

From: Veronica Lebron <Veronica@robertsilversteinlaw.com>
Sent time: 09/23/2020 04:05:41 PM
To: john.fox@lacity.org; mike.feuer@lacity.org; mindy.nguyen@lacity.org; terry.kaufmann-macias@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 | Response to September 14, 2020 Letter re Hollywood Center Project; Case Nos. ENV-2018-2116-EIR, CPC-2018-2114-DB-MCUP-SPR, CPC-2018-2115-DA, and VTT-82152; SCH 201805100
Attachments: 9-23-20 [SCAN] Response to City Attorney's (Fox) 9-14-20 Letter re Documents for Inclusion in Record; Motion Transcript.PDF

Dear Mr. Fox:

Please see attached.

Dear Ms. Nguyen:

Please include the attached in the record for the above-referenced project.

Thank you.

Veronica Lebron
The Silverstein Law Firm, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504
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September 23, 2020

**VIA EMAIL mike.feuer@lacity.org
terry.kaufmann-macias@lacity.org
john.fox@lacity.org**

Mike Feuer, City Attorney
Terry Kaufman-Macias, Esq.
John Fox, Esq.
Office of the City Attorney
200 N. Main St., Room 800
Los Angeles, CA 90012

Re: Response to September 14, 2020 Letter re 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:

Please include this letter in the Hollywood Center administrative record.

Dear Mr. Fox:

We are surprised by your September 14, 2020 letter which purports to respond to my September 2, 2020 letter. The statements in your September 14, 2020 letter are demonstrably incorrect.

To verify what the Los Angeles City Attorney's office said at the August 14, 2020 trial court hearing, as raised in my September 2, 2020 letter, please review the August 14, 2020 hearing transcript for Case No. 19STCP01027, and the City's own March 16, 2020 opposition brief and accompanying declaration signed under penalty of perjury by Patrice Lattimore of the City Clerk's office. To remove any doubt, I am attaching those pages.

“MORGAN HECTOR ON BEHALF OF THE CITY. IF I COULD
JUST MAKE ONE MORE POINT ABOUT THE
CONSOLIDATED IRRIGATION DISTRICT CASE. I DON'T

THINK IT'S INCONSISTENT WITH THAT CASE TO HOLD THAT -- TO PUT THE OBLIGATION ON THE CITY TO HAVE TO DOWNLOAD THE DOCUMENTS. **THAT LETTER SHOULD MAKE IT EXPLICIT AND REQUEST THAT THE CITY IN FACT DO THAT.**" (Aug. 14, 2020 Tran., p. 12:24-28 & 13:1-3; emph. added.)

The City's actual position –denied by you in your September 14, 2020 letter – is further laid bare in the City's March 16, 2020 opposition brief:

"It is **not** the City's practice to require source documents referenced in footnotes of comment letters to be downloaded for inclusion in the Council File **unless** a **specific request** is made to do so—which in this case it was not. (Lattimore Decl., ¶¶ 9-10.) Accordingly, the **City did not include** the referenced documents **because they** were not provided by the commenter(s), **were not requested to be accessed and included** in the Council File and, **therefore, were not included** in the Council File." (City's Opposition to Pet. Motion to Augment, p. 18:5-9, emph. added.)

Similarly, the sworn declaration by Ms. Lattimore unequivocally stated:

"9. . . . the [City Clerk's] Office does not have the time and resources to carefully review each document submitted to determine if its contains hyperlinks and, if so, download documents that may be found at those hyper links. Because of the volume of documents submitted, a **commenter must submit a specific request** to the City Clerk's Office **via a cover letter or memo, specifically identifying the website/URL link and requesting** that the document provided via that link be placed into the Council File. **Only at that point** will the Office download a document and include it in a Council File.

10. . . . Mr. Kracov's letter **did not request** that the documents referenced in footnotes in the comment letters attached to his letter were also intended to be uploaded to the Council File by the Office of the City Clerk. **As such, I would not expect my staff to review the footnotes in attachments submitted as part of a main comment letter to identify documents with hyperlinks contained**

therein, and then download them for inclusion in the Council File. . . .” (Lattimore Decl., ¶¶ 9-10; *emph. added.*)

This argument made by Mr. Hector, other City attorneys, and City officials violates the holding in Consolidated Irrigation District as quoted in my September 2, 2020 letter, and is illegal. The City’s “pruning” of the record in this case and all others is improper, and we demand that it stop, and further demand that all hyperlinked documents contained in comment and/or objection letters be printed by the City at the time of submission and included in the administrative records. No special, extra request – whether by “cover letter or memo” or otherwise – for the City to do so is required, and no such “rule,” announced or secret (and the City’s quasi-rule or policy in this regard has been secret until now) may be applied. Every link contained in every comment or objection letter must be printed out contemporaneously (or within a few days thereafter) for inclusion in this, and all other matters and administrative records before the City.

To prevent the City from creating a false record, we have provided this response to your “final letter” to our original September 2, 2020 letter. If we have somehow misunderstood and mischaracterized the City Attorney’s statement, and the City’s written arguments, and Ms. Lattimore’s declaration, kindly explain how. Otherwise, we request that you immediately retract your incorrect September 14, 2020 letter equally for the record. As our Supreme Court has ruled in previously addressing conduct by the Los Angeles City Attorney’s office:

“A government lawyer in a civil action . . . has the responsibility to seek justice and **to develop a full and fair record**, and he **should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.**” [Citation.]” City of Los Angeles v. Decker (1977) 18 Cal.3d 860, 871 (*emphasis added*).

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Office of the City Attorney
September 23, 2020
Page 4

Our September 2, 2020 Public Records Act requests for documents related to this issue and City quasi-policy or practice remains, directed to the City Attorney's office and all various City departments, including but not limited to the Planning Department. Please promptly produce those documents. The City's delays in producing documents to us sought under the Public Records Act prejudice us and the public, and violate the City's "responsibility to seek justice and to develop a full and fair record." Decker at id.

Very truly yours,

/s/ Robert P. Silverstein

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

RPS:vl

Encls.

(Excerpts of Aug. 14, 2020 transcript; March 16, 2020 City opposition brief; March 16, 2020 Lattimore Declaration)

Cc: Vincent Bertoni, Planning Director (via email vince.bertoni@lacity.org)
Mindy Nguyen, City Planner (via email mindy.nguyen@lacity.org)
(w/ encls.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 32 HON. DANIEL S. MURPHY, JUDGE PRESIDING

THE SUNSET LANDMARK INVESTMENT,)
LLC,)
PETITIONER,)
V.) NO. 19STCP01027
CITY OF LOS ANGELES,)
ET AL.,)
RESPONDENT.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FRIDAY, AUGUST 14, 2020, 10:00 A.M.

REMOTE APPEARANCES:

FOR THE PETITIONER: THE SILVERSTEIN LAW FIRM
BY: DANIEL WRIGHT, ESQ.
JAMES S. LINK, ESQ.

FOR SELMA WILCOX HOTEL: SHEPPARD, MULLIN, RICHTER &
HAMPTON
BY: ALEXANDER MERRIT, ESQ.

FOR RESPONDENTS: L.A. CITY ATTORNEY'S OFFICE
BY: MORGAN L. HECTOR, ESQ.
JOHN W. FOX, ESQ.
REMY MOOSE MANLEY, LLP
BY: CHRISTINA L. BERGLUND, ESQ.
ANDREA K. LEISY, ESQ.

REPORTED BY: ALEXANDER T. JOKO, CSR NO. 12272
COURT REPORTER PRO TEM

1 AS THE COURT IS AWARE, URL SITES CHANGE,
2 INFORMATION CHANGES. IT'S UPDATED. IT'S DELETED. THE
3 CITY REALLY HAS NO CERTAINTY THAT THE URL LINKS ARE
4 ALWAYS SECURE OR THAT THE ARCHAIC STORAGE WEBSITES ARE
5 ACTUALLY ACCURATE. SO I THINK THAT WOULD BE MORE IN
6 LINE WITH THE CONSOLIDATED IRRIGATION DISTRICT CASE.

7 THE COURT: ARE WE -- ARE WE IN AGREEMENT AS
8 TO WHAT ARE STILL CURRENTLY ACTIVE URL CITES AND WHICH
9 ARE NOT, OR ARE WE GOING TO HAVE FURTHER LITIGATION ON
10 THAT?

11 MS. LEISY: NO, YOUR HONOR. I THINK IT'S
12 CLEAR. WE ACTUALLY HAVE ACCESSED A LOT OF THE SITES AS
13 EXPLAINED IN THE BERGLUND DECLARATION THAT, YOU KNOW,
14 IF SOME OF THE URL SITES ARE STILL ACTIVE, THE CITY AND
15 OUR OFFICE IS WILLING TO GO BACK AND WORK WITH
16 PETITIONERS TO INCLUDE THOSE DOCUMENTS THAT ARE STILL
17 ACTIVE URL SITES IN A SUPPLEMENTAL FOR THE RECORD.

18 THE COURT: OKAY. ANYTHING ELSE YOU WANT TO
19 ARGUE BEFORE I HEAR FROM PETITIONER AGAIN?

20 MS. LEISY: NO, YOUR HONOR.

21 THE COURT: THANK YOU.

22 ANY OTHER RESPONDENT'S COUNSEL WISH TO
23 ARGUE?

24 MR. HECTOR: MORGAN HECTOR ON BEHALF OF THE
25 CITY.

26 IF I COULD JUST MAKE ONE MORE POINT ABOUT
27 THE CONSOLIDATED IRRIGATION DISTRICT CASE. I DON'T
28 THINK IT'S INCONSISTENT WITH THAT CASE TO HOLD THAT --

1 TO PUT THE OBLIGATION ON THE CITY TO HAVE TO DOWNLOAD
2 THE DOCUMENTS. THAT LETTER SHOULD MAKE IT EXPLICIT AND
3 REQUEST THAT THE CITY IN FACT DO THAT.

4 THE COURT: OKAY.

5 MR. HECTOR: ESPECIALLY HERE WHERE THE LETTERS
6 AT ISSUE WERE THEMSELVES ATTACHMENTS TO A COMMENT
7 LETTER. THERE'S NO INDICATION THAT -- WHEN YOU READ
8 THEM, THERE'S NO INDICATION THAT THE INTENT OF THE
9 SUBMISSION WAS FOR THOSE DOCUMENTS TO BE PUT INTO THE
10 RECORD AND BEFORE THE DECISION-MAKERS.

11 THE COURT: ARE THERE ANY CASES THAT
12 RESPONDENTS WANT ME TO REVIEW THAT YOU THINK WOULD HELP
13 ME DISTINGUISH THE CONSOLIDATED IRRIGATION CASE WITH
14 THIS CASE, MR. HECTOR?

15 MR. HECTOR: I'M NOT AWARE OF ANY CASES
16 ADDRESSING THIS PARTICULAR ISSUE OTHER THAN
17 CONSOLIDATED IRRIGATION.

18 AND TO MAKE ONE MORE POINT, THE CITY OF
19 SELMA IS NOT THE CITY OF LOS ANGELES. AND TO HOLD THAT
20 THE SAME TYPE OF BURDEN ANALYSIS SHOULD APPLY TO THAT
21 CITY AS IT SHOULD HERE, IT REALLY JUST DOESN'T MAKE
22 SENSE.

23 THE COURT: WHY NOT?

24 MR. HECTOR: BECAUSE THE -- WELL, LET'S TAKE,
25 FOR EXAMPLE, THE NUMBER OF URL'S. THERE HAS TO BE A
26 LIMIT AT SOME POINT. SOME MAY INCLUDE, LET'S SAY,
27 5,000 URL'S. THERE'S A POINT AT WHICH IT BECOMES
28 INFEASIBLE. FIVE IS SIGNIFICANTLY DIFFERENT FROM A

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2 **TERRY KAUFMANN MACIAS**, SBN 137182
Sr. Assistant City Attorney
3 **JOHN W. FOX**, SBN 171426
4 **MORGAN L. HECTOR**, SBN 246573
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**EXEMPT FROM FILING FEES
[GOVERNMENT CODE § 6103]**

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14 Attorneys for Respondents
15 CITY OF LOS ANGELES and
CITY OF LOS ANGELES CITY COUNCIL

16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

18 THE SUNSET LANDMARK INVESTMENT,
19 LLC, a California limited liability company,

Case No. 19STCP01027
[Related to Case No. 19STCP00988]

20 Petitioner,

21 v.

**RESPONDENTS' OPPOSITION TO
PETITIONER'S MOTION TO AUGMENT
THE ADMINISTRATIVE RECORD**

22 CITY OF LOS ANGELES, a municipal
corporation; CITY OF LOS ANGELES CITY
23 COUNCIL; and DOES 1 through 10, inclusive,

24 Respondents,

ASSIGNED FOR ALL PURPOSES:
Hon. Daniel S. Murphy
Dept. 32

25 6421 SELMA WILCOX HOTEL, LLC, a
California limited liability company; and ROES
26 1 through 10, inclusive,

Hearing Date: April 3, 2020
Time: 8:30 a.m.

27 Real Parties in Interest.

Petition filed: April 2, 2019
(CEQA)

1 should be avoided.

2 Petitioner's suggestion that the City chose not to produce the documents in violation of Local
 3 Rule 2.32(d)(1)(B) and (d)(2)(B) is derisive. The City underwent a good-faith reasonable effort to
 4 obtain all documents required by Public Resources Code section 21167.6, subdivision (e).⁸ It is not the
 5 City's practice to require source documents referenced in footnotes of comment letters to be
 6 downloaded for inclusion in the Council File unless a specific request is made to do so—which in this
 7 case it was not. (Lattimore Decl., ¶¶ 9-10.) Accordingly, the City did not include the referenced
 8 documents because they were not provided by the commenter(s), were not requested to be accessed and
 9 included in the Council File and, therefore, were not included in the Council File.

10 Petitioner uses the City's PRA production as a scapegoat. (Motion, p. 14.) The relevant
 11 comment letters were, however, provided to Petitioner with the master control set of documents in June
 12 2019. Prior to receiving the City's PRA documents, Petitioner had already reviewed the master control
 13 set and emails provided by the City. Petitioner was anything but hesitant in serially alerting the City to
 14 alleged "missing" attachments. (See Leisy Decl., ¶ 12, Exhibit G.) Throughout the endless rounds of
 15 back and forth, Petitioner provided several versions of the draft record index to the City for review—
 16 none of which included the documents now proffered. (Leisy Decl. ¶ 11.)⁹

17 Despite the untimeliness of Petitioner's request, the City did not refuse to include the
 18 documents on the basis Petitioner asserts. (Motion, p. 14.) Rather, the City noted that the prejudice to it
 19 and Real Party due to delay and costs associated with supplementing the record with thousands of
 20 pages of irrelevant material at this stage in the litigation grossly outweighed any material benefits. (See
 21 Wright Decl., Exh. 10.) For example, the documents referenced in the Unite Here Local 11 appeal
 22 (dated September 5, 2019) and the Gideon Law letter (dated January 23, 2019) are general in nature
 23 relating to greenhouse gas emissions, air quality, and transportation, i.e., a 2017 CALEEMOD User's
 24

25 _____
 26 ⁸ / In denying Petitioner's prior motion to require the City to conduct a broader search of its records, the
 Court ostensibly agrees. (Minute Order, p. 4.)

27 ⁹ / Ironically, Petitioner previously (and wrongly) alleged that attachments were missing from other
 28 Unite Here Local 11 correspondence—when, in fact, those attachments were found elsewhere in the
 draft record and simply needed to be organized correctly. Petitioner's recent discovery of the "missing"
 hyperlinked documents is suspect.

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[GOVERNMENT CODE § 6103]**

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14 Attorneys for Respondents
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15 CITY OF LOS ANGELES CITY COUNCIL

16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

18 THE SUNSET LANDMARK INVESTMENT,
19 LLC, a California limited liability company,

Case No. 19STCP01027
[Related to Case No. 19STCP00988]

20 Petitioner,

21 v.

**DECLARATION OF PATRICE
LATTIMORE IN SUPPORT OF
OPPOSITION TO MOTION TO AUGMENT**

22 CITY OF LOS ANGELES, a municipal
corporation; CITY OF LOS ANGELES CITY
COUNCIL; and DOES 1 through 10, inclusive,

ASSIGNED FOR ALL PURPOSES:
Hon. Daniel S. Murphy
Dept. 32

23 Respondents,

24 6421 SELMA WILCOX HOTEL, LLC, a
25 California limited liability company; and ROES
1 through 10, inclusive,

Petition filed: April 2, 2019
(CEQA)

26 Real Parties in Interest.

Hearing Date: March 20, 2020
Time: 8:30 a.m.

1 9. Because of the number of documents received and processed by this Office as well as
 2 the potential for malware and computer viruses being transmitted through hyperlinks and the fact that
 3 documents related to agenda items are generally submitted close to the date of the agendized Council
 4 Meeting or Council Committee Meeting, the Office does not have the time and resources to carefully
 5 review each document submitted to determine if its contains hyperlinks and, if so, download documents
 6 that may be found at those hyperlinks. Because of the volume of documents submitted, a commenter
 7 must submit a specific request to the City Clerk's Office via a cover letter or memo, specifically
 8 identifying the website/URL link and requesting that the document provided via that link be placed into
 9 the Council File. Only at that point will the Office download a document and include it in a Council
 10 File.

11 10. I have reviewed a letter sent by attorney Gideon Kracov to Sharon Dickinson c/o City
 12 Council and May Sironopswongsagon of the Department of City Planning dated January 23, 2019
 13 related to the project. This letter was uploaded to Council File 18-0873 on January 23, 2019. The letter
 14 refers to "attached expert traffic and environmental comment letters." The attachments to Mr. Kracov's
 15 letter were uploaded into the Council File. However, Mr. Kracov's letter did not request that the
 16 documents referenced in footnotes in the comment letters attached to his letter were also intended to be
 17 uploaded to the Council File by the Office of the City Clerk. As such, I would not expect my staff to
 18 review the footnotes in attachments submitted as part of a main comment letter to identify documents
 19 with hyperlinks contained therein, and then download them for inclusion in the Council File. Placing
 20 such a responsibility on our office would result in an undue hardship because we already have limited
 21 staffing to handle a large volume of work. A true and correct copy of Mr. Kracov's letter with the
 22 attached comment letters dated January 23, 2019 is attached hereto as Exhibit "B."

23 I declare under penalty of perjury of the laws of the State of California that the foregoing is true
 24 and correct, and that this declaration was executed on this 12th day of March 2020 in Los Angeles,
 25 California.


 Patrice Lattimore

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