ARMBRUSTER GOLDSMITH &DELVAC LLP

CLIENT ALERT
COURT CASTS DOUBT OVER FUTURE HOLLYWOOD DEVELOPMENT

Mark S. Armbruster | Dale J. Goldsmith | William F. Delvac | R.J. Comer
Amy E. Freilich | David A. Goldberg | Damon P. Mamalakis
Dave Rand | Nicole Kuklok-Waldman | Aaron Clark | Matt Dzurec

On December 10, 2013, Los Angeles Superior Court Judge Allan J. Goodman issued a 41-page tentative decision in the actions challenging the City of Los Angeles Hollywood Community Plan ("Community Plan") update. The Community Plan update involved a series of zone changes and amendments that increased the development potential of a number of properties in Hollywood.

It is likely the court will adopt its tentative ruling as final. Despite acknowledging that the Community Plan update expressed "the finest thoughts of dedicated city planners," the judge held that the "otherwise well-conceived plan is also fundamentally flawed, and fatally so in its present iteration," along with the accompanying EIR. The core flaw identified by the court was that the population base used by the City was erroneous - the City should have used updated 2010 Census data, which became available 60 days after the publication of the Draft EIR, instead of the Southern California Association of Government's 2005 projections. This flaw infected virtually all of the impact analyses contained in the EIR. The judge ordered the City to rescind the adoption of the Community Plan update and related approvals and enjoined it from granting any entitlements that "derive" from the Community Plan update. The City may appeal the ruling, which would stay its effect, and/or begin preparation of a revised EIR and Community Plan update. The last update took several years to adopt.

The ruling will cast a very long shadow over development in Hollywood for the foreseeable future, and will require a rethinking of the entitlement approach for many projects. Additionally, it is unclear as to the effect of the ruling on already approved entitlements under the Community Plan update.

The cases represent the ever expanding use of litigation to impact reasonable development not only in Hollywood, but also throughout the region. In the last few years, we have obtained approvals for a number of high profile projects in Hollywood, as well as successfully defended and resolved legal challenges to our clients' projects. We have closely watched the Community Plan update process, as well as the litigation, and are actively engaged in strategizing paths forward for development in the aftermath of the ruling.

Please contact Dale Goldsmith or Damon Mamalakis for an evaluation of the effect of the court's ruling on specific projects or properties.

[Copy of Ruling Attached]

About Our Law Firm

Armbruster Goldsmith & Delvac LLP is California's premier boutique land use law firm specializing in land use, administrative matters, municipal advocacy, and land use litigation (with an emphasis on the defense of CEQA lawsuits, Writs of Mandate, and Appeals).

11611 San Vicente Blvd. | Suite 900 |Los Angeles | California | 90049 | Phone: 310-209-8800

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

WEST DISTRICT

FIX THE CITY, etc., **Petitioner and Plaintiff,** vs. **CITY OF LOS ANGELES; LOS ANGELES CITY COUNCIL; LOS ANGELES DEPT. OF CITY PLANNING; and DOES 1 through 100, inclusive,** **Respondents and Defendants.**	CASE NO. **BS138580** **TENTATIVE DECISION AND PROPOSED STATEMENT OF DECISION**
HOLLYWOOD CHAMBER OF COMMERCE, **Intervenor.**	
LA MIRADA AVENUE NEIGHBORHOOD ASSN. OF HOLLYWOOD, etc., **Petitioner and Plaintiff,** vs. **CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; and DOES 1 through 100, inclusive,** **Respondents and Defendants.**	CASE NO. **BS138369** **TENTATIVE DECISION AND PROPOSED STATEMENT OF DECISION**

HOLLYWOOD CHAMBER OF COMMERCE,
Intervenor.

SAVE HOLLYWOOD.ORG, aka PEOPLE FOR LIVABLE COMMUNITIES, etc., HOLLYWOODIANS ENCOURAGING LOGICAL PLANNING, etc.,

Petitioners/Plaintiffs,

vs.

THE CITY OF LOS ANGELES, CITY COUNCIL OF THE CITY OF LOS ANGELES, CITY ATTORNEY OFFICE OF CITY OF LOS ANGELES, HERB WESSON PRESIDENT OF CITY COUNCIL, CARMEN TRUTANICH CITY ATTORNEY, DOES 1 through 100, inclusive,

Respondents/Defendants.

HOLLYWOOD CHAMBER OF COMMERCE,

Intervenor.

CASE NO. **BS138370**

TENTATIVE DECISION AND PROPOSED STATEMENT OF DECISION

These matters having been tried on September 16 and 17, 2013, and having been submitted for decision, the Court now rules as follows.

INTRODUCTION

The Hollywood Community Plan Update (HCPU) (and its corollary environmental impact report [EIR]), which is a principal subject of this litigation, is a comprehensive, visionary and voluminous planning document which thoughtfully analyzes the potential for the geographic area commonly referred to as Hollywood (as defined in its several

hundred pages). The HCPU includes scores of pages of text, detailed maps and tables which together express the finest thoughts of dedicated city planners. The HCPU is intended to be *the* essential component of the General Plan Framework (the Framework) for the City of Los Angeles (the City) as the General Plan for the City (in all of its elements) is applicable to planning and potential growth in Hollywood.

This otherwise well-conceived plan is also fundamentally flawed, and fatally so in its present iteration. As petitioners have articulated, and as will be discussed below, the HCPU, and its accompanying EIR, contain errors of fact and of law that compel granting relief to the community groups which challenge adoption of the HCPU and its EIR in their present forms.

While one can appreciate the goal of finalizing adoption of the HCPU, its accompanying EIR and related documents, and doing so as close to "on schedule" as possible given the many years since the City began its staged revisions to its General Plan planning documents (culminating in adoption of the Framework),[1] forging ahead in the processing of the HCPU, EIR and related documents in this case based on fundamentally flawed factual premises has resulted in a failure to proceed in the manner required by law. This and other bases for the rulings now made are set out below.

TRIAL PROCEEDINGS

The matter was tried to the Court on September 16 and 17, 2013. Prior thereto the parties filed extensive briefs, followed by their arguments at length at trial. Following the trial, the parties have filed requests for statement of decision (in addition to that provided for in Public Resources Code section 21005 (c) [requiring that a court specify

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[1] The first draft of the Framework was circulated to the public almost twenty years ago, in July 1994. It was not finalized until eleven years later when review of the decision of the Court of Appeal of late 2004 upholding a revised version of the Framework was denied review by the California Supreme Court in February 2005. The attenuated history of adoption of the Framework is described in *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252 [*Federation I*] and *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2005) 126 Cal.App.4th 1180 [*Federation II*].

all grounds on which a public agency has acted not in compliance with CEQA if it so finds]). While those statements have been filed, a controversy over the requests has been created. It is resolved in the accompanying footnote.[2]

Pursuant to Public Resources Code section 21005(c), Code of Civil Procedure section 632 and California Rules of Court 3.1590, this Tentative Decision is also the proposed Statement of Decision in these matters. If any party now renews its request for a statement of decision, it must timely and fully comply with Rule 3.1590. If not, then this document is also the Statement of Decision in these matters, and prevailing parties are to timely prepare, serve and lodge the appropriate peremptory writs and judgments.

Evidence

The Court admitted the Administrative Record in each case. (It is identical.)

Each party has sought judicial notice of certain items. With the consent of the parties, those items which are determined properly the subject of judicial notice in one case are admitted as to all cases.

Request for Judicial Notice by Fix the City

Fix the City (by Request for Judicial Notice filed August 21, 2013) seeks judicial notice of sections 2.10 through 2.10.6 and 2.11 through 2.11.6 of the City's General Plan Framework EIR (addressing Fire and Emergency Medical Services and Police Services, respectively. These requests are granted pursuant to Evidence Code section 452(c).

Request for Judicial Notice by La Mirada

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[2] In addition to filing in each case a list of issues which it contends should be addressed in the statement of decision in each, City and intervenor filed in each case a lengthy set of objections and arguments as to why many of the requests made by each petitioner/plaintiff were erroneous. As no authority to support their editorial comments on the requests made by their adversaries was provided, and the Court is not aware of any authority to challenge another party's *request* for inclusion of any matter or issue in the statement of decision, the *objections* will not be considered *qua* objections: The Court is the final arbiter of the contents of its own statement of decision and does consider the parties' views with respect to its contents in connection with the Court's final document.

La Mirada seeks judicial notice of the meaning of the word "range" according to a particular dictionary and of Los Angeles City Charter sections 554, 556 and 558. The Court grants the second request in full and the first subject to the Court's own ability to discern the appropriate and applicable meanings of words when used in particular contexts.

La Mirada also sought to "supplement" the Administrative Record by its August 21, 2013 Notice of Lodging, to which City objected. The items are Chapter 2 of the City's General Plan Framework and the text of a particular hyperlinked document. The latter is already part of the record pursuant to the correct reading of *Consolidated Irrigation District v. Superior Court* (2010) 205 Cal.App.4th 697, 724-725. City's reading of this case is crabbed. City's objection to the Framework is frivolous as City itself both seeks judicial notice of the document and cites it in its Opposition (City's Op. at 11:17-21). La Mirada requests are granted, as is City's request for judicial notice of the Framework.

Request for Judicial Notice by SaveHollywood.org et al.

There is no objection to Item 1, which is an opinion in a federal court case; granted.

Nor is there any objection to item 2, which is a print out of a web page relating to the census, but the Court sees nothing other than the printed page. That is not sufficient basis for granting a request for judicial notice; this request is denied.

City objects to item 3, a SCAG document, but it is in the record at AR 21168. And, under the authority of *Consolidated Irrigation District v. Superior Court, supra*, the report at the hyperlinked cite was already also part of the record. The copy of that report at that link (Exhibit 3 to the Cheng declaration, filed with the Request for Judicial Notice) is merely another copy of the document which is already in the record. This request is granted.

Request number 4 is not a part of the record and its contents indicate it is only raw data in any event. It is neither timely nor appropriate for judicial notice; City's

objections to this item are sustained.

City's Request for Judicial Notice

The requests of City, et al. that the Court take judicial notice of several items (identical in each case) are resolved as follows:

Granted as to Sections 555, 556 and 558 of the City Charter. (Exhibits F, G and H.)

Granted as to the extracts of the City of Los Angeles General Plan Framework attached to the Request for Judicial Notice as Exhibit B.

Granted as to the official opinion of the Court of Appeal in *Saunders v. City of Los Angeles,* reserving determination as to the relevance and application of that opinion to the circumstances of this action.

As no adverse party objected, the Court also grants the requests as to the existence and filing of each of the Petitions for Writ of Mandate in *Federation of Hillside Canyon Associations v. City of Los Angeles* (two cases) and *Saunders v. City of Los Angeles*; and as to the excerpts of the EIR in the *Saunders v. City of Los Angeles* (Exhibits C, D and E).

Without additional explanation, which was never provided, the Court finds insufficient the proffer with respect to a single page of the 2013 update of the U.S. Census. (Exhibit A.) Although the population of the HCPU area is a point of considerable interest in and importance to this case, the document attached as Exhibit A to this RJN, was apparently updated in 2013 -- in some unexplained manner — and the particular document attached has no indication of any particular relevance itself.

Nor will the Court accept City's apparently implied offer that the Court search the U.S. Census itself. That would be both improper and inordinately time-consuming. City had the obligation to explain the relevance of the document, and in this case to be clear about the particular parts of the document to which it seeks the Court's attention.

Declarations

The declarations of MacNaughton and Kruse are not proper subjects of judicial

notice; nor is Exhibit 1 to the Reply Brief to which it is attached. City's objections to these matters are sustained.

Other evidence

All other evidence, which is in the Administrative Record, is admitted.

Status of the three cases

With the stipulation that all evidence admitted in one case is admitted in all, and based on the congruence of the subject matter of the cases, the Court issues this single decision to address the issues presented in each of the three cases.

Background; the Framework Element

City has sought, and the Court has granted, City's request for judicial notice of a portion of "The Citywide General Plan Framework - An Element of the City of Los Angeles General Plan" ("the Framework Element" [the same document the Court referenced *ante* and which was the subject of the cases cited in footnote 1, *ante*).

There is no explanation why this document was not originally included in the Administrative Record in this case as it sets forth "a citywide comprehensive long-range growth strategy" for the city and describes the role of community plans such as the Hollywood Community Plan Update (HCPU) at issue in these proceedings.[3] (City's RJN, Exh. B, page 2) Thus: "While the Framework Element incorporates a diagram that depicts the generalized distribution of centers, districts, and mixed-use boulevards throughout the City, it does not convey or affect entitlements for any property. **Specific land use designations are determined by the community plans**." [Par.] In fulfilment of the State's [planning] requirements [for general plans (Govt. Code secs. 65300, et seq.]), the City's general plan contains citywide elements for all topics listed except Land Use for which community plans establish policy and standards for each of the 35 geographic areas." (*id.*, emphasis added.) The HCPU is or will be such a plan for

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[3] The Court also granted Petitioner Fix the City's request that the Court take judicial notice of segments of Chapter 2 of the same document.

Hollywood.

The Framework also contains a statement of relevance with respect to the significance of population data:

> "In planning for the future, the City of Los Angeles is using population forecasts provided by the Southern California Association of Governments (SCAG). The Framework Element does not mandate or encourage growth. Because population forecasts are estimates about the future and not an exact science, it is possible that population growth as estimated may not occur; it may be less or it may be more. The City could be at the beginning of a long decline in population or at the beginning of a sharp increase." [Par.] The Element is based on the population forecasts provided by SCAG. Should the City continue to grow, the Element provides a means for accommodating new population in a manner which enhances rather than degrades the environment. The City does not have the option of stopping growth and sending it elsewhere. It must prepare for it, should growth occur. In preparing the General Plan Framework Element, the City has answered the question "What would the City do if it had to accommodate this many more people?" In answer to that question there are two possibilities: 1) prepare a Plan to accommodate density equally among all City neighborhoods, or 2) prepare a plan to preserve the single-family neighborhoods and focus density — should it occur — in limited areas linked to infrastructure." (*Id.*)

The HCPU is thus the updated, basic planning document for the Hollywood community which "establish[es] policy and standards for [the Hollywood] geographic area[]. (*Id.*)

As will be discussed, the HCPU, includes, *inter alia*, a plan to focus growth along transit corridors and in specific areas of Hollywood. Whether the final environmental impact report for the HCPU withstands scrutiny at this time is the focus of the differences between these petitioners, on the one hand, and City and Intervenor, the Hollywood Chamber of Commerce, on the other.

The fundamental dilemma is why and how "specific land use designations" are properly determined based on population estimates which, it is argued and clearly established, are substantially inaccurate.

PRELIMINARY PROCEDURAL ARGUMENTS

Waiver?

City and Intervenor contend that certain petitioners waived critical arguments by not asserting them in the administrative proceedings or in the petition for writ of mandate. This contention is an inaccurate statement of what occurred in the administrative proceedings below. Contrary to the claims of City and of Intervenor, it is well-established that whether a particular petitioner made a contention below is not the test for asserting that claim in CEQA proceedings. The question is: Was the subject matter of the claim made *by anyone* below with sufficient specificity?

As but two examples of the facts: (1) SaveHollywood raised the issue of the mis-use of the 2005 SCAG population estimate multiple times in the administrative proceeding, and (2) when the 2010 Census data was first incorporated into an official document just days prior to the final action by the City Council, La Mirada wrote to the body before which the issue was then being considered, the City Council, setting out in more than ample detail its objections. *Cf., Endangered Habitats League v. State Water Resources Control Board* (1999) 70 Cal.App.4th 482, 489-491 [exhaustion not required when no opportunity to challenge provided]. Public Resource Code section 21177 is simply not applied in the crabbed manner that City and Intervenor contend. Multiple additional examples of timely stated objections to the points now adjudicated appear in the record. Thus, on the facts, the issues now presented were all timely presented below.

Next, there was considerable specificity in the objections made by petitioners (and others) at the several stages of the administrative process, specificity that meets the applicable test, even as discussed in the cases cited by Intervenor (*e.g., Resources Defense Fund v. Local Agency Formation Commission* (1987) 191 Cal.App.3d 886,

894). Moreover, better reasoned cases such as *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163, make clear that the specificity prong of the Public Resources Code section 21177 requirement was amply met -- and for all of the issues raised in this proceeding. As the *Sensible Development* court states: " ... less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding. This is because "'[i]n administrative proceedings, [parties] generally are not represented by counsel. To hold such parties to knowledge of the technical rules of evidence and to the penalty of waiver for failure to make a timely and specific objection would be unfair to them.' (Note (1964) Hastings L.J. 369, 371.) It is no hardship, however, to require a layman to make known what facts are contested." (*Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1970) 8 Cal.App.3d 1009, 1020 [87 Cal.Rptr. 908].)" *Id.*, at 163.[4]

Claim Preclusion as to Fix the City?

City and Intervenor advance two arguments as to claim preclusion of certain contentions by petitioner Fix the City; neither is meritorious.

First, City mistakenly asserts (City's Op. at 28-29) that Fix the City's arguments about mitigation measures are barred because it is "in privity with" with a party to *Federation II* (*id.* at 23:12-27). City cites as its legal authority *Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1301. That case does not support the argument made. At the cited page that court is addressing claims made by the same party, not which party is in privity with whom. It is clear that in this case we have multiple petitioning parties and that there is no sufficient evidence presented that Fix the City is in legal privity with any other party to the earlier case. City's claim is without support. *See, e.g.*, *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180

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[4] This last waiver contention is resolved based on the circumstance that the claims which City claims to have been waived are simply elements of petitioner Fix the City's Fourth Cause of Action. The cases City cites are inapposite. *See* Fix the City's Reply at 25:1-15.

Cal.App.4th 210, 229-231.

Nor does Fix the City's participation in *Saunders v. City of Los Angeles* (September 25, 2012) (2012 WL 4357444) support City's claim preclusion arguments. As Fix the City points out, the issue presented in *Saunders* was whether City breached a mandatory duty by failing to prepare annual reports on the City's infrastructure (Fix the City's Reply at 22:19-27); it involved the Framework and not either this EIR or the HCPU. It appears that City relies solely upon the circumstance that Fix the City was a party to *Saunders* as barring its contentions here. That argument ignores the material differences in the issues presented in the two cases. Nor were this HCPU and its EIR considered in any respect in *Saunders*; indeed, there is no way either could then have been subject to anyone's consideration as they had only been adopted and approved *after* the *Saunders* trial court had issued its decision.[5]

PRINCIPAL ARGUMENTS AND ANALYSIS

Petitioners' contentions

Petitioners advance several arguments in support of their contentions that the HCPU and its EIR were not prepared in the manner required by law, etc.[6]

Population base

A fundamental contention of all petitioners is that the population data upon which the EIR for the HCPU is formulated is fatally flawed, with the result that the EIR must be revised and then recirculated with appropriate analysis of the corrected basic data.

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[5] The Court, *sua sponte*, takes judicial notice of the entry of judgment in the trial court in *Saunders* -- on March 2, 2011 — a date *prior* to the public dissemination of the draft EIR in the present case, making City's argument -- that of a party to *Saunders* and with detailed knowledge of its proceedings -- more than difficult: There is no way in which the claims now made concerning this, later issued EIR (and plan), could have been raised or litigated in that case. *See, Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 225-229 *and e.g., Federation II* at 1202.

[6] Certain petitioners also address claimed general plan defects. Because they are analyzed according to a different standard, the Court addresses them separately, *post*.

Applicable facts

The first set of relevant facts is the timeline of significant actions for the items, now listed.

- April 28, 2005 * Notice of Preparation of Draft EIR published
- March 3, 2011 * Draft EIR released
- May 2011 * 2010 U.S. Census data released[7]
- October 2011 * Final EIR released
- December 11, 2011 * Planing Commission submits HCPU with recommendation of approval of HCPU
- May 8, 2012 * City Council Planning and Land Use Management Committee (PLUM Com.) submits HCPU to Council without recommendation
- May 18, 2012 * First Revisions to EIR [contains response to SCAQMD]
- June 14, 2012 * Second Revisions to EIR - [33 pages; contains references to 2010 US Census data released in May 2011]
- June 19, 2012 * City Council meeting at which EIR adopted
- June 21, 2012 * Notice of Determination filed

The principal factual and legal dispute concerns City's reliance on population data, which City obtained from the Southern California Association of Governments (SCAG), as the base for analysis in the HCPU and its EIR. There is agreement that the base used for analysis was the SCAG estimate of population in 2005 in the HCPU defined area, and that this number was 224,426 persons. The EIR describes this estimate as having been derived from the 2004 SCAG Regional Transport Plan. Neither this 2004 Plan nor any other source data with respect to the 2005 population number appear in the Administrative Record. (Limited background memoranda relevant to the

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[7] City cited a web address at which census data could be viewed. The Court declines this entirely non-specific invitation as vague, overbroad and therefore insufficient.

population statistics do appear in the Reference Library, but they do not provide the missing data.) The Draft EIR (DEIR) uses a forecast of population for 2030 for the HCPU area of 244,302; this was derived from the same 2004 study. The DEIR also sets out a "revised" population estimate of 245,833.

Using these various data points, the DEIR analyzed what it referred to as a "reasonable expected level of development for 249,062 people.

Petitioners argue that the fact that the results of the 2010 Census became available just after the DEIR was released compelled revision of the DEIR to utilize that data and that failure to do so was prejudicial error requiring preparation and recirculation of a new DEIR which properly incorporates the 2010 Census population data. (While the exact date of release of this data is a point of dispute among the parties, it is clear that the official United States Government census data became available by May, 2011 — within 60 days of the release of the DEIR.)

This U.S. Census data is relevant to this litigation because it differs so significantly from that used in the EIR process here. The 2010 Census shows that the population of the HCP area was approximately 198,228 persons. The reason why this is given as an approximation is that the relevant census tracts cover an area slightly different than the boundaries of the HCPU area. This difference is known, however, to City's Planing Department, and City did make some adjustments to its own data in its Second Addition to Final EIR, dated June 14, 2012, five days before the City Council took final action on the HCPU and its EIR, confirming its knowledge in this respect.

The following table summarizes key data and illustrates the petitioners' contention that the base used by City in its planning constitutes error.[8]

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[8] While City argues that it was not possible to estimate the population in the HCPU area because of incongruity of census tracts with the HCPU area, the Administrative Record reveals that petitioner La Mirada was able to estimate the population in the HCPU area at 197,085 persons, and City itself made revisions to the EIR just 5 days prior to its approval by the City Council to incorporate some of the data from the 2010 Census, as noted in the text.

1990 U.S. CENSUS	2000 U.S. CENSUS	**2004/2005 SCAG pop. est.**	**2010 U.S. CENSUS**	2030 Forecast in DEIR	2030 CITY est.
213,912	210,824	**224,426**	**198,228**	244,302	249,062

Reference to this table produces some obvious questions including the following: (1) Why was the population base which City used for analysis in the DEIR the SCAG estimate of 224,426 when the Official Census data became available within 60 days of release of the DEIR — and when that data shows a significantly lower population (even in a somewhat larger geographic area)?[9]; and (2) why was the 2030 population number used not further adjusted once the 2010 U.S. Census data was available?

The 2005 SCAG population estimate was a principal key to the analytical foundation for the DEIR. From it flowed not only the 2030 population estimate used in the DEIR, but, combined with other factors, estimates for water consumption, waste water, solid waste, and energy demand,[10] as well as other elements of the EIR.

As Fix the City aptly describes the function of the EIR: "At the heart of the [DEIR for the HCPU] and indeed the defining purpose of the Plan Update itself, is the accommodation of projected population growth in the Plan area. The purpose of the EIR is to evaluate the environmental impacts of accommodating this growth in the manner and locations set forth in the Plan Update. In this regard, the magnitude of the

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[9] It is clear that City's Planning Department had the ability to adjust for the slight differences between the HCP boundaries and the census tract data as the latter was discussed in the 33 page June 14, 2012 Second Revision to EIR released just 5 days prior to the City Council voting to approve the EIR -- and the census tracts themselves had been extant for a considerable period of time. City advanced several contentions based on the argued differences, claims that appear fully refuted by the actions taken by its own Planning Department.

[10] The estimates for public safety services will be discussed, *post.*

population increase accommodated by the Plan Update is a critical component of the environmental analysis and [is] relied upon in numerous instances throughout the EIR." (Fix the City's Opening Memo. at 6:5-21). Thus, it is critical to the EIR that the population base be appropriate to the actual circumstances which exist in the area of the HCPU and its EIR. In this case, it was not.

Standard of Review

The standard for review of the sufficiency of any EIR is prejudicial abuse of discretion. Public Resources Code sections 21168 and 21168.5. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. *Laurel Heights* [*Impr. Asn. v. Regents* (1988) 47 Cal.3d 376,] at 392. A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the goals of the EIR process." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 653. "... the existence of substantial evidence supporting the agency's ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA. " *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383. 1392.[11] A clearly inadequate or unsupported study is entitled to no judicial deference. *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1355.

Here, a case cited by respondents also supports petitioners' contention.[12] In *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136

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[11] The need to be alert for agency misconduct in CEQA matters is especially strong where, as here, the agency is the project proponent. *Deltakepper v. Oakdale Irrigation Distr.* (2001) 94 Cal.App.4th 1092, 1109.

[12] Petitioner La Mirada clearly makes the argument that City did not proceed in the manner required by law. Petitioner Fix the City appears to rely on the other basis to set aside an EIR, viz., that there is no substantial evidence in its support — a claim joined by SaveHollywood, as well as by La Mirada.

Cal.App.4th 1, the court held that a lead agency cannot forego its own analysis of base data and rely instead on such data provided by another agency. In the present matter, one of City's principal counter-arguments is that it was entitled by law to rely on the SCAG 2005 population estimate. That contention must be and is rejected upon the authority of *Californians for Alternatives, supra. See also, Ebbits Pass Forest Watch v. Calif. Department of Forestry* (2008) 43 Cal.4th 936, 956.

There are additional reasons why use of the SCAG population estimate is improper in the context of this EIR. As petitioners explain, this EIR does not contain the "analytical route" by which the lead agency reached the conclusions set out in such a document. This requirement, that fundamental information be disclosed in the planning documents, has been the law for decades. *E.g.*, *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506:

> "We further conclude that implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route. Reference, in section 1094.5, to the reviewing court's duty to compare the evidence and ultimate decision to 'the findings' (emphasis added) we believe leaves no room for the conclusion that the Legislature would have been content to have a reviewing court speculate as to the administrative agency's basis for decision." *Id.*, at 515.

City and Intervenor contend that City fully complied with EIR requirements, citing

Guidelines section 15125(a), which provides:

> "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published .... This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."

In addition to using the SCAG 2005 estimate of a population of 224,426, the DEIR forecast a population of 244,302 residents in 2030 for planning purposes. This data, as noted previously, was derived from the 2004 SCAG transportation report.[13] The EIR then estimated the "reasonable expected level of development" utilizing a further estimate of the population in the HCPU area in 2030 of 249,062.

Considering the *actual* population in 2010 as evidenced by the 2010 Census data, the real population increase essential to analysis in the DEIR was 50,744 rather than the 24,636 persons number which was utilized by City. Thus, the analysis in the DEIR was predicated upon a population increase — *well under half* — of what would occur if the 2030 estimate were to remain. And, if the population estimate for 2030 were to be adjusted based on what the 2010 Census data had shown, then all of the several analyses which are based on population would need to be adjusted, such as housing, commercial building, traffic, water demand, waste produced — as well as all other factors analyzed in these key planning documents.[14]

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[13] As Petitioner SaveHollywood points out, the 2004 RPT was not included in the Administrative Record; this is "a fatal error" as it is "a key rationale" for the HCPU and "[b]y omitting purported relevant information from the record, the City deprived the public of the ability to independently verify [City's] population assumptions and its environmental assessments predicated thereon." SaveHollywod.org Opening Memo. at 8:16-21.

[14] As La Mirada points out in its Opening Brief at 7:19-22, just before the City Council voted to approve the several documents in June 2012, City added its conclusion that it was still reasonable to rely on the 2005 SCAG population base even with the 2010 Census data. That clearly is a post-hoc rationalization of City's failure to recognize

City's reliance on what is "normally" permissible as what is required is misplaced. The very fact that Guideline section 15125(a) uses the word "normally" suggests that there are circumstances in which such reliance is not appropriate. It is well-established that, "[i]n some cases, conditions closer to the date the project is approved are more relevant to a determination of whether the project's impacts will be significant. *Save Our Peninsula Com. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 125. Thus, the Guideline in which City and Intervenor seek refuge instead recognizes, and the cases support, the petitioners' contention that there are substantial reasons to use a different (up-to-date) baseline when the circumstances warrant, as the circumstance did, and do, in this case:

> "Administrative agencies not only can, but should, make appropriate adjustments, including to the baseline, as the environmental review process unfolds. *No purpose would be served, for example, if an agency was required to remain wedded to an erroneous course and could only make a correction on remand after reversal on appeal.*" *Citizens for East Shore Parks v. California State Lands Comsn.* (2011) 202 Cal.App.4th 549, 563. (Emphasis added.)

Even when the surrounding conditions are recognized close in time to the final certification of the EIR, the baseline must be updated to reflect that new knowledge. *E.g.*, *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357 (identification of additional wetlands made just prior to proposed certification of FEIR). Here, the significant factual predicate for the critical analytical issues explicated in the EIR was known far earlier in the EIR process than that in *Mira Monte*; here, just two months after release of the initial DEIR and over a year prior to final action on the EIR — yet no material adjustments were made. Multiple objections to the continued use of

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that the HCPU was unsupported by anything other than wishful thinking — and a demonstration of an effort to avoid further analysis in key planning documents. Nor is an agency's determination marked by changes such as those in evidence here, entitled to any deference. *Yamaha Corp. v. State Board of Equalization* (2001) 19 Cal.4th 1, 14.

these demonstrably incorrect SCAG population estimates repeatedly were made "for the record" by several groups — and ignored by City until their limited [and inadequate] use, just 5 days before final approvals in the Second Addition to Final EIR. This conduct was itself a failure to proceed in the manner required by law. Public Resources Code section 21166; *Mira Monte, supra*, at 365-366.

When the new facts became known shortly after issuance of the DEIR, the baseline used for analysis should have been adjusted -- in the summer of 2011 rather than proceeding with a fundamentally flawed baseline. The failure to use accurate and then-current data was a failure to proceed in the manner required by law . This is made clear by cases such as *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99: "If 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. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236 []; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 492 []; *County of Amador v. El Dorado County Water Agency, supra,* 76 Cal.App.4th at p. 954; Pub. Resources Code, § 21005, subd. (a).)" *Id.*, at 128.

While CEQA gives the lead agency flexibility in establishing baseline conditions, as Fix the City argues, "that flexibility must be cabined by the rule that all CEQA determinations must be supported by substantial evidence. (Fix the City, Opening Memo. at 8:17-19). Citing Guideline 15384, which defines substantial evidence, Fix the City points out (*id*, at 9:5 et seq.) that substantial evidence must have a factual basis which is "a serious deficiency of the 2005 estimate." Decision makers cannot arrive at the required reasoned judgment without it. *Concerned Citizens of Costa Mesa v. 32nd Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

Intervenor errs in its claim that use of the incorrect baseline was not prejudicial. (Intervenor's Opposing Memo. at 17-18) Rather, as Fix the City argues, use of the flawed baseline "fundamentally distorted the EIR." (Fix the City's Opening Memo. at

8:20). Also, the attempted remedy to the prior utilization of the wrong baseline data in the DEIR resulted in City inserting an abbreviated analysis of the 2010 census data in its June 2012 Second Addition to the EIR, which contained a merely truncated — and insufficient — discussion of alternatives. As Fix the City notes: "Clearly, if one goal of the plan is to accommodate projected population growth — setting aside entirely the accuracy of the projection — and the City is advised that there is more capacity in the current plan than it realized, its analysis of necessary future actions to accommodate a projected increase would change." (Fix the City's Reply. at 9:1-4)

What is particularly flawed about the Second Addendum to the EIR is the failure to adjust for the 50,744 new residents that are a direct consequence of City's original error (use of the 2005 overstatement of population by SCAG rather than the actual number available from the 2010 Census). The Second Addendum is flawed because it is premised on the unsupportable notion that accommodating 50,744 new residents will have less impact than accommodating 24,636 new residents. The utilities, wastewater and public safety discussions of this EIR are all without support and City has not explained the "analytical route the ... agency traveled from evidence to action," thus rendering invalid its literally last minute attempt (viz., 5 days prior to final approval) to remedy its prior failures and refusals to accept as valid the many objections made to the mistaken use of outdated and substantially wrong SCAG data. *See, Laurel Heights Improvement Assn. v. Regents*, *supra*, (1988) 47 Cal.3d 376, 404. [15] [16]

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[15] No party makes any note of the discussion in *Federation II* of a discussion of projections based on SCAG and census data which appears at 126 Cal.App.4th at 1206-1207. That discussion is not applicable in any event to this case; as may be inferred by the parties omission of any reference to it.

At page 11 of its opening memorandum, City claims that a single sentence in the Framework precludes use of up to date population figures, especially the 2010 Census data. As La Mirada argues (Reply at 7:9-11) "Blind adherence to data [City] knows is wrong is not the 'good faith effort at full disclosure' mandated by CEQA. Guideline section 15151." See, *Citizens for East Shore Parks v. California State Lands Comsn.* (2011) 202 Cal.App.4th 549, in which the State Lands Commission as lead agency revisited its baseline during the environmental review process *and modified it as needed.*

Alternatives Analysis

Alternatives analysis is a core element of each EIR. *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162.[17] An EIR must contain and analyze in depth a "range of reasonable alternatives." *Citizens of Goleta Valley v. Board of Supervisors* [*Goleta II*] (1990) 52 Cal.3d 533, 566; Guidelines section 15126.6(c). The range must be sufficient "to permit

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This practice was specifically approved by the reviewing court of appeal:

> "To begin with, plaintiffs cite no authority supporting the implied premise of their argument—that the Lands Commission could not revisit the baseline during the environmental review process and modify it as the Commission deemed appropriate or necessary.[fn omitted] Moreover, such a suggestion is unsound. Administrative agencies not only can, but should, make appropriate adjustments, including to the baseline, as the environmental review process unfolds. No purpose would be served, for example, if an agency was required to remain wedded to an erroneous course and could only make a correction on remand after reversal on appeal. [Par.] The record also reveals a sound basis for the Lands Commission's adjustment of the baseline. Chevron presented the Commission with information about other baseline determinations being made for proposed San Francisco Bay Area projects, and urged it to take the same approach so there would be uniformity in the environmental review process. In addition, the case law in the area was being developed through decisions such as *Fat,* 97 Cal.App.4th at pages 1277–1281, 119 Cal.Rptr.2d 402, which endorsed and followed *Riverwatch, supra,* 76 Cal.App.4th 1428, 91 Cal.Rptr.2d 322. Thus, as the Lands Commission explained, its view of the appropriate baseline evolved over time, ultimately leading to modification of the baseline in the 2003–2004 timeframe, some four years before it completed the environmental review process. [Par.] in sum, the Lands Commission did not abuse its discretion in defining the baseline used to assess environmental impacts of the proposed marine terminal lease renewal. The baseline was not contrary to the law, and it was based on substantial evidence." *Id.* at 563-564.

[16] The claims that the petitioners were too late with their objections is devoid of merit. As City only applied the 2010 Census data in the document dated June 14, 2012, five days prior to the City Council vote on the project component documents, and as the record is clear that some of the petitioners made their objections known even in that short time frame, that was all any citizen might (or need) do — and it fully complies with the standing requirements of CEQA under such a tight time frame. Public Resources Code section 21167; *e.g.*, *Endangered Habitats League v. State Water Resources Control Board* (1997) 63 Cal.App.4th 227, 238-240.

[17] The other core element is that of mitigation. *Id.*

a reasonable choice of alternatives so far as environmental aspects are concerned. *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-751. Each case must be evaluated on its own facts. *Goleta II, supra*, at p. 566. Among the usually included alternatives is one for "reduced density." *Watsonville Pilots Assn. V. City of Watsonville* (2010) 183 Cal.App.4th 1059. The EIR must always include analysis of the No Project Alternative (Guidelines section 15126.6(e); *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 203) which must discuss what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. Guidelines section 15216.6(e). This alternative is not always the same as the baseline environmental setting, and the EIR's analysis of the No Project Alternative should identify the practical consequences of disapproving the project when the environmental status quo will not necessarily be maintained. *Planning & Conservation League v. Dept. Of Water Resources* (2000) 83 Cal.App.4th 892.

In determining what constitutes a reasonable range of alternatives, there must be a set or group of such alternatives which would feasiblely attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. Guidelines section 15126.6(a). The term feasible is defined in Public Resources Code section 21061.1 as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. See Guidelines section 15126.6(f)(1). "The key issue is whether the range of alternatives discussed fosters informed decision making and public participation. *Laurel Heights Improvement Assn. v. Regents*, supra, 47 Cal.3d 376, 404-405.

The EIR must identify the alternatives considered in, and those excluded from, EIR analysis and should provide the reasons for their rejection. *Goleta II, supra*, at 569; Guidelines section 15126.6(b). A brief explanation of such excluded alternatives is sufficient; the entire administrative record may be considered in determining whether a

reasonable range of alternatives has been discussed. *Id.*, at 569.

"The selection of alternatives discussed will be upheld, unless the challenger demonstrates that the alternatives are manifestly unreasonable and they do not contribute to a reasonable range of alternatives." *Calif. Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 988.

The EIR in this case contains analysis of three "alternatives": (1) the current (preexisting, 1988) plan, considered as the No Project Alternative, (2) the current/proposed project, and (3) a plan based on the SCAG 2030 population forecast (which is based on a one percent reduction in population from the proposed project). However, under applicable regulations, there are only two alternatives — Public Resources Code section 21100(b)(4) provides that the project itself cannot be an alternative to itself, as La Mirada points out. La Mirada Opening Brief at 16:17-20.

There is a further problem in "counting" the alternatives analyzed: La Mirada points out that Guidelines section 15126.6(e)(3)(A) when read in conjunction with *Planning and Conservation League v. Dept. Of Water Resources* (2000) 83 Cal.App.4th 892, 917-918 suggests that the "No Project Alternative" is not an alternative for purposes of CEQA. Instead, it is simply the continuation of the existing plan, policy or operation into the future....[T]he projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan." La Mirada Opening Memo. at 16:21-17:7.

However one counts the "alternatives," the flawed environmental setting presented in these EIR documents makes the analysis insufficient and inaccurate. *Friends of the Eel River v. Sonoma County Water Agency* (1994) 27 Cal.App.4th 713, 738-739. "[W]ithout [an adequate baseline] description, analysis of impacts, mitigation measures and alternatives becomes impossible." *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953.

SaveHollywod and HELP contend that consideration of a down-sizing/down-zoning (DS-DZ) alternative was both feasible and required based on the actual

population statistics and trends. These petitioners argue that notwithstanding multi-year and multi-million dollar investments in infrastructure in the Hollywood community, there has been a net outflow of population and an increase in vacancy rates in both commercial and residential properties. Interestingly, they argue that, based on the SCAG 2005 population estimate, the HCP area has lost over 26,100 people in the five year period 2005-2010 (basing the 2010 population on the U.S. Census data) and there have been massive financial losses connected to construction projects — the key example being the difference between the construction cost and eventual sale price of the Hollywood-Highland Project, of over $420 million. SaveHollywod Opening Memo. at 14-19.

Fix the City argues that the EIR's 10 page discussion of the three selected alternatives is perfunctory and "[a]s a result of the deficient alternatives analysis, the EIR fails to provide decision makers and the public with a genuine comparison of the environmental consequences of different levels of development in Hollywood." Fix the City Opening Memo. at 15:9-11. Nor, in Fix the City's view does the Second Addition to the EIR (June 14, 2012) sufficiently address the otherwise insufficient range of alternatives in the manner required by law. This petitioner points out that (1) these environmental documents ignore the requirement that other alternatives be identified or, consequentially, the reasons they were rejected be stated, and (2) that this defect was raised throughout the environmental review process in numerous comment letters. Instead, "The FEIR states that City Planning 'considered and rejected as infeasible an alternative that would place a blanket moratorium on demolition permits and project development.' ... Like the DEIR, the FEIR also fails to meet CEQA's disclosure requirements...." Fix the City Opening Memo. at 16-17.

Focusing on the Second Addition document, Fix the City argues that the discussion there of the no-growth and DS-DZ alternatives are infeasible, but neither the EIR nor the Second Addition document contains "sufficient information ... to enable the public or decision makers to adequately evaluate the City's conclusory statements

regarding the infeasibility of a downsizing alternative." *Id.* at 17

This argument has particular force when one considers the material discrepancy in the population statistics discussed, *ante*, and the short 5 day window between the release of the Second Addition and the vote by the City Council approving the several documents at issue. The evidence in this record strongly supports petitioners' contention that there has been an insufficiently-reasoned rush to completion of the EIR process, and that the process was administered in a way that is clearly contrary to well-established laws as interpreted by the appellate courts. As Fix the City argues: "The Plan Update EIR ... lacks an analysis of sufficient ranges of alternatives and fails to provide substantial evidence supporting its decisions to analyze only the narrowest range of alternatives. [Par.] While it may be a reasonable policy decision for the City to plan for the level of population growth accommodated in the Plan Update, the City cannot make that decision without a genuine understanding of what the environmental trade-offs are of accommodating this level of growth. The Plan Update EIR is the document designed to inform both the decision makers and the public of the environmental consequences of the Plan Update and of alternative approaches to the critical task of planing the City's growth.... CEQA does not permit an agency to evade its disclosure duties in this manner; the failure to analyze a reasonable range of alternatives without any support of a finding of infeasibility is an abuse of discretion." Fix the City Opening Memo. at 18:21-19:7.

One can only wonder how this planning process ran so far off the track when consideration is given to the recent history of the Framework itself and the corrective action it required.[18]

In response to these arguments, neither City nor Intervenor presents any adequate counter-arguments. Both City and Intervenor ignore the cases, statutes and Guidelines cited by the petitioners. City instead focuses, *inter alia*, on other claimed

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[18] See footnote 1, *ante*.

defects in the petitioners' contentions, but these assertions do not respond to the fundamental point that petitioners have established: City did not proceed in the manner required by law with respect to ascertainment and discussion of these 'core components of the EIR process' as alternatives analysis is defined by our Supreme Court. *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, *supra*, 43 Cal.4th 1143, 1162.

Public Services

Fix the City contends, and City acknowledges, that the EIR's thresholds of significance did require City to evaluate whether the significant capacity increase permitted by the HCPU would require "unplanned upgrading or improvement of existing fire protection equipment or infrastructure" or would "induce substantial growth or concentration of population beyond the capacities of existing police personnel and facilities; or whether the HCPU would "cause deterioration in the operating traffic conditions that would adversely affect [police and fire] response times. City's Op at 20. As Fix the City points out, "[t]he EIR determined that in fact such thresholds of significance would be exceeded for both police and fire services.... conclud[ing] that, absent mitigation, degraded performance in the[se] critical services was likely." (Fix the City's Reply at 13:4-14.) The issue was of substantial concern to many participants in the environmental and plan review process, including then Council member Eric Garcetti, who wrote a letter (dated March 23, 2012) highlighting the need for improved response times by City's Fire Department (AR21362).

Delayed response times of emergency services may be a factor in determining whether increased population concentration is significant. The focus of such analysis is on the physical changes that may result from economic and social changes. Guidelines section 15064(e) addresses this issue; e.g., population increases, as well as other "economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment". *See also* Guidelines section

15131; and *Christward Ministry v. Superior Court* (1986) 184 Cal.App.4th 180.

For reasons explained throughout this decision, this EIR is fatally flawed. One of the reasons is particularly applicable here, *viz.*, the failure to use appropriate population statistics leads to fatally flawed estimation of the impact on fire and police services — and their impact on physical changes: "the effects of decreased response capacity, including both physical effects and social/economic effects that lead to physical effects, require [environmental] review." Fix the City's Reply at 15:12-13.

Prejudice

For reasons discussed above in detail, petitioners have demonstrated prejudice compelling the granting of relief. The facts and circumstances of the administrative proceedings in this record clearly evidence as much of a rush to completion of the EIR and HCPU as might be possible in a proceeding of this nature. As described, *ante*, the 2010 Census data became available within two months of release of the DEIR. As the time line, *ante*, demonstrates, there was ample time to revisit the critical population estimates and still have the documents [re]circulated, heard at public fora and submitted to various City committees and to the Council by June of the year after issuance. When community members and groups repeatedly wrote and spoke against key elements of the documents now being reviewed — and clearly articulated many reasons why the documents were flawed, there were two rushed efforts to supplement the relevant documents, including the first attempt to address some of the consequences of the 2010 Census data — but that only 5 days before the matter was voted on by the City Council. The result was a manifest failure to comply with statutory requirements.[19]

When a public agency does not comply with procedures required by law, its decision must be set aside as presumptively prejudicial. *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236. "Noncompliance with substantive requirements of

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[19] City's claim that the Framework mandated that SCAG estimates be used is without support for reasons discussed in the text, *ante*.

CEQA or noncompliance with information disclosure provisions 'which precludes relevant information from being presented to the public agency ... may constitute prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions." (§ 21005, subd. (a).) In other words, when an agency fails to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation. Case law is clear that, in such cases, the error is prejudicial. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236–1237[]; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 491–493 []; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712[]; *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174 []; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021–1023 [].)'" *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

That is what occurred here to the legal prejudice of petitioners, mandating relief.

Failure to recirculate

Guidelines section 15088.5(a) mandates that a DEIR be recirculated when "significant new information is added...." Here, it is clear that the significant new information begins with the 2010 Census data, but it cannot stop there. It is also evident that that information must be given full consideration; this will in turn affect much of the analysis in key documents.

City's failure to incorporate and update the DEIR to reflect the significant different population statistics, and all that flows from them, necessarily means that the EIR is fatally flawed. As in *Mountain Lion Coalition v. Fish & Game Comsn.* (1988) 214 Cal.App.4th 1043, this DEIR is fundamentally inadequate, even with the Second Supplement, issued 5 days before City Council action — meaningful public review was thwarted by City's pyrrhic rush to final approvals. This hasty action constitutes an

additional failure to proceed in the manner required by law, which is legally prejudicial.

GENERAL PLAN ISSUES

Contentions of Fix the City

Fix the City's opening brief sets the argument for this aspect of petitioners' contentions.[20] "California law and the Los Angeles City Charter require consistency between the policies set forth in the General Plan and land use ordinances adopted by the City," citing Government Code section 65300.5 and Los Angeles City Charter section 556.

This petitioner's principal contentions are that the HCPU is "fatally inconsistent" with the Framework because it fails to require policies that will ensure that the timing and location of development are consistent with City's ability to provide adequate infrastructure for additional development.

The findings made in support of the HCPU explain, correctly, that the Framework "establishes the standards, goals, policies, objectives, programs, terms, definitions, and direction to guide the update of citywide elements and the community plans."

Community plans, such as the HCPU, apply the elements of the Framework regarding growth and development in specific areas of the city, here of Hollywood. The Findings made for the HCPU discuss consistency with Framework Element Objective 3.3: "Accommodate projected population and employment growth within the City and each community plan and plan for the provision of adequate supporting transportation and utility infrastructure and public services."

The reasoning for the Finding was that the HCPU was consistent with Objective 3.3 because it includes a recommended pattern of land use that directs future growth to areas of Hollywood where new development can be supported by transportation infrastructure and different types of land uses can be intermingled to reduce the length

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[20] La Mirada makes a similar contention. SaveHollywood.com, *et al.* do not address this issue.

and number of vehicle trips.

Fix the City places emphasis on this finding because "it focuses exclusively on transportation infrastructure and not [on] other types of infrastructure and pubic services that are required to support increased population or commercial development; the Finding therefore does not demonstrate consistency with Objective 3.3." Fix the City Opening Brief 29:2-5.

Fix the City further focuses on what it contends is City's ignoring significant policies included in the Framework that, it argues, are designed to enable City to meet Objective 3.3. "Most significantly, the City's findings ignore the policies designed to ensure a continual monitoring of population growth *and* the ability of infrastructure to support the pace of growth.... Specifically, the Framework Element requires the use of a monitoring program to assess the status of development activity and supporting infrastructure and public services and '[i]dentify existing or potential constrains or deficiencies of other infrastructure in meeting existing and projected demand." .... The [HCPU] is inconsistent with the Framework Element because it does not include any mechanism to ensure that the state of infrastructure will be assessed or to provide for controls for controls on development in the event that infrastructure is insufficient to support the level of development permitted by the [HCPU]..... The City's approach to the Framework Element is focused entirely on the aspects that encourage growth, with no attention to those policies that require period[ic] assessment of the capacity for additional growth. Without inclusion of similar policies in the [HCPU], which is part of the Land Use Element of the General Plan, the City's General Plan is fatally inconsistent. The [HCPU], while permitting increased density and growth in key parts of Hollywood, fails to provide a mechanism to continually assess whether the infrastructure has the ability to support the increased development and therefore frustrates the policies in the Framework Element that are designed to ensure provision of adequate public services. The Framework Element permits only the appropriate amount of growth in light of the City's infrastructure; the [HCPU] omits the necessary mitigation measures to require

controls on development where the infrastructure is threatened. (Emphasis in original.) Fix the City's Opening Memo. at 29-30.

Fix the City next contends that City Charter section 558 mandates a finding that any plan adopted by City will not have an adverse effect on the General Plan or any other plans. And, this petitioner contends that, although City adopted such a finding, the Findings do not demonstrate actual compliance with this requirement. The Findings rely on the concept of concentrating growth in particular sectors, near public transport such as the new metro system, and the protection of existing single-family neighborhoods from denser development. Yet, Fix the City argues, "[t]he Finding is notable for what it lacks: any substantive discussion of the potential [inter]-plan effects of the [HCPU]. Fix the City next poses the question: "How can the decision makers conclude that the [HCPU] will not have an adverse effect on other community plan areas without considering if the increased growth facilitated by the [HCPU] will harm other areas?" (Fix the City Opening Memo. at 30:16-18).

Fix the City concludes as follows: "Because this analysis [that of inter-plan/area impact] is not in the EIR or in the record before the Council, substantial evidence does not support this finding. Indeed, the record before the City showed that public services are stretched thin throughout the City. On this record, the City cannot find that the [HCPU] will not adversely affect other areas of the City; the finding must be overturned." (*Id.*, at 30:18-22.)

La Mirada's Contentions

La Mirada also contends that the HCPU is not consistent with the General Plan for the City of Los Angeles, but focuses on different aspects. This petitioner's view is that, while the Framework is "growth neutral," the HCPU is not. Instead, La Mirada argues first, that the HCPU is "growth inducing," and contends that the reason the 2005 SCAG population estimate was used was to lower the population increase for which planning was required in the HCPU to just over 24,000 -- rather than the more accurate

number of 50,000 — that would need to be planned for for 2030.[21] Using the true population data results in a plan that is growth inducing according to La Mirada, which it argues "provides for a significant amount of excess capacity, a growth inducing effect." La Mirada's Opening Memo. at 23:3-23.

Second argues La Mirada, the objective of growth neutrality was dropped in the final EIR and HCPU. Thus it notes that the final version of the HCPU accommodates "more than double the natural amount of growth through 2030, dropp[ing] all pretense of growth neutrality, further showing an inconsistency with the ... Framework. [Par.] The result is an internally inconsistent General Plan. Is it growth accelerating and inducing, as provided for in the Land Use Element via the HCP, or is it growth accommodating and neutral, as required by the Framework.... Because of this inconsistency, the City cannot make the necessary findings required by Section 556." (La Mirada, Opening Memo. at 24:10-16).

City's Contentions

City advances several counter-arguments in defense of its actions.

On the key issue of whether the General Plan and Specific Plans must be consistent -- and how that requirement is achieved here -- City first acknowledges that a general plan must be "internally consistent and correlative" (City's Op. Memo. at 25:24-27), and then points out that City has broad discretion to balance the many competing policies expressed in the general plan — and that balance "does not require equivalence, but rather a weighing of pros and cons to achieve an acceptable mix" (citing *Friends of Lagoon Valley v. City of Vacaville* [2007] 154 Cal.App.4th 807, 822 [quotations and citations omitted]). After noting the many factors and interests described in the findings made in this case, City notes the role of a court reviewing such

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[21] Whether that was the reason to use the higher baseline, or not, the result is the same — a substantial error in the population baseline and in all planning aspects that rely on it for other impacts.

arguments: "A reviewing court's role is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies. (*Id.*, at 816 [internal citations omitted]).

Specifically in response to Fix the City's contentions,[22] City argues that there was no need to make a specific finding that the HCPU was consistent with Framework Objective Element 3.3. (City's Op. Memo. at 27:14-22). City's argument is that the HCPU is an amendment to a previous plan, the Hollywood Community Plan, which is itself a part of the General Plan, and that the adoption or amendment of a general plan is a legislative act -- and, pursuant to state law, "a city need not make explicit findings to support its action." *South Orange County Wastewater Auth. v. City of Dana Point* (2011) 196 Cal.App.4th 1604, 1619.

Further, City argues that General Plan amendments are governed by Charter Section 555 rather than section 556, which does not require any specific findings. And, to the extent that Section 556 applies, the findings it requires only need to show "'that the action is in substantial conformance with the purposes, intent and provisions of the General Plan; it does not require a separate specific finding of consistency for each of the thousands of policies and objectives contained in the General Plan.... The City's 16 pages of General Plan consistency findings would easily satisfy any requirements Section 556 would impose, if applied to the HCPU." (City's Op. Memo. at 27:28-28:7)

Applicable Law

1. Consistency

"'[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.' (*Citizens of Goleta Valley v. Board of Supervisors* [1990] 52 Cal.3d 553, 570, 276 Cal.Rptr. 410, 801 P.2d 1161.) 'The consistency doctrine has been described as 'the linchpin of

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[22] City's collateral estoppel arguments as to Fix the City were discussed and found invalid, *ante*.

California's land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law.' *Corona – Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994, 21 Cal.Rptr.2d 803.) 'A project is consistent with the general plan ' "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." ' " "A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan.'" *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 [emphasis added.].

"The general plan and its parts must be "an integrated, internally consistent and compatible statement of policies for the adopting agency." (Govt.C. 65300.5; see *Karlson v. Camarillo* (1980) 100 C.A.3d 789, 161 C.R. 260; *deBottari v. Norco* (1985) 171 C.A.3d 1204, 1210, 217 C.R. 790, infra, §1029 [referendum inconsistent with general plan is invalid]; *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado* (1998) 62 C.A.4th 1332, 1336, 1341, 74 C.R.2d 1 [although given project need not be in perfect conformity with each and every general plan policy, it must be compatible with objectives, policies, general land uses, and programs specified in general plan; some general plans are more specific than others, leaving less room for discretion].)

"If a general plan is to fulfill its function as a 'constitution' guiding 'an effective planning process,' a general plan must be reasonably consistent and integrated on its face. A document that, on its face, displays substantial contradictions and inconsistencies cannot serve as an effective plan because those subject to the plan cannot tell what it says should happen or not happen. When the court rules a facially inconsistent plan unlawful and requires a local agency to adopt a consistent plan, the court is not evaluating the merits of the plan; rather, the court is simply directing the local

agency to state with reasonable clarity what its plan is." *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97.

The court in *Garat v. Riverside* (1991) 2 Cal.App.4th 259, *overruled on other grounds in Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11 (discussed on this point in *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 388 [*Napa Citizens*], confirmed the application of the consistency requirement to charter cities such as Los Angeles, explaining that under Govt. Code sec. 65700(a), a charter city's general plan must contain the mandatory elements required by Govt. Code sections 65300 et seq. and section 65700, which construed together require not only that a charter city's general plan have the mandatory elements of Govt.Code sec. 65302, but also that these elements be internally consistent as required by Govt. Code sec. 65300.5. *Id.*, at 285, 287. *See Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 875, 876, 879 [Govt.C. 65860(a) prohibition of inconsistent zoning ordinances applied to charter city that had enacted ordinance requiring zoning and general plan consistency; hence, proposed referendum inconsistent with general plan was properly declared invalid]. As colorfully explained in *Napa Citizens, supra*, a "zoning ordinance that is inconsistent with the general plan is invalid when passed [citations] and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. [Citation.] The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform." *Id.*, at p. 389.

2. Standard for review of general plan/specific plan consistency issues

General plan consistency issues such as those presented by these parties are reviewed under a particularly deferential standard. While a city has broad discretion to weigh and balance competing interests in formulating development policies (*Federation*

II, supra, at p. 1196), a charter city's[23] general plan must be internally consistent.

The case upon which City relies sets out the standard to be applied here: "The adoption or amendment of a general plan is a legislative act. [Citation.] A legislative act is presumed valid, and a city need not make explicit findings to support its action. [Citations.] A court cannot inquire into the wisdom of a legislative act or review the merits of a local government's policy decisions. [Citation.] Judicial review of a legislative act under Code of Civil Procedure section 1985[24] is limited to determining whether the public agency's action was arbitrary, capricious, entirely without evidentiary support, or procedurally unfair. [Citations.] A court therefore cannot disturb a general plan based on violation of the internal consistency and correlation requirements unless, based on the evidence before the city council, a reasonable person could not conclude that the plan is internally consistent or correlative. [Citation.]" (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195, 24 Cal.Rptr.3d 543.) SOCWA has the burden of proof to demonstrate that the amendment to the general plan rendered the plan internally inconsistent. (See *Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 293, 3 Cal.Rptr.2d 504, disapproved on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 29 Cal.Rptr.2d 804, 872 P.2d 143.)." *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, 1618-1619 [*South Orange County*].

On the other hand, it is also true that direct conflict is not the litmus test for general plan consistency. All three petitioners cite *Napa Citizens*, a leading case on this issue. And, City does not either rely on or seek to distinguish the holding of *Napa Citizens* when discussing the consistency arguments made by petitioners.

In *Napa Citizens*, the court of appeal specifically addresses the consistency issue

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[23] There is no dispute about Los Angeles' status as a charter city.

[24] Clearly a typographical error in the opinion; the citation should be to section 1085.

in a way that the court in *South Orange County* does not. The *Napa Citizens* court explains:

> "We are of the opinion that the consistency doctrine requires more than that the Updated Specific Plan recite goals and policies that are consistent with those set forth in the County's General Plan. We also are of the opinion that cases such as *FUTURE v. Board of Supervisors, supra,* 62 Cal.App.4th 1332, do not require an outright conflict between provisions before they can be found to be inconsistent. The proper question is whether development of the Project Area under the Updated Specific Plan is compatible with and will not frustrate the General Plan's goals and policies. If the Updated Specific Plan will frustrate the General Plan's goals and policies, it is inconsistent with the County's General Plan unless it also includes definite affirmative commitments to mitigate the adverse effect or effects." *Id.,* at 379.

By contrast with *Napa Citizens*, the facts and procedural setting discussed in *South Orange County* lead to the conclusion that it is of limited value; indeed it is readily distinguishable from the present case. There, the issue of consistency with the general plan was not presented to the trial court; and the question of conflict was far more limited -- there, only whether a single zoning change was appropriate in the context of that general plan — rather than the massive, multi-faceted set of issues addressed in the HCPU. Further, the court of appeals there noted that no change could occur without further action, including review by the Coastal Commission. *Id.*, at 1609.

Analysis

Applying these principles to the present case, City's opening argument in its opposition, that it was not required to make findings in support of the HCPU, although literally true, nevertheless lacks merit.[25]

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[25] It also is inconsistent as City concedes it was required to make findings in support of the zoning changes called for by the HCPU, which it did.

While Charter section 555 contains no requirement that findings be made, this does not obviate the need for consistency. The consistency doctrine is, as noted, "the linchpin of California's land use and development laws." *E.g.*, *Families Unafraid, etc. v. County Board of Supervisors, supra*, 62 Cal.App.4th at 1336.

Fix the City points to what it contends is a fundamental inconsistency between the Framework and the HCPU, *viz.*, City's failure to address the absence from the HCPU of "policies that require monitoring of infrastructure to determine whether the growth permitted in the Plan Update should continue at a given time. The City's Revised Findings reveal how the Plan Update twists the monitoring requirements in Framework Policy 3.3.2 (the infrastructure monitoring policy)..... The City's position is that the Plan Update sufficiently addressed the infrastructure capacity of the area such that *no further monitoring is required during implemental of the Plan Update. This hands-off policy is completely contrary to the Framework Element's objective of continuous monitoring of development activity*. By asserting that the Plan Update conclusively establishes the ability of the infrastructure to absorb the level of development planned, the City thwarts the Framework Element's policy of limiting development when capacity becomes threatened. The failure to include a monitoring requirement makes the Plan Update inconsistent with the Framework Element." Fix the City's Reply at 24:8-26 [first emphasis in original; second emphasis added].

La Mirada's reply to City's arguments is multi-faceted.

(1) City's reliance on SCAG estimates is faulty and there is no substantial evidence to support the validity of that 2005 SCAG estimate;

(2) there is internal inconsistency with the Framework's focus on "growth neutrality" as the true data reveal that the HCPU is in actuality a plan to more than double the population in Hollywood;

(3) City's plan to focus growth close to transit stations elevates one policy over others, creating an inconsistency; and

(4) the 16 pages of findings used by City to justify its actions start from a false

premise — the misleading population data used by City which is "less than half what the [HCPU actually] provides..... Accordingly, there is no evidence on which to base the findings, and abuse of discretion is established. Code of Civil Proced. Sec. 1094.5(b)." (La Mirada Reply 17:26-18:3.)[26]

City's reliance on the holding of *Napa Citizens, supra,* that "a governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of an abuse of discretion" (id., at 357) is correct (City's Opposition Memo. at 8:15-19) — but on these facts, circumstances and record — not sufficient. Petitioners' arguments on lack of consistency, particularly those of Fix the City, on balance, overcome the presumption of regularity and explain why adoption of the HCPU on this record constituted an abuse of discretion.

The Court also concludes that the actions of City do constitute an abuse of discretion. Fix the City, in particular, cogently sets forth the reasons (summarized above). The fundamental inconsistency between the Framework and the HCPU on the failure of the HCPU monitoring policy is completely contrary to the Framework's essential component of continuous monitoring of development activity. There is a void in an essential aspect of the HCPU where instead there should be a discussion of the inter-plan/area impacts created by the HCPU. And, to the extent City relies on the entirely discredited SCAG 2005 population estimate (with the substantial impact that has on many facets of the HCPU), there is a fatal inconsistency between the HCPU and the General Plan.

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[26] Citation of this statute is inapposite; perhaps an inadvertence comparable to the typographical error noted in footnote 24, *ante*. General Plan adoption issues are legislative acts reviewed by ordinary mandamus under Code of Civil Procedure section 1085. Govt. Code section 65301.5; *Yost v. Thomas* (1984) 36 Cal.3d 561, 570-571; *Federation II, supra*, at 1195; see, generally, Miller & Starr, Calif. Real Estate Law, 3rd Ed. Ch. 25:9 at p. 25-39 and fn. 32.

The HCPU cannot survive in its present form and substance in the face of these very substantial inconsistencies. The HCPU is fatally flawed as a planning document as it presently stands.

CONCLUSION[27]

For the reasons stated, petitioners are entitled to relief as follows:

(1) to a peremptory writ of mandate ordering respondents and defendants City and City Council to (a) rescind, vacate and set aside all actions approving the HCPU and certifying the EIR adopted in connection therewith and all related approvals issued in furtherance of the HCPU, including but not limited to the text and maps associated with the HCPU, the Resolution amending the Hollywood Community Plan, the adoption of rezoning actions taken to reflect zoning changes contained in the HCPU, all amendments to the General Plan Transportation and Framework Elements made to reflect changes in the HCPU, adopting the Statement of Overriding Considerations, adopting the Mitigation and Monitoring Program, and adopting Findings in support of the foregoing; and (b) initiate the process of amending the HCP in a manner that conforms to the policies and objectives of the General Plan and the requirements of CEQA;

(2) an injunction that respondents and defendants City and City Council, their officers, employees ,agents, boards ,commissions and other subdivisions shall not grant any authority, permits or entitlements which derive from the HCPU or its EIR until an adequate and valid EIR is prepared, circulated and certified as complete and is consistent with CEQA, CEQA Guidelines, and all other applicable laws, and until legally adequate findings of consistence are made as required pursuant to the Charter of the

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[27] The relief set out below is the full relief to be awarded in the three cases. Any argument made and not addresses is deemed rejected.

City of Los Angeles and other applicable laws;

(3) attorneys fees and costs as may hereafter be determined.

DATED: December 10, 2013

ALLAN J. GOODMAN
JUDGE OF THE SUPERIOR COURT