From:	Anthony Kornarens <khlawfirm@aol.com>
Sent time:	10/05/2020 03:49:30 PM
To:	mindy.nguyen@lacity.org; cpc@lacity.org
Subject:	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:	CityOfLA100520.pdf

See attached:

Submission Of Vedanta Society Of Southern California in support of 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

Anthony Kornarens

Anthony Kornarens, APC
2491 Atlantic Avenue
Long Beach, CA 90806
Tel: (562) 426-0384
Fax: (310) 230-5104

ANTHONY KORNARENS
A PROFESSIONAL CORPORATION

2491 ATLANTIC AVENUE
LONG BEACH, CALIFORNIA 90806

TELEPHONE 562.426.0384
FACSIMILE 310.230.5104

October 5, 2020

VIA EMAIL
Mindy Nguyen, City Planner (**mindy.nguyen@lacity.org**)
City Planning Commission (cpc@lacity.org)
City of Los Angeles, Department of City Planning
Commission Executive Assistant
221 North Figueroa Street, Suite 1350
Los Angeles, CA 90012

Re: Submission Of Vedanta Society Of Southern California in support of 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 and City Planning Commission:

This firm and the undersigned represents Vedanta Society Of Southern California ("VSSC"), a California non-profit religious corporation which since the 1930's has owned and operated a monastery, shrine and other facilities near the site of the proposed project. ("Project").

VSSC objects that the land use approvals are in error, are not supported by substantial evidence and otherwise fail to comply with the law.

VSSC further objects that the certification of the final Environmental Impact Report is improper, premature and constitutes a failure to proceed in the manner required by law, both procedurally and substantively.

Without limiting the forgoing, VSSC objects on the basis that the Lead Agency admittedly does not have adequate information to approve the Project or to certify the Environmental Impact Report. The letter of determination admits that the Project cannot proceed in its current form if there are active fault traces and states that further studies must be conducted in the suspected area to demonstrate, or rule out, the presence of an active fault prior to approval of this project. This is underscored by the concerns of the California Geological Survey (CGS) and other bodies that there is an active fault definitely traversing the southerly portion of the site, which area was not trenched previously by Millennium – as well as other portions of the site northerly thereof.

There are no findings nor any legally proper reason why these further studies could not have been conducted prior to certification of the final Environmental

Impact Report. Completion of these studies and a definitive conclusion that there are not active earthquake faults traversing the project site is required as a matter of law prior to certification of the final Environmental Impact Report. It is also required based on the facts in the record in this matter. The final Environmental Impact Report cannot properly be certified until all required environmental review is completed and that review made available as part of the public CEQA process at this time.

Without limiting the forgoing, VSSC will focus on the seismic issues that require the land use approvals to be set aside.

1. "The fundamental purpose of an EIR is 'to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.' (§21061) To that end, the EIR 'shall include a detailed statement setting forth…[¶]…[a]ll significant effects on the environment of the proposed project.' (§21100(b)(1).)" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* [2007] 40 Cal.4th 412, 428) "CEQA's demand for meaningful information 'is not satisfied by simply stating information will be provided in the future.' [Citation.]" (Id. at p. 431.) "Under CEQA's standards for the adequacy of EIR's, an EIR must 'be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences.' ([CEQA] Guidelines, [Cal. Code Regs., tit. 14,] §15151.)" (*Planning & Conservation League v. Castaic Lake Water Agency* [2009] 180 Cal.App.4th 210, 242.) "'If a final environmental impact report (EIR) does not "adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project," informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law. [Citations]'" (*Communities for a Better Environment v. City of Richmond* [2010] 184 Cal.App.4th 70, 82–83.)

2. In a recent published decision involving this very project, the Court of Appeal explained that the "draft environmental impact report (EIR) must contain a project description. Cal. Code Regs., tit. 14, § 15124. That project description must include (a) the precise location and boundaries of the proposed project, (b) a statement of the objectives sought by the proposed project, (c) a general description of the project's technical, economic and environmental characteristics, and (d) a statement briefly describing the intended use of the EIR. §15124, subds. (a)-(d). This description of the project is an indispensable element of both a valid draft EIR and final EIR. That project description must be *accurate, stable and finite*." (*stopthemillenniumhollywood.com v. City of Los Angeles* [2019] 39 Cal.App.5th 1, 16, citing *CCR* 14, §15124(a)–(d) (Italics

added).[1] Thus, ""[i]f an EIR fails to include relevant information and precludes informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred." (Id. at 18, citing *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* [2001] 87 Cal.App.4th 99, 128.)

3. Where, as here, relevant to the project's technical, economic and environmental characteristics, geological and seismic conditions are within the purview of CEQA and must be addressed. (CEQA Guidelines, 14 *CCR* §15125[a]) An EIR must include a description of the physical environmental conditions in the vicinity of the project"]; *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* [2013] 57 Cal.4th 439, 472, fn. 5 ["seismicity" was one of the matters reviewed in the EIR at issue "consistent with CEQA requirements" {citing CEQA Guidelines, §15125(a)}]) This includes the seismic investigation issue discussed below, which the Lead Agency (City of Los Angeles) correctly recognizes must be evaluated (*Cadiz Land Co. v. Rail Cycle* [2000] 83 Cal.App.4th 74, 98-100; see CEQA Guidelines Appendix G, which includes several questions relating to seismic safety and whether a project may increase exposure of people to risks such as earthquake and liquefaction. Appendix G (VII) (Geology and Soils)).

4. The City of Los Angeles CEQA Thresholds Guide (2006) require, among other things, that geological issues be fully analyzed and conclusions reached and mitigation measures fully developed before project approval; including analysis of the following key questions: Would the project expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking, including liquefaction? Are there geologic hazards associated with the project site that exceed the typical risk of hazard for the region? If so, the project would have significant geologic impacts that require the design and study of specific mitigation measures before project approval.

5. A significance threshold should have been determined first. Conclusions were required whether the project would normally have a significant geologic hazard impact by causing or accelerating geologic hazards, which would result in substantial damage to structures or infrastructure, or exposing people to substantial risk of injury. The geologic processes that may result in geologic hazards on the project site or in the surrounding area needed to be identified. The requirements and/or policies for geologic hazards that apply to the project site had to be summarized. The City was required to consider Alquist-Priolo Special Study Zones and Fault Rupture Study Areas, published reports, or other appropriate maps or studies, as available to assess whether

[1]This decision binds the City and the Developer Millennium Hollywood LLC, and its successor now known as MCAF Vine, LLC ("MCAF").

the project is located in an area susceptible to geologic hazards. It did not do so and indeed, expressly failed properly to do so by its failure to recirculate the Draft EIR to include the May 8, 2020 United States Geological Survey study, and the July 16, 2020 California Geological Survey comment letter and new information. The City's claim in the Final EIR that neither of those new documents presents anything new is both false and dangerous. Design and structural features that exceed the requirements of the Los Angeles Building Code and Planning and Zoning Code were required before approval. These and many other matters have improperly been deferred until after project approval.

6. The geological assessment of the Project is incomplete and does not comply with the current City of Los Angeles CEQA Thresholds Guide for Geologic Hazards for Alternative 8. As well, the testing after project approval contained in the Vesting Tentative Tract Map Conditions 18 and 34 violates the City's CEQA Thresholds Guide. The 555 page Thresholds Guide (included in the reference materials to the Final EIR) requires these issues be fully analyzed and conclusions reached and mitigation measures fully developed before project approval.

7. The Screening Criteria in the Guidelines are met, therefore requiring further study in an expanded EIR.

8. The required Determination of Significance is not in the project approval, in violation of the City's own Guidelines.

9. The project approval does not contain these findings, nor does it adequately describe or incorporate all feasible mitigation, nor are there findings that once all feasible mitigation is incorporated, the impacts are below the significance threshold or have otherwise been properly mitigated.

10. Instead, these critical matters are improperly deferred.

11. The City has otherwise violated its own CEQA *Thresholds Guide* specifically applicable to this Project.

12. The current version of CEQA Guidelines §15126.2(a) (14 *CCR* 15126.2) mandates that "[t]he EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas." The EIR

therefore was required to analyze the significant environmental effects the project might cause or risk exacerbating by bringing development and people into the project area that is affected by seismic issues. (*In re Alanna A.* [2005] 135 Cal.App.4th 555, 563 ["[u]se of the mandatory language "shall" indicates a legislative intent to impose a mandatory duty; no discretion is granted.]) The EIR does not meet these standards.

13. CEQA promotes informational and substantive protections for the environment and for all members of the public. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* [2015] 62 Cal.4th 369, 382-383). ("*CBIA*") The EIR's omission of critical earthquake fault information impedes both purposes. As a result, "[t]he public was deprived of a full understanding of the environmental issues raised by the . . . project proposal." (*Banning Ranch Conservancy v. City of Newport Beach* [2017] 2 Cal.5th 918, 942.) That is not much ado about nothing. It is about protection of the public and the process.

14. When information is not disclosed, prejudice to the public is presumed. (*Sierra Club v. State Bd. of Forestry* [1994] 7 Cal.4th 1215, 1236-1237.)

15. CEQA Guidelines §15126.2(a) and the statutes from which it is derived are valid and binding under *CBIA*, 62 Cal.4th 369, which partially upheld and partially invalidated an earlier version of §15126.2(a) which stated that *all* EIR's "on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision." In language applicable to the Millennium (Hollywood Center) project, the Court held that *Pub. Resources Code* §§21096, 21151.8, 21159.21(f),(h), 21159.22, (a),(b)(3), 21159.23(a)(2)(A), 21159.24(a)(1), (3), and 21155.1(a)(4), (6), constitute specific exceptions to the general rule of the California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., requiring consideration only of a project's effect on the environment, not the environment's effects on project users. Accordingly, the Millennium (Hollywood Center) Project falls squarely within these statutes' express exception to the general rule of CEQA, requiring consideration only of a project's effect on the environment, not the environment's effects on project users. (*CBIA,* 62 Cal.4th at 392.)

16. That statute "reflect[s] an express legislative directive to consider whether existing environmental conditions might harm those who intend to occupy or use a project site." (62 Cal.4th at 391). As our Supreme Court recognized: "A separate cluster of statutes limits the availability of CEQA exemptions where future residents or users of certain housing development projects may be harmed by existing conditions. These limits on exemptions extend to projects located on sites that will expose future occupants to certain hazards and risks—including the release of hazardous substances and sites subject to wild

land fire, *seismic*, landslide or flood hazards—unless (in some cases) the hazards and risks can be removed or mitigated to insignificant levels. (E.g., §§ 21159.21, subds. (f), (h), 21159.22, subds. (a), (b)(3) [agricultural employee housing], 21159.23, subd. (a)(2)(A) [*affordable to low-income housing*], 21159.24, subd. (a)(1), (3) [*infill housing*].) (Id.) (*Italics added*). These statutory and regulatory (Guideline §15126.2[a]) limits on exemptions govern the Millennium (Hollywood Center) project.

17. Emphasizing the requirement that a project's impacts on the existing environment must be studied, the Supreme Court said: "Moreover, and consistent with CEQA's general rule, we note that the statute does not proscribe consideration of existing conditions. In fact, CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present. Accordingly, we find that the following sentences of Guidelines section 15126.2(a) – challenged by CBIA as unauthorized under the statute – are valid under CEQA: "The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected....Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps,[2] risk assessments or in land use plans addressing such hazards areas.'" (*CBIA,* 62 Cal.4th at 388.)[3]

18. Accordingly, as a matter of law, the EIR must analyze the significant seismic environmental impacts the project might cause or risk exacerbating by bringing massive amounts of high rise residential housing to a project site that two governmental agencies have indicated is underlaid with active, near-surface earthquake faults. The seismic hazards to which future residents of the Project may be subject must be analyzed and measures proposed to remove the risks or to mitigate them to insignificant levels. This must occur before project approval. It has not.

19. The Project's proposed skyscrapers are surrounded by other buildings, including the Capitol Records Tower, and is in the immediate vicinity of the Equitable Building and the 2,700-seat Pantages Theatre, among others. With skyscrapers proposed for the Project, a high-rise collapse in an earthquake

[2]This applies to the official, 2014 Alquist Priolo Map showing the active Hollywood earthquake fault crossing the Project site.

[3]The Supreme Court makes clear in *CBIA* that CEQA requires study of a project's impacts on the existing environment, including hazardous conditions to which development and people are brought. There is no question here that the Millennium (Hollywood Center) Project will bring more people and significantly greater development to the project site and its surroundings than presently exist.

will not only place future Project occupants at unacceptable risk under the City's General Plan Safety Element ([Safety Element policies]), but will affect the nearby buildings, structures and public rights of way and services (such as streets and utilities). These potential impacts on the existing environment fall within *CBIA's* holding that seismic and other reasonably foreseeable hazardous impacts on the existing environment from a project are should be studied under CEQA.

20. These authorities and the conditions the City has decided to impose on the approval preclude MCAF from claiming that a complete seismic analysis is not necessary under CEQA.

21. Whether characterized as deferred study or deferred mitigation, the Project's deferral of this to another day while at the same time approving the project violates CEQA. (Guidelines §15126.2(a))

22. After the required analysis, an EIR must include proposed mitigation measures designed to minimize the project's significant environmental impact. (*Pub Res C* §§21002.1(a), 21100(b)(3); 14 *CCR* §15126.4(a)(1)).

23. The CEQA Guidelines provide a broad definition of mitigation, including actions taken to rectify or compensate for a significant impact. Under 14 *CCR* §15370, "mitigation" includes: (1) avoiding an impact altogether by not taking a certain action or part of an action; (2) minimizing an impact by limiting the magnitude of a proposed action and its implementation; (3) rectifying an impact by repairing, rehabilitating, or restoring the affected environmental resource; (4) reducing or eliminating an impact over a period of time through preservation or maintenance operations during the life of the action; and (5) compensating for the impact by providing substitute resources or environments. At minimum, factors (1) and (2) of the Guidelines encompass mitigation of seismic impacts.

24. If this project is permitted to proceed, CEQA requires that seismic issues be investigated and addressed by mitigation measures. Adequate studies must be performed and conclusions reached before it can be determined what, if any, mitigation is available to address known, suspected or later-discovered conditions. (*Oakland Heritage Alliance v. City of Oakland* [2011] 195 Cal.App.4th 884, 908-909; see also, City of Los Angeles CEQA Thresholds Guide for Geologic Hazards and discussion, supra)

25. The City has determined there are serious seismic concerns. (See discussion infra., see ¶56) Substantial evidence supports that determination (Id.)

Moreover, the project proponent MCAF cannot contest the point.[4]

26. These serious seismic issues that must be evaluated as part of the review process. We will next show how the City's approach to this life-and-death issue violates CEQA.

27. The Letter of Determination ("LOD") contains two conditions that are most relevant to this issue:

> 18. See Condition 34 regarding the requirement for the developer to excavate another exploratory trench to demonstrate, or rule out, the presence of an active fault in the southerly part of the Project Site; AND
>
> 34. Prior to the issuance of any permit which authorizes excavation on the Project Site, the project engineering geologist (a California licensed Certified Engineering Geologist or Professional Geologist who is experienced with fault investigations, at the discretion of the Grading Division of the Los Angeles Department of Building and Safety (LADBS)) shall directly observe, by exploratory trench overlapping the transect investigation performed on the southern portion of the East Site, continuous strata of late Pleistocene age to rule out "active fault traces" (as defined by California Code Regulations, title 14, division 2, chapter 8, section 3601, subdivision (a)) on the Project Site....

---

[4]The California Geological Survey questioned the project's impacts on public health, safety and welfare, including because the 7.0 magnitude, surface rupture, active Hollywood Earthquake Fault runs directly through the site, as officially mapped in the State's Alquist-Priolo Earthquake Fault Zone Map (official map and State Fault Evaluation Report 253 and supplement ["FER 253]") Those concerns are even more well founded today given the current iteration of this project. The current proposal places skyscrapers astride and adjacent to the earthquake fault. In fact, the eastern skyscraper is bisected by the earthquake fault, and places the building footprint of at least one structure in the 50-foot restricted Alquist-Priolo setback zones.) The State provided an administrative appeal period for anyone to challenge the new Alquist-Priolo Map's findings. MCAF did not appeal, which means it failed to exhaust its administrative remedies in seeking to argue for a change in the active fault designation through the site. MCAF has forfeited any ability to challenge that identification and the official mapping by the California Geological Survey of the active Hollywood Earthquake Fault through the site is final, and it must be treated as such. The subsequent smear campaign MCAF's attorney mounted against CGS, which simply assumes – without any supporting evidence – that CGS is biased, incompetent, or misrepresenting facts and data does not distract from the that fact any revisiting of CGS's official 2014 Map is barred as a matter of law by collateral estoppel and the doctrine of failure to exhaust administrative remedies regarding the long-since-expired appeal period to challenge the official, 2014 Alquist-Priolo Map and its findings. In relation, in the prior action, in response to a request for judicial notice of the then recently-released Final Alquist-Priolo Map and FER 253 Study, Judge Chalfant found that those documents "corroborate Petitioners' position" regarding the dangers of the active fault running through the site. Since then, far more corroborating facts have come to light about the dangerous seismic conditions at the project site.

> If the investigation performed by the project engineering geologist, as documented in the Surface Fault Rupture Hazard Investigation Report, concludes that there are no active fault traces traversing the southern portion of the East Site, no Project-related construction activity may proceed until LADBS provides written approval of the Surface Fault Rupture Hazard Investigation Report to the Applicant and the Department of City Planning. If the investigation performed by the project engineering geologist, as documented in the Surface Fault Rupture Hazard Investigation Report, concludes that there are active fault traces traversing the southern portion of the East Site, construction of the Project, as proposed, shall not proceed. In compliance with CGS' and LADBS' guidance, the Surface Fault Rupture Hazard Investigation Report shall include recommendations for building setbacks from any identified active fault trace(s), subject to LADBS review and approval.

28. The LOD states these conditions must be satisfied and the project design modified and "what, if any, additional environmental review" completed before construction of the project can proceed:

> No ground disturbance or other construction activity shall take place on the Project Site until all of the following has been completed to the satisfaction of the Director of Planning:
>
> a. Applicant shall meet with the Department of City Planning and LADBS to determine what modifications need to be made to the Project to address the existence of the active fault traces on the Project Site, including any building setbacks recommended in the Surface Fault Rupture Hazard Investigation Report approved by LADBS.
>
> b. Applicant shall submit revised plans to the City that include the project modifications needed to address the existence of the active fault traces on the Project Site.
>
> c. The Department of City Planning and LADBS shall determine what, if any, additional environmental review, pursuant to the California Environmental Quality Act (CEQA), is necessary to analyze the Project modifications, and complete the additional environmental review.

29. As such, the City did *not* accept the conclusions reached by the 2015 and 2019 studies submitted by MCAF that it argued showed the geology impacts would be insignificant. The City did not find these studies to be determinative. Instead, the City ordered further testing in Conditions of Approval 18 and 34.

30. The conditions of further testing and the resulting project modifications are mitigation measures under CEQA. As explained in *POET, LLC v. State Air Resources Bd.* [2013] 218 Cal.App.4th 681, 734-735 (*POET*): "A state agency

considering proposed action under a certified regulatory program must not approve or adopt the activity "if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect that the activity may have on the environment." (§21080.5,(d)(2)(A).) As to the written documentation prepared under a certified regulatory program, it must include a description of "mitigation measures to minimize any significant adverse effect on the environment of the activity." (§21080.5(d)(3)(A).) This obligation to describe mitigation measures is one of the procedural requirements of CEQA "intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." (§21002.)"

31. The general rule is that mitigation measures may not be deferred, Guideline 15126.4(b)(1)(A) has consistently mandated: "Formulation of mitigation measures shall not be deferred until some future time." This principle has been consistently applied and emphasized by courts as the "general rule against deferral." *POET,* 218 Cal.App.4th at 735.[5]

32. Until recently, Courts have recognized a narrow "judge-made exception to the general rule prohibiting the deferral of the formulation of mitigation measures." (*POET*, 218 Cal.App.4th at 735.) While there was not a single, all-encompassing statement for it, courts have unanimously applied the exception only in limited cases: "'[F]or kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process." *(City of Maywood v. Los Angeles Unified School Dist*. [2012] 208 Cal.App.4th 362, 411 [school district could not conduct soils testing on 27 residential properties where it did not have a right of entry; mitigation measure committing to such further study when access was later obtained, and in accordance with objective standard,

[5]Under CEQA, regulatory study requirements and determination of feasible mitigation requirements based upon those studies must be performed during the CEQA initial study process in order to obtain study information **required to determine if mitigation can in fact reduce impacts beneath the level of significance**. If it can as to that issue, the study supports use of an Mitigated Negative Declaration (MND). If not, an EIR is required. The corollary to this principle is that where there are no practical considerations prohibiting the ability of the agency to conduct the studies and consult with potential responsible agencies, that consultation, study and mitigation development shall occur before the decision on whether an MND or EIR will be prepared. Such study is required "because a negative declaration *ends* environmental review." (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* [2004] 116 Cal.App.4th 396, 399. (Emphasis added.))

was not improper][6]; *POET*, 218 Cal.App.4th at 736; *Gentry v. City of Murrieta* [1995] 36 Cal.App.4th 1359, 1394; *Oakland Heritage,* 195 Cal.App.4th at 906–907; *Sacramento Old City Assn. v. City Council* [1991] 229 Cal.App.3d 1011, 1028-29). Here, the Project site is unobstructed, flat, accessible, and under the ownership of the developer. In other words, it there are no physical or legal impediments that could potentially allow for a deferred study or deferred mitigation scenario. The Project site (both the East and West parcels) can and must be properly trenched and studied, preferably under the auspices of the CGS and other neutral scientists, now, prior to Project approval and FEIR certification.

33. Whether characterized as deferred study or deferred mitigation, or both, these conditions are inadequate as a matter of law.

34. The EIR ignores the many authoritative studies showing active faults under the project site. As such, the EIR withholds relevant information from the public and public agencies.

35. For this reason, any reliance on *Oakland Heritage.* 195 Cal.App.4th at 895, 904 and *Cadiz Land Co., Inc.,* 83 Cal.App.4th at 98-101 for the proposition that fault investigation studies may properly occur in the future as part of the mitigation measures is unavailing. Neither case involved the issue here, i.e., whether the draft EIR failed to include and consider relevant earthquake fault information necessary to fully inform the public. And neither applied the current Guidelines.

36. The courts "scrupulously enforce" compliance with the statutory procedural requirements of CEQA. (*Citizens of Goleta Valley v. Board of Supervisors* [1990] 52 Cal.3d 553, 564.) Only when CEQA is scrupulously followed does the public "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).

37. But there is compelling evidence in the record is that such testing could have

---

[6]The Court allowed the deferral of mitigation measures only because the School District could not conduct soils testing on 27 residential properties where it did not have a right of entry, the School District provided this explanation in the MND, and the record contained "evidence assessing the feasibility of the cleanup" – the DTSC letter approving the Preliminary Endangerment Assessment indicated that cleanup would take more than six months and the LAUSD estimated that the costs of remediation were estimated to be "between $2 million-$4.4 million" (Id. at 412)

been (and, in fact, was) conducted before project approval.

a. When the California Geological Survey (July 16, 2020 CGS letter) came out after the Draft EIR was released on April 16, 2020, relying on new subsurface data from the United States Geological Survey that was *not* previously available, which indicate potentially four (4) fault traces crossing the proposed development site and which strongly disapproves of any trenching that is conducted with or as part of project construction.

b. When the California Geological Survey and the U.S. Geological Survey studies came out after the Draft EIR was released, the City was required to have recirculated a new DEIR to include the critical new information from USGS and CGS. (See CEQA Guidelines, §15200 [the purpose of allowing the public and other governmental agencies the opportunity to review EIRs includes: sharing expertise, disclosing agency analyses, checking for accuracy, detecting omissions, discovering public concerns, and soliciting counter proposals). Each of those objects was impaired by the City's exclusion of known, relevant Hollywood Earthquake Fault information – directly pertaining to the Millennium site – from the Draft EIR. As such, CEQA-mandated information was withheld from the DEIR. The absence of information regarding the presence of the suspected earthquake fault running through the Millennium (Hollywood Center) Project site "frustrated the purpose of the public comment provisions" of CEQA during the critical draft EIR stage, and impaired informed decision making. (*Sierra Club, supra,* 7 Cal.4th at 1236-1237.) Under such circumstances, "prejudice is presumed" (*Id.* at 1237.) (See also, ¶56).

38. Obtaining information through studies is a key part of formulating mitigation measures. The lead agency "must" find out and disclose all that it reasonably can during the CEQA (and especially during the draft EIR) process. (see i.e. City of Los Angeles CEQA Thresholds Guide for Geologic Hazards and discussion, supra). This information is to then be used in part to formulate mitigation measures. (*POET*, 218 Cal.App.4th at 759, [ARD violated CEQA when it "deferred the formulation of mitigation measures for NOx emissions from biodiesel without committing to specific performance criteria for judging the efficacy of the future mitigation measures"])

39. This is why the Guidelines contain a rigorous requirement of showing impracticability or infeasibility (and three other requirements) to overcome the "general rule prohibiting the deferral of the *formulation* of mitigation

measures." (*POET*, 218 Cal.App.4th at 735).[7]

40. Following the rigorous requirement of showing impracticability or infeasibility, the Court in *Communities for a Better Environment,* 184 Cal.App.4th at 95 rejected future mitigation measures where there was no feasibility or practical impediments and the City was solely reluctant to make a finding early in the EIR process.

41. As elaborated by *POET*, this narrow exception to the general rule against deferral applies "when three elements are satisfied. First, practical considerations prevented the formulation of mitigation measures at the usual time in the planning process. Second, the agency committed itself to formulating the mitigation measures in the future. Third, the agency adopted specific performance criteria that the mitigation measures were required to satisfy." (*POET*, 218 Cal.App.4th at 736-740).

42. The CEQA Guidelines also acknowledge these exceptions, explaining that in certain situations, mitigation measures may specify performance standards for mitigating a significant impact when it is impractical or infeasible to specify the specific details of mitigation during the EIR review process, provided the lead agency commits to implement the mitigation, adopts the specified performance standard, and identifies the types of actions to achieve compliance with the performance standard. (14 CCR §15126.4(a)(1)(B)).

43. The recent amendment to the Guidelines 15126.4(b)(1)(A) reflects the mentioned narrow judge-made exception that has been followed by courts for years. The amended Guideline 15126.4(b)(1)(A) clearly states:

"Formulation of mitigation measures *shall not* be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review *provided that* the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards." (Emphasis added)

---

[7]In relation, "[o]nly the formulation of mitigation measures may be deferred, mitigation itself cannot be deferred past the start of the project activity that causes the adverse environmental impact." (Id. at 740)

44. These standards are not met here. There is no finding that it was impractical or infeasible to include those details during the project's environmental review. The facts do not have support any such finding.

45. There were no physical or legal impediments to conduct all necessary tests and studies on the property before Project approval. The City never refuted the fact that the property was at all times readily accessible for testing, with zero practical considerations prohibiting it and, if remediation was required, development of mitigation plans. (*Gentry*, 36 Cal.App.4th at 1394.) .

46. In limited cases in the EIR context, courts have allowed deferral of testing and development of mitigation measures where there are "practical" problems accessing portions of the site *and* each of the other three elements in Guideline 15126.4(b)(1)(A) are met (See, e.g., *City of Maywood,* 208 Cal.App.4th at 411-12). But the City or developer here, by contrast, have no access impairment.

47. Nor has the City committed itself to the mitigation as required by Guideline 15126.4(b)(1)(A). The approval also fails for this reason alone.

48. Nor has the City adopted specific performance standards the mitigation will achieve as required by Guideline 15126.4(b)(1)(A). The approval also fails for this reason alone.

49. Nor has the City identified the type(s) of potential action(s) that can feasibly achieve that performance standard and that will considered. Even had all of the other requirements of the Guidelines been met, the approval also would fail for this reason. The EIR does not explain with substantial evidence how each regulatory compliance measure in fact reduces possible significant impacts beneath the level of significance. Nor could the City so claim, given the fact that it concluded further study was needed to identify the existence and scope of the problem and how, if at all, it might be addressed. Any other conclusion is founded on raw speculation that whatever measures the City adopts will work. This fails as a matter of law.

50. VSSC next further elaborates on how this violates CEQA.

51. Under Guidelines §15126.4(a)(1)(B), the specific details of a mitigation measure may be developed after project approval only "when it is impractical or infeasible to include those details during the project's environmental review," and the agency "adopts specific performance standards the mitigation will achieve" (*Save Agoura Cornell Knoll v. City of Agoura Hills* [2nd Dist, 2020] 46 Cal.App.5th 665, 668 ["*Save Agoura*"]).

52. None of these requirements are met here.

53. The threshold issue is whether it was "impractical or infeasible to include those details during the project's environmental review." (Guidelines §15126.4(a)(1)(B)) If the answer is not yes, than the approval must be set aside. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* [2007] 149 Cal.App.4th 645, 670 [deferral can be found improper if no reason for it is given]; see also *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 17 Cal.App.5th 413, 442 [rejecting deferred mitigation partly because agency did not proffer any evidence supporting deferral]).

54. Here, the approval must be set aside because there has been no determination that it was "impractical or infeasible to include those details during the project's environmental review," nor can such a determination be made in view of the overwhelming evidence that all of the testing necessary to make such determinations could have been made during the project's environmental review (CEQA Guidelines, §15126.4(a)(1)(B)). Nor is there substantial evidence in the record to support such a finding.

55. The City here had no access impairment, yet studied nothing and did not meet its obligation to analyze what could be done to reduce impacts below thresholds of significance.

56. But there is compelling evidence in the record that such testing could have been (and, in fact, was) conducted before project approval.

    a. California Geological Survey (July 16, 2020 CGS letter), relying on new subsurface data from the United States Geological Survey that was *not* previously available, which indicate potentially four (4) fault traces crossing the proposed development site and which strongly disapproves of any trenching that is conducted with or as part of project construction).

    b. U.S. Geological Survey (USGS) Open-File Report, May 8, 2020, entitled "2018 U.S. Geological Survey–California Geological Survey Fault-Imaging Surveys Across the Hollywood and Santa Monica Faults, Los Angeles County, California" which identifies several new splays of the known-active Hollywood Fault. This is highly pertinent to the proposed Hollywood Center and its Draft EIR because several north-dipping fault splays appear to intersect the project's planned high-rise foundations. This could "cause substantial adverse effects on human beings, either directly or indirectly" (Guidelines §15065(a)(4)), and also on the surrounding environment including to humans, other buildings, and streets and infrastructure if the proposed towers were to collapse due to seismic uplift or intense ground shaking.

    c. Wilson Geosciences report, which itself attaches the May 8, 2020 new

USGS report and data and concludes that the Hollywood Fault as a continuous unit is active.

d. Two LADBS memos authored by Daniel Schneidereit, Engineering Geologist II, Los Angeles Department of Building and Safety, including August 7, 2020 Inter-Departmental Correspondence "acknowledg[ing] the CGS's concern and [that we] believe the best way to resolve this issue is for the developer to excavate another exploratory trench to demonstrate, or rule out, the presence of an active fault in the southerly part of the site. The trench needs to be approximately 30 feet deep or more to expose the necessary strata, and may require the use of shoring." (See also September 9, 2020 memo, stating "a geologic fault exploration trench shall be excavated in the suspected area to demonstrate, or rule out, the presence of an active fault prior to the DBS' approval of this project."

e. Robert Sydnor expert letter ("The new information from the California Geological Survey's comment letter and the United States Geological Survey's report show that a "substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance." (CEQA Guidelines §15088.5(a)(2)) They also show that feasible project alternatives or mitigation measures "considerably different from others previously analyzed [in the current Draft EIR – such as placing buildings off of and far enough away from any and all active fault lines –] would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it." (CEQA Guidelines Section 15088.5(a)(3).")

57. This testing supports the concerns that caused the City to make construction contingent on additional testing confirming that there are no active faults underlying the project site and, if active fault traces are found, on further design (not specified) to address the findings and further required environmental review.

58. This is also why the approvals are conditioned on a series of mitigation measures being developed and approved *after* the further testing is conducted. Condition 34 states:

a. Applicant shall meet with the Department of City Planning and LADBS to determine what modifications need to be made to the Project to address the existence of the active fault traces on the Project Site, including any building setbacks recommended in the Surface Fault Rupture Hazard Investigation Report approved by LADBS.

b. Applicant shall submit revised plans to the City that include the project

modifications needed to address the existence of the active fault traces on the Project Site.

c. The Department of City Planning and LADBS shall determine what, if any, additional environmental review, pursuant to the California Environmental Quality Act (CEQA), is necessary to analyze the Project modifications, and complete the additional environmental review.

59. Conditions 18 and 34 themselves further establish there are no physical or legal impediments to conduct all necessary tests and studies on the property before Project approval. (*Gentry,* 36 Cal.App.4th at 1394)

60. Nor has the City followed its own CEQA thresholds guidelines, or specified what existing regulatory programs apply, or explained how those existing regulatory programs assure the Project would clearly have no significant impact. (*Pub. Res. Code* §21080(c)(2).)

61. Many cases hold that requiring formulation of mitigation measures at a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before a project is approved. (*Pub Res C* §21080(c)(2); see *League for Protection of Oakland Architectural & Historic Resources v. City of Oakland* [1997] 52 Cal.App.4th 896; *Gentry,* 36 Cal.App.4th at 1396; *Quall Botanical Ganlens Found., Inc. v. City of Encinitas* [1994] 29 Cal.App.4th 1597, 1605, fn. 4; *Oro Fino Gold Mining Corp. v. Cnty. of El Dorado* [1990] 225 Cal.App.3d 872, 884; *Sundstrom v. County of Mendocino* [1988] 202 Cal.App.3d 296, 306 (condition requiring that mitigation measures recommended by future study to be conducted by civil engineer evaluating possible soil stability, erosion, sediment, and flooding impacts was improper).[8]

62. Conditions 18 and 34 do not meet any of the other requirements of CEQA Guidelines, §15126.4(a)(1)(B).

63. Instead, these conditions literally create a moving target. If "active fault traces" are found (or not ruled out) on the Project Site, modifications will need

[8]The project in Sundstrom was a proposed sewage treatment plant and the record contained evidence of significant environmental problems. The County certified a negative declaration with several conditions (Id at 302-304) which required the developer to have hydrological and other studies prepared to show that the project would not have any significant environmental impacts. The studies were to recommend mitigation measures, and the developer was required to incorporate these mitigation measures into the project. (Id. at 306.) The court concluded that the County should have required the preparation of an EIR. Deferring assessment of the environmental impacts of the project until after certification of the negative declaration and approval of the project violated CEQA's requirement that environmental review precede decisionmaking on the project. (Id. 307.)

to be made to the Project. (Condition 34)[9] As such, the required project description does not meet the requirement that it be "stable and finite." (*stopthemillenniumhollywood.com, supra.* 39 Cal.App.5th at 16).

64. Mitigation measures should describe the actions that will be taken to reduce or avoid an impact. These measures do not. In fact, the approvals claim the City still does not even know whether there are active earthquake faults at the project site. They also confirm that *none* of the three required Guideline elements are met if the further testing identifies (or does not rule out) active fault traces.

65. Specifically, the approval letter expressly conditions whether or not the project can even be built on the results of the further geological testing for the presence of active earthquake faults and requires further analysis if fault traces are found. (See VTTM approval letter, Conditions 18 & 34).

66. MCAF cannot challenge the City's failure to require further testing. Expert opinion such as contained in this record supports a fair argument that further testing is required. (Id. at 689, citing *Pocket Protectors v. City of Sacramento* [2004] 124 Cal.App.4th 903, 928 ["expert opinion if supported by facts, even if not based on specific observations as to the site under review" may qualify as substantial evidence supporting a fair argument].) [10]

67. There is another issue that is fatal to the approval: CEQA Guidelines, §15126.4(a)(1)(B) *also* requires that the mitigation measure "adopt[s] specific performance standards the mitigation will achieve." Impermissible deferral can occur when an EIR calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but the agency fails to commit itself to specific performance standards. (*Cleveland Nat'l Forest Found.,* 17 Cal.App.5th at 442 [generalized air quality measures failed to set performance standards]; *California Clean Energy Comm. v City of Woodland* [2014] 225 Cal.App.4th 173, 195 [agency could not rely on future report on urban decay with no standards for determining whether mitigation required); *POET,* 218 Cal.App.4th at 740 [agency could not rely on future rulemaking to establish specifications to ensure emissions of nitrogen oxide

---

[9]"Applicant shall meet with the Department of City Planning and LADBS to determine what modifications need to be made to the Project to address the existence of the active fault traces on the Project Site, including any building setbacks recommended in the Surface Fault Rupture Hazard Investigation Report approved by LADBS."

[10]The substantial evidence standard does not apply to this issue since VSSC does not challenge any *factual* determinations regarding the decision to require further seismic investigation and testing. Rather, without waiving its other objections, VSSC challenges the City's decision to approve the project now, before completion and careful consideration of the results of testing the lead agency has found to be necessary.

would not increase because it did not establish objective performance criteria for measuring whether that goal would be achieved); *Gray v County of Madera* [2008] 167 Cal.App.4th 1099, 1119 [rejecting mitigation measure requiring replacement water to be provided to neighboring landowners because of mine operations and holding that the commitment "to a specific mitigation goal" is not adequate where "the County has not committed itself to a specific performance standard."])

68. This requirement also is not met. The approval contains no performance standards regarding seismic safety. Instead, it states that construction of the project cannot now proceed unless the presence of an active earthquake fault on the project site is ruled out. It also states that if a fault is located, there will be meetings with the City "determine what modifications need to be made to the Project to address the existence of the active fault traces on the Project Site." Other than mentioning "building setbacks recommended in the Surface Fault Rupture Hazard Investigation Report approved by LADBS,"[11] and "what, if any, additional environmental review, pursuant to the California Environmental Quality Act (CEQA), is necessary to analyze the Project modifications," Instead, it states in the most conclusory fashion that "Applicant shall submit revised plans to the City that include the project modifications needed to address *the existence of* the active fault traces on the Project Site." (Italics added). Even if this is construed to require further regulatory agency review, it does not identify the methods the agency will consider for mitigating the impact, nor does it indicate the expected outcome.

69. Additional testing may be required under CEQA "if the initial testing is insufficient." (*Save Agoura*, 46 Cal.App.5th at 693-694; *Gray v. County of Madera* [2008] 167 Cal.App.4th 1099, 1115.)

70. Here, the LOD necessarily rests on the assumption that the initial testing is insufficient to approve the project and to formulate all required mitigation measures.

71. Studies conducted after a project's approval do not guarantee an adequate inquiry into environmental effects. Such a mitigation measure would effectively be exempt from public and governmental scrutiny.

---

[11]The reference to possibly moving "building setbacks" appears to recognize that the Alquist-Priolo Earthquake Fault Zoning Act, Pub. Resources Code, § 2621 et seq., prohibits the construction of structures for human occupancy across the trace of an active fault or within 50 feet of an active fault. (*California Oak Foundation v. Regents of University of California* [2010] 188 Cal.App.4th 227, 248 "[{t}he Alquist-Priolo Act applies broadly to "any project … which is located within a delineated earthquake fault zone, upon issuance of the official earthquake fault zone maps to affected local jurisdictions, except as provided in Section 2621.7."(§2621.5(b).) "[P]roject" is defined to include "[s]tructures for human occupancy." (§2621.6(a)(2).)])

72. Specifically, a condition that requires implementation of mitigation measures to be recommended in a future study may conflict with the requirement that project plans incorporate mitigation measures. (*Pub Res C* §21081.6(b); 14 Cal Code Regs §15126.4(a)(2); *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* [2000] 83 Cal.App.4th 1252, 1261).

73. A mitigation measure calling for a mitigation plan to be devised on the basis of further study can also be found legally inadequate if it does not identify steps that might be taken to mitigate the impact once the study is completed. (*Preserve Wild Santee v. City of Santee* [2012] 210 Cal.App.4th 260, 280 [mitigation measure providing for active habitat management did not describe anticipated management actions and did not include management guidelines or performance criteria]; *Communities for a Better Env't,* 184 Cal.App.4th at 95 [rejecting mitigation measure that required project applicant to develop plan for reducing greenhouse gas emissions because it identified undefined and untested measures of unknown efficacy and did not contain any objective criteria for measuring success];[12] *San Joaquin Raptor Rescue Ctr.* 149 Cal.App.4th at 669 [rejecting mitigation measure calling for future surveys for special status species and development of undefined habitat management plan in response to surveys]; *Endangered Habitats League, Inc. v. County of Orange* [2005] 131 Cal.App.4th 777, 794 [rejecting mitigation measure requiring submission of acoustical analysis and approval of mitigation measures recommended by analysis because no mitigation criteria or potential mitigation measures were identified]). In short, mitigation deferral as has occurred here is not proper, especially since the result expected from the agency permitting process is left undefined. (*San Joaquin Raptor Rescue Ctr.,* 149 Cal.App.4th at 669).

74. The LOD does not meet these standards. A specifically tailored requirement to trench the southern portion of the East site is not a municipal code requirement, but rather the exercise of environmental protection discretion. The City exercised that discretion to add further testing as a condition in the

---

[12]In Communities for a Better Env't, 184 Cal.App 4th 70, 75 the city council certified the EIR. Late in the environmental review process—that is, in an addendum circulated after issuance of the final EIR—the city belatedly found that the project's greenhouse gas emissions would be a significant impact. (Id. at 90–91) The amended EIR addressed this impact by putting forth "some proposed mitigation measures to ensure that the Project's operation 'shall result in no net increase in GHG emissions over the Proposed Project baseline.'" (Id. at 91) The amended EIR gave Chevron one year to submit to the city, for approval by the city council, "'a plan for achieving complete reduction of GHG emissions up to the maximum estimated…Project GHG emissions increase over the baseline'" (Ibid.) The Court concluded the mitigation plan for greenhouse gases violated CEQA because the city "delayed making a significance finding until late in the CEQA process, divulged little or no information about how it quantified the Project's greenhouse gas emissions, offered no assurance that the plan for how the Project's greenhouse gas emissions would be mitigated to a net-zero standard was both feasible and efficacious, and created no objective criteria for measuring success."(CBE, at p. 95).

VTT. To comply with CEQA, the City should formulate mitigation measures to address what is learned and provide these express mitigation measures in a recirculated EIR before project approval. There is no substantial evidence how regulations that the City may assume could mitigate impacts will fully mitigate the impacts that will be reflected in the future studies. Imposing project conditions but failing to include them in the mitigation monitoring plan evades the requirement to recirculate, with new mitigation initially (and improperly) omitted.

75. Nor does the approval language "adopt[s] specific performance standards the mitigation will achieve" as required by CEQA Guidelines, §15126.4(a)(1)(B). That specific performance criteria must be "articulated at the time of project approval," and further action to carry the project forward must be contingent on meeting them (*Sacramento Old City Ass'n,* 229 Cal.App.3d at 1029; *Rialto Citizens for Responsible Growth v. City of Rialto* [2012] 208 Cal.App.4th 899, 945 [the general rule against deferred mitigation bars "loose or open-ended performance criteria"]).

76. The document contains no full commitment to mitigating identified significant seismic impacts of the project nor does it demonstrate how the impact can be mitigated in the manner described in the EIR. The required performance standards are not found anywhere in the document. "Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR." (*City of Long Beach v. Los Angeles Unified Sch. Dist.* [2009] 176 Cal.App.4th 889, 915.) That both describes and dispenses with the bill of goods that MCAF appears to be peddling here, which is based on a false premise that the City already has rejected; specifically, that it already has been determined there are no seismic issues to investigate or to address before construction can proceed.

77. Based on the lack of the required performance standards, it may be concluded such standards cannot be specified until the extent of the problem is determined by further testing. This, too, is inadequate under CEQA. (*Sierra Club v County of San Diego* [2014] 231 Cal.App.4th 1152 [later actions taken to flesh out a mitigation measure that calls for the details to be deferred must be consistent with the measure's terms, comply with its requirements, and be designed to implement its performance standards.]). Here, the public and the agencies are left to guess about the effect the proposed project will have.

78. Perhaps this is because there is no way to safely build or modify the project if the further study confirms the findings in this record that there in fact are active earthquake faults on the project site. (*Carmel Valley View, Ltd. v. Board of Supervisors* [1976] 58 Cal.App.3d 817, 821-822 [The presence of

geological hazards ascertained in connection with the required EIR requires map disapproval on grounds of physical unsuitability], see *Govt. Code* §66474(d) [if a site is not physically suitable for the proposed density of development, a public agency cannot approve a map for the proposed subdivision].) In fact, the approval implicitly reaches the same conclusion by prohibiting any construction unless and until further studies rule out the presence of active earthquake faults. In fact, until the study is completed, it cannot be known whether mitigation that can meet a specified performance standard is even available. But this is no excuse to violate the Guideline. Instead, it further underscores why approval was improper.

79. Many cases stress the importance of careful seismic studies as part of the approval process. Properly utilized, their function is "to eliminate a potential source of seismic hazard." (*Beverly Hills Unified Sch. Dist. v. Los Angeles County Metro. Transp. Auth*. (2015) 241 Cal.App.4th 627, 663 ["The elimination of the Santa Monica station as an option did nothing to change the potential environmental impacts of the Project, other than to eliminate a potential source of seismic hazard."]; see also *Oakland Heritage,* 195 Cal.App.4th 884 [design of structure in conformance with seismic design codes coupled with review by engineers and building officials was sufficient to ensure mitigation of seismic impacts];[13] *California Oak Foundation,* 188 Cal.App.4th at 264 ["[m]ost significantly, both the DEIR and EIR identified as a "significant and unavoidable" impact the fact that people or structures at the project sites could be exposed to potentially substantial adverse effects, including the risk of loss, injury, or death from rupture of a known earthquake fault or strong seismic ground shaking]. See also Id. at 251 [proposed Athlete Center was not an "addition" or "alteration" within the meaning of the Alquist-Priolo Act and thus not subject to the Act's value restrictions and in any event, a report issued after the DEIR, but before the EIR "entitled Fault Rupture Hazard Investigation... concluded that the proposed Athlete Center site was not located astride an active fault." [Id. at 263]; see also Id. at 264 [noting that the "DEIR also assured the public that neither project would be built across the trace of a known active fault").[14]

---

[13]The *Oakland Heritage* court describes "the situation here—and contrary to the rule of CNPS and SOCA—not only had the study not been made, but no possible mitigation measures had been developed, no performance standards had been set, and there was no reason to conclude either that the measures recommended in the study would be feasible or that they would mitigate the impacts." (195 Cal.App.4th at 911, discussing *Gentry,* 36 Cal.App.4th at 1367, 1395–1397)

[14]The totality of excluded information violating CEQA's information disclosure obligations also makes this case distinguishable from *California Oak Foundation*, where the only information excluded from the EIR was a single report. *See, analogously*, the Supreme Court's analysis in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, that examined the totality of "circumstances and the practical effect of the public agency's action on its ability and willingness to

80. The differences between these decisions and the EIR certified here only underscore why the approval of the EIR at this time is both premature and improper. In fact, none of these cases addresses CEQA Guideline, §15126.4(a)(1)(B).[15] As already discussed, the threshold requirement of impracticability or infeasibility cannot be met in this instance. Nor have the any of the other three elements of the Guideline been met. In plain English, MCAF is 0 for 4, when it needed to bat 100% to proceed at this time.

81. VSSC does not suggest that there can never be a situation where a deferred seismic study might be proper. But here, none of the requirements articulated in CEQA Guideline, §15126.4(a)(1)(B) and the relevant cases has been met.

82. "Under CEQA, a public agency cannot charge a developer with the responsibility to study the impact of a proposed project. (*Sundstrom,* 202 Cal.App.3d 296) Sundstrom involved a county delegating the duty to conduct hydrology impact studies for construction of a sewage treatment plant to the applicant. (Id. at p. 307) The Court held CEQA did not allow delegation of "the County's legal responsibility to assess environmental impact by directing the applicant himself to conduct the hydrological studies subject to the approval of the planning commission staff." (*California Clean Energy Committee v. City of Woodland* [2014] 225 Cal.App.4th 173, 194).

83. Here, the City has improperly delegated its responsibility to study the impact of the proposed project to the project applicant MCAF (Condition 18, requiring "the developer to excavate another exploratory trench to demonstrate, or rule out, the presence of an active fault in the southerly part of the Project Site...".)

84. VSSC is not aware of any case which holds that deferred seismic mitigation or study after project approval is proper where the proponent sought approval to build in-fill high-rise housing structures, including for elderly and low income people on top of active earthquake faults that have already been identified by reputable government agencies as being riddled with active earthquake faults. The concept is so absurd as to be self-refuting.

---

modify or reject a proposed project." *Id.* at 139. Likewise, the LOD ignores that the totality of the informational failure of the Draft EIR regarding seismic issues defeats CEQA's purpose to provide decision makers with full knowledge of potential impacts. "CEQA is essentially an environmental full disclosure statute, and the EIR is the method by which this disclosure is made." *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1020. The Millennium (Hollywood Center) EIR did not fulfill this statutory mandate.

85. MCAF cannot rely on the prior seismic studies it submitted. The City did not accept the conclusions of these studies and instead ordered further studies. Because the MCAF's studies are unreliable and the new USGS and the CGS letter state there are active faults on the project site, the site should be presumed to be crossed by active fault lines. (*CBIA,* 62 Cal.4th at 388, Guidelines §15126.2(a), "areas susceptible to hazardous conditions" can be "identified in authoritative hazard maps").

86. *Golden Door Properties, LLC v. County of San Diego* [2020] 50 Cal.App.5th 467, 520 invalidated an approval predicated on a future study because it "provide[d]" only a generalized goal....and then allow[ed] the Director to determine whether any particular...program is acceptable based on unidentified and subjective criteria." The Court stated the rule in clear terms: "Deferred mitigation violates CEQA if it lacks performance standards to ensure the mitigation goal will be achieved." As the Golden Door court observed, "there is nothing inherently unlawful under CEQA by delegating M-GHG-1 determinations to the Director. The problem is that M-GHG-1 contains no objective criteria for exercising that discretion to ensure that the...goals are actually met." (Id. at 523). "Feasible means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (Guidelines, §15364.) M-GHG-1 contains no objective criteria for the Director to apply in making these factual determinations." These observations apply with equal force to the approval here.

87. The fact "that scientific knowledge in th[e] area" or seismology "is constantly evolving" "is one of the most important reasons 'that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena.'" (*Communities for a Better Env't*, 184 Cal.App.4th at 96.) Although "'foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.'" (Ibid.) (Id. at 524)

88. The issue of regulation-vs-mitigation is crystal clear here. The project is on top of a fault line that has been determined by the State, the Federal Government and others to be active at the site, and nearby; the City can reasonably investigate the condition since it is obviously open, accessible, already owned by the project applicant MCAF and there are no physical or legal impediments to access.

89. And even had there been physical or legal impediments to access, the City was still obligated to (1) commit itself to the mitigation, (2) adopt specific performance standards the mitigation will achieve, and (3) identify the type(s) of potential action(s) that can feasibly achieve that performance standard and that will considered, analyzed, and potentially incorporated in

the mitigation measure.

90. But there were no impediments to access. Nor has the City committed itself to the mitigation, nor adopted specific performance standards the mitigation will achieve, nor has it identified the type(s) of potential action(s) that can feasibly achieve that performance standard and that will considered, analyzed, and potentially incorporated in the mitigation measure.

91. Instead, the City has asked for is a highly contextual and subjective investigation after which there will be further closed door discussions with the developer. But CEQA does not permit the City or MCAF to dig a trench and then decide behind closed doors during condition clearance how the results may be shoe-horned into the project approval. Nor can the City simply assume the project will have no geology impact because it will supposedly comply with regulations.

92. Here, the project approval itself confirms that none of the requirements of the Guidelines is met. The LOD itself admits that construction cannot proceed if later testing confirms one or more active earthquake faults, From this, it necessarily follows that approval of a project that cannot be built in and of itself has precluded informed decision-making and informed public participation.

93. Just as the first Millennium case turned on Project Description issues, the geology issues here are fundamentally issues of an accurate Environmental Setting. Guidelines §15125 requires a description of the existing physical environment and prohibits relying on "hypothetical conditions" in the environment. Here, one of the most important facts about the immediate physical environment is that it is crossed by fault lines determined by government to be active since the Holocene. Yet, despite Conditions 18 and 34, we may later be told that the City relied on a "hypothetical condition" that the fault is not active and rejected the findings of the USGS and CGS and the recommendations of its own, Engineering Geologist of the Los Angeles Department of Building & Safety, in addition to the other overwhelming evidence of site seismic issues (see ¶56, supra). If the City takes that almost unfathomable position, recirculation of the DEIR would be required.

94. As such, the approval *also* fails each of the following reasons: (i) there is an inaccurate environmental setting; (ii) it excludes relevant information; (iii) the USGS and CGS reports and the other studies discussed above require recirculation of the DEIR; and (iv) the project fails to do an adequate alternatives analysis.

95. Our local history teaches that short-cutting the investigative and evaluative

process to serve alternative agendas will cost lives and tarnish the legacies of all involved. For example, William Mulholland was primarily responsible for building the infrastructure to provide a water supply that allowed Los Angeles to grow into the largest city in California. He designed and supervised the building of the Los Angeles Aqueduct, a 233 mile long system to move water from Owens Valley to the San Fernando Valley. But his career ended when the St. Francis Dam failed, resulting in the loss of at least 600 lives, including 108 children. The Los Angeles Coroner's Inquest concluded that responsibility for the disaster lay in an error in engineering judgment about the suitability of the area's geology as a stable foundation for the dam, and in errors in public policy, which encouraged hasty building to meet the growing city's demands for more infrastructure. The Coroner's Inquest concluded the disaster was primarily caused by the unsuitable soil conditions on which the eastern abutment of the dam was built, which included an old earthquake fault (the San Francisquito Fault) that had not been adequately studied when the project was built. The disaster occurred because the theoretical and experiential knowledge base available for the project was inadequate to build the dam, without substantial additional research, exploration and testing. Almost one-hundred years later, that is exactly what is being proposed again. However, this time, there is no doubt but that the project proponent and those charged with ensuring public safety know of the risk.

VSSC further adopts and incorporates by reference all Project comments and objections raised by all others during the environmental review and land use entitlement processes for the Project. This includes each of the reasons stated in the June 1, 2020 letter, the September 11, 2020 letter and the September 22, 2020 letter from The Silverstein Law Firm, APC for StopTheMillenniumHollywood.com. VSSC incorporates these objections by this reference. VSSC further incorporates by reference the entire administrative record for the original Millennium Hollywood project, Los Angeles County Superior Court Case No. BS144606.

For the reasons stated above, the City Planning Commission should grant VSSC's appeal, reject the Project and overturn the Determination.

Thank you.

Very Truly Yours,
ANTHONY KORNARENS, APC

Anthony Kornarens

cc: Vedanta Society of Southern California