

From: Veronica Lebron <Veronica@robertsilversteinlaw.com>
Sent time: 09/22/2020 07:16:40 PM
To: mindy.nguyen@lacity.org; vince.bertoni@lacity.org
Cc: Dan Wright <Dan@robertsilversteinlaw.com>; Esther Kornfeld <Esther@robertsilversteinlaw.com>; Robert Silverstein <Robert@robertsilversteinlaw.com>
Subject: The Silverstein Law Firm | Appeal of the Vesting Tentative Tract Map No. VTT-82152 for the Hollywood Center Project; Case Nos. ENV-2018-2116-EIR, CPC-2018-2114-DB-MCUP-SPR, CPC-2018-2115-DA, and VTT-82152 ; SCH 2018051002
Attachments: 9-22-20 [SCAN] Appeal Application Form.pdf 9-22-20 [SCAN] Justification - Reason for Appeal.pdf

Dear Ms. Nguyen:

Please see attached for inclusion in the record of the above-referenced project.

Thank you.

Veronica Lebron
The Silverstein Law Firm, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504
Telephone: (626) 449-4200
Facsimile: (626) 449-4205
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APPLICATIONS:

APPEAL APPLICATION

Instructions and Checklist

Related Code Section: Refer to the City Planning case determination to identify the Zone Code section for the entitlement and the appeal procedure.

Purpose: This application is for the appeal of Department of City Planning determinations authorized by the Los Angeles Municipal Code (LAMC).

A. APPELLATE BODY/CASE INFORMATION

1. APPELLATE BODY

- Area Planning Commission City Planning Commission City Council Director of Planning
- Zoning Administrator

Regarding Case Number: VTT-82152

Project Address: 1720-1770 N Vine St; 1746- 1764 N Ivar Ave; 1733-1741 N Argyle Ave; 6236, 6270, and 6334 W. Yucca St.

Final Date to Appeal: 09/23/2020

2. APPELLANT

Appellant Identity:
(check all that apply)

- Representative Property Owner
- Applicant Operator of the Use/Site
- Person, other than the Applicant, Owner or Operator claiming to be aggrieved

Person affected by the determination made by the **Department of Building and Safety**

- Representative Owner Aggrieved Party
- Applicant Operator

3. APPELLANT INFORMATION

Appellant's Name: StopTheMillenniumHollywood.com

Company/Organization: _____

Mailing Address: 215 North Marengo Avenue, 3rd Floor

City: Pasadena State: CA Zip: 91101

Telephone: (626) 449-4200 E-mail: robert@robertsilversteinlaw.com

a. Is the appeal being filed on your behalf or on behalf of another party, organization or company?
 Self Other: _____

b. Is the appeal being filed to support the original applicant's position? Yes No

4. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Robert Silverstein, Esq.

Company: The Silverstein Law Firm, APC

Mailing Address: 215 North Marengo Avenue, 3rd Floor

City: Pasadena State: CA Zip: 91101

Telephone: (626) 449-4200 E-mail: robert@robertsilversteinlaw.com

5. JUSTIFICATION/REASON FOR APPEAL

a. Is the entire decision, or only parts of it being appealed? Entire Part

b. Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: 1-39 inclusive

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

6. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: Robert Silverstein / VL Date: Sept. 22, 2020

GENERAL APPEAL FILING REQUIREMENTS

B. ALL CASES REQUIRE THE FOLLOWING ITEMS - SEE THE ADDITIONAL INSTRUCTIONS FOR SPECIFIC CASE TYPES

1. Appeal Documents

a. **Three (3) sets** - The following documents are required for each appeal filed (1 original and 2 duplicates) Each case being appealed is required to provide three (3) sets of the listed documents.

- Appeal Application (form CP-7769)
- Justification/Reason for Appeal
- Copies of Original Determination Letter

b. Electronic Copy

Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Appeal Form.pdf", "Justification/Reason Statement.pdf", or "Original Determination Letter.pdf" etc.). No file should exceed 9.8 MB in size.

c. Appeal Fee

- Original Applicant - A fee equal to 85% of the original application fee, provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- Aggrieved Party - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

d. Notice Requirement

- Mailing List - All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC
- Mailing Fee - The appeal notice mailing fee is paid by the project applicant, payment is made to the City Planning's mailing contractor (BTC), a copy of the receipt must be submitted as proof of payment.

SPECIFIC CASE TYPES - APPEAL FILING INFORMATION

C. DENSITY BONUS / TRANSIT ORIENTED COMMUNITES (TOC)

1. Density Bonus/TOC

Appeal procedures for Density Bonus/TOC per LAMC Section 12.22.A 25 (g) f.

NOTE:

- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.
- Appeals of Density Bonus/TOC cases can only be filed by adjacent owners or tenants (must have documentation), and always only appealable to the Citywide Planning Commission.

- Provide documentation to confirm adjacent owner or tenant status, i.e., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, drivers license, bill statement etc.

D. WAIVER OF DEDICATION AND OR IMPROVEMENT

Appeal procedure for Waiver of Dedication or Improvement per LAMC Section 12.37 I.

NOTE:

- Waivers for By-Right Projects, can only be appealed by the owner.
- When a Waiver is on appeal and is part of a master land use application request or subdivider's statement for a project, the applicant may appeal pursuant to the procedures that governs the entitlement.

E. TENTATIVE TRACT/VESTING

1. Tentative Tract/Vesting - Appeal procedure for Tentative Tract / Vesting application per LAMC Section 17.54 A.

NOTE: Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.

- Provide a copy of the written determination letter from Commission.

F. BUILDING AND SAFETY DETERMINATION

- 1.** Appeal of the Department of Building and Safety determination, per LAMC 12.26 K 1, an appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

a. Appeal Fee

- Original Applicant - The fee charged shall be in accordance with LAMC Section 19.01B 2, as stated in the Building and Safety determination letter, plus all surcharges. (the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code)

b. Notice Requirement

- Mailing Fee - The applicant must pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt as proof of payment.

- 2.** Appeal of the Director of City Planning determination per LAMC Section 12.26 K 6, an applicant or any other aggrieved person may file an appeal, and is appealable to the Area Planning Commission or Citywide Planning Commission as noted in the determination.

a. Appeal Fee

- Original Applicant - The fee charged shall be in accordance with the LAMC Section 19.01 B 1 a.

b. Notice Requirement

- Mailing List - The appeal notification requirements per LAMC Section 12.26 K 7 apply.
- Mailing Fees - The appeal notice mailing fee is made to City Planning's mailing contractor (BTC), a copy of receipt must be submitted as proof of payment.

G. NUISANCE ABATEMENT

1. Nuisance Abatement - Appeal procedure for Nuisance Abatement per LAMC Section 12.27.1 C 4

NOTE:

- Nuisance Abatement is only appealable to the City Council.

a. Appeal Fee

Aggrieved Party the fee charged shall be in accordance with the LAMC Section 19.01 B 1.

2. Plan Approval/Compliance Review

Appeal procedure for Nuisance Abatement Plan Approval/Compliance Review per LAMC Section 12.27.1 C 4.

a. Appeal Fee

Compliance Review - The fee charged shall be in accordance with the LAMC Section 19.01 B.

Modification - The fee shall be in accordance with the LAMC Section 19.01 B.

NOTES

A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

Please note that the appellate body must act on your appeal within a time period specified in the Section(s) of the Los Angeles Municipal Code (LAMC) pertaining to the type of appeal being filed. The Department of City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

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September 22, 2020

VIA EMAIL vince.bertoni@lacity.org;
mindy.nguyen@lacity.org

Vincent Bertoni, Planning Director
Mindy Nguyen, City Planner
City of Los Angeles, Department of City Planning
221 North Figueroa Street, Suite 1350
Los Angeles, CA 90012

Re: EXHIBIT A: Appeal of the Vesting Tentative Tract Map No. VTT-82152
for the Hollywood Center Project; Case Nos. ENV-2018-2116-EIR, CPC-
2018-2114-DB-MCUP-SPR, CPC-2018-2115-DA, and
VTT-82152 ; SCH 2018051002

Dear Ms. Nguyen:

This firm and the undersigned represent StopTheMillenniumHollywood.com. Please keep this office on the list of interested persons to receive timely notice of all hearings, votes and determinations related to the proposed Hollywood Center Project (“Project”).

Pursuant to Public Resources Code Section 21167(f), please provide a copy of each and every notice issued by the City in connection with this Project. We adopt and incorporate by reference all Project objections raised by all others during the environmental review and land use entitlement processes for the Project.

I. INTRODUCTION

On September 14, 2020, the Advisory Agency of the Department of City Planning approved Vesting Tentative Tract Map No. 82152 (“the VTT”) for Alternative 8, certified the Final Environmental Impact Report (“FEIR”) and adopted the Mitigation Monitoring Program, Findings for adoption of the EIR and a statement of overriding considerations (the “Determination”). As set forth below, the Advisory Agency abused its discretion and acted contrary to law, including but not limited to the Subdivision Map Act, the

Mindy Nguyen
City of Los Angeles, Department of City Planning
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California Environmental Quality Act (“CEQA”), the General Plan, the Los Angeles City Charter, the Los Angeles Municipal Code and the California and Federal Constitutions.

II. GROUNDS FOR APPEAL

The Advisory Agency erred and abused its discretion in approving the VTT, including as set forth below.

1. The Advisory Agency Erred in Approving the Vesting Tentative Tract Map and Relying on the EIR for Legally Required Findings.

First, as explained in our September 11, 2020 letter objecting to the holding of the Advisory Agency hearing on August 26, 2020, before issuance of the FEIR to the public, the entire Advisory Agency Determination is void *ab initio*. We incorporate and restate the objections contained in our September 11, 2020 letter. A new Advisory Agency hearing must be noticed and properly held. We also incorporate by reference our September 18, 2020 objection letter. These letters are attached hereto at **Exhibits 1 and 2** for your convenience.

In addition, the Determination letter purports to approve the Vesting Tentative Tract Map, including numerous conditions and findings based on the EIR. For example, Condition 34 requires trenching to investigate the location of active fault traces. The Deputy Advisory Agency’s actions are illegal and *ultra vires*. The Deputy Advisory Agency has no authority to certify, approve or make findings in support of the EIR – those actions are reserved for the City Council.

CEQA defines a “project” as the “whole of an action” and refers to the activity being approved which may be subject to several discretionary approvals. (Guidelines § 15378 (a), (c).) The Project requires numerous discretionary approvals including Density Bonus Off Menu Incentives, Site Plan Review, a Master Conditional Use Permit, a Vesting Tentative Tract Map and a Development Agreement. Therefore, the “project” entails physical development requiring these various entitlements, only one of which is approved by the Deputy Advisory Agency acting on behalf of the Director of Planning per LAMC § 17.03. Because the Project requires approval by the City Council for the Development Agreement and EIR, the City Council is the “decision making body” with legal authority to approve or disapprove the Project. (Guidelines § 15356.) The CEQA Guidelines do not permit the City Council to delegate review and consideration of an EIR, or to delegate the making of findings on the basis of the EIR. (Guidelines §

15025(b.) The City Council, not the Deputy Advisory Agency, is the decision-making body which must consider the EIR. This consideration must take place prior to Project approval. (Guidelines § 15090(a).) Therefore, the Determination Letter improperly purports to approve the Vesting Tentative Tract Map and certify the EIR. Any Notice of Determination recorded prior to City Council certification, therefore, has no legal effect.

2. The Determination Was Unlawful.

Assuming that the Advisory Agency acted within its authority to consider the FEIR, and that therefore the determination is subject to appeal, the Advisory Agency erred and abused its discretion. In addition to all objections previously submitted to the City on all grounds submitted to the City by this firm and others in opposition to the EIR for this project, the deficiencies include the following:

- (1) The hearing violated due process rights.
- (2) The development is not consistent with General Plan policies.
- (3) The development is not physically suitable for the site.
- (4) The development is likely to cause substantial health problems.
- (5) The merged right-of-way does not comply with City standards.
- (6) The development conflicts with California Redevelopment Law.
- (7) The Determination improperly pre-commits the City to Project approval.
- (8) The EIR failed to identify an accurate, good faith Project Description.
- (9) The EIR failed to identify a proper baseline for environmental analysis.
- (10) The EIR failed to properly analyze and disclose impacts or adopt feasible mitigation measures.
- (11) The EIR failed to analyze a reasonable range of alternatives.
- (12) The EIR failed to properly respond to comments.
- (13) The CEQA findings are not supported by substantial evidence.

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III. CONCLUSION

For the reasons stated above, a new Advisory Agency hearing must be properly noticed and held. If the City refuses to do so and pushes a premature and illegal appeal process at this time, then reserving all rights and objections, the City Planning Commission should grant the appeal and overturn the Determination.

Very truly yours,

/s/ Robert P. Silverstein
ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM, APC

RPS:vl
Encls.

**Appeal of the Vesting Tentative Tract Map No. VTT-82152
for the Hollywood Center Project; Case Nos. ENV-2018-2116-EIR,
CPC-2018-2114-DB-MCUP-SPR, CPC-2018-2115-DA, and
VTT-82152 ; SCH 2018051002**

EXHIBIT 1

THE SILVERSTEIN LAW FIRM

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September 11, 2020

VIA EMAIL vince.bertoni@lacity.org;
mindy.nguyen@lacity.org

Vincent Bertoni, Planning Director
Mindy Nguyen, City Planner
City of Los Angeles, Department of City Planning
221 North Figueroa Street, Suite 1350
Los Angeles, CA 90012

Re: Demand for New Advisory Agency Public Hearing re Hollywood Center,
Including re Project Final EIR; Case Nos. ENV-2018-2116-EIR, CPC-
2018-2114-DB-MCUP-SPR, CPC-2018-2115-DA, and VTT-82152 ;
SCH 2018051002

Dear Mr. Bertoni and Ms. Nguyen:

I. INTRODUCTION.

This firm and the undersigned represent StopTheMillenniumHollywood.com. Please keep this office on the list of interested persons to receive timely notice of all hearings, votes and determinations related to the proposed Hollywood Center Project (“Project”).

Pursuant to Public Resources Code Section 21167(f), please provide a copy of each and every notice issued by the City in connection with this Project. We adopt and incorporate by reference all Project objections raised by all others during the environmental review and land use entitlement processes for the Project.

II. THE ADVISORY AGENCY/HEARING OFFICER JOINT PUBLIC HEARING WAS A SHAM CALCULATED TO DEPRIVE THE PUBLIC OF AN ABILITY TO COMMENT – THE CITY MUST HOLD A NEW ADVISORY AGENCY/HEARING OFFICER HEARING.

The City claims, including based on its hearing notice, to have taken public testimony on the Final EIR (“FEIR”) at the August 26, 2020 joint public hearing

Vincent Bertoni, Planning Director
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conducted by the Deputy Advisory Agency and Hearing Officer on behalf of the City Planning Commission (“CPC”). Yet the circumstances of the joint public hearing demonstrate that the City orchestrated the timing of the hearing to preclude any public testimony on the FEIR as part of taking testimony on the Vesting Tentative Tract Map (“VTT”) application or any other issues. This denied the public meaningful opportunity to comment on critical aspects of the applications.

At the time of the August 26, 2020 hearing, the FEIR had not been published. This circumstance alone is a severe departure from the City’s established practice of publishing FEIRs (or Addenda or Errata) well in advance of any Advisory Agency hearing, delegated hearing on behalf of the CPC or joint hearing. In fact, a survey of recent EIRs prepared by the City is attached as **Exhibit 1** and reveals that the City is, in fact, singling out opposition to the Hollywood Center mega-development for the City’s abusive manipulation of process: ***not one other development has held its required Advisory Agency/Hearing Officer public hearing prior to publication of the relevant environmental document.***

At the conclusion of the August 26, 2020 hearing, after forceful procedural objections from members of the public that they had no substantive comment without seeing the FEIR, the City closed the public testimony portion. Apparently to create the artifice of trying to meet the bare minimum legal standards while effectively denying the ability to meaningfully comment on the EIR, the City recommended that the Advisory Agency take the case under advisement until the Final EIR had been available for 10 days. Nonetheless, the City’s procedures violate the hearing and due process requirements of CEQA and the City Charter.

Although the public had no inkling of what the FEIR would say, the City as lead agency had been working on it at least since June 1, 2020, and knew full well what it would publicly say, once the FEIR was released shortly after the August 26, 2020 hearing. The City’s attitude that it can determine what is and is not relevant for the public to know under CEQA is inconsistent with CEQA’s full disclosure requirements. The City “*miss[es] the critical point that the public must be equally informed.*” Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 404 (ital. in original). The public is equally entitled to information about a project that the agency has, and is just as entitled to examine, question, and probe that information. Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 936; Environmental Protection Information Center v. California Dept. of

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Forestry (2008) 44 Cal.4th 459, 486. The City's highly irregular conduct deprived the public of the ability to comment on the VTT and other aspects of the Project with the FEIR in mind and in hand.

A necessary pre-condition to the public's ability to meaningfully participate in a public hearing is the disclosure of relevant information upon which to comment. Despite – or perhaps because of – this impairment of public comment, the City held the August 26, 2020 joint public hearing prior to the release of the FEIR. Without access to the FEIR, the public had no understanding how the City had considered the hundreds of pages of laboriously-crafted comment letters submitted on the DEIR. The City must notice a new Advisory Agency/Hearing Officer public hearing for the Project.

Although the FEIR was just days from being published at the time of the joint public hearing (it was published September 3, 2020), the August 26, 2020 hearing notice included an enigmatic project description that raised more questions than answers, including:

- *Why had the City noticed both the Project and Alternative 8 for hearing?*
- *Why did the Project abandon Measure JJJ and instead pursue a State Density Bonus?*
- *Why did the new Project Description mention only Very Low Income units?*

These questions are so fundamental to the Project that a proper hearing satisfying due process requirements also was not conducted. Informed public participation requires that the public be given sufficient information about a project so that it does not need to guess whether its comments are applicable.

Far from being an honest broker in the CEQA process, the City is contorting its normal process to obstruct informed participation.

In addition, the CPC's ability to delegate its hearing responsibilities pursuant to Charter Section 560 entails that the same information shall be made available to the public during the delegated hearing as would be available to the CPC as the decision-maker or recommending body. In this case, the public had a legally incomplete record

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Mindy Nguyen, City Planner
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upon which to comment, nullifying the purpose of the public hearing to enable the public to comment on all matters which they would have been able to comment on if the CPC itself held the hearing. Because the CPC, as initial decision-maker on the Density Bonus case, would have had a Final EIR before it for consideration, the City improperly delegated the hearing with an insufficient record.

Finally, the hearing officer arbitrarily limited all public comments to a maximum of two minutes, even though the officer is constitutionally required to entertain all reasonable comments. The City's arbitrary limitation on public comment thereby violated due process rights and the obligations of the hearing officer under the City Charter.

III. CONCLUSION.

For the reasons stated herein, the City must schedule and hold a new Advisory Agency/Hearing Officer public hearing prior to any action on the VTTM and other entitlements, or this matter proceeding to the CPC.

Very truly yours,

/s/ Robert P. Silverstein

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

RPS:vl
Encl.

EXHIBIT 1

Survey of City Policy on FEIR Publication Prior to Hearing

Case Number	Development	Was FEIR Published Prior to Hearing?
ENV-2018-2116-EIR	Hollywood Center Project	No Joint AA/CPC Hearing Officer Hearing: August 26, 2020 FEIR Release: September 3, 2020
ENV-2017-5091-EIR	Sunset Gower Studios	Yes Joint AA/CPC Hearing Officer Hearing: September 16, 2020 FEIR Release: August 26, 2020
ENV-2014-4706-EIR	6220 Yucca Project	Yes Joint AA/CPC Hearing Officer Hearing: August 19, 2020 FEIR Release: August 7, 2020
ENV-2016-3177-EIR	Hollywood and Wilcox Project	Yes Joint AA/CPC Hearing Officer Hearing: August 12, 2020 FEIR Release: July 31, 2020
ENV-2016-4321-EIR	Venice Place Project	Yes Zoning Administration Hearing: August 1, 2019 FEIR Release: June 28, 2019
ENV-2016-4676-EIR	Times Mirror Square Project	Yes Joint AA/CPC Hearing Officer Hearing: May 14, 2020 FEIR Release: September 20, 2019 (Errata March 2020)
ENV-2016-4630-EIR	1045 Olive Project	Yes Joint AA/CPC Hearing Officer Hearing: January 15, 2020 FEIR Release: December 8, 2019

**Appeal of the Vesting Tentative Tract Map No. VTT-82152
for the Hollywood Center Project; Case Nos. ENV-2018-2116-EIR,
CPC-2018-2114-DB-MCUP-SPR, CPC-2018-2115-DA, and
VTT-82152 ; SCH 2018051002**

EXHIBIT 2

THE SILVERSTEIN LAW FIRM

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September 18, 2020

VIA EMAIL vince.bertoni@lacity.org;
mindy.nguyen@lacity.org

Vincent Bertoni, Planning Director
Mindy Nguyen, City Planner
City of Los Angeles, Department of City Planning
221 North Figueroa Street, Suite 1350
Los Angeles, CA 90012

Re: Objections to Letter of Determination for Hollywood Center Project; Case Nos. ENV-2018-2116-EIR, CPC-2018-2114-DB-MCUP-SPR, CPC-2018-2115-DA, and VTT-82152 ; SCH 2018051002

Dear Ms. Nguyen:

This firm and the undersigned represent StopTheMillenniumHollywood.com. Please keep this office on the list of interested persons to receive timely notice of all hearings, votes and determinations related to the proposed Hollywood Center Project (“Project”).

Pursuant to Public Resources Code Section 21167(f), please provide a copy of each and every notice issued by the City in connection with this Project. We adopt and incorporate by reference all Project objections raised by all others during the environmental review and land use entitlement processes for the Project.

I. INTRODUCTION.

On September 14, 2020, the Advisory Agency issued a Letter of Determination (“LOD”) purporting to approve Vesting Tentative Tract Map No. 82152 for Alternative 8. The LOD incorrectly identifies the end of the appeal period as September 23, thus misinforming the public. Assuming the entire process were even proper, we believe the appeal period would end on September 24, 2020.

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Mindy Nguyen, City Planner
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California Code of Civil Procedure § 12 provides that statutory time limitations shall exclude the first day:

“The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.”

The Subdivision Map Act (Govt. Code § 66462.5) provides for a 10-day appeal period “after” the action of the advisory agency:

“(a) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body. The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.”

Recalculating the appeal deadline to properly exclude the first day of mailing (September 14) yields a final appeal date of September 24, – not September 23 as listed in the LOD.

The City must issue a revised LOD with a new 10-day appeal period to ensure the public has the lawfully mandated time to respond. Crucially, even if the City accepts appeals filed on September 24th, all appellants were prejudiced by the City’s unlawful calculation of the appeal period. Appellants and potential appellants were deprived of the most valuable resource to review the enormous volume of documents in the LOD – time. The City’s unlawful inclusion of the first day resulted in approximately 10 percent less time than statutorily mandated. Accordingly, only a new extended notice period can cure the defective LOD.

Vincent Bertoni, Planning Director
Mindy Nguyen, City Planner
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We also express our concern that there appears to be a pattern and practice by the City to deprive the public of time and fair opportunity to review and respond to other issues and documents in this matter. Not only did the City refuse to give even one additional day on the close of the official comment period for a 13,000-page Draft EIR dropped on an unsuspecting public during the height of the pandemic and lock down orders, but it held an August 26, 2020 hearing even though the Final EIR was not yet circulated, and it now shortens the already bare minimum appeal timing provision.

We also note the irony of the City refusing to give the public any modicum of reasonable timing extensions, or here, even the minimum time for an appeal, when the City, in response to our Public Records Act requests, has unilaterally granted itself an additional 14 days to respond, and who knows how much more time the City will actually take before providing us with a complete and good faith production, if at all. Good faith should mean that the City provides us with all responsive documents well in advance of the next upcoming hearing so that we, our client and the public can actually review and assimilate that information in time to assist us in making more complete comments.

We are reminded of the Supreme Court's admonition that "the government must not be motivated solely by a desire to win a case, but instead owes a duty to the public to ensure that justice will be done. [Citation.]" County of Santa Clara v. Superior Court (2010) 50 Cal.4th 35, 57.

Individually and collectively, the City's actions amount to actionable due process violations. We request that the City immediately send out a new/corrected LOD and notice of a new 10-day appeal period running from the date of that new LOD. Anything less is a violation of law.

Very truly yours,

/s/ Robert P. Silverstein
ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM, APC

RPS:vl