Mindy Nguyen <mindy.nguyen@lacity.org>

The Silverstein Law Firm | Demand to Preserve Intact All Project-related Documents re "P" and "N" Drives, and to Supplement the Running Administrative Record 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

Veronica Lebron <Veronica@robertsilversteinlaw.com> Wed, Dec 9, 2020 at 6:57 PM
To: mindy.nguyen@lacity.org, vince.bertoni@lacity.org
Cc: Esther Kornfeld <Esther@robertsilversteinlaw.com>, Naira Soghbatyan <Naira@robertsilversteinlaw.com>, Robert Silverstein <Robert@robertsilversteinlaw.com>

Dear Ms. Nguyen:

Please include the attached for the record in the above-referenced matter. Please respond to the demand letter.

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
Email: Veronica@RobertSilversteinLaw.com
Website: www.RobertSilversteinLaw.com

====================================
The information contained in this electronic mail message is confidential information intended only for the use of the individual or entity named above, and may be privileged. The information herein may also be protected by the Electronic Communications Privacy Act, 18 USC Sections 2510-2521. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (626-449-4200), and delete the original message. Thank you.

====================================

12-9-20 [SCAN] Demand to City Planning (Nguyen) to Preserve Intact All Project-Related Documents in Shared Drives.PDF
356K

THE SILVERSTEIN LAW FIRM
A Professional Corporation

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

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

ROBERT@ROBERTSILVERSTEINLAW.COM
WWW.ROBERTSILVERSTEINLAW.COM

December 9, 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: Notice of Violations of Administrative Record Preparation Rules and Demand to Correct 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 Mr. Bertoni and 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 § 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.

This letter is a Notice of Violation of CEQA and the California Rules of Court ("CRC"), and is a demand that the City immediately correct and restructure the entire running administrative record ("AR") for the Project.

This correction is mandatory in any event, but particularly given the current lull in processing of the Project's requested entitlements, there is absolutely no reason why the City should not promptly make the corrections called for by this letter. If the City does

not do so, then this will constitute further proof of the City's violations of the public's rights, including but not limited to under CEQA and AB 900.

The City is in violation of the AB 900 AR preparation mandates, and therefore, the AB 900 "benefits" cannot be used by the Applicant unless there is prompt action to bring the AR preparation into compliance with the law and rules.[1]

As a mandatory provision under AB 900, codified at Pub. Res. Code § 21186(a), "The lead agency for the project **shall** prepare the record of proceedings **pursuant to this division** [i.e., CEQA] **concurrently** with the administrative process." (Emph. added.)

Further, Pub. Res. Code § 21186(b) mandates: "**All** documents **and other** materials placed in the record of proceedings **shall** be posted on, and be downloadable from, an Internet Web site maintained by the lead agency, commencing with the date of the release of the draft environmental impact report." (Emph. added.)

Pub. Res. Code § 21186(c) mandates: "The lead agency **shall** make available to the public in a **readily accessible** electronic format the draft environmental impact report and **all other documents submitted to, or relied on by,** the lead agency in the preparation of the draft environmental impact report." (Emph. added.)

Pub. Res. Code § 21186(d) mandates that a "document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record **shall be made available to the**

---

[1] This is not intended to imply that the City and Applicant are otherwise in compliance with the law, CEQA, or AB 900. They are not, and all rights and objections are expressly reserved. (As but one additional example not related to AB 900, but still a violation of law by the City with regard to the AR, we reiterate our June 15, 2020 email to you, our September 2, 2020 letter to you and the City Attorney, and our September 23, 2020 letter to deputy City Attorney John Fox and you, demanding that the contents of all embedded links in comment and objection letters from us and all other objectors be printed out and attached to/included with the subject letter within which they are provided. To date, the City has failed to take the required remedial steps, which are required by law.) However, this letter focuses on one particular issue that the City can and must take immediate steps to remedy in order to comply with the law and ameliorate prejudice to the public and the process.

public in a readily accessible electronic format within **five days** of its receipt." (Emph. added.)

Pub. Res. Code § 21186(e)-(f) mandate that any other comments submitted to the Agency be made available to the public in a readily accessible electronic format within "**five** days of receipt" (for electronic submissions) and within "**seven** business days of receipt" (for non-electronic submissions). (Emph. added.)

Pub. Res. Code § 21186(j) unambiguously provides: "the contents of the record of proceedings **shall** be as set forth in subdivision (e) of Section 21167.6." (Emph. added.)

Pub. Res. Code § 21167.6(e) provides a non-exclusive list of document that **shall** be included in the AR or record of proceedings, including but not limited to "all written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project" and "**any other written** materials **relevant** to the respondent public agency's compliance with this division or to its decision on the merits of the project . . . . and **all internal agency communications**, including staff notes and memoranda related to the project or to compliance with this division." Pub. Res. Code 21167.6(e)(7)&(10), respectively. Relevance is broadly defined by statute and case law:

> "Relevance is statutorily defined as "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid.Code, § 210.) Though not directly germane, a "matter collateral to an issue in the action may nevertheless be relevant to the credibility of a witness who presents evidence on an issue...." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9, 82 Cal.Rptr.2d 413, 971 P.2d 618.)" San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist. (2006) 139 Cal.App.4th 1356, 1414.

Finally, California Rules of Court, CRC 3.2205(a)(1), provides the "organization" and the order of documents, where CRC 3.2205(a)(1)(H) specifies: "(H) The remainder of the administrative record, in **chronological** order."

While CRC 3.2205(a)(3) allows changes to the order in subsection (1), such change is allowed only in a few cases (applicable to litigation) not present here.

To date, the City has grossly failed to comply with the above legal mandates. Specifically, the AR prepared by the City violates the law at least in the following ways:

1) Preparing a **concurrent** AR **–** which is also fair, complete and accurate – along with the administrative process, as required by **Pub. Res. Code § 21186(a)**: The manifest lack of recent documents added to the record indicates that the record is not being *concurrently* prepared as to its timing.

   The scant record also suggests that the AR is not being *concurrently* prepared as to its content and is instead being substantially "pruned," in violation of CEQA and legal authority:

   > "Moreover, the County's and Newland's interpretation of section 21167.6 would enable an agency to **prune** the record by deleting unfavorable "internal agency communications, including staff notes and memoranda related to the project." (§ 21167.6, subd. (e)(10).) However, existing law **prohibits** a lead agency from "pick[ing] and choos[ing] who sees pertinent data." (See Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 88, 108 Cal.Rptr.3d 478.)" Golden Door Properties, LLC v. Superior Court of San Diego County (2020) 52 Cal.App.5th 837. (Emph. added.)

   See also:

   > "When an agency prepares and certifies the administrative record, it exercises **no discretion** and employs **no specialized expertise**; it performs a **ministerial task** when it applies the mandatory language in section 21167.6, subdivision (e). (See County of Orange v. Superior Court, supra, 113 Cal.App.4th at p. 11, 6 Cal.Rptr.3d 286 [compilation of administrative record is ministerial task].) Ordinarily, when an agency performs a ministerial task, deferential judicial review is not appropriate. (See Western States, supra, 9 Cal.4th at p. 576, 38 Cal.Rptr.2d 139, 888 P.2d 1268 [ministerial actions by an agency do not merit deference].) As a result, when a trial court applies

> section 21167.6, subdivision (e) and determines the contents of the administrative record, it does so in its role as a trier of fact, not a court of review, and it resolves the factual and legal disputes between the parties without deference to the agency's certification. (See Western States, supra, at p. 576, 38 Cal.Rptr.2d 139, 888 P.2d 1268 [independent judicial scrutiny appropriate when actions are ministerial].)" Madera Oversight Coalition, Inc. v. County of Madera (2011) 199 Cal.App.4th 48, 64, disapproved on other grounds. (Emph. added.)

2) Inclusion of **all** communications into the record, as required by Pub. Res. Code § 21186(b)&(j), as well as Pub. Res. Code § 21167.7(e) and specifically subdivisions (7) and (10): At present, the AR does not contain internal city communications or communications with other public agencies or the Applicant, relevant to the alleged compliance with CEQA or the project. Even though a Final EIR was recently posted, there are only a few communications, if at all, submitted to or produced by the City. Even if the City has been holding zoom meetings and taken the Project off the paper trail, there must still be communications setting up those zoom meetings; yet, there is a glaring absence thereof.

3) Making CEQA mandatory records (per Pub. Res. Code 21167.6(e)) publicly and readily accessible in electronic form within the prescribed "five" and "seven" days, as required by Pub. Res. Code §21186(e)-(f).

4) Arranging the documents in the "remainder" category of the concurrent AR "chronologically" and in a "readily accessible" form, as required by CRC 3.2205(a)(1)(H) and Pub. Res. Code § 21186(b)-(f): Specifically, the City has unilaterally chosen to group the "remainder" of the AR into various groups, containing documents of various dates, which are not chronologically listed and have no uniform title format.

   As a result, documents *overlap* in various groups. Moreover, the document groups created by the City make the search or review of documents cumbersome and impossible, requiring reopening numerous files to keep track of things in each, and then to compare and contrast those with the prior days, to identify any changes.

The importance of the above-noted AR laws and court rules is many-fold. They serve to further CEQA's informational purposes for the public and decisionmakers. Guidelines § 15002(a). They also serve the judiciary – both at the lower and appellate levels – to determine if the agency complied with CEQA "in light of the whole record":

> "The "in light of the **whole record**" language means that the court reviewing the agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record. (Bixby v. Pierno (1971) 4 Cal.3d 130, 149 [93 Cal.Rptr. 234, 481 P.2d 242].) Rather, the court must consider **all relevant** evidence, including **evidence detracting** from the decision, a task which involves some weighing to fairly estimate the worth of the evidence. (County of San Diego v. Assessment Appeals Bd. No. 2 (1983) 148 Cal.App.3d 548 [195 Cal.Rptr. 895].) In any event, our scope of review on appeal is identical to that of the trial court. (Bixby, supra, 4 Cal.3d at p. 149.)" Lucas Valley Homeowners Assn. v. County of Marin (1991) 233 Cal.App.3d 130, 141–142. (Emph. added.)

Conversely, the City's omission of important documents and its failure to prepare a concurrent and properly organized record, as required under AB 900, prejudices both the public and the courts. Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151, 167–168 (omitting information from the environmental process prejudices the court.) The public – and those who represent public interests, like us – have been prejudiced by the City's failure to provide a concurrent, full, properly organized, and accurate record.

The City's compliance with CEQA's mandates and the prejudice to the public and courts ensuing from the City's ongoing AR violations are especially critical in this case, where the proposed Project poses lethal health and safety threats to thousands of people – both future occupants of the Project as well as those in the surrounding environment.

The consequences of having a disorganized record are even severe to the Project proponents: a reversal of approvals is warranted. Protect Our Water v. County of Merced (2003) 110 Cal.App.4th 362, 373. ("The consequences of providing a record to the courts that does not evidence the agency's compliance with CEQA is severe—reversal of

project approval. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 81, 118 . . . .)")

Therefore, we urge the City to immediately cure and correct the violations noted above and ensure that the entire, fair, complete, organized and accurate record of proceedings be prepared concurrently with the administrative process, so that the AR is readily accessible to the public in its format and content and is properly and chronologically organized. <u>That means that the City must reorganize and repair the defective and incomplete AR it has kept to date.</u> While that process is ongoing and the AR, presumably, will be temporarily inaccessible by the public, there should be no hearings or processing of applications/entitlements of any type related to the Project.

Ultimately, we urge that no approval of the Project or any of its parts occur until and unless the City fully complies with its duty and provides a complete, fair and accurate AR, makes it properly organized and readily accessible to the public, notifies the public of the corrected AR's availability, and provides at least 30 days for the public to review the corrected AR before any proceedings recommence, if at all. **<u>Of course, we believe that no proceedings should ever recommence, and all Project applications should be withdrawn or otherwise terminated, because the Project is so clearly dangerous and illegal, perhaps even criminally so.</u>**

The City's duty to ensure a complete record for the Court is well-settled:

> "We find it inconceivable that, given the scope and magnitude of this project, the documents comprising the administrative record are so defectively drafted. This responsibility fell squarely on the County. (See § 21081, subd. (a)(3); Guidelines, § 15091; see also § 21167.6, subd. (b)(2) [agency charged with certifying accuracy of record of administrative proceedings prepared by petitioner].) And we hold the County to it. Were we not to do so, we would be defeating one of the basic purposes of CEQA—to disclose to the public the reasons for a project's approval if the project has significant environmental effects. (See Guidelines, § 15002, subd. (a)(4).)" <u>Protect Our Water v. County of Merced</u> (2003) 110 Cal.App.4th 362, 372–373.

Because the present running AR omits crucial documents and drafts exchanged within the City and/or with the Applicant, the City must cure and correct those omissions now.

Because of the confusing manner in which the City has been keeping the running AR, despite our painstaking efforts to track the addition of documents into the AR, we have been unable to identify recently added documents or ascertain their completeness.

Please immediately reorganize the AR and provide a concurrent record organized *chronologically* as required by applicable rules and regulations noted in this letter. We also request that the concurrent record and each uploaded document reflect the date those documents were uploaded, to ensure transparency and verify the City's compliance with CEQA's requirement of uploading documents within 5 and 7 days of receipt. Pub. Res. Code § 21186(d)-(f). As an example of what an acceptable AR may be in terms of chronology and organization, please see for this ELDP-type project at http://ibecproject.com/

This letter is a demand that the City immediately cure and correct the AR violations noted in this letter, and in prior correspondence from this office. Please confirm by **December 18, 2020** that the City is doing so, and provide us with the expected date of completion. Thank you.

Very truly yours,

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

RPS:vl