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July 24, 2013

VIA HAND DELIVERY

Hon. Herb Wesson, President and
Los Angeles City Council
c/o June Lagmay, City Clerk
City of Los Angeles
200 North Spring Street
City Hall - Room 360
Los Angeles, California 90012

Re: Objections to Millennium Hollywood Project;
Appeals of VTTM-71837-CN-1A and
CPC-2008-3440-VZC-CUB-CU-ZV-HD; ENV-2011-0675-EIR

Dear Honorable Wesson and Members of the City Council:

I. INTRODUCTION.

This firm and the undersigned represent Communities United for Reasonable Development, a coalition of more than 40+ Los Angeles community organizations and Neighborhood Councils representing more than 250,000 residents, all of which oppose the proposed Millennium Hollywood project near Hollywood and Vine in Hollywood.

The manner in which the environmental review and planning entitlements have been processed for the Millennium Hollywood Project by Los Angeles City officials marks one of the most alarming derelictions of legal duties ever seen in the history of the City. These include, but are not limited to, the following:

1) Failing to require the Millennium Developer to disclose to the public what project is proposed so that it may be lawfully analyzed for project impacts and enforceable mitigation measures put in place to mitigate all impacts that may be feasibly mitigated;

2) Allowing the Millennium Developer to write its own development "regulations" that expressly state that no matter what provision of the Los

Angeles Municipal Code might restrict land uses or development of the Project Site, the developer-written regulations will "prevail" over all other City laws (even though the City Council does not even know what those provisions might be);

3) City officials participating with the Millennium Developer and its licensed geologists in publishing of a fraudulent EIR with materially misleading statements, false supporting maps that move the project 850 feet out of the City's Fault Rupture Investigation Zone, and omissions of well-known geologic studies which conclude that traces of the Hollywood Fault traverse the Millennium Project site;

4) The City's geologist, in the face of knowledge of these false reports, failing to fulfill his obligations as a licensed professional to rescind the Project's grading and geologic approvals until a fault investigation of the entire Millennium Project is conducted with trenching to 60 feet and other appropriate measures;

5) Allowing the Millennium Developer to directly hire and pay significant funds to Planning Commission President William Roschen when the Developer knew that the project would come before Mr. Roschen for review and approval – in violation of California's conflict of interest laws;

6) When faced with the reality that Mr. Roschen's conflict of interest barred the City from proceeding with considering and approving any contract or agreement involving the Millennium Project entitlements, the City Attorney contending that upon mere withdrawal of a requested Development Agreement, the City Planning Commission could consider and approve another agreement that makes the project conditions legally enforceable against the Developer and any successors in interest, all in violation of State conflict of interest laws;

7) Ignoring repeated and detailed demands of the California Department of Transportation, a responsible agency for the state highway system, to properly study the traffic impacts of the Millennium Project on the Hollywood Freeway, and because of the City's dereliction of this mandatory duty, trying to shift the cost of the mitigation of the impacts on

the freeway system from the Millennium Developer to the taxpayers of the State;[1]

8) Failing to include in the cumulative impact analysis of traffic and other environmental issues dozens of related development projects discussed in EIRs of other Hollywood projects but omitted from the Millennium Project EIR – even after Caltrans itself objected to the omissions;

9) Ignoring reports of the City and Los Angeles Grand Jury that the fire department response times used for the analysis in the environmental documents could not be relied upon and needed to be revised and updated before considering project approvals;

10) Undertaking a final act of desperation by falsely claiming that the Planning and Land Use Committee of the City Council recommended that all of the Millennium Project entitlement conditions, development regulations, and land use flexibility rules be placed into a new ordinance, when no such thing occurred at the June 18, 2013 PLUM Committee meeting;[2]

11) Proposing to enact the new ordinance without complying with the review requirements of the City Charter in Section 558.

This list of actions and omissions by City of Los Angeles officials is a shocking compilation of dereliction of duty, misfeasance and malfeasance by officials elected and appointed to City positions with affirmative duties to protect public health, safety and welfare.

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[1] True and correct copies of our letter and a letter of the South of Santa Monica Homeowners Association addressed to Mr. Malcolm Dougherty, Director of the California Department of Transportation, are attached collectively at **Exhibit 1**.

[2] Such misconduct by City Planning and City Clerk officials constitute fraudulently altering a public record. Such misconduct will entitle any Petitioner in subsequent litigation to conduct depositions to locate records suppressed from any administrative record of the City. In other litigation brought by this office, the City and City Clerk were found by the Los Angeles County Superior Court to have falsified the City's official Journal of Proceedings. We contend the City is violating the law in this regard again.

Accordingly, we adopt and incorporate by reference all prior objection letters and supporting evidence filed or submitted to any and all City officials, whether contained in "official files", any City email address, and any personal email of a City official used to receive or conduct official City business about the Millennium Project without placing it in an official City file. All of this information is before the public agency of the City in accordance with Public Resources Code Section 21167.6(e).

II. PUBLIC RECORDS ACT REQUESTS AND INTERPLAY WITH THESE OBJECTIONS.

As a preliminary issue, we have sought various public documents from the City under the California Public Records Act ("CPRA"). Several of those requests have not been responded to by the City, thus depriving us of a full opportunity to meaningfully respond to the City's contemplated actions.

Attached collectively at **Exhibit 2** hereto are true and correct copies of correspondence regarding this matter as well as copies of currently-outstanding CPRA requests (and City responses) to which the City has, to date, failed to provide responsive documents or has provided incomplete and impermissibly late documents, to our prejudice. Because these documents have not been produced, the City has hampered our ability to object and impaired our ability to submit the most meaningful and comprehensive evidence possible.

The California Supreme Court has stated: "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process . . . ." CBS, Inc. v. Block (1986) 42 Cal.3d 646, 651. Those precepts apply to the City's actions herein.

As stated by the Supreme Court in Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, CEQA's

> "purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment but also informed self-government. To this end, public participation is an essential part of the CEQA process."

Id. at 1123 (italics in original; underline added).

It has been held that "the whole purpose of the CPRA is to shed public light on the activities of our governmental entities . . . ." Fairley v. Superior Court (1998) 66 Cal.App.4th 1414, 1422. Because the documents requested from the City relate to critical issues as they pertain to, *inter alia*, the City Geologist's refusal to revoke the grading and seismic approvals for the Project, and his interactions with the Developer and its consultants, we ask that no decision be made until those documents have been produced to us. We will seek to augment the administrative record as appropriate to remedy the violations of our client and the public's constitutional and due process rights to a fair and impartial hearing, among other violations committed by the City.

III. THE FAILURE OF THE CITY COUNCIL TO ADOPT PROCEDURAL HEARING RULES AS MANDATED BY GOVERNMENT CODE 65804 DEPRIVED APPELLANTS OF A FAIR HEARING.

The City Council has been on notice for years that Government Code Section 64804 imposes a mandatory duty upon this City to enact and publish land use hearing procedural rules. Despite knowing of this procedural infirmity to its land use hearings before the City Council, the City persists in its refusal to propose and adopt fair hearing rules that treat land use appellants in accordance with their constitutionally protected due process hearing rights.

The hearing before the City Council's Planning and Land Use Management ("PLUM") Committee was fundamentally deficient simply on the ground that the City refuses to adopt fair procedural rules. There exists no procedural rule that limits the PLUM Committee Chair's discretion regarding the amount of time given to appellants and applicants.

This was the order of presentation at the PLUM Committee hearing:

1) Planning Staff Report – 4 minutes

2) CURD Appeal – 16 minutes

3) PLUM Committee "Rebuttal" of CURD – 3 minutes

4) W Hotel Residences Appeal – 2 minutes

5) Millennium Developer Presentation – 20 minutes

6) Public Comment Severely Restricted to 20 minutes per side – 40 minutes

7) Shouts From Audience About Denial of Public Comment – 1 minute

8) Announcement of Continuance of Council Hearing Date – 1 minute

9) Applicant Called to Further Discuss the Project – 6 minutes

10) Council Office Comment – 1 minute

11) Motions to Approve the Project – 5 minutes

Thus, the PLUM Committee gave the Applicant more time to present its case than to Appellant CURD or even Appellants CURD and W Hotel combined. Then once the PLUM Committee chair declared that the Public Hearing was "closed" under the Brown Act, the Applicant was returned to the podium and given 6 more minutes to offer previously undisclosed changes to the Project or to make statements for which the land use Appellants, because of the lack of any fair procedural rules enacted under State law, were never allowed to rebut or respond to before the PLUM Committee took action. Even during the Motions to Approve the Project, the Applicant's attorneys were brought to the podium to further speak, but no response was afforded to the Appellants.

Additionally, because the City has no procedural rules in place that mandate that the Applicant provide written submittals to the City at the same time to the Appellant, a letter of Sheppard Mullin asking for substantial changes to the Project Conditions was not sent to Appellant. During the Motions to Approve the Project, we first learned of the existence of the Sheppard Mullin letter even though no one identified the date of this letter. Due to this unfair process that permits an Applicant to slide into the administrative record documents and materials for which the Appellant is given no opportunity to rebut, we were denied fair hearing as to an opportunity to analyze and submit contrary evidence on these materials. See Section VI for further analysis.

We also object to an administrative hearing process where the PLUM Committee's vote to forward the matter to City Council occurred without the Committee even having reviewed the various substantial objections, including regarding hitherto unknown defects in the EIR regarding seismic and geological issues on the Project Site.

The dismissal of so many issues that should be of primary concern to the City Council with its lead agency duties under CEQA to fully disclose the Project impacts and mitigate them in good faith, not only because of their importance in the CEQA process but because of actual life, health and property issues regarding undisclosed earthquake faults on the Project Site, is truly distressing. It is also a failure to proceed in accordance with law.

IV. MILLENNIUM'S COUNSEL MADE NUMEROUS MATERIAL MISREPRESENTATIONS OF FACT TO THE PLUM COMMITTEE TO WHICH CURD WAS GIVEN NO OPPORTUNITY TO REBUT.

Certain points made by Mr. Jerold Neuman of Sheppard Mullin on behalf of the Applicant before the PLUM Committee were materially false. CURD was denied a fair hearing because it was given no opportunity to rebut the following claims made by the Applicant's attorney:

1) Mr. Neuman claimed that there is "no evidence" of a fault on the site. This is fundamentally untrue. As documented in our June 18, 2013 objection letter and Exhibits 15-24 thereto, there is an enormous amount authoritative and credible evidence of active earthquake faults on the Project site. This includes from the California Geological Survey 2010 Fault Activity Map, the 1997 Dolan Study, and the 1992 Crook & Proctor Study. That none of these things were mentioned in the text of the EIR or the May 2012 Langan Engineering Study commissioned by the Millennium Hollywood Project developer, shocks the conscience because any competent and complete geotechnical report would have included this critical information.[3]

[3] As a demonstration that Langan Engineering actively suppressed substantial evidence of the existence of earthquake fault traces across the Project site, we note that the May 2012 Langan Report fails to list the Dolan and Crook & Proctor studies under the References Section of the report, or discuss any of the maps in those studies that depict active fault traces across the Project site. Only the later November 30, 2012 Langan Report disclosed about 12 additional study references including the missing and well-known geologic studies of Crook & Proctor and Dolan. Even when discussing these studies, Langan geologists attempted to disparage the quality of the work of these respected academic scholars instead of presenting an objective description of their conclusions about the location of the Hollywood Fault on the Millennium Project site.

2) Mr. Neuman claimed that the seismic/geologic studies undertaken as part of the EIR process were adequate. For all of the reasons stated above, this is untrue. The City and the Millennium Hollywood Project developer had withheld vital data from the public and decisionmakers. "If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government." Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392.

3) Further, the claim that the Millennium Hollywood Project developer's consultant adequately tested the Project Site in connection with the report relied upon in the Draft EIR is false. The four borings conducted on the Project Site (two on the West and two on the East Sites) were done parallel to the previous mapped or projected fault trace. Standard engineering practice would be to run borings perpendicular, if one were actually trying to find a fault. The borings were defective and below the standard of care of a professional geologist for other reasons as more fully described in the Wilson Report at Exhibit 19, p. 4, to our June 18, 2013 objection letter, as well as in Prof. Dolan's comments at Exhibit 24 to our June 18, 2013 objection letters (see Prof. Dolan's June 4, 2013 email at 13:27). Later additional borings, only performed on the West Site, were never included in the Draft EIR and never re-circulated consistent with the public's right to participate in the City's decisionmaking. No further borings to explore for a fault were ever conducted on the East Site. Even though the later borings were reported in a Fault Investigation Report dated November 30, 2012 by Langan Engineering, none of the written responses to public comments on the Draft EIR mentioned the existence of this Fault Investigation Report or any of its findings. The Final EIR text was not modified in any way to discuss the November 30, 2012 Fault Investigation Report or make the report available to the public as part of the statutorily mandated public comment process. Instead, the City's Final EIR responses to numerous comments on earthquake faults onsite were deflected with the same false claim that the Hollywood Fault was .4 miles away.

4) Mr. Neuman falsely claimed that the oversized exhibits that our office used at the PLUM hearing were internally inconsistent, i.e., that the maps showed different fault locations, suggesting that there is no clarity about where the faults are located. Mr. Neuman's statement was either intentionally distortive of the facts or portrayed a shocking lack of understanding. The first exhibit we used, which is attached for your convenience at **Exhibit 3**, was the "blue polygon exhibit." The two large black lines on that exhibit do not attempt to represent faults. Those black lines are the Earthquake Fault Rupture Study Zone from Exhibit A of the City's Safety Element of the General Plan. Any property within those zones must be subjected to more intensive seismic studies including competent and thorough investigation for earthquake faults. Significantly, as we noted, the Millennium Hollywood Project developer falsified the location of the Project Site in Figure 4 of the EIR by shifting the Project Site as represented in blue polygons about 850 feet north of the actual Project Site so that it could then be north and outside of the City's Earthquake Fault Rupture Study Zone. The actual location places the Project Site through the black line of the City's Earthquake Fault Rupture Study Zone. In comparison, the second exhibit which our office used, attached hereto at **Exhibit 4,** is an enlargement of the California Geological Survey's 2010 Fault Activity Map. That was superimposed upon a scaled City map grid showing the location of the property in relation to the mapped fault trace across the subject property from the California Geological Survey's 2010 Fault Activity Map. The lines in the first exhibit are the City's Earthquake Fault Rupture Study Zone boundary lines. The lines in the second exhibit are actual fault traces mapped on the California Geological Survey's 2010 Fault Activity Map. For Mr. Neuman to argue that the two exhibits showed different fault traces was grossly misleading and inaccurate, and yet given credence by the PLUM Committee in its rush to approve the largest project in Hollywood's history in just over 90 minutes.

5) Mr. Neuman also made the nonsensical claim that the decision of the City's Building and Safety Department to require a fault investigation report was triggered solely in connection with review of the Subdivision Map Act entitlements, and had "nothing to do with" CEQA compliance for the Project. Mr. Neuman's claim is inconsistent with the Introduction to the November 2012 Fault Investigation Report prepared by Langan

Engineering and Environmental Services which says: "*The fault investigation was performed because although fault investigations have not been traditionally required by the City of Los Angeles' (City) Department of Building and Safety within or immediately adjacent to the Site and the Site is not located within a current state or city mandated fault investigation zone,* ***the City has required a fault investigation*** *be performed within the Site in accordance with Section 1803.5.11 of the Los Angeles Building Code* ***since it is located within 500 feet of the Hollywood fault trace*** *(as mapped by the California Geologic Survey (CGS) and the United States Geological Survey (USGS).*" (Emphasis added.) Thus, the text of the Report states that because the City concluded the Hollywood Fault was much closer than the fraudulent claim of 0.4 miles set forth in the May 2012 Langan Report (and repeated by the City in the Draft and Final EIR), a fault investigation and report had been ordered. Mr. Neuman knows full well this was the reason (which is a critical CEQA issue required to be investigated in an EIR) because the first sentence of the Fault Investigation Report states: "*As requested by Millennium Hollywood, LLC (Millennium)* ***and Sheppard Mullin Richter & Hampton, LLP (Sheppard Mullin)****, we completed a fault investigation for the proposed Millennium Hollywood Development (Site) in Hollywood, California.*" (Emphasis added.) Thus, it appears that Mr. Neuman and his firm have at least read the Report, and may have participated in "wordsmithing" the evasive language of the Fault Investigation Report submitted to the City. Nowhere does the Fault Investigation Report validate Mr. Neuman's claim that it was a requirement of only the subdivision parcel map process. And certainly there was no basis in Mr. Neuman's assertion that preparation of the Fault Investigation Report did not trigger an obligation of the City to disclose and re-circulate the Report as part of the CEQA process.

6) Finally, there were repeated claims by Mr. Neuman and others at the PLUM Committee that the EIR remained adequate as to seismic analysis. Throughout the entire CEQA process for the Project, the City staff, passively relying upon environmental reports and geologic reports prepared by the Developer's consultants, has released Draft and Final EIR reports that falsely claimed the Hollywood Fault was no closer than 0.4 miles (2,112 feet) from the Project Site. Even when the City received the November 2012 Fault Report which states the site is within 500 feet of the Hollywood Fault, no one required the Draft EIR to be revised and re-

circulated for public comment regarding this extremely vital environmental issue. On these facts, the City clearly failed to fulfill its mandatory duty to fully disclose the facts as part of the CEQA public participation process. Manufactured (fraud) and unsubstantiated evidence that the Hollywood Fault was 0.4 miles from the Project Site cannot constitute substantial evidence of anything in the CEQA record. For this reason, a complaint against Millennium's geologists was filed with the California Board of Professional Engineers, Land Surveyors, and Geologists for their shocking material misrepresentation of facts in connection with the May and November 2012 Reports to the City. And in response, the State Board has opened investigations of both the engineer and geologist from Langan Engineering who prepared and placed their professional stamps on those geology reports. A copy of the complaint letter (minus exhibits, which are already in the administrative record for this matter), and the State Board's letters notifying our office of the opening of these investigations is attached at **Exhibit 5.** Mr. Neuman was actively participating in the developer's grossly misleading actions through his baseless denials and materially misleading assertions before the City Council's PLUM Committee.

Because the City allowed no rebuttal to the Developer's substantial and pervasive material misrepresentations of fact, CURD was denied an opportunity to offer this substantial rebuttal into the record before the PLUM Committee voted to approve the Project. On this ground, CURD was not afforded a fair hearing.

V. EVENTS SUBSEQUENT TO THE PLUM COMMITTEE HEARING DEMONSTRATE THE CITY IS ABDICATING ITS DUTY UNDER STATE LAW TO PROTECT LIVES OF FUTURE OCCUPANTS OF THE MILLENNIUM PROJECT.

This office has submitted California Public Records Act ("CPRA") requests to both the Los Angeles Building and Safety Department and the City's Information Technology Agency for just the email of a handful of persons in the LADBS regarding communications concerning the Millennium Project. The City is delaying its response in searching for these emails despite the extremely limited time period and handful of persons requested to search their email accounts. Attached at **Exhibit 2** are copies of those requests and the City's delaying tactic of extending the period of response to 24 days to search for a few emails. These actions demonstrate the lengths the City has gone

to participate in a cover up of the Millennium Developer's fraud concerning seismic issues.

From weeks since the submittal of CURD's evidence of Langan Engineering's defective geologic studies were submitted to the PLUM Committee, CURD representatives have contacted the City's licensed geologist, Dana Prevost, asking him to intervene to halt the consideration of this Project until credible fault investigation of the entire Project site has been conducted. Attached at **Exhibit 6** are copies of email and other exchanges with Mr. Prevost.

Originally, Mr. Prevost told CURD's representatives that he was going to issue a rescission letter on the grading/seismic approval letter. Soon thereafter, he did not do so, and instead told CURD representatives that he would meet with the Millennium representatives the week of July 15, 2013. Mr. Prevost also confessed to CURD representatives that Mr. Prevost had not really read the Langan reports. Due to the failure of the City's licensed geologist to intervene to protect the public health and safety, our office sent a warning letter to Los Angeles Building and Safety Department officials to alert them of their duties to enforce the State law that bars approval of structures for human occupancy on active fault traces. A copy of that letter is attached at **Exhibit 7**. Through the date of this objection letter, the City has taken no action to rescind the grading/seismic approval letter, and has not even deigned to respond to our **Exhibit 7**.

Since the PLUM Committee's recommendation hearing, other licensed geologists, alarmed by the evidence in this matter, have asked the California State Geologist to protect the public health and safety by requiring a more through and credible fault investigation. Robert Sydnor, a renowned geologist, not receiving any compensation, has asked Dr. John Parrish of the California Geologic Survey to intervene. A copy of his letter to Dr. Parrish is attached at **Exhibit 8**.

In response to the requests for intervention, Dr. John Parrish, California State Geologist, California State Department of Conservation, on Saturday, July 20, 2013, sent notice to the Los Angeles City Council and submitted to the official EIR administrative record for the Millennium Hollywood Project the letter attached hereto at **Exhibit 9**. This is dramatic new information that should stop the City's approval process in its tracks, and which should further call into question the dereliction of duty (or worse, including complicity) of the City's Building and Safety Department in refusing to issue a rescission letter weeks ago. In his letter, Dr. Parrish states:

1) The California Geologic Survey ("CGS") has notified the Los Angeles City Council – *with specific reference to the Millennium Hollywood project and its EIR No. ENV-2011-0675-EI*R – that the CGS "has commenced a detailed study of the Hollywood Fault" and its associated splay faults pursuant to the Alquist-Priolo Act, which study includes the Millennium Hollywood project site.

2) The City "must withhold development permits for sites within the [Alquist-Priolo] zones . . . ."

3) The CGS's investigation affects the Millennium project and the City's "reviewing of plans for the prospective Millennium Hollywood Project, which may fall within an Earthquake Fault Zone . . . ."

4) The CGS's "fault-zoning process" is under way and "will provide the City with new information for its consideration of current and future proposed developments all along the Hollywood Fault."

5) The CGS's "investigation and resultant maps and reports are scheduled for completion by the end of this year or early in 2014."

In other words, the City should defer any action or approvals for the Millennium Hollywood project until the State's investigation affecting the proposed Millennium Hollywood project site is complete.

On its website, the California State Geologist's Office explains that it is illegal under the Alquist-Priolo Act to build on top of an active fault. That website says, in part: "Before a project can be permitted, cities and counties must require a geologic investigation to demonstrate that proposed buildings will not be constructed across active faults. An evaluation and written report of a specific site must be prepared by a licensed geologist. If an active fault is found, **a structure for human occupancy cannot be placed over the trace of the fault and must be set back from the fault (generally 50 feet**)." (Emphasis added.)

Doesn't it make sense to delay a decision to gather all the facts before subjecting thousands of people to potential death and dismemberment? That would be the reasonable and responsible thing for the City Council to do.

We have contended geologic hazards exist. The CGS has already begun studying faulting at this site in specific response to the flaws discovered in the Millennium Developer's geologists' studies. Why not wait? What is to be lost in keeping the public safe?

The State is now investigating the status of the Millennium Project site, and its earthquake faults. We believe this is in part because of the dereliction of duty by the City's Building and Safety Department and its own State licensed geologist, Mr. Prevost. A responsible government agency would send the Project back to the Planning Department for a full investigation of whether or not active faults run across the Millennium site as concluded by several academic studies of the Hollywood Fault. The City Council must defer any discretionary decisions until after the State's investigation of the Hollywood Fault is complete. To do otherwise under the leadership of the City Council and Councilman Mitch O'Farrell would be wasteful, irresponsible, and a violation of State law. *Let the State complete its investigation before the City approves two skyscrapers on top of an active earthquake fault cutting through this property.*

The new testing by the State has been announced before any approvals have happened. At this point, the current EIR has not been certified as complete. Prior to this, an Alquist-Priolo study, commissioned by the State Agency with regulatory authority over the issue, has commenced regarding this very serious issue of life and public safety. Significantly, this State Agency was NOT consulted by the City during the CEQA process – and that failure alone violates the duty of the City to consult with all responsible agencies during the CEQA consultation process.

This constitutes new information which must alter the EIR process. The existing EIR did not acknowledge the existence of an Alquist-Priolo study or zone. An Alquist-Priolo study has now been commenced by the State Geologist, and the "fault-zoning process" affects this process. Even though the Project site is not currently within an Alquist-Priolo zone, it is within the City's Earthquake Fault Rupture Study Zone (after correcting for the Millennium Developer's fraudulent movement of the project site 850 feet north of its actual location in maps attached to the City's EIR). Thus, there are at least two independent bases for the City Council to protect public safety by sending this Project back for full earthquake fault studies in conjunction with the State's investigation of the Hollywood Fault across the Millennium Project site.

Given the materially misleading nature of the Langan Engineering studies of the geologic conditions of the Project site, the City should be determining who the investors

and the insurers of the Millennium Project are, and *mandate that proof be submitted that the Applicant has fully disclosed these seismic issues and these objections, and the letter from the State Geologist Dr. Parrish, to those who will be asked to invest in and insure the Project.* After all, in the event of any fraudulent representations to investors or insurers, if there is a building collapse that damages City facilities that could have been avoided by designing the Project to avoid the active Hollywood fault zone, the City will be unable to recover losses from the Project's insurers or investors. In fact, the evidence of City participation in this fraud may be a highly unusual circumstance where the City itself could be found liable for injuries and property damage.

Based upon all of the foregoing, any attempt of Councilmember O'Farrell to submit an amending motion at the City Council meeting, any new findings, new information on the seismic issues, or new information regarding other environmental issues from the City or developer being presented at this time, or deferred study and/or deferred mitigation post-City Council approval: 1) denies CURD, its members, and the general public of its due process rights; and 2) violates CEQA because it constitutes substantial new evidence that should have mandated recirculation of the Draft EIR. To the extent that this actually occurs at the City Council hearing, the City has deprived CURD of its right to a fair hearing before the City Council.

The entire Project should immediately be stopped until objective testing of the property is conducted to identify the exact location of faults that are traversing the property. This should be done through trenching at the property with independent geologists under direct supervision of a neutral panel of experts, including any geologists of my client's choosing having simultaneous access to tests and observe. For the sake of the lives of thousands of future residents and occupants of these potential structures, and for the rule of law that "No structure for human occupancy . . . shall be placed across the trace of an active fault. Furthermore, as the area within fifty (50) feet of such active faults shall be presumed to be underlain by active branches of that fault unless proven otherwise by an appropriate geologic investigation and report . . . , no such structures shall be permitted in this area", we demand that the City Council deny all Project applications and the EIR until such time as the property has been properly trenched and investigated on both the West and East Sites so that the existence of faults can be determined with specificity, and that such critical studies be released for public participation as part of a recirculated draft EIR.

If, we, the California Geological Survey map, the California Geologist John Parrish, Professor Dolan, and Crook and Proctor are all wrong, and in fact there are no

faults on the property, then so be it. But if we are right, as all independent evidence indicates, then the law has clear requirements for buildings in relation to earthquakes. Specifically, buildings cannot be built atop earthquake faults and must be set back a specific distance. Those facts must be ascertained prior to any further actions in this regard. Given that Councilman O'Farrell will be able to assert his influence and public stewardship in this matter in his first test of leadership and protection of the public health, safety and welfare, we particularly urge his focus on this critical, life and death matter.

VI. THE MAY 31, 2013 SHEPPARD MULLIN LETTER ASKING FOR SIGNIFICANT MODIFICATIONS OF THE PROJECT CONDITIONS VIOLATES CEQA AND DUE PROCESS OF LAW.

Due to what may be City staff misconduct, it appears that a letter dated May 31, 2013 from the Applicant's attorneys regarding changes to the Project's conditions may have been submitted by Sheppard Mullin at a much later date, scanned and posted in the City's online City Council File at a date significantly after the date on the letter. ("May 31 Conditions Letter".) As stated above, the failure of the City to have adopted procedural hearing rules requiring this significant letter to be timely delivered to CURD deprived Appellant of a fair hearing. If this letter was fraudulently submitted to the City's official records after the stated date of the letter (to modify the City's official administrative record), such action would constitute tampering with a public record.

It is facially invalid for the City and Applicant to contend that it is the responsibility of a land use Appellant to check the City Council File every day to see if the Applicant or City tossed something new into the City Council File. To the best of the recollection of CURD representatives, they certainly had not seen the May 31 Conditions Letter at any time leading up to the July 18, 2013 PLUM Committee hearing. To follow up on this issue, CURD has submitted a CPRA request to the City Clerk's office for all communications related to submittal of this letter and to inspect all screen shots of the software of the City that records when each document was uploaded to the City Clerk's Council File system online.

Even worse is that the transcript of the PLUM Committee hearing will reveal that the Councilmembers were materially misled by Mr. Neuman when he asked the PLUM Committee to adopt all of the Applicant's requested Project changes without disclosing to the PLUM Committee, the Appellant, or the commenting public what those proposed project changes were, or even the date of the letter that supposedly contained those substantive changes of the Project.

He represented to the PLUM Committee that all of the modifications were to "conform" the project conditions to the reduced height project offered by the Applicant and accepted by the City at the hearing that day.[4] While that may have been true as to some of the modifications, it most certainly was not true of all of them. Some of the changes are significant and make even more the alleged project benefits or transportation mitigation measures illusory. Thus, the PLUM Committee was asked to and in fact did approve modifications to the largest project in the history of Hollywood without even bothering to find out what those significant changes were. The changes included, but are not limited to, the following:

1) The Elimination Of Two TDM Measures And Removal Of Seven Other TDM Mitigation Measures After 15 Years Was Not Analyzed In The EIR For Project And Cumulative Impacts. This change needs to be analyzed and mitigated in a recirculated Draft EIR.

2) The Modification of Q Condition 10 To Allow Nighttime Delivery Of Construction Materials And Construction Machinery Was Not Analyzed For New Project And Cumulative Noise Impacts On Sensitive Receptors At Surrounding Hotels And Projects To Be Constructed Adjacent To The Project Site. This change needs to be analyzed and mitigated in a recirculated Draft EIR.

3) The Elimination Of Dedicated Guest Parking For The Residential Project Component And Substituting Use Of Commercial Parking Not On The Project Site Required A Variance Not Applied For Or Analyzed In The EIR. This change needs to be analyzed and mitigated in a recirculated Draft EIR.

4) The Change of Q Condition 7 To Allow The 6:1 FAR To Be Averaged In Total For All Buildings Instead Of For Each Building Could Result In

[4] And given that the May 31, 2013 Sheppard Mullin letter supposedly contained these conforming changes to the reduced height project first offered on June 18, 2013, it becomes clear this deal was cut with the Council office long ago and the scripted offer of the reduced project by Applicant at the PLUM hearing, and Councilmember Garcetti office's congratulations on the Applicant "listening" to the community was a fake compromise representing the planned height of the Project all along.

Density Exceeding 6:1 FAR. This change needs to be analyzed and mitigated in a recirculated Draft EIR.

5) The Change Of The Millennium Development Regulations Permits No Limit On The Height Of The Podium Building Along Ivar. This change needs to be analyzed and mitigated in a recirculated Draft EIR.

None of these major changes to the Millennium Project were disclosed to the PLUM Committee, let alone the Appellant. Because those changes were added into the Project without an opportunity for the Appellant to know and reasonably prepare responses and evidence to rebut them, Appellant has been denied due process of law by the City failing to have an adopted set of procedural hearing rules as mandated by Government Code Section 65804.

VII. THE CITY'S NEW ORDINANCE CANNOT BE APPROVED WITH THE REVIEW MANDATED BY THE CITY CHARTER.

Section 558 of the Los Angeles Charter mandates that the City Planning Commission review and make a recommendation regarding each ordinance that concern zoning and other land use regulations. Now, at the last second, the City Council is proposing to throw all of the Millennium Project conditions, entitlements, custom Development Regulations, and Land Use Equivalency Program into a new ordinance. Additionally, the City Council proposes to set aside an ordinance to merely amend the zoning map that was recommended by the City Planning Commission.

Now, in what a retired City Planner informs us is unprecedented in their memory, custom-written Millennium Development regulations will be thrown into a proposed ordinance and, on the authority of LAMC 12.04 which is the City's zoning maps, the City Council will propose to elevate every element of the Millennium Project entitlement documents into a City Ordinance. Presumably, all the content of these conditions and Development Regulations will be amended into the text of LAMC 12.04.

On this basis, a provision in the Millennium Development Regulations states that whenever any other provision of the Los Angeles Municipal Code, no matter what it is, and even though the City Council has not been informed what those conflicting provisions might be (which is impossible to know until the Project is known and this also has not been disclosed to the City Council or public in the EIR), the Millennium Development regulations will "prevail" over all conflicting Code provisions.

By this action, the City Council and Mayor Garcetti will elevate the Millennium Project over all other development regulations of the City – without even knowing what provisions the Millennium Developer proposes to override.

What is being hidden by these actions? When the actual Project is submitted to the City Planning Department and Building and Safety Department for building permits, what fundamental policies of the Code will be overridden? Who knows. This is a dereliction of duty of the City Council to know what project it is approving.

One provision that even this appalling act cannot trump is the requirement for the Millennium Developer to apply for and obtain all required variances per the Los Angeles Municipal Code. By purporting to elevate the Millennium Regulations over the Code, the City Council may not and cannot override the City Charter that mandates obtaining a variance, which is a new discretionary decision.

To this end, the City's ongoing failure to disclose the existence of the Advisory Agency's parking rule that mandates 2.5 parking spaces for each condominium remains a fatal flaw of the EIR because it fails to disclose it, analyze the land use impact, and provide findings that justify the grant of this "hidden" variance to the Millennium Project.

Given that the City Council has proposed a new ordinance that was never reviewed by the City Planning Commission, and given the gravity of an unprecedented action to enact all of a project's entitlements into an ordinance, referral of this matter back to the City Planning Commission is required before any such new ordinance may be considered by the City Council.

VIII. THE ERRATA TO THE EIR SHOWS THE CITY AND DEVELOPER'S MOVING OF THE MILLENNIUM DEVELOPMENT REGULATIONS/LAND USE EQUIVALENCY PROGRAM FROM THE DEVELOPMENT AGREEMENT TO Q CONDITIONS TO THE CITY'S NEW ORDINANCE IN A DESPERATE EFFORT TO OVERRIDE THE MUNICIPAL CODE AND OUTRUN THE SECTION 1090 CONFLICT OF INTEREST VIOLATION.

When the City Attorney found that Millennium's hiring of the President of the City Planning Commission violated California's conflict of interest statute (Govt. Code § 1090), the City Planning Department declared that the Development Regulations/Land

Use Equivalency Program could be moved from the unlawful Development Agreement over to the regular project entitlements and imposed under the authority of Los Angeles Municipal Code Section 12.32G.2(a) related to Q conditions. This change to the Project Entitlements was documented for the EIR in the First Errata issued in the period leading up to the hearing before the City Planning Commission. In the First Errata, the City asserted, without any supporting analysis or data, that imposing the Development Regulations/Land Use Equivalency Program as a Q condition triggered no new adverse impacts.

CURD's appeal of the tract map approvals and the City Planning Commission's decision of March 27, 2013 objected on the ground that the improper use of Q Condition authority to purport to override all conflicting Los Angeles Municipal Code provisions was not only illegal, but would trigger a new Land Use Impact because the proposed action was not consistent with the history and purposes of the Q condition authority granted to the City in LAMC 12.32. We renew these objections because the City continues to falsely claim that a law that only allows imposition of more restrictions of a project also entitles the City to use a Q condition scheme to authorize the Millennium Development Regulations/Land Use Equivalency Program that by definition purports to override any conflicting Municipal Code provision and grant greater authority, which is most certainly NOT a restriction on the Millennium Project.

When faced with this correct legal argument, City officials and the Millennium Developer conspired to claim that the PLUM Committee recommended that the City Council enact a new ordinance that includes in it all of the Millennium Project conditions, the Millennium Development Regulations, and the Land Use Equivalency Program. The audio recording of the City's PLUM Committee hearing establishes that no such recommendation was made by the PLUM Committee, yet it appears in the Committee's report to City Council. This record appears to be a false and tampered public record of the proceedings.

Now the City attempts to paper over this continuing new significant land use impact by claiming that using a Q condition authority AND enacting all of the Millennium Entitlements, Development Regulations and Land Use Equivalency Program into a new never-before-seen ordinance will enable the Millennium Development Regulations and Land Use Equivalency Program to "prevail" over all conflicting Los Angeles Municipal Code provisions – whatever they may be. This is documented in the Second Errata to the EIR that makes additional false assertions.

The Second Errata at page 2 claims that the Development Regulations/Land Use Equivalency Program "were designed to remain independent of the Development Agreement." This is false. The Development Agreement was written (also in excess of the authority granted in Government Code Sections 65864-65869.5) for the purpose of *making the bogus claim that the City could contract away its entire Municipal Code by allowing the Millennium Development Regulations and Land Use Equivalency Program to override contrary Code provisions.* When the Developer was crazy enough to hire the President of the Planning Commission, he killed the legality of this Project by giving a person with contract-making power (William Roschen) a financial interest in the Project's contracts.

Now, the Developer and City claim that the Millennium Development Regulations and Land Use Equivalency Program can be severed from the Development Agreement and dropped into a Q condition. This is not legal either because the City's authority to restrict a development project under a Q condition clearly does not authorize granting flexibility to choose whatever mix of uses the developer wants or overriding any conflicting Code provisions. Yet the City in the Second Errata persists in its unsubstantiated claim that it may use a Q condition for this purpose. And the Second Errata also claims that the enactment of these Q conditioned Millennium Development Regulations and Land Use Equivalency Program into a new City ordinance also entitles the Project to override conflicting Code provisions (perhaps even the Q condition restrictions themselves). But the City claims without substantial evidence in the record that these jaw-dropping project changes are "minor" and trigger no new impacts, and thus no new CEQA review. The emperor has no clothes.

If ever there was a failure to identify significant new impacts triggered by changes to a Project, this is it. The City essentially says: "We don't care how the Millennium Development Regulations conflict with the Los Angeles Municipal Code; we want Millennium to get anything it wants." These changes are significant undisclosed land use impacts. Can the Millennium Development Regulations override supergraphics sign laws? What about other basic health and safety laws of the Building Code? Those are provisions contained in the Los Angeles Municipal Code and are not limited to just land use and zoning. The use of Q conditions or the unprecedented enactment of a Project's entitlements completely into the Municipal Code in order to override all conflicting Code provisions also generates undisclosed growth inducing impacts from the setting of a precedent that would allow all future major projects to be enacted into the Municipal Code to override all other conflicting laws – whatever they may be. This is one more example how this City's reckless pursuit of this Project is a massive violation of the

fundamental disclosure and public participation rights at the heart of CEQA. All of these new, potentially significant environmental impacts would have to be disclosed, analyzed and mitigated in a recirculated Draft EIR.

IX. THE CITY'S CONTINUED REFUSAL TO RECIRCULATE THE EIR TO ANALYZE ACCURATE FIRE DEPARTMENT RESPONSE TIMES ALSO VIOLATES CEQA.

The City and Millennium Developer continue to evade the fact that evidence attached to CURD's June 18, 2013 objection letter shows that the Fire Department Response Time data used in the EIR was unreliable and cannot be used. In further support of this objection, CURD attaches at **Exhibit 10** true and correct copies of Los Angeles County Grand Jury Report on the inadequacy of the City's response time reporting systems, and an academic study that concluded that patient survival regardless of other factors was enhanced with response times of less than 4 minutes.

We also attaching for the record at **Exhibit 11** hereto recent media materials related to the project and the City's ongoing failures to comply with the law in its processing of the project applications.

X. THE STATEMENT OF OVERRIDING CONSIDERATIONS IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

CURD objects to each and every factual claim made in the City Statement of Overriding Considerations. The "findings" are not supported by data cited. Furthermore, to the extent that the EIR and other entitlement documents of the City are based upon falsified data, such data cannot support findings of overriding considerations. As our Supreme Court has held since the founding of this state: Fraud vitiates the transaction.

XI. CONCLUSION.

For all of the foregoing reasons in this letter and all materials incorporated by reference into this letter, CURD objects to the Los Angeles City Council considering or approving the Millennium Project today and until full CEQA compliance has occurred. Due to substantial failures of the City to proceed in the manner required by law, indeed due to the City staff's participation in a cover up of the existence of the active Hollywood Fault on the Millennium Project site, the Project cannot lawfully be approved unless or until a sufficient EIR is prepared, real project impacts identified, and meaningful

mitigation measures imposed to reduce the impacts to the greatest extent possible as required by law, if the project can even go forward in any form, following the results of proper and independent seismic and geologic studies, including those now being conducted by the State of California.

The Millennium Project must not be approved today. There might be a version of a project possible once earthquake faults on site have been identified and all other disclosed Project impacts are properly mitigated. But what is before the City Council today is not that project.

We urge you to unequivocally deny the project, its entitlements and its Final EIR that are before you today. Approving skyscrapers on an active fault, shown in multiple credible studies as bisecting the Project site, cannot be permitted by any responsible and thoughtful Los Angeles City Councilmember, under any circumstance.

Very truly yours,

ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM

RPS:jmr
Attachments