pollution is related to traffic generation. It is anticipated that the proposed ordinance will encourage residential development in commercial centers which would otherwise be fully developed to commercial uses. To the extent that residential use displaces commercial development the impacts on traffic and therefore air pollution should be reduced. It is anticipated that more housing in centers will tend to reduce commuting and the associated air pollution by providing housing with in or close to the work area.

[Land Use. - The Director of Planning and others have determined that the proposed ordinance is consistent with the Concept, Citywide Plan, and local district plans. The following quotations are from Concept Los Angeles.

"It is the City's policy that a range of housing types, densities, and costs be encouraged. Where appropriate in Centers, housing is to be intermixed with compatible non-residential uses."

"In centers housing will be in the form of medium and high density apartments. In the larger centers, most residential structures will be medium - rise with a height of four to eight stories or high-rise with a height of nine stories or more. Housing may also occupy the upper floors of high rise commercial buildings."

Since the proposed ordinance is consistent with the various City plans no adverse impact is anticipated. EIR's have been approval for the Concept, Citywide Plan, and all recent district plans evaluating the impacts of these proposals.

[Population/Housing - The proposed ordinance should have a positive effect in this area since it will encourage the development of housing in the regional centers. Such housing will make it possible for more people to live close to their work thereby reducing the energy consumption and pollution associated with commuting. More residents in commercial centers will also contribute to the revitalization of these centers. The proposal encourages the provision of badly needed housing which is in short supply in the City in locations where it would not otherwise be provided.

Transportation/Circulation - The City Traffic Department indicates that residential development in the centers is preferable to commercial development from a traffic standpoint. Hotels tend to generate a more uniform traffic flow throughout the day and do not contribute as much to peak hour congestion as would be expected with commercial development. Condominiums generate peak hour traffic but the direction of flow would be favorable for units located in the centers.

Public Services - The effect of the proposed ordinance on the need for public services cannot be determined at this time since it is not known what mix of commercial and residential use will eventually evolve. EIR's will be prepared for individual projects as Tract Maps are filed for air space subdivisions and condominiums.

EXHIBIT 3

THE SILVERSTEIN LAW FIRM, APC
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Attorneys for Petitioner
LA MIRADA AVENUE NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD

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

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

Petitioner,

vs.

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

Respondents.

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervenor.

Case No. BS138369

[Related to Case Nos. BS138580 and
BS138370]

**PETITIONER LA MIRADA AVENUE
NEIGHBORHOOD ASSOCIATION
OF HOLLYWOOD'S OPENING
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF
MANDATE**

[Filed concurrently with Request for
Judicial Notice]

Date: September 16-17, 2013

Time: 9:30 a.m.

Dept.: P

[Hon. Allan J. Goodman]

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6	Los Angeles City Charter § 556.....	5, 24
7	Los Angeles City Charter § 556(a)(1).....	5
8	Los Angeles City Charter § 556(a)(2).....	5
9	Los Angeles City Charter § 556(a)(4).....	5
10	Los Angeles City Charter § 558.....	5
11	Los Angeles City Charter § 558(a)	22
12	Webster's Third New International Dictionary, Unabridged, Merriam- Webster, 2002, http://unabridged.merriam-webster.com	18

1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT.**

2 Petitioner La Mirada Avenue Neighborhood Association of Hollywood ("La
3 Mirada") challenges Respondents City of Los Angeles and the Los Angeles City Council's
4 (collectively "City") June 19, 2012: (1) approval of the Hollywood Community Plan
5 Update ("HCP Update"); and (2) certification of an EIR for the HCP Update (sometimes
6 collectively the "Project.")

7 The HCP is part of the Los Angeles General Plan Land Use Element, designed to
8 guide development in an approximately 25-square-mile area centered on Hollywood.

9 The City spent seven years preparing an EIR for the HCP Update, but the result is a
10 legally inadequate document, violating CEQA, Public Resources Code § 21000 *et seq.*, in a
11 number of areas. La Mirada focuses on the three most significant CEQA violations herein.
12 Each is fatal to certification of the EIR and approval of the HCP Update:

13 (1) The City failed to use a proper population baseline, relying on outdated and
14 inflated population estimates that were superseded by the 2010 U.S. Census. Even when
15 provided with the Census data, the City refused to use it, resulting in a distorted and stilted
16 environmental analysis with no basis in substantial evidence.

17 (2) The City failed to analyze a range of reasonable alternatives to the Project.
18 Indeed, based on undisputed facts in the record, the City failed to analyze *any* alternatives.
19 As a matter of law, the failure to consider a "reasonable range of alternatives" is fatal to the
20 validity of an EIR. Laurel Heights Improvement Assn. v. Regents of University of
21 California (1988) 47 Cal.3d 376, 390 ("Laurel Heights I"); CEQA Guidelines § 15126.6(a).

22 (3) The City failed to recirculate a Draft EIR after the City had added
23 significant new information as late as five days before certification of the EIR.

24 In addition and with regard to a non-CEQA issue:

25 (4) The City failed to make required consistency findings between the Project
26 and the Los Angeles General Plan.

27 The EIR and Project approvals must be invalidated. The law allows no other
28 outcome.

1 **II. FACTUAL AND PROCEDURAL HISTORY.**

2 The Hollywood Community Plan is part of the City's General Plan. Along with 34
3 other community plans, it makes up the Land Use Element of the General Plan (AR
4 45:6674),¹ an element mandated by law. Los Angeles City Charter § 554(b);² Govt. Code
5 § 65302(a). The HCP guides development in an area of about 25 square miles roughly
6 extending south from the cities of Burbank and Glendale, west of the Golden State
7 Freeway, east of West Hollywood and Beverly Hills, and a relatively small strip of land
8 south of West Hollywood between La Brea Avenue and La Cienega Boulevard. (AR
9 26:3045.)

10 The HCP was adopted in 1973 and updated in 1988. (4AR 47:697.) The current
11 HCP consists of the revised text of the plan. That contains its goals and policies, and a
12 Long Range Land Use Diagram, which is a map identifying all land use designations in the
13 HCP area. (AR 47:6987-6988.) The HCP Update also includes a number of implementing
14 actions, such as General Plan amendments and zone changes. (AR 26:3048, 47:6987-
15 6988.)

16 The City prepared an Initial Study (AR 39:6228-6229) and issued a Notice of
17 Preparation of a Draft EIR on April 28, 2005. (AR 39:6225.) The Draft EIR was released
18 on March 3, 2011. (AR 26:2994, 27:3338.) The Final EIR was released in October 2011.
19 (AR 27:3336.) La Mirada, a community organization in Hollywood whose members live
20 and work in the HCP area (AR 417:15704), commented at each step of the process, both in
21 writing (AR 252:13669-13670, 417:15074-15082, 429:15320-15325, 575:16635-16639,

22
23 ¹ "AR" denotes the control set of documents initially provided by the City for
24 preparation of the administrative record. The first number is the document number and the
25 second is the page number. "RL" denotes the so-called Reference Library, which contains
26 additional documents that this Court ordered the City to provide for inclusion, following La
27 Mirada's successful motion to compel. Citations from the Reference Library are "RL"
28 followed by the page number. The Reference Library was Bates stamped by the City in
that manner.

² All Los Angeles City Charter sections and dictionary definitions cited herein
are contained in the concurrently filed Request for Judicial Notice.

1 646:17219-17223, 749:18104-18113, 794:19078-19080, 830:20922-20925, 871:21173-
2 21174) and in public testimony. (AR 59:11748-11750, 61:11918-11919, 65:12236-12237.)
3 It is one of several groups that opposed the City's approval of the Project. (See, e.g., AR
4 414:14983-14984, 415:14985-14994, 509:16757-16758, 676:17507-17508.)

5 The City Planning Commission recommended approval of the HCP Update on
6 December 11, 2011. (AR 4:7-8.) However, on May 8, 2012, the City Council's Planning
7 and Land Use Management Committee submitted the HCP Update to the full City Council
8 for consideration, without making a recommendation (AR 52:10687), and did so only after
9 first going into closed session. (AR 64:12210-12213.) The full City Council approved the
10 Project and certified the Final EIR on June 19, 2012. (AR 1:1.)

11 Based on public comment and testimony, two additions were made to the Final EIR
12 between the time the document was released and the time the Project was approved. The
13 City did not recirculate a new Draft EIR to include this significant new information as
14 required under CEQA, calling none of it significant. (34:6164-6165.) The first addition,
15 dated May 18, 2012, responded to specific comments made by the South Coast Air Quality
16 Management District. (AR 36:6151-6152.) A second and more extensive 33-page addition
17 to the Final EIR, addressing numerous issues, including baseline/capacity, alternatives,
18 general plan consistency, mitigation monitoring and environmental impacts ranging from
19 air quality to geology, was made on June 14, 2012 – a mere 5 days before City Council
20 approval. (AR 38:6188-6221.)

21 The City filed a Notice of Determination on June 21, 2012. (AR 1:1.) This lawsuit
22 timely followed.³

23
24
25
26 ³ This litigation is one of three related lawsuits challenging approval of the
27 HCP Update and its EIR certification. The other two are Fix the City, Inc. v. City of Los
28 Angeles, et al., LASC Case No. BS138580 and SaveHollywood.org, et al. v. City of Los
Angeles et al., LASC Case No. BS138370. The Petitioners in the three related cases are
referred to collectively as "Petitioners."

1 **III. STANDARD OF REVIEW.**

2 **A. Standard of Review for Determining Violation Of CEQA.**

3 “The foremost principle under CEQA is that the Legislature intended the act to be
4 interpreted in such manner as to afford the fullest possible protection to the environment
5 within the reasonable scope of the statutory language.” Laurel Heights I, supra, 47 Cal.3d
6 at 390. If CEQA is scrupulously followed, the public will know the basis on which its
7 responsible officials either approve or reject environmentally significant action, and the
8 public, being duly informed, can respond accordingly to action with which it disagrees.
9 [Citations.] The EIR process protects not only the environment but also informed self-
10 government. Id. at 392.

11 “An EIR must include detail sufficient to enable those who did not participate in its
12 preparation to understand and to consider meaningfully the issues raised by the proposed
13 project.” Id. at 405. In a challenge to the sufficiency of an EIR, a Court’s inquiry extends
14 to whether there was a prejudicial abuse of discretion. Pub. Res. Code § 21168.5. “Abuse
15 of discretion is established if the agency has not proceeded in a manner required by law or
16 if the determination or decision is not supported by substantial evidence.” Id.; Laurel
17 Heights I, supra, 47 Cal.3d at 392. “A prejudicial abuse of discretion occurs if the failure
18 to include relevant information precludes informed decision-making and informed public
19 participation, thereby thwarting the goals of the EIR process.” San Joaquin Raptor Rescue
20 Center v. County of Merced (2007) 149 Cal.App.4th 645, 653; Sunnyvale West
21 Neighborhood Assn. v. City of Sunnyvale (2010) 190 Cal.App.4th 1351, 1392. As such,
22 “the existence of substantial evidence supporting the agency’s ultimate decision on a
23 disputed issue is not relevant when one is assessing a violation of the information
24 disclosure provisions of CEQA.” Association of Irrigated Residents v. County of Madera
25 (2003) 107 Cal.App.4th 1383, 1392. The need to be alert for agency misconduct in the
26 CEQA context is especially strong where, as here, the agency is the project proponent.
27 Deltakeeper v. Oakdale Irrigation Dist. (2001) 94 Cal.App.4th 1092, 1109.

1 The “reviewing court is not to ‘uncritically rely on every study or analysis
2 presented by a project proponent in support of its position. A clearly inadequate or
3 unsupported study is entitled to no judicial deference.’ [Citations.]” Berkeley Keep Jets
4 Over the Bay Comm. v. Board of Port Commr’s (2001) 91 Cal.App.4th 1344, 1355. The
5 Court “must ensure strict compliance with the procedures and mandates of [CEQA].” Save
6 Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87
7 Cal.App.4th 99, 118.

8 The violations of CEQA here present purely legal issues for the Court’s
9 determination. Accordingly, the *de novo* standard of review applies, not the substantial
10 evidence standard of review. See Citizens for Jobs and the Economy v. County of Orange
11 (2002) 94 Cal.App.4th 1311, 1324; Association of Irrigated Residents, supra, 107
12 Cal.App.4th at 1392.

13 B. Standard of Review for Determining Violation Of General Plan
14 Consistency Requirement.

15 Pursuant to Los Angeles City Charter Section 556, “when approving any matter
16 listed in Section 558 [of the Charter], the City Planning Commission and the Council shall
17 make findings showing that the action is in substantial conformance with the purposes,
18 intent and provisions of the General Plan.” Charter Section 558 includes amendments to
19 the General Plan, zone changes, and public projects. Los Angeles City Charter §
20 556(a)(1)-(2), (4). See also Govt. Code § 65300.5.

21 A claim that the HCP Update creates an internal inconsistency within the General
22 Plan, thus preventing findings of conformity, is governed by the abuse of discretion
23 standard. Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001)
24 91 Cal.App.4th 342, 357. “Abuse of discretion is established if the respondent has not
25 proceeded in the manner required by law, the order or decision is not supported by the
26 findings, or the findings are not supported by the evidence.” Code Civ. Proc. § 1094.5(b).
27 Under this standard, a court will not “disturb a general plan based on violation of the
28 internal consistency and correlation requirements unless, based on the evidence before the

city council, a reasonable person could not conclude that the plan is internally consistent or correlative.” Federation of Hillside and Canyon Associations v. City of Los Angeles (2004) 126 Cal.App.4th 1180, 1195 (“Federation II”). As will be discussed below, a reasonable person could not conclude that the HCP Update is internally consistent or correlative with the General Plan.

IV. THE EIR MUST BE INVALIDATED BECAUSE THE CITY RELIES ON A FALSE POPULATION BASELINE.

The foremost issue here is that the City used knowingly false and inaccurate population estimates to establish a “baseline” environmental condition from which analysis and impacts were then measured. Starting from the wrong population base “distorts a project’s true environmental impacts and may also lead to the failure to consider feasible alternatives and mitigation measures.” Cherry Valley Pass Acres and Neighbors v. City of Beaumont (2010) 190 Cal.App.4th 316, 339-340.⁴

“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published This environmental setting will *normally* constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” CEQA Guidelines § 15125(a) (emphasis added.) This is often referred to as the “baseline.”

The City’s Draft EIR relied on a baseline population of 224,426 persons in the HCP area, using 2005 as the base year. (AR 26:3099.) The EIR noted that this baseline was an estimate derived from the 2004 Southern California Association of Governments (“SCAG”) Regional Transportation Plan (“RTP”). (AR 26:3100.)⁵

⁴ A CEQA baseline case is currently before the California Supreme Court. Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, et al., Case No. S202828, was argued and submitted on May 7, 2013.

⁵ While the 2004 SCAG RTP is listed in the EIR as the reference for the estimate, the document does not appear in the Administrative Record. Correspondence from SCAG in the Administrative Record provides figures for Los Angeles, but not for the HCP area. (See AR 124:12919-12920.)

1 The Draft EIR also relied on a forecast of 244,302 residents in the HCP area in the
2 year 2030 for analytic purposes. (AR 26:3104.) This figure was also derived from the
3 2004 SCAG RTP. (AR 26:3009, 3100.)

4 The EIR thus anticipated a population increase of 20,176 people during the plan
5 horizon. With these SCAG figures in mind, the EIR analyzed what it referred to as a
6 “reasonable expected level of development” slightly higher than the SCAG 2030 forecast,
7 estimating a 2030 population of 249,062 – a population increase of 24,636 persons. (AR
8 6735-6736.)

9 However, prior to release of the Draft EIR, 2010 U.S. Census data for the HCP
10 area was published. It showed that SCAG significantly overestimated the actual
11 population. The 2010 Census counted only 198,288 people in the HCP area – about 26,000
12 fewer people than the SCAG 2005 estimate. (AR 32:5966.)⁶

13 Thus, while the Draft EIR had only analyzed the Project based on a population
14 increase of 24,636, the Census data showed the HCP Update would actually accommodate
15 a population increase of 50,744 – more than double that analyzed in the Draft EIR.

16 When the objection was raised that the City needed to correct the baseline by using
17 the 2010 Census data, the City took the position that the CEQA Guidelines gave it no
18 discretion to change the population baseline from the SCAG 2005 *estimate* to the 2010
19 U.S. Census *actual* data. (AR 27:3630-3621, 28:5307.) However, after the Final EIR had
20 been released and in the face of continued criticism over the use of an incorrect baseline
21 (see, e.g., AR 575:16635-16638, 652:17247-17248, 751:18125-18126), the City added an
22 alternate position: the SCAG 2005 estimate was reasonable, even in light of the 2010 U.S.
23 Census data. (AR 38:6205.) Neither position finds support in the law.

24 With reference to CEQA Guidelines Section 15125(a), quoted supra, use of the
25 word “normally” in the Guidelines indicates neither a rigid nor inflexible requirement.
26 “Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for

27 ⁶ Using the 2010 Census data, La Mirada determined that the figure was
28 actually 197,085 persons. (AR 32:5866-5867.)

determination of the existing conditions baseline.” Sunnyvale West Neighborhood Assn., supra, 190 Cal.App.4th at 1380, citing Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 328. “In some cases, conditions closer to the date of the project is approved are more relevant to a determination of whether the project’s impacts will be significant.” Save Our Peninsula, supra, 87 Cal.App.4th at 125. When it is known with certainty that a surrounding condition will change prior to certification of a Final EIR, the baseline must be changed to reflect that knowledge. Mira Monte Homeowners Assn. v. County of Ventura (1985) 165 Cal.App.3d 357 (identification of additional wetlands made a few days before proposed certification of FEIR); Citizens for East Shore Parks v. California State Lands Comm. (2012) 202 Cal.App.4th 549, 563 (“[A]gencies not only can, but should, make appropriate adjustments, including to the baseline, as the environmental review process unfolds”).

Implicit in this is that the environmental setting must be based on substantial evidence. Cherry Valley Pass, supra, 190 Cal.App.4th at 337 (noting that determination of a proper baseline can be difficult when physical conditions are subject to fluctuation, difficult to discern because there is little historical data, or when appropriate studies have not been done); Sunnyvale West, supra, 190 Cal.App.4th at 1375 (“[A]n agency enjoys the discretion to decide, in the first instance, exactly how the *existing* physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence” [emphasis in original].)

For most categories analyzed under CEQA, substantial evidence to support a baseline is relatively easy to determine: noise can be measured, wetlands can be delineated, vehicle traffic can be counted. When discussing population, however, agencies must often rely on estimates, as actual counts only occur every ten years with the decennial U.S. Census.

But when Census data more recent than population estimates become available, as occurred here, that data become the population figure supported by substantial evidence. The actual Census count constitute the “real conditions on the ground.” Save Our

1 Peninsula, supra, 190 Cal.App.4th at 121. In the case of significant discrepancies, like the
2 difference in population of more than 26,000 people – which translates to more than a
3 100% discrepancy over the prior projected increase – substantial evidence no longer
4 supports use of the 2005 estimate as the baseline.

5 The City's own CEQA Thresholds Guide recognizes this in its discussion of the
6 use of population estimates:

7 “The City of Los Angeles uses two different estimates of its
8 population. The first is prepared by the California Department
9 of Finance (DOF) and provided to SCAG. For purposes of
10 conformity with the requirements of these other agencies, the
11 City uses this estimate when and where appropriate. The City
12 Planning Department prepares an estimate of its population
13 based on a number of locally derived factors including:
14 building and demolition permits issued, school enrollments,
15 and the percentage of active electric meters. The City
16 Planning Department estimates are used for planning purposes
in the City of Los Angeles. *It should be noted that both sets of
numbers are estimates and, therefore, only close
approximations of the actual population. Every 10 years
these estimates are reconciled by the U.S. Census.*” (AR
30:5468; emphasis added. See also 29:5119-5120.)

17 Here, the City failed to reconcile (read: correct) its use of the SCAG 2005 estimate
18 with the 2010 U.S. Census data, as required by its own Thresholds of Significance. (AR
19 26:3011.) The City's failure to rely on the 2010 U.S. Census data not only violates its own
20 Thresholds of Significance, but it results in a wildly inaccurate baseline by which
21 environmental impacts of the HCP Update were incorrectly and misleadingly measured.
22 What may have been reasonable in 2005 no longer had substantial evidence to support it.
23 The City simply used wrong data when better, accurate and current data existed and should
24 have been used instead. The failure to use accurate and current population data constitutes
25 a failure to proceed in a manner required by law, Sunnyvale West, supra, 190 Cal.App.4th
26 at 1383, and thus a prejudicial abuse of discretion occurred, rendering the EIR invalid.
27 Save Our Peninsula, supra, 87 Cal.App.4th at 128.

V. THE MINIMAL ANALYSIS THE CITY CLAIMS TO HAVE DONE
UNDER THE PROPER BASELINE IS LEGALLY INADEQUATE.

To the end, the City maintained that the 2005 SCAG estimate “was a reasonable estimate at the time it was made and remains a reasonable estimate of the population in Hollywood.” (AR 38:6205.) However, when faced with the inconvenient truth of the 2010 Census data, the City knew it had a problem and scrambled to add some analysis to the Final EIR using the 2010 Census data as the environmental setting.⁷

That analysis was too little – as fictional and as inaccurate as the analysis that preceded it. It was also too late – a legally adequate analysis should have been contained in the Draft EIR.

A. What Analysis The City Claims To Have Done Using The 2010 Census
Data Is Too Little.

When the City was provided with and ultimately acknowledged the 2010 Census data, it undertook a cursory analysis of any difference in traffic impacts. Other than this slight window dressing, the City engaged in no real analysis of impacts from the increased population delta. (RL 23216.) As the criticism for its adherence to a discredited baseline continued, the City attempted some last-minute analysis of HCP Update impacts using the 2010 Census data. (AR 38:6172-6174.) This second set of revisions to the Final EIR generally asserts that accommodating 50,744 new residents will somehow have less impact than accommodating 24,636 new residents. It does so by using an increase in the number of dwelling units to make conclusions about population-based impacts, such as public service needs or resource consumption. (See RL 20041.) These assertions lack any underlying substantial evidence to support them, and are entitled to no deference.

1. Utilities.

The treatment of water resources under the 2010 U.S. Census data is limited to a single sentence, “[r]esidential water consumption is based on residential units not

⁷ This should be viewed as an admission against interest by the City as to the other EIR study topics where the City still refused to use the 2010 Census data as the basis for its analysis of the Project’s environmental impacts.

1 population and therefore using the 2010 Census data would show less of an impact as
2 compared to using the 2005 data.” (AR 38:6173.) The statement is nonsense. Residential
3 units do not consume water. People do. Measuring water consumption by residential land
4 does nothing more than identify where the water is being consumed, not who is consuming
5 it, and that people who live in houses use more water than people who live in apartments.
6 (AR 26:3153.) The statement is also incorrect in implying no per capita consumption
7 figures exist. According to the Draft EIR, “[t]he average per capita consumption [in Fiscal
8 Year 2006/07] was 141 gallons per person per day.” (AR 26:3150.)

9 What the City actually asserts is that using the 2010 Census data as the baseline –
10 showing *fewer* people than the SCAG 2005 estimate – will show *greater* water
11 consumption than using the SCAG 2005 estimate as the baseline, thus making the HCP
12 Update’s impact on water resources less when using the SCAG 2005 estimate. No support
13 is offered for this assertion, rendering the analysis, such as it is, insufficient to meet the
14 requirements of CEQA. Citizens To Preserve the Ojai v. County of Ventura (1985) 176
15 Cal.App.3d 421, 429 (“[a] conclusory statement ‘unsupported by empirical or
16 experimental data, scientific authorities, or explanatory information of any kind’ not only
17 fails to crystallize the issues [citation] but ‘affords no basis for a comparison of the
18 problems involved with the proposed project and the difficulties involved in the
19 alternatives.’ [Citation.]” [Citations.]”); Berkeley Keep Jets Over the Bay, *supra*, 91
20 Cal.App.4th at 1355.

21 The same is true for the last-minute treatment of wastewater. As with its single
22 sentence discussing water, the City asserts that wastewater generation is based on
23 residential units, not population (AR 38:6173), thus trying to convince the reader that the
24 198,288 people counted by the 2010 Census generated more sewage than the 224,426
25 people estimated by SCAG to reside in the HPC area in 2005. Again, the City’s problem is
26 that it confuses where sewage is generated with who generates it. People generate sewage.
27 Buildings do not. Moreover, a consulting sanitary engineer with over 30 years’ experience
28 noted that use of the SCAG 2005 estimate as the baseline means that “the impact of an

1 additional 3,176,000 gallons per day of sewage is unaccounted for, an amount that “could
2 easily overwhelm parts of the sewer system,” a system for which the Bureau of Sanitation
3 has already “recommend[ed] 59 future sewer repair projects, 314 sewer renewal projects,
4 and 1054 sewer replacement projects” – and those just for the secondary sewers. (AR
5 646:17222-17226.)

6 This thus leaves the City with no evidence for its assertion. Its discussion of
7 wastewater using 2010 Census data is insufficient to meet the requirements of CEQA.
8 Citizens To Preserve the Ojai, supra, 176 Cal.App.3d at 429; Berkeley Keep Jets Over the
9 Bay, supra, 91 Cal.App.4th at 1355.

10 The same is true for the last-minute treatment of energy resources and solid waste.
11 The City tries to convince the reader that 198,288 people use more energy and generate
12 more solid waste than 224,426 people. (AR 38:6173.) People use energy. People generate
13 solid waste. Houses and apartments do not. The City confuses who consumes energy and
14 who generates solid waste with where it is consumed or generated. The City is again left
15 with no support for its assertion. Accordingly, its “shoot-from-the-hip” discussion of
16 energy resources and solid waste is also insufficient to meet the requirements of CEQA.
17 Citizens To Preserve the Ojai, supra, 176 Cal.App.3d at 429; Berkeley Keep Jets Over the
18 Bay, supra, 91 Cal.App.4th at 1355.

19 2. Public Safety Services.

20 The City’s last-minute analysis of fire protection services merely states that
21 “[u]sing the 2010 baseline would show less impact in terms of dwelling unit increases from
22 2010 to the proposed 2030 plan.” (AR 38:6172.) The threshold of significance for impacts
23 on fire protection, however, is not tied to dwelling units. Rather, “a significant impact
24 would occur if the implementation of the Proposed Plan would . . . require the unplanned
25 upgrading or improvements of existing fire protection equipment or infrastructure due to
26 proposed land use designation changes.” (AR 26:3113.) By failing to tie the conclusion to
27 the threshold of significance, the City has failed to disclose the “analytic route the . . .
28 agency traveled from evidence to action.” Laurel Heights I, supra, 47 Cal.3d at 404.

1 The brief discussion of police service impacts suffers similar flaws. The discussion
2 in the second set of revisions begins, “[a]s noted on page 4.3-9 [of the EIR], police
3 deployment is based on a number of factors and cannot be precisely calculated on police-
4 need-per-population standards.” (AR 38:6172.) That is not, however, quite what the EIR
5 says. The complete sentence in the EIR is “[d]eployment of police officers to existing area
6 stations in the City, however, is based on a number of factors and cannot be precisely
7 calculated on police-need-per-population standards *alone*. (AR 26:3118 [emphasis
8 added].) This is an acknowledgment that population increase is one factor in determining
9 the impact of the HCP Update on police services. The EIR even notes the existence of a
10 police officer per population standard and determined baseline staffing requirements based
11 on the estimated population. (*Id.*; see also AR 414:14983-14984.) By fudging the criteria
12 used to determine impacts, the City’s last-minute attempt to analyze police services under
13 the 2010 Census thus fails. See Mani Bros. Real Estate Group v. City of Los Angeles
14 (2007) 153 Cal.App.4th 1385, 1405 (“Viewed accordingly, we find, as did the trial court,
15 that the conclusory assertion in the 2005 Addendum that the Modified Project will have an
16 insignificant impact on the provision of police services is not supported by substantial
17 evidence”).

18 B. What Analysis The City Claims To Have Done Using The 2010 Census
19 Data Is Too Late.

20 Even if the City properly analyzed the impacts of the HCP using the 2010 Census
21 data as the correct population baseline (and La Mirada vigorously disputes that the City
22 did), that analysis came far too late in the process to meet the requirements of CEQA. It
23 did not occur in the Draft EIR. It did not occur in the Final EIR, released October 7, 2011.
24 (RL 26339-26340.) It did not occur in the First Addition to the Final EIR, released May
25 18, 2012. (AR 36:6151-6152.) What little analysis the City will claim it conducted based
26 on use of the correct population data did not occur until a Second Addition to the Final
27 EIR, released on June 14, 2012 – only 5 days before City Council approval of the HCP
28 Update and certification of the EIR. (AR 38:6189, 6205-6208; 2:3.)

1 The correct baseline, however, must be contained in the Draft EIR – the
2 environmental document that must be circulated for public review and comment under
3 Public Resources Code Section 21091. That review may not be deferred to agency
4 responses in a Final EIR. “*Draft* EIRs shall contain the information required by
5 [Guidelines] Sections 15122 through 15131.” CEQA Guidelines § 15120(c), emphasis
6 added; see also CEQA Guidelines § 15362(a) (“Draft EIR means an EIR containing the
7 information specified in Sections 15122 through 15131”). The information required by
8 CEQA Guidelines Sections 15122 through 15131 to be in the Draft EIR, of course,
9 includes the information required by Guidelines Section 15125, which requires a
10 description of the environmental setting, including baseline population.

11 The public disclosure of an accurate environmental setting in the Draft EIR is
12 mandatory and critical. The Court of Appeal in Mountain Lion Coalition v. Fish & Game
13 Comm. (1989) 214 Cal.App.3d 1043, explained this rule:

14 “If we were to allow the deficient analysis in the draft EID to
15 be bolstered by a document that was never circulated for
16 public comment ... we would be subverting the important
17 public purposes of CEQA. Only at the stage when the draft
18 EID is circulated can the public and outside agencies have the
19 opportunity to analyze a proposal and submit comment. No
20 such right exists upon issuance of a final EID unless the
21 project is substantially modified or new information becomes
22 available. [Citation.] To evaluate the draft EID in
23 conjunction with the final EID in this case would only
24 countenance the practice of releasing a report for public
25 consumption that hedges on important environmental issues
26 while deferring a more detailed analysis to the final EID that is
27 insulated from public review.”

28 Id. at 1052; see also CEQA Guidelines § 15020 (lead agency may not rely on comments
from other agencies and citizens “as a substitute for work CEQA requires the lead agency
to accomplish”). Thus, not only by failing to use the 2010 Census data as the population
baseline, but also by failing to use it in a Draft EIR, the City has failed to proceed in a
manner required by law, and an abuse of discretion has occurred.

1 **VI. SEPARATELY, THE EIR MUST BE INVALIDATED BECAUSE IT**
2 **FAILED TO ANALYZE A REASONABLE RANGE OF ALTERNATIVES.**

3 As our Supreme Court has held: “Mitigation and *alternatives discussion forms the*
4 *core of the EIR.*” In re Bay-Delta Programmatic Environmental Impact Report
5 Coordinated Proceedings (2008) 43 Cal.4th 1143, 1162 (emphasis added).

6 Pursuant to CEQA Guidelines § 15126.6(a), “[A]n EIR shall describe a range of
7 reasonable alternatives to the project . . . which would feasibly attain most of the basic
8 objectives of the project but would avoid or substantially lessen any of the significant
9 effects of the project, and evaluate the comparative merits of the alternatives.” Id.
10 (emphasis added). This regulation is “intended to assist public agencies in systematically
11 identifying both the significant effects of proposed projects and the feasible alternatives or
12 feasible mitigation measures which will avoid or substantially lessen such environmental
13 effects.” Pub. Res. Code § 21002.

14 “Each case must be evaluated on its facts, which in turn must
15 be reviewed in light of the statutory purpose. . . . [A]n EIR
16 for any project subject to CEQA review must consider a
17 reasonable range of alternatives to the project, or to the
18 location of the project, which: (1) offer substantial
19 environmental advantages over the project proposal [citation];
20 and (2) may be ‘feasibly accomplished in a successful manner’
21 considering the economic, environmental, social and
22 technological factors involved. [Citations.]” Citizens of
23 Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553,
24 566; emphasis added (“Goleta II”)

25 The alternatives to be considered under the two Goleta II parameters are the
26 alternatives that must be reviewed in-depth in an EIR. Id. at 569; see Preservation Action
27 Council v. City of San Jose (2006) 141 Cal.App.4th 1336, 1350-1351 (“The EIR is
28 required to make an in-depth discussion of those alternatives identified as at least
potentially feasible”); CEQA Guidelines § 15126.6(f) (“The range of feasible alternatives
shall be selected and discussed in a manner to foster meaningful public participation and
informed decision making”).

The HCP Update EIR fails to provide a range of reasonable alternatives. Indeed, the problems with the City's discussion of alternatives go much further than a lack of a reasonable range. The EIR purports to provide three alternatives. In reality, however, it provides none – a violation of CEQA's mandate that the EIR must analyze a "range of reasonable alternatives." CEQA Guidelines § 15126.6(c).

The first claimed “alternative” is the Project itself – the HCP Update. (AR 26:3024, 3308-3309.) A project, however, cannot be an alternative to itself. Pub. Res. Code § 21100(b)(4) (An EIR must contain a “detailed statement setting forth ... alternatives to the proposed project.”)

The second “alternative” is the no-project alternative. (AR 26:3024-3025, 3309.) The description of what happens should the status quo continue, however, is not an alternative for the purpose of establishing and analyzing the reasonable range of alternatives, as CEQA requires. It is simply “the continuation of the existing plan, policy or operation into the future... [T]he projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.” CEQA Guidelines § 15126.6 (e)(3)(A).

1 “A no project description is nonevaluative. It provides the
2 decision makers and the public with specific information
3 about the environment if the project is not approved. It is a
4 factually-based forecast of the environmental impacts of
5 preserving the status quo. It thus provides the decision makers
6 with a base line against which they can measure the
7 environmental advantages and disadvantages of the project
8 and alternatives to the project.” Planning and Conservation
9 League v. Department of Water Resources (2000) 83
10 Cal.App.4th 892, 917-918.

11 That leaves only what the EIR calls Alternative #3, the SCAG 2030 Forecast
12 alternative (AR 26:3025, 3309), which assumes a marginally smaller population, dwelling
13 unit count, and commercial/industrial square footage than the Project. (AR 26:3310-3312.)
14 ***This is not an alternative to the Project.*** It is, in fact, identical to the Project.

15 A project is defined as “an activity which may cause either a direct physical change
16 in the environment, or a reasonably foreseeable indirect physical change in the
17 environment. . . .” Pub. Res. Code § 21065. An alternative to the Project must therefore
18 also be an activity which may cause either a direct physical change in the environment or a
19 reasonably foreseeable indirect physical change in the environment.

20 The HCP Update consists, *inter alia*, of text containing goals and policies, a land
21 use designation map, general plan amendments and zone changes. (AR 42:6988.)
22 ***Nowhere*** in the EIR are there any alternative goals and policies, land use designation maps,
23 general plan amendments and zone changes identified, let alone analyzed.⁸ All Alternative
24 #3 does is take the Project – unchanged – and assumes that the number of people who
25 move to, shop, or work in Hollywood will be a little bit less than the number of people who
26 will do the same if the Project projections come to fruition. (AR 26:3310-3312.) The
27 policies are the same. The land use designations are the same. The permitted land uses are

28 ⁸ The deficiency is even more apparent when the lack of alternative policies
and land use matrices in Alternative #3 is compared with alternative policies and matrices
that were submitted by the East Hollywood Neighborhood Council Planning Entitlement
Review Committee. (RL 16174-16198, especially RL 16187-16189.)

1 the same. The only thing different is an assumption about how many potential stakeholders
2 – developers, employers, residents, and others – will respond to those policies and plans.

3 ***This is not an alternative to the Project.*** The result is that the EIR fails to provide the
4 range of reasonable alternatives required by CEQA.⁹

5 In defending its flawed analysis, the City will no doubt assert that there were no
6 feasible alternatives because none met the City objectives of accommodating future
7 growth. (See AR 62:12149.) This defense, however, fails. Any such assertion would rest
8 on the discredited population baseline, meaning there is no substantial evidence to support
9 a conclusion that that there are no other feasible alternatives. If the environmental setting
10 is flawed and inaccurate, then the alternatives analysis will also be flawed and inaccurate.
11 Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal.App.4th 859,
12 873, citing San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27
13 Cal.App.4th 713, 738-39. Indeed the City's justification for failing to analyze any
14 alternatives in the EIR demonstrates how critical an accurate baseline is to the development
15 of a reasonable range of alternatives, and how the City has failed here. See County of
16 Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 953 ("without [an
17 adequate baseline] description, analysis of impacts, mitigation measures and project
18 alternatives becomes impossible").

19 The City justified its refusal to analyze a reduced capacity alternative because it
20 "would not accommodate the future growth forecasted by SCAG and would, therefore, be
21 inconsistent with population, housing, and employment projections." (AR 38:6191.) This,

22 ⁹ Even if, *arguendo*, Alternative #3 were a legitimate alternative, it does not
23 and cannot constitute a reasonable "range of alternatives." A single, potentially feasible
24 alternative is not a "range," much less a "reasonable" one as mandated by CEQA. This is
25 clear from the plain language of the words "range" and "alternatives" [plural] repeatedly
26 used in CEQA and the CEQA Guidelines. See, e.g., Pub. Res. Code § 21100(b)(4) ("The
27 environmental impact report shall include a detailed statement setting forth all of the
28 following: ... Alternatives to the proposed project"). The term "range" refers to "a
sequence, series, or scale between limits . . . [e.g.] a range of possible solutions . . ."
Webster's Third New International Dictionary, Unabridged, Merriam-Webster, 2002,
<http://unabridged.merriam-webster.com>.

1 according to the City, meant that Project goals and objectives regarding increased
2 employment and housing opportunities, among others, would not be met. (AR 38:6191.)¹⁰
3 All of this analysis, however, is predicated on a population baseline that has no substantial
4 evidence to support it. If the baseline is legally unsupportable then so are the justifications
5 for refusing to analyze a reduced capacity alternative. That is the case here.

6 The 2005 population estimate of 224,426 was taken from the 2004 SCAG Regional
7 Transportation Plan. (AR 26:3100.) The 2030 population projection of 244,602 was also
8 taken from the 2004 SCAG Regional Transportation Plan. (*Id.*) The latter is predicated on
9 the former. (*See* AR 417:15075.) If the 2005 estimate is wrong, then the “reasonable
10 inferences from that information” support a conclusion that the 2030 projection is also
11 wrong. CEQA Guidelines § 15384(a) (definition of “substantial evidence.”)

12 Since the 2010 Census figure in the HCP area was only 198,228 and has been
13 declining steadily over the prior 20 years (AR 32:5996; *see also* 26:3009 [Draft EIR
14 recognition of decline between 1990 and 2000]), a reasonable inference is that the 2030
15 projection is too high. (AR 30:5470-5471.)¹¹ A reduced capacity alternative based on the
16 2010 Census data, however, could still accommodate the amount of growth that SCAG
17 predicted would occur between 2005 and 2030 – 20,176 new residents. This makes

18
19 ¹⁰ The City raised a host of other objectives purportedly not met by a
20 downzoning or reduced capacity alternative, including “encouraging sustainable land use in
21 proximity to transit, expanding mobility options, [and] ensuring that buildings and
22 neighborhoods are well-designed . . .” (AR 38:6191-6912.) However, the City never told
23 the public why or how these objectives would not be met. No alternative land use matrices,
24 design guidelines, policies or other regulatory schemes were provided against which the
25 City’s bare assertions could be judged. Assertions of fact regarding infeasibility require
26 support by independent facts and analysis. Preservation Action Council, *supra*, 141
27 Cal.App.4th at 1355-1356; Californians for Alternatives to Toxics v. Dept. of Food and
28 Agriculture (2005) 136 Cal.App.4th 1, 13. The City provided no such facts or analysis.

29 ¹¹ La Mirada also submitted substantial evidence showing SCAG consistently
30 overestimated population projections for Hollywood and Los Angeles. (AR 417:15074-
31 15075.) SCAG admitted that previous population projections for the region were higher
32 than actual Census data, with most of the difference attributable to Los Angeles County.
33 (AR 579:16643.)

1 potentially feasible an alternative that reduces the capacity of the existing HCP or HCP
2 Update. (AR 871:21173-21175.) Several commenters made exactly that suggestion. (See,
3 e.g., AR 61:11931, 875:21201, 877:21212-21213.) The City's failure to consider such an
4 alternative is fatal to the EIR. "A potentially feasible alternative that might avoid a
5 significant impact must be *discussed* and *analyzed* in an EIR so as to provide information
6 to the decision makers about the alternative's potential for reducing environmental impacts.
7 Without analysis, the theory posited by the City ... is purely speculative and is not
8 supported by facts discussed in the draft EIR or Final EIR By failing to mention,
9 discuss, or analyze any feasible alternatives, the draft EIR and the final EIR failed to satisfy
10 the informational purpose of CEQA" Habitat and Watershed Caretakers v. City of
11 Santa Cruz (2013) 213 Cal.App.4th 1277, 1304-1305 (emphasis in original).

12 **VII. THE CITY'S FAILURE TO RECIRCULATE THE DRAFT EIR IS A**
13 **SEPARATE BASIS REQUIRING INVALIDATION OF THE FINAL EIR.**

14 A decision not to recirculate an EIR must be supported by substantial evidence.
15 Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th
16 1112, 1120 ("Laurel Heights II"). Here, the City lacked substantial evidence to support its
17 decision not to recirculate, and its failure to recirculate the Draft EIR is fatal on several
18 grounds.

19 There were two significant new additions of information added after the Draft EIR
20 was circulated. The first was the 2010 Census data itself, which commenters alerted the
21 City to in initial responses to comments. (AR 417:15074-15076, 15092-15099.) This
22 disclosure significantly changed the Project setting and environmental baseline. It meant
23 that instead of the 24,636 new residents which the EIR contemplated and analyzed, the
24 HCP would actually accommodate 50,744 new residents. This results in substantial
25 increases in the severity of environmental impacts caused by the Project than those
26 identified in the Draft EIR. Given a specific build-out, the higher the baseline population
27 is, the lower the reported impacts will be. Because the baseline population of the HCP
28 Update is so overinflated, any impact with a population-based analysis – from wastewater

1 and utilities, to police and fire services, to recreation, to air quality and traffic, among
2 others – is significantly underestimated. “When significant new information shows that the
3 project will have a different or more severe effect on the environment, the agency must
4 notify the public and recirculate the draft EIR for review and comment.” Federation of
5 Hillside and Canyon Associations v. City of Los Angeles (2000) 83 Cal.App.4th 1252,
6 1258; emphasis added (“Federation I”). The City failed to do so here.

7 The 2010 Census data also made feasible an alternative that was considerably
8 different, and that potentially lessened the environmental impacts of the project. Using the
9 2010 Census data, a lower capacity alternative that still accommodated 24,636 new
10 residents became potentially feasible. (AR 871:21173-21174.) However, not only did the
11 City decline to adopt such an alternative, it refused to even analyze it. On this independent
12 ground, the City’s failure to recirculate is fatal to lawful certification of the EIR. See Gray
13 v. County of Madera (2008) 167 Cal.App.4th 1099, 1120 (portion of an EIR addressing
14 water concerns should have been recirculated when new information created a new
15 potentially feasible mitigation in the form of constructing a new water system).

16 The second significant addition of new information is the City’s purported analysis,
17 albeit limited, of certain impacts using the 2010 Census data – analysis the City released
18 only five days before certification of the EIR and approval of the HCP Update. (AR
19 38:6172-6174).¹² The lack of substantial evidence to support the City’s bare bones
20 conclusions is detailed above in Section V.A. For purposes of recirculation, however, the
21 release of this information – after the public hearings and only five days before the end of
22 the process – should have led to recirculation so the EIR could be “subjected to the same
23 critical evaluation that occurs in the draft stage, so that the public is not denied an
24 opportunity to test, assess, and evaluate the data and make an informed judgment as to the
25 validity of the conclusions to be drawn therefrom.” Preservation Action Council, supra,

26
27 ¹² Not only was this information added after the Draft EIR was circulated, but
28 it was added after the Final EIR was released, doubly subverting CEQA’s core information
disclosure and analysis purposes.

1 141 Cal.App.4th at 1358. The City failed to do so, and on this independent ground, the EIR
2 must be invalidated.

3 **VIII. THE HCP APPROVAL IS FURTHER ILLEGAL BECAUSE IT CREATES**
4 **INTERNAL INCONSISTENCY WITH THE LOS ANGELES GENERAL**
5 **PLAN.**

6 “The general plan is atop the hierarchy of local government law regulating land
7 use. It has been aptly analogized to ‘a constitution for all future developments.’
8 [Citation.]” Concerned Citizens of Calaveras County v. Calaveras County Board of
9 Supervisors (1985) 166 Cal.App.3d 90, 97. “It embodies fundamental policy decisions to
10 guide future growth and development. [Citation]. Virtually all local decisions affecting
11 land use and development must be consistent with the general plan.” Federation I, supra,
12 83 Cal.App.4th at 1259-1260. “If a general plan is to fulfill its function as a ‘constitution’
13 guiding ‘an effective planning process,’ a general plan must be reasonably consistent and
14 integrated on its face. A document that, on its face, displays substantial contradictions and
15 inconsistencies cannot serve as an effective plan because those subject to the plan cannot
16 tell what it says should happen or not happen.” Calaveras County, supra, 166 Cal.App.3d
17 at 97.

18 Pursuant to Los Angeles City Charter Sections 556 and 558(a), the HCP Update
19 must be consistent with the Los Angeles General Plan. See also, Govt. Code § 65300.5. A
20 consistency determination requires more than that the HCP Update “recite goals and
21 policies that are consistent with those set forth” in the City’s General Plan. Napa Citizens
22 for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342,
23 379. The proper question is whether the HCP Update “is compatible with and will not
24 frustrate the General Plan’s goals and policies.” Id. An inconsistency exists not only if
25 there are substantial contradictions and inconsistencies on the face of the General Plan, but
26 if the implementation of one provision will frustrate a policy stated in a second provision
27 and there is no affirmative commitment to mitigate that adverse effect. Id. at 380. Here,
28 the HCP Update is inconsistent with the General Plan in a most fundamental manner – the

1 growth and capacity provisions of the General Plan.

2 The Los Angeles General Plan professes growth neutrality. According to the
3 Growth and Capacity chapter of the General Plan Framework Element, "The General Plan
4 Framework Element is population growth neutral: it is not the intent of the Framework
5 Element to cause any specific level of population growth to occur. It is a plan to
6 accommodate whatever growth does occur in the future, which could include loss of
7 population." (AR 721:17890-17891, 751:18127-18128; emphasis added.)¹³ City staff
8 portrayed the HCP Update as growth neutral, as well. (AR 61:12022.) In doing so, staff
9 recognized that a community plan update that provided for substantial excess capacity
10 would be growth inducing (id.), implicitly acknowledging that a growth inducing
11 community plan would conflict with the growth neutral approach called for by the Growth
12 and Capacity provisions of the Los Angeles General Plan Framework Element.

13 This is why the capacity selected for the HCP Update was generally tied to the
14 difference between the SCAG 2005 estimate and the SCAG 2030 projection. (AR
15 45:6736.) The plan would accommodate only an expected population increase of
16 approximately 24,000 people. Such an accommodationist approach would conform to the
17 growth neutrality approach of the General Plan as long as those population estimates and
18 projections remain reasonable and supported by substantial evidence. (See AR 10:1810.)

19 If it used the correct population baseline, however, the HCP Update accommodates
20 over 50,000 people, more than double the natural amount of growth initially expected.
21 This provides for a significant amount of excess capacity, a growth inducing effect (AR
22 26:3504-3505) that creates an inconsistency with the Growth and Capacity provisions of
23 the Los Angeles General Plan Framework Element.

24
25 ¹³ "The General Plan Framework, an element of the city's general plan, states
26 policies, objectives, and goals for the long-term growth of the city. The General Plan
27 Framework influences but is separate from other general plan elements, which together
28 comprise the general plan." Federation II, supra, 126 Cal.App.4th at 1188-1189. These
other elements include the Land Use Element, of which the HCP is a component. (AR
45:6674.)

1 The growth inducing nature of the HCP Update is also apparent in the changed
2 objectives for the HCP Update as they are identified in the Final EIR. The first objective
3 listed in the Draft EIR was “to provide additional housing, especially near supporting
4 infrastructure and services, including public transit, *for an anticipated population*
5 *increase.*” (AR 26:3022; emphasis added.) In the context of the HCP, this objective means
6 that the HCP Update must plan only for the forecasted additional 20,176 residents
7 projected to call Hollywood home by 2030 in order to be growth neutral. That objective
8 was eliminated from the Final EIR. (AR 32:6086-6087.) The objectives in the Final EIR
9 were essentially de-linked from any particular level of growth. As the HCP Update now
10 accommodates more than double the natural amount of growth through 2030, the
11 conclusion can only be that the HCP Update had dropped all pretense of growth neutrality,
12 further showing an inconsistency with the General Plan Framework Element.

13 The result is an internally inconsistent General Plan. Is it growth accelerating and
14 inducing, as provided for in the Land Use Element via the HCP, or it is growth
15 accommodating and neutral, as required by the Framework Element? Because of this
16 internal inconsistency, the City cannot make the necessary findings required by City
17 Charter Section 556. The HCP Update should be invalidated on this additional ground.

18 **IX. CONCLUSION.**

19 The City will likely argue about its extensive outreach in preparing the HCP
20 Update. Conducting a meeting, however, is not the same as listening to those in
21 attendance.

22 Repeatedly, the City was told the HCP would lead to overdevelopment – even
23 more so once the public learned that the City was significantly exaggerating population
24 estimates by using a demonstrably incorrect population baseline. Repeatedly, the City was
25 asked to consider and analyze a reasonable range of alternatives to the Project. The City
26 ignored these comments and criticisms, even though it is undisputed that “alternatives
27 discussion forms the core of the EIR” (*In re Bay-Delta, supra*, 43 Cal.4th at 1162), and
28 CEQA mandates that the “EIR *shall* describe a *range* of reasonable *alternatives* to the

project . . . , and evaluate the comparative merits of the *alternatives*.” CEQA Guidelines § 15126.6(a) (emphasis added).

The City also violated CEQA when it added significant new information to the EIR only a few days before certification, without recirculating the Draft EIR as CEQA mandates. Finally, the City illegally approved a community plan, the HCP, that is inconsistent with the General Plan of which it is a part.

For all of the foregoing reasons, La Mirada respectfully asks that this Court grant its Petition for Writ of Mandate, and issue the writ relief as prayed.

DATED: June 6, 2013

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By: _____

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14 **FOR THE COUNTY OF LOS ANGELES**

15 **LA MIRADA AVENUE NEIGHBORHOOD**
16 **ASSOCIATION OF HOLLYWOOD, a**
17 **California unincorporated association,**

18 **Petitioner,**

19 **vs.**

20 **CITY OF LOS ANGELES, a municipal**
21 **corporation; CITY COUNCIL OF THE CITY**
22 **OF LOS ANGELES, and DOES 1 through**
23 **20, inclusive,**

24 **Respondents.**

25 **HOLLYWOOD CHAMBER OF**
26 **COMMERCE,**

27 **Intervenor.**

Case No. BS138369

[Related to Case Nos. BS138580 and
BS138370]

**PETITIONER LA MIRADA AVENUE
NEIGHBORHOOD ASSOCIATION
OF HOLLYWOOD'S REPLY
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF
MANDATE**

[Filed concurrently with Reply
Memorandum of Points and Authorities
to Intervenor's Opposition; Notice of
Lodging of the Administrative Record;
Notice of Lodging of Supplemental
Administrative Record; and Notice of
Lodging Joint Appendix]

Date: September 16-17, 2013

Time: 9:30 a.m.

Dept.: P

[Hon. Allan J. Goodman]

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I. INTRODUCTION AND SUMMARY OF ARGUMENT.

The Supreme Court just held: “The public and decision makers are entitled to the most accurate information on project impacts practically possible, and the choice of a baseline must reflect that goal.” Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (August 5, 2013, S202828) ___ Cal.4th ___, slip op. at 17 (emphasis added) (<http://www.courts.ca.gov/opinions/documents/S202828.PDF>). The City’s reliance on the SCAG 2005 estimate for its baseline utterly fails this standard. Petitioner should prevail on this key issue. Petitioner should also prevail because:

1) The City’s opposition does not challenge the accuracy of the 2010 Census data, which data fully discredit the 2005 SCAG estimate used by the City. This further leaves the 2005 SCAG estimate lacking substantial evidence to support it.

2) The City does not challenge Petitioner’s argument that the EIR failed to analyze any alternatives – which is a concession by the City of a facial CEQA violation.

3) Use of a correct population baseline made a reduced capacity alternative a possibility within a “reasonable range” of alternatives. The City should have analyzed that in the EIR, but failed to do so.

4) The City’s attempt to justify a last-minute, truncated analysis of impacts using the 2010 Census data is deficient on two grounds: a) the City confuses thresholds of significance with units of measurement for determining whether a threshold has been exceeded; and b) the City’s woefully late introduction of the 2010 Census data without recirculating the Draft EIR constituted an independent violation of CEQA.

5) The City’s claim of no growth inducement in the General Plan rests on the discredited 2005 SCAG estimate. The City’s so-called consistency findings are predicated on a potential growth of less than half what the HCP Update actually provided. The result is the creation of substantial excess development capacity, which the General Plan disfavors. Accordingly, the findings of no growth inducement lack evidentiary support, and the City abused its discretion on this further ground.

For the reasons explained herein, the EIR and the HCP Update must be invalidated.

1 **II. DE NOVO REVIEW IS THE STANDARD FOR THE ALTERNATIVES**
2 **ISSUE.**

3 The City asserts that challenges to an EIR's alternatives analysis are governed by
4 the substantial evidence test rather than *de novo* review, citing California Native Plant
5 Society v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 987 ("CNPS"). The City is
6 incorrect.

7 The substantial evidence test applies to an alternatives analysis once alternatives
8 are actually presented for analysis. CNPS at 972 (description of alternatives); 987. See
9 also, Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 566-567
10 (analysis of alternative sites). By contrast, where no alternatives have been provided, let
11 alone analyzed, the EIR has omitted information required by CEQA. Guidelines §
12 15126.6(a). An omission constitutes a failure to proceed in the manner required by law
13 when it precludes informed decision making by the agency or informed participation by the
14 public. CNPS, supra, 177 Cal.App.4th at 987; Stanislaus Natural Heritage Project v.
15 County of Stanislaus (1996) 48 Cal.App.4th 182, 199.

16 Here, informed decision making was precluded when no alternatives whatsoever –
17 no goals, policies, no land use plans – were presented as against the Project. The public
18 and decision makers cannot determine if potentially feasible alternatives could reduce
19 Project impacts while meeting most Project objectives. *De novo* review is the correct
20 standard where there has been a wholesale omission of a core information disclosure
21 requirement. In that situation, "prejudice is presumed." Sierra Club v. State Bd. of
22 Forestry (1994) 107 Cal.4th 1215, 1237 ("The absence of any information regarding the
23 presence of the four old-growth-dependent species on the site...made any meaningful
24 assessment of the potentially significant environment impacts of timber harvesting and the
25 development of site-specific mitigation measures impossible. In these circumstances
26 prejudice is presumed").

1 **III. THE CITY'S POPULATION BASELINE IS INVALID.**

2 **A. No Substantial Evidence Supports The City's Use Of The 2005 SCAG**
3 **Estimate As The Population Baseline.**

4 The City acknowledges both the existence of the 2010 Census data and the stark
5 difference in population between the 2005 SCAG estimate and the actual population
6 counted by the 2010 Census. (AR 38:6204.) Confronted by this reality, the City tries to
7 explain it away by essentially saying, "we have experts – trust us." (See City's Opposition
8 Brief ("COB") at 9:6-8.) The City strangely treats the 2005 SCAG estimate as a *fait*
9 *accompli*. Substantial evidence, however, requires that expert opinion be supported by
10 facts. Guidelines § 15384(b). Clearly inadequate studies or conclusions unsupported by
11 facts are entitled to no judicial deference. Berkeley Keep Jets Over the Bay Comm. v.
12 Board of Port Commr's (2001) 91 Cal.App.4th 1344, 1355. The City offers no facts to
13 support its claim that somehow, the SCAG estimate is accurate or proper. The 2005 SCAG
14 estimate thus falls because it lacks substantial evidence to support it.

15 "Census data is generally accepted as the best data available and virtually all
16 agencies and individuals benchmark data to the Census...." (SAR 3.)¹

17 The City suggests that the 2005 SCAG estimate is appropriate because the
18 boundaries of the Census tract do not perfectly align with the HCP area. (COB at 9:10-11.)
19 However, Petitioner had already addressed this in its comments to the Draft EIR. (AR
20 449:15453.) It noted that the HCP split some Census tracts, which would make the
21 population of an area based solely on Census tract boundaries slightly higher than that of
22 the HCP area. (AR 449:15469-15470.) To compensate, La Mirada adjusted the population
23 downward to reflect the slightly smaller HCP area, sufficiently addressing the issue of
24 slightly different boundaries. (AR 449:15470.)

25 The City then asserts that the sample size of the Census was too small to yield
26 acceptable margins of error. (COB 9:11-12.) The City, however, confuses the decennial
27 Census, which is a count of the entire population taken every ten years (see AR 30:5468),

28 ¹ "SAR" refers to Petitioner's Supplemental Administrative Record.

1 with a different Census Bureau estimate called the American Community Survey (“ACS”),
2 which is a population estimate based on a sample conducted annually by the U.S. Census
3 Bureau. (AR 29:5248.) What the City cites in support of its contention has nothing to do
4 with use of the 2010 Census.

5 The City then opined that the population decrease between 2005 and 2010 may
6 only have been temporary, but would likely recover and for that reason, continued to use
7 the 2005 SCAG estimate. (COB 9:28-10:3.) This fails as substantial evidence for three
8 reasons. First, it suggests without substantial evidence that the population decline in the
9 HCP area began in 2005. However, the only evidence in the record is of a gradual decline
10 in the Hollywood population beginning in 1990. The record shows that the HCP area
11 declined in population from about 214,000 to about 211,000 between 1990 and 2000, and
12 declined from about 211,000 to about 198,000 between 2000 and 2010. (AR 29:5249.)

13 Second, given the City’s recognition of the 2000 and 2010 Census figures (*id.*), one
14 would have to accept that a huge spike in population somehow occurred between 2000 and
15 2005 in order to reach the 2005 SCAG estimate of 224,426 persons. The City, however,
16 offers no “facts, reasonable assumption predicated upon facts, [or] expert opinion
17 supported by facts” to support such a claim. See Guidelines § 15384(b) [defining
18 “substantial evidence”].

19 The City would have the public suspend belief and accept that population shot up
20 by 14,000 people between 2000 and 2005, then plummeted by 23,000 people between 2005
21 and 2010, and will shoot up again by 50,000 people between 2010 and 2030. There was
22 not one shred of evidence to support this assertion.² All this assertion shows is that the
23 City was grasping at straws to avoid using the 2010 Census as a baseline.

24 Third, and more importantly, any temporary nature of the decline is irrelevant to
25 the baseline. The baseline is *existing* conditions on the ground. Guidelines § 15125(a).
26 Talk of economic cycles and other growth factors addresses trends into the *future*; relevant

27 ² Indeed, evidence in the record of SCAG’s long pattern of significantly
28 overestimating population suggests the opposite. (AR 29:4326-4327, 575:16643.)

1 perhaps for a projected population in 2030, but not relevant to the baseline. Cf. Neighbors
2 for Smart Rail, supra, slip op. at 25 (“The level of ridership on the proposed transit line is a
3 characteristic of the *project in operation*, not a characteristic of the *environmental baseline*
4 against which project impacts are measured.”) [Emphasis in original.]

5 Citizens for Open Government v. City of Lodi (2012) 205 Cal.App.4th 296, cited
6 by the City, does not support its contention. The “moving target” in Citizens which the
7 city’s expert discussed was where “updates to the [economic analysis] would not be able to
8 keep pace with events” that could literally occur within days of each other. Id. at 319. The
9 example highlighted in Citizens was a report submitted by the petitioner that focused on the
10 closure of one large retailer as an example of a property at risk of urban decay. The city
11 noted that a new retailer announced it was taking over the retail space in question “within a
12 few days” of issuance of the petitioner’s report. Id. Here, there can be no “moving target.”
13 The Census occurs only once every ten years.

14 Moreover, the City has shown no evidence of turmoil in the economy or its effect
15 on population other than conclusory, self-serving statements. Rather than showing
16 volatility, the evidence in the record instead shows a gradual, 20-year decline in the
17 population of the HCP area. (AR 36:5249). Assertions of volatility by the City are also
18 belied by a relatively consistent level of subdivision activity in and around Hollywood
19 between 2003 and 2011. (AR 830:20923, 20926-20929.)

20 The City’s claim that there were “other indicia of growth in the 2010 Census from
21 the 2005 baseline” (COB 10:7-8) is equally meaningless. Again, it improperly assumes the
22 2005 SCAG estimate as a concrete fact. That estimate was shown to be demonstrably
23 wrong – and the concrete shattered – with the release of the 2010 Census. That three
24 census tracts may have gained in population (from 2000 to 2010, not 2005 to 2010, as the
25 City’s brief implies) is also irrelevant to the baseline. That the City proposed to “increase
26 capacity” in those Census tracts (COB 10:9-10) goes to meeting future projections, not
27
28

1 existing conditions.³

2 In further trying to explain away its failure to reconcile its population estimates
3 with the 2010 Census, the City asserts it did not have to follow its own CEQA Thresholds
4 Guide. (COB 10:14-19.) This confuses thresholds of significance with the data used to
5 measure whether the threshold has been exceeded. The City's explanation thus fails.

6 "A threshold of significance is an identifiable quantitative, qualitative or
7 performance level of a particular environmental effect, non-compliance with which means
8 the effect will normally be determined to be significant by the agency and compliance with
9 which means the effect normally will be determined to be less than significant."

10 Guidelines § 15064.7(a). A population figure is not a "quantitative, qualitative or
11 performance level of a particular environmental effect." Id. It is the data applied to the
12 threshold of significance to determine whether the threshold has been exceeded and the
13 impact significant. Guidelines § 15125(a). The City may, in certain instances, modify a
14 threshold of significance. La Mirada does not here suggest otherwise. However, the City
15 may not use fictitious data to determine whether a threshold of significance has been
16 exceeded.

17 The City also asserts that its CEQA Threshold Guidelines are designed for
18 "project-specific development." The City offers no support or citation for this assertion.
19 Moreover, the issue here is not thresholds of significance. It is how population is
20 determined, a population that will then be applied to a given threshold. (AR 30:5468
21 [footnote 1].)

22 Finally, even SCAG itself recognized that release of the 2010 Census data would
23 leave its prior projections with no substantial evidence to support them. In a February 2011
24 memo – a memo produced prior to the Draft EIR – SCAG staff acknowledged that the
25 forthcoming release of the 2010 Census data would show a "1.3 million population gap

26 ³ The growth rate in those three Census tracts was quite modest between 2000
27 and 2010, suggesting a far slower growth rate than the City implies to justify increasing
28 density in those tracts beyond what is currently allowed. The growth rate in those three
tracts between 2000 and 2010 ranged from only 6% to less than 1%. (AR 878:21239.)

1 between the 2010 Census count of California population and the State DOF annual
2 population estimates [and] potential magnitude of discrepancy at the local levels.” (AR
3 869:21168; SAR 7.)

4 B. Use Of The 2010 Census Data Is Consistent With The General Plan.

5 The City asserts that use of the 2010 Census data would somehow be inconsistent
6 with the General Plan because the General Plan Framework Element mandates that SCAG
7 forecasts be used. (COB 11:19-22, 12:1-2.) This is an extraordinary claim. What the City
8 is saying is that even if it knows the forecast is without substantial evidence to support it
9 and knows it is factually in error, the City must still use the forecast. Blind adherence to
10 data it knows is wrong is not the “good faith effort at full disclosure” mandated by CEQA.
11 Guidelines § 15151.

12 Moreover, if the City’s position is correct, it creates an irreconcilable dilemma for
13 itself. Does the City use the discredited 2005 SCAG population estimate and violate
14 CEQA, or does it use the 2010 Census data and violate the General Plan?⁴ The Court need
15 not reach that question, though, because the City has not shown that using the 2010 Census
16 data would be inconsistent with the General Plan.

17 The City’s approach takes one sentence in the General Plan and elevates it over all
18 else. This is not how consistency is determined, and the City cites no authority to the
19 contrary. The proper approach to determining consistency is to ask whether using the 2010
20 Census data “is compatible with and will not frustrate the General Plan’s goals and
21 policies.” Napa Citizens for Honest Government v. Napa County Board of Supervisors
22 (2001) 91 Cal.App.4th 342, 379. Here, the City makes no showing of how replacing the
23 discredited 2005 SCAG estimate with the 2010 Census data frustrates the General Plan’s
24 goals and policies.

25
26
27 ⁴ The City’s assertion here, if correct, would also be a tacit admission that its
28 CEQA Thresholds Guide, which requires that population estimates be reconciled every 10
years with Census data, is inconsistent with its General Plan. (See AR 30:5468.)

1 To the contrary, use of demonstrably inaccurate data would frustrate the General
2 Plan's goals and policies. According to the General Plan Framework Element, "[t]he
3 General Plan Framework Element plans for a level of population and employment growth
4 that may be reasonably anticipated in the near term as the basis of its policies and programs
5 and for environmental review...." (Supplemental AR, Exhibit 1 at p. 1.) Because SCAG
6 projections are just estimates, though, the City's CEQA Thresholds Guide requires those
7 estimate to be "ground-truthed" every ten years by reconciling them with the Census. (AR
8 30:5468.)

9 Here, at the time the NOP was issued in 2005 (AR 17:2416), the City rejected other
10 estimates of population in 2005 in favor of the SCAG estimate based on reliability issues.
11 (AR 29:5428.) Implicit (or actually explicit) in this rejection is that the City believed that
12 developing new plans and policies for the HCP Update required accurate underlying data.
13 But when the 2005 SCAG estimate was ground-truthed by reconciliation with the 2010
14 Census, the City and the public learned the SCAG estimate was longer that which is
15 "reasonably anticipated." This required revision of the EIR.

16 This is consistent with how the City described its process in using SCAG data to
17 reach a 2005 population estimate in the first place: "[t]he population numbers had to be
18 'derived' from data supplied by the SCAG 2004 RTP and calculated by the City's
19 Demographic Unit and Community Plan Update" (COB 17:8-10), and may use other data
20 sources in deriving a figure. (See 30:5468.)

21 Additionally, "[t]o the extent the [City] is arguing that a technique used for
22 planning under another statutory scheme necessarily satisfies CEQA's requirements for
23 analysis of a project's impacts," the California Supreme Court disagrees. Neighbors for
24 Smart Rail, supra, slip op. at 26. "[A]n EIR must be judged on its fulfillment of CEQA's
25 mandates, not those of other statutes." Id. at 26-27.

26 We also note that nowhere in the Final EIR justifying its use of the 2005 SCAG
27 estimate did the City refer to Chapter 2 of the Framework Element as mandating use of
28 SCAG figures and SCAG figures only. (See AR 29:5247-5248.) This suggests that the

1 City's contention is nothing more than a *post hoc* rationalization to support the
2 unsupportable.

3 **C. CEQA Does Not Support The Use Of Fictitious Data.**

4 The City's assertion that CEQA requires the use of inaccurate data is grossly
5 misplaced. The CEQA Guideline requiring an accurate description of the environmental
6 conditions is interpreted broadly to afford the fullest possible protection to the
7 environment. This is to ensure that the analysis of impacts in an EIR – impacts measured
8 from the baseline – is as accurate as possible. Friends of the Eel River v. Sonoma County
9 Water Agency (2003) 108 Cal.App.4th 859, 874.

10 While environmental conditions at the time of the issuance of a Notice of
11 Preparation will "normally" constitute the baseline, Guidelines § 15125(a), use of the word
12 "normally" recognizes that there will be situations where conditions at a different time
13 must constitute the baseline in order for the EIR to be as accurate as possible... [A]gencies
14 not only can, but should, make appropriate adjustments, including to the baseline, as the
15 environmental review process unfolds. No purpose would be served, for example, if an
16 agency was required to remain wedded to an erroneous course and could only make a
17 correction on remand after reversal on appeal." Citizens for East Shore Parks v. California
18 State Lands Comm. (2012) 202 Cal.App.4th 549, 563.

19 The release of Census data prior to certification of an EIR showing a population
20 estimate to be wildly inaccurate is such a situation.

21 The City's contention that Guidelines § 15125(a) does not apply to general plan
22 updates is also misplaced. That regulation has been specifically applied to general plans.
23 See Lighthouse Beach Field Rescue v. City of Santa Cruz (2005) 131 Cal.App.4th 1170,
24 1192-1193.

25 The City also misreads Guidelines § 15125(e). The subdivision merely provides
26 that when any project (not just amendments to an already adopted plan, as the City
27 suggests) is compared to an adopted plan, the project analysis must also address potential
28 future conditions discussed in the plan in addition to existing environmental conditions.

1 Because Guidelines § 15125(e) applies to any proposed project, the City's reading
2 eliminates the word "normally" from § 15125(a). The law does not allow the City to read
3 words out of a regulation that it finds inconvenient. See Ludwig v. Superior Court (1995)
4 32 Cal.App.4th 8, 18 ("It is well-established that a statute open to more than one
5 construction should be construed so as to avoid anomalous or absurd results").

6 **IV. THE CITY'S ALTERNATIVES ANALYSIS IS NO ANALYSIS AT ALL.**

7 **A. The City Failed To Analyze *Any* Alternatives In The EIR, Which Is A**
8 **Fatal Flaw.**

9 The City's alternatives analysis suffers from a far more fundamental flaw than
10 simply failing to analyze a reduced capacity alternative. The City failed to analyze any
11 alternatives whatsoever. The result is an alternatives "non-analysis" that fails to comply
12 with both procedural and substantive requirements of CEQA, including pursuant to
13 Guidelines Section 15126.6.

14 The City's response to La Mirada in this regard is at most limited to a single
15 sentence: "Contrary to La Mirada's claim that the SCAG 2030 Forecast Alternative was
16 identical to the project (La Mirada Brief 17-18), the SCAG 2030 Forecast Alternative
17 would require 'fewer land use designation changes' and 'would not be subject to the same
18 controls' as the proposed project, but would accommodate the anticipated level of growth
19 by 2030. (AR 1456, 3314.)" (COB 14:5-9.) The City's response fails to satisfy CEQA
20 when faced with even the most cursory review.

21 First, the City entirely ignores La Mirada's initial argument that the SCAG 2030
22 Forecast Alternative does not meet CEQA's definition of an alternative to the Project.⁵ A
23 project is defined as "an activity which may cause either a direct physical change in the
24 environment, or a reasonably foreseeable indirect physical change in the environment. . . ."
25 Pub. Res. Code § 21065. An alternative to the Project must therefore also be an activity

26 ⁵ The City's complete and total silence to the argument should be deemed an
27 admission. Nungaray v. Pleasant Val. Lima Bean Growers & Warehouse Ass'n. (1956)
28 142 Cal.App.2d 653, 666 ("failure to deny the truth of a statement may constitute an
admission by silence").

1 which may cause either a direct physical change in the environment or a reasonably
2 foreseeable indirect physical change in the environment. The HCP Update “is composed of
3 a series of documents, including text, maps, matrices and diagrams that explain how
4 planning tools would be used to implement the Plan’s goals.” (AR 26:3047.) The text
5 includes the goals and policies that the City seeks to implement. (AR 42:6988.) Any
6 alternative to the HCP Update must thus have similar components – text, maps, matrices,
7 and the like – with goals and policies that somehow differ from the HCP Update.
8 However, the City offers none and cites to none because there are none.

9 The omission of any alternatives is even more glaring when the City’s response to
10 La Mirada is viewed more closely. The City claims that the SCAG 2030 Forecast
11 Alternative would require “fewer land use designation changes” than the HCP Update.
12 (COB 14:7.) What changes? The SCAG 2030 Forecast Alternative provides no alternative
13 land use designations to compare to the Project. The City claims that the SCAG 2030
14 Forecast Alternative “would not be subject to the same controls” as the HCP Update.
15 (COB 14:8.) What controls? The City cites to none in brief because there are none to
16 which it can cite. The City’s assertion is nothing more than an *ipse dixit* statement without
17 support in the record.

18 **B. The City Failed To Analyze A Potentially Feasible Reduced Capacity**
19 **Alternative.**

20 Beyond failing to analyze *any* alternatives in the EIR, which alone must end the
21 inquiry in favor of La Mirada, the City’s failure to analyze a reduced capacity alternative
22 suggested by all Petitioners in the related cases is an additional flaw that dooms the EIR.

23 The City’s justification for refusing to analyze a reduced capacity alternative
24 essentially boils to an assertion that such an alternative would not meet growth projections
25 and thus would fail to meet Project objectives. (COB 14:18-21.) But as La Mirada pointed
26 out, a reduced capacity alternative could still meet SCAG projections and Project
27 objectives. (AR 871:21173-21174.)
28

SCAG estimated that the HCP area would grow by 20,176 residents between 2005 and 2030. (AR 26:3319.) Even though release of the 2010 Census data left the 2005 SCAG estimate without substantial evidence to support it, La Mirada acknowledged that the City could still have applied the amount of growth projected – 20,176 residents – to the 2010 Census figure of 198,228 residents. This would allow for a reduced capacity alternative that accommodates both the correct environmental baseline and projected growth. (AR 871:21173-21174.)⁶

The City's only substantive response is that it had no choice; it allegedly could not deviate from the 2005 SCAG estimate. As has been thoroughly discussed, the City's devotion is to a population projection with no substantial evidence to support it. The City's refusal to analyze a potentially feasible reduced capacity alternative is thus fatal to the EIR. "A potentially feasible alternative that might avoid a significant impact must be *discussed* and *analyzed* in an EIR so as to provide information to the decision makers about the alternative's potential for reducing environmental impacts. Without analysis, the theory posited by the City ... is purely speculative and is not supported by facts discussed in the draft EIR or Final EIR By failing to mention, discuss, or analyze any feasible alternatives, the draft EIR and the final EIR failed to satisfy the informational purpose of CEQA" Habitat and Watershed Caretakers v. City of Santa Cruz (2013) 213 Cal.App.4th 1277, 1304-1305 (emphasis in original).

V. THE CITY'S LATE AND ABBREVIATED REVIEW OF IMPACTS USING 2010 CENSUS WAS LEGALLY INADEQUATE.

A. Petitioner La Mirada Exhausted Its Administrative Remedies.

The City did not provide an analysis of HCP impacts using the 2010 Census data when it released the Final EIR in October 2011. It did not provide an analysis of HCP impacts using the 2010 Census data when it released the first addition to the Final EIR on

⁶ Since the SCAG projection for 2030 was necessarily projected out from the 2005 SCAG estimate, there is no substantial evidence to support the 2030 Forecast of 244,602 people. See, also Supplemental AR, Exhibit 2 (Attachment to the P&P TAC Report, p. 6 ["Concern: SCAG population projections are too high..."]).

1 May 18, 2012. It was not until the City released its second addition to the Final EIR on
2 June 14, 2012 – five days before the City Council approved the HCP and certified the EIR
3 – that the City provided anything using 2010 Census data, although it still claimed the 2005
4 SCAG estimate was the proper baseline. (AR 38:6205.)

5 Even at that eleventh hour, and contrary to the City’s assertions, La Mirada
6 responded to the inadequacy of the City’s abbreviated analysis in the second addition to the
7 Final EIR:

8 “Use of the correct baseline significantly increases impacts in
9 every area that uses population as a variable for gauging
10 impacts, from transportation to wastewater to public safety.
11 This means the City’s current document fails to properly
disclose, analyze, and mitigate the actual impacts.” (AR
881:21250.)

12 See also AR 751:18125 (noting impacts on fire protection, solid waste, and water are
13 population-based and must be measured in that fashion). This was sufficient for La Mirada
14 to have exhausted its administrative remedies. San Joaquin Raptor/Wildlife Rescue Center
15 v. County of Stanislaus (1994) 27 Cal.App.4th 713, 735, n. 10. It fairly apprised the City
16 of the substance of the challenge. That was that using something other than population to
17 measure impacts fails to properly disclose, analyze, and mitigate the actual impacts. See
18 Save Our Residential Environment v. City of West Hollywood (1992) 9 Cal.App.4th 1745,
19 1750 (“[W]e find that SORE’s objections to the Project, while not identifying the precise
20 legal inadequacy upon which the trial court’s ruling ultimately rested, fairly apprised the
21 City and Rossmoor that SORE believed the environmental impacts of developing the
22 Project on the Rossmoor site would be deleterious to the surrounding community”).

23 B. The City’s Review Using 2010 Census Data Confused Thresholds Of
24 Significance With The Units Of Measurement Used To Determine
25 Significance.

26 Contrary to the City’s assertion (COB 18:7-8), La Mirada did and does contend
27 that the second addition to the FEIR is inadequate as a response to comments. In
28 particular, La Mirada objected to the City’s inadequate, last-minute attempt to analyze

1 impacts using the 2010 Census data.⁷

2 As it did in trying to trying to explain away its failure to reconcile the 2005 SCAG
3 estimate with the 2010 Census data, the City again confuses thresholds of significance with
4 the data used to measure whether a threshold has been exceeded. The City's purported
5 analysis of the impacts of the HCP Update using 2010, by using housing unit counts
6 instead of population, thus fails.

7 "A threshold of significance is an identifiable quantitative, qualitative or
8 performance level of a particular environmental effect, non-compliance with which means
9 the effect will normally be determined to be significant by the agency and compliance with
10 which means the effect normally will be determined to be less than significant."

11 Guidelines § 15064.7(a). The number of housing units is not a "quantitative, qualitative or
12 performance level of a particular environmental effect." *Id.* It is the data applied to a
13 threshold of significance to determine whether an impact is significant. Guidelines §
14 15125(a). In this instance, it is the incorrect data.

15 The thresholds of significance for water (AR 26:3151), energy (AR 26:3161),
16 wastewater (AR 26:3169) and solid waste (AR 26:3177) are silent as to the unit of
17 measurement by which the determination of significance must be measured. Measuring
18 impacts by housing units, as the City implies, is not mandated. But in using housing units
19 to measure impact, the City again asks the public to set aside common sense and suspend
20 belief. The City asks the public to believe that 224,426 people consume less water and
21 energy, and generate less sewage and solid waste, than 198,228 people. The City offers no
22 support for this fiction. Clearly inadequate or unsupported studies are entitled to no
23 judicial deference. Berkeley Keep Jets Over the Bay, *supra*, 91 Cal.App.4th at 1355. The

24
25 ⁷ Moreover, La Mirada rejects the City's characterization of the second
26 addition to the FEIR as a response to late comments. The discussion in the second addition
27 to the FEIR is a direct response to claims that the wrong baseline was being used and that
28 the Draft EIR needed to be revised and recirculated to reflect the 2010 Census data. The
inadequacy of the population baseline was raised during the Draft comment period. (*See*,
e.g., 29:4326-4328, 4433-4434.)

1 City's last-minute attempt to analyze impacts using 2010 Census data thus fails.

2 In the case of police services, not only did the City fail to use the correct
3 measurement, but it is also mistaken in its statement that the thresholds of significance did
4 not change between the Draft EIR and the second addition to the Final EIR. One of the
5 thresholds of significance for police services is "[a] potentially significant impact to police
6 services could result if [the HCP update] were to induce substantial growth or
7 concentration of population beyond the capacities of existing police personnel and
8 facilities...." (AR 26:3119.) By its very terms, population increase is an appropriate
9 metric by which to measure an impact and determine if the threshold of significance has
10 been crossed. Indeed, the EIR even provides a police officer per population standard and
11 determined baseline staffing requirement based on the estimated population. (AR
12 26:3120.) The City backed away from that threshold in the second addition to the Final
13 EIR (AR 38:6172) with no basis for its abandonment. On this ground as well, the analysis
14 of impacts purporting to use the 2010 Census data fails.

15 **VI. THE CITY'S FAILURE TO RECIRCULATE ALSO REQUIRES**
16 **INVALIDATION OF THE EIR.**

17 By asserting that "if the Court upholds the City's actions, then recirculation would
18 not be triggered" (COB 19:25-26), the City tacitly accepts the flip side: If information
19 about the baseline, alternatives, or the 2010 Census were significant new information added
20 after the release of the Draft EIR, then recirculation is triggered. Guidelines § 15088.5(a).

21 Here, disclosure of the 2010 Census data significantly changed the Project setting.
22 Instead of the 24,636 additional residents that the Draft EIR contemplated, the 2010 Census
23 indicated the HCP Update would accommodate 50,744 additional residents. Providing for
24 an additional 26,000 people creates a substantial increase in the severity of environmental
25 impacts than those identified in the Draft EIR. This required recirculation. Guidelines §
26 15088.5(a)(2).

27 The 2010 Census data also made feasible a reduced capacity alternative that was
28 considerably different from the Project and that potentially lessened its environmental

1 impacts. Using the 2010 Census data, a reduced capacity alternative that still
2 accommodated 24,636 new residents became potentially feasible. (AR 871:21173-21174.)
3 However, not only did the City decline to adopt such an alternative, it refused to even
4 analyze it. This, too, required recirculation. Guidelines § 15088.5(a)(2).

5 In fixating on the facts of Mountain Lion Coalition v. Fish & Game Comm. (1988)
6 214 Cal.App.3d 1043, the City misses the point of the case. The environmental document
7 circulated for public review in Mountain Lion Coalition was so fundamentally and
8 basically inadequate and conclusory in nature that meaningful public review and comment
9 were precluded. Id. at 1050-1052. See also, Guidelines § 15088.5(a)(4). So it was here.
10 The City's attempt to analyze impacts using the 2010 Census data, and the timing that
11 attempt less than 5 days before adoption of the HCP Update, was so fundamentally
12 inadequate and conclusory in nature that meaningful public review and comment were
13 precluded.

14 **VII. LA MIRADA HAS SHOWN THE GROWTH INDUCING NATURE OF THE**
15 **HCP UPDATE CREATES INTERNAL INCONSISTENCY WITHIN THE**
16 **LOS ANGELES GENERAL PLAN.**

17 The City offers several arguments in opposition to La Mirada's claim that the
18 excess capacity created by the HCP Update renders the General Plan internally
19 inconsistent. Each of the City's arguments fails.

20 The City's first argues that because it meets SCAG forecasts, the HCP Update is
21 not growth inducing. (COB 26:6-8.) As demonstrated by La Mirada and the related cases
22 petitioners, however, there is no substantial evidence to support the validity of the 2005
23 SCAG estimate. Applying the only population figures with evidence in the record to
24 support them – the 2010 Census data and the 20,176-person increase projected by SCAG
25 between 2005 and 2030 (AR 871:21174) – the HCP Update significantly exceeds SCAG
26 forecasts.

27 Second, the City asserts that the General Plan Framework Element is not anti-
28 growth, i.e., that even if it were growth inducing, the HCP Update would not be

1 inconsistent with it. (COB 26:8-10.) However, La Mirada never referred to the
2 Framework Element as “anti-growth.” Rather, La Mirada referred to it as growth neutral,
3 “a plan to accommodate whatever growth does occur in the future, which could include
4 loss of population.” (AR 721:17890-17891.) In order to show growth neutrality the
5 Framework Element looked to SCAG forecasts for a determination of what that growth or
6 decline might be. (SAR 1-5.) A community plan that provides for a capacity that exceeds
7 SCAG forecasts is thus growth inducing and creates an internal inconsistency with the
8 General Plan Framework Element. Here, SCAG forecast an increase of 20,176 new
9 residents in the HCP area between 2005 and 2030. (AR 26:3319, 881:21250.) However,
10 substantial evidence exists that the HCP Update provides capacity for more than double
11 than amount. (AR 575:16645, 652:17250.) This makes the HCP Update growth inducing
12 and inconsistent with the General Plan Framework.

13 Third, the City touts conformity with a policy to increase density generally within
14 one quarter mile of transit stations to show the HCP Update is not inconsistent with the
15 General Plan Framework Element. (COB 26:12-15.) Elevating one policy in a general
16 plan above all others to determine consistency is not the test for making such a
17 determination. The test is whether the HCP Update “is compatible with and will not
18 frustrate the General Plan’s goals and policies.” Napa Citizens for Honest Government v.
19 Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 379. An inconsistency exists
20 not only if there are substantial contradictions and inconsistencies on the face of the
21 General Plan, but if the implementation of one provision will frustrate a policy stated in a
22 second provision and there is no affirmative commitment to mitigate that adverse effect.
23 Id. at 380. Here, the growth inducing nature of the HCP Update is inconsistent with the
24 General Plan in a fundamental manner – it frustrates growth and capacity provisions in the
25 General Plan Framework Element.

26 Fourth, the City touts “16 pages of findings demonstrating” HCP Update
27 consistency with the General Plan. (COB 27:1-9.) But all of those findings are predicated
28 on a level of growth that is less than half what the HCP Update provides. That level of

1 growth, in turn, stems from the discredited 2005 SCAG estimate. Accordingly, there is no
2 evidence on which to base the findings, and abuse of discretion is established. Code Civ.
3 Proc. § 1094.5(b).

4 Fifth, the City claims it is mandated to use only SCAG forecasts and may not
5 deviate from them. The fallacy of that claim is addressed in Section III.B, supra.
6 However, it is worth noting again that the City puts itself between the proverbial rock and a
7 hard place by asserting this position. It either uses the discredited 2005 SCAG population
8 estimate and violates CEQA, or it uses the 2010 Census data and violates the General Plan.
9 The City cannot have it both ways.

10 **VIII. CONCLUSION.**

11 The City never challenges the veracity of the 2010 Census data. With that and the
12 2000 Census data as brackets, there simply is no substantial evidence to support use of the
13 significantly inaccurate 2005 SCAG estimate as the population baseline for the HCP
14 Update EIR. Further, the taint of the flawed baseline flows into and distorts every
15 environmental review subject area in the EIR that relies on population. The entire EIR is
16 wrong, and is the poster child for the opposite of what CEQA requires.

17 Beyond that, the City violated CEQA by failing to consider a “reasonable range” of
18 alternatives – or any. It considered zero alternatives, which is a facial violation of CEQA.
19 On a related point, the City’s rejection without analysis of a reduced capacity alternative
20 constitutes a separate flaw.

21 The City’s eleventh-hour “review” of impacts using the 2010 Census data did not
22 remedy the problems. Not only were the City’s conclusions unsupported by substantial
23 evidence, but the City violated CEQA by adding this significant new information to the
24 EIR without recirculating the Draft EIR.

25 Finally, because the City never confronts the lack of substantial evidence to
26 support its population baseline, it never confronts the growth inducing nature of the HCP
27 Update. Because the General Plan is growth neutral, this creates an internally inconsistent
28 General Plan.

1 For these and all other foregoing reasons, La Mirada respectfully asks that this
2 Court grant the petition for writ of mandate and issue the writ relief as prayed.

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4 DATED: August 21, 2013

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